NEETHAM

LAW REVIEW

vol. X

From the North to the World?
An interdisciplinary approach to the two realities

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LAW STUDENTS' SOCIETY
DEPARTMENT OF LAW
UNIVERSITY OF JAFFNA

NEETHAM LAW REVIEW

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Table of Contents

MESSAGES

MESSAGE FROM THE CHIEF GUEST

It is with great pleasure that I forward this message on the occasion of the launch of "Neetham Law Review-Vol-X", the academic journal of the Department of Law, University of Jaffna.

I strongly believe in publications of this nature, which extend far beyond the university environment. For the broader legal profession, encompassing the judiciary, active practitioners, and dedicated legal researchers, this offers fresh perspectives and carefully researched arguments that often bring new clarity to complex areas of law. It builds a culture of curiosity and critical thinking. Ultimately, this dedication to the advancement of legal knowledge does more than just add to Sri Lanka's academic archives; it strengthens the very foundations of justice, making it an indispensable asset to all relevant stakeholders.

After the initial publication of Neetham Law Journal in the year 2009, it is satisfying to observe its 10^{th} publication, which exhibits the enthusiasm and commitment of the Law Students' Society towards advancing legal scholarship. Especially for a university that commenced its LLB degree programme only in year 2005.

I extend my warmest congratulations to the Editorial Board of the Law Students' Society 2025/2026, for their untiring and dedicated endeavours in publishing "Neetham Law Review-Vol X**"**, which signifies an important milestone in its journey.

Justice Sampath B. Abayakoon,
Judge of the Supreme Court.

MESSAGE FROM THE GUEST OF HONOUR

It is a privilege to extend my greetings on the publication of *Neetham* by the students of the Department of Law, University of Jaffna.

The study of law demands critical and impartial reflection, beyond the comfort of personal convictions. This tenth edition of *Neetham* has offered students a valuable platform to express their ideas through legal writing and to deepen their engagement with the discipline. Despite the many challenges encountered in their academic journey, the students have demonstrated admirable perseverance and commitment in bringing this journal to fruition.

I extend my heartfelt congratulations to the editorial board, the Law Students' Society, the contributors, the academic staff, and all those whose dedication has made *Neetham* Volume X possible. May this journal continue to inspire generations of students to pursue scholarship with integrity, intellectual courage, and an unwavering devotion to justice.

As *Neetham* enters its second decade, I hope it will remain a distinguished forum for legal research, thoughtful dialogue, and principled inquiry.

Justice B. Sasi Mahendran,
Judge of the Court of Appeal.

MESSAGE FROM THE SPECIAL GUEST

I am deeply honoured to have been invited as a special guest for the launch of the 10th anniversary of the Neetham magazine, edited and published by the Law Students' Union of University of Jaffna. This year's theme for the Neetham magazine, as I understand, is "From North to the World".

The Law Faculty of University of Jaffna was established in 2005. During the past couple of decades, thousands of students would have graduated and entered the legal profession. Currently, there are 26,809 lawyers in Sri Lanka. Out of the said number, 15,164 are female lawyers being the majority.

I wish to emphasize the importance of women empowerment and the voice of females in the legal profession. Women empowerment is multi-dimensional. It refers to the process of increasing women's access to opportunities, resources, education, employment and other welfare systems. It also includes legal protection afforded to females. The pathway is to remove barriers created by stereotypes and discrimination against women.

Most importantly, women empowerment includes educational empowerment. In educational empowerment of women, I wish to emphasize more specifically on how legal education could protect the social fabric. Nelson Mandela, in his book "Long Walk to Freedom", has described "education is the most powerful weapon". Although these words are applied to everyone, they are particularly meaningful in the context of female education. It is more meaningful when females are educated in the legal stream. Women empowerment is not merely a social objective. It is a fundamental principle of equality, justice and sustainable development. A society that values women and provides them with equal opportunities for education, and to engage in professions; leadership and decision making lays the foundation for peace, prosperity and innovation. Thus, empowering women means enabling them to realize their full potential, exercise their rights, make informed choices and participate equally in every sphere of life.

Many influential thinkers have emphasized on equality and dignity of females. For instance, Virginia Woolf, in her book "A Room of One's Own", highlights the importance of independence and opportunity. Gloria Steinem, in her book "My Life on the Road", emphasizes that equality benefits society as a whole.

This launch of the Neetham magazine has set an example of free opportunity for educationally empowered females, by having 25 articles of female authors out of 30 articles. As Yusuf Malala once mentioned, "One Child, One Teacher, One Book and One Pen can change the world", this Neetham magazine has displayed that the voice of a female has become more powerful in the ultimate goal of "From North to the World. I wish all the very best to all the authors who are engaged in research in their respective fields and more specifically urge the female students and researchers to make use of these opportunities to showcase their potential. I wish that the Law Students' Unions to come would continue with this invaluable forum enabling researchers to engage in educating the world.

Suharshie Herath
LL. B (OUSL), LL.M (University of Colombo), PgDip. in International Relations (BCIS),
Dip.in Forensic Medicine (University of Colombo)
Deputy Solicitor General

MESSAGE FROM THE VICE CHANCELLOR

It is with great pleasure that I extend my warmest congratulations to the Editorial Board of the Law Students' Society, Department of Law, University of Jaffna, on the publication of the tenth volume of the Neetham Law Review.

The launch of Neetham Vol. X marks a significant milestone in the journey of this Journal. Over the years, Neetham has evolved into a distinguished platform for legal scholarship, offering a voice to law students, emerging scholars, and legal professionals alike. It is a testament to the unwavering dedication, intellectual rigour, and collaborative spirit of the student body and the faculty who guide them.

This year's theme, "From North to the World: An Interdisciplinary Approach to the Lived Realities of People," resonates deeply with the ethos of our University. It reflects a commitment to bridging the gap between academic inquiry and the lived experiences of communities and to engaging with complex legal and social issues through a multidimensional lens. I am particularly encouraged by the Journal's efforts to expand its reach beyond the Northern Province, contributing meaningfully to the national and global legal discourse.

The introduction of an Electronic International Standard Serial Number (EISSN) for this volume is a commendable step forward. It enhances the Journal's accessibility, discoverability, and scholarly impact, ensuring that the valuable research published within these pages reaches a wider audience.

I commend the Editorial Board of 2025/2026 for their tireless efforts in bringing this volume to fruition. Their commitment to academic excellence and their dedication to upholding the tradition of Neetham are truly inspiring. I also extend my sincere gratitude to the academic staff of the Department of Law for their continued mentorship and support.

It is my earnest hope that Neetham will continue to flourish as a beacon of legal scholarship, inspiring future generations of law students to engage critically with the law and contribute to the betterment of society.

Wishing the Editorial Board and all contributors every success in their future endeavours.

Senior Prof. T. Velnampy,
Vice Chancellor,
University of Jaffna.

MESSAGE FROM THE DEAN OF THE FACULTY OF ARTS

I would like to extend my heartfelt congratulations to the Law Students Association of the University of Jaffna on the publication of your latest magazine '*NEETHAM*'. Your dedication to promoting legal awareness, student achievements, and scholarly discussions is truly commendable. The magazine serves as an excellent platform for aspiring legal professionals to share their insights, research, and perspectives on current legal issues affecting Sri Lanka and the world.

The articles featured in this edition reflect a deep commitment to academic excellence and social responsibility. It is inspiring to see young law students engaging critically with topics such as human rights, justice, and legal reforms. Such initiatives not only enhance the students' understanding of the law but also contribute positively to the broader legal community and society at large.

I encourage the Law Students Association to continue fostering a spirit of intellectual curiosity and advocacy through this publication. Your efforts play a vital role in shaping future legal practitioners who are well-informed, ethical, and dedicated to justice. Wishing you continued success in your endeavors and looking forward to more insightful editions in the future.

Professor Nagamuthu Piratheeparajah,
Dean,
Faculty of Arts,
University of Jaffna.

MESSAGE FROM THE HEAD OF THE DEPARTMENT OF LAW

I firmly believe that students possess immense talent and potential. It is the responsibility of teachers to ensure that students are provided with opportunities to showcase their abilities, both individually and as a group.

In the university system, student societies are formally recognized, and their activities are regulated. These societies are well known for their activism, creativity, commitment, and dedication.

The Law Students' Society of the Department of Law was established concurrently with the Department in 2005 and has continued to function effectively to date.

There were administrative lapses in the past in constituting the Executive Committee of the Society, which posed challenges to its effective functioning. However, since 2023, a structured process has been in place whereby the election of the Executive Committee is held at the beginning of each academic year. This ensures that the newly elected committee has a full academic year to plan and implement its activities. All events and activities are well-planned in consultation with the Senior Treasurer, who is also the Head of the Department. Necessary approvals are obtained by submitting the required documents promptly, enabling the successful realization of the intended objectives.

The Law Students' Society carries out a wide range of functions through its various sub-committees, including the Mooting and Debating Committee, the Career Guidance Committee, and the Public Relations Committee. The Executive Committee for 2025/2026 has already initiated several commendable activities, such as the "Address to the Jury" Competition organized by the Mooting and Debating Sub-Committee and the Environmental Day celebration organized by the Public Relations Committee.

While the Society is involved in many valuable activities, the launch of the Neetham Law Review stands out as its key event. This involves selecting a theme, issuing a call for papers to stakeholders such as judges, practitioners, academics, and law students, reviewing the submissions received, organizing the chapters of the Review, and undertaking thorough editing and proofreading. The launch of a law review is the culmination of both academic and organizational effort by student leaders, guided by the academic staff.

As Senior Treasurer, I have witnessed firsthand the extraordinary efforts of the Editorial Committee, led by Ms. Yasara Pitawala, in making the 10th Volume a resounding success. The process was initiated well in advance, and every aspect of the event was meticulously planned and executed. The Editorial Committee demonstrated exceptional dedication and hard work in producing the 10th Volume of the Neetham Law Review. I am confident that the outcome of a year-long endeavour will be recognized by its readers as a publication of high academic quality.

I am proud to place on record that students of diverse ethnic backgrounds work together harmoniously in the Department of Law. This diversity is one of our greatest strengths, and the composition of the Law Students' Society is a testament to the principle that diversity is a strength, not a weakness.

I extend my sincere wishes to the President, Secretary, and all members of the Executive Committee of the Law Students' Society for 2025/2026 for their tireless and effective work. I also wish to commend the Editorial Team for their remarkable commitment and excellence in producing a high-quality student publication and for making the launch of the 10th Volume of Neetham a grand success.

While I wholeheartedly congratulate the present team, I urge future committees to sustain this spirit of dedication and uphold the high standards of student activism.

The administration and academia remain committed to ensuring that students are provided with every opportunity to explore and realize their potential.

I wish you all the very best.

Kosalai Mathan
Head, Department of Law
Senior Treasurer, Law Students' Society

MESSAGE FROM THE PRESIDENT OF THE LAW STUDENTS' SOCIETY

On behalf of the Law Students' Society, I extend my sincere congratulations to the Editorial Board on the successful launch of the 10th Volume of the Neetham Annual Law Journal

This remarkable achievement reflects your dedication, professionalism, and commitment to advancing legal scholarship. The theme, "North to World," aptly captures the vision of showcasing the intellectual contributions of the North to the wider global legal community.

I commend the Editorial Board for this significant milestone and wish you continued success in your future academic endeavors.

Mr. Musthaq Nauf
President
Law Students' Society
Department of Law,
University of Jaffna.

MESSAGE FROM THE SECRETARY OF THE LAW STUDENTS' SOCIETY

It is with profound honour and distinguished academic privilege that I extend my heartfelt felicitations on the occasion of the publication of *Neetham Law Journal – Volume X*, an eminent scholarly initiative undertaken by the Editorial Board functioning under the Law Students' Society, Department of Law, University of Jaffna. The successful completion and release of the tenth volume of this esteemed journal marks a significant academic milestone, reflecting the sustained commitment of our student body towards the advancement of legal scholarship, critical inquiry, and intellectual excellence. In the ever-evolving landscape of law, where legal principles are continuously tested against societal transformation, such a publication stands as a vital forum for the articulation of reasoned argument, doctrinal analysis, and progressive legal thought.

A law journal of this stature represents far more than a mere compilation of academic writings; it constitutes a structured and principled engagement with the law itself. It is a space where legal theory is examined in light of jurisprudential development, where statutory interpretation meets practical application, and where the boundaries of legal understanding are continuously expanded through rigorous academic discourse. The Editorial Board must be highly commended for their unwavering dedication, meticulous editorial standards, and steadfast commitment to maintaining academic integrity and scholarly precision throughout the preparation of this volume. Their collective effort reflects not only editorial competence but also a deep-rooted respect for the ideals of justice, professionalism, and academic responsibility that form the foundation of legal education.

I further take this opportunity to express my sincere appreciation to all authors, contributors, peer reviewers, and academic mentors whose intellectual contributions and guidance have significantly enriched this publication. Your scholarly engagement has not only elevated the academic quality of *Neetham Law Journal –*

Volume X but has also contributed meaningfully to the cultivation of a vibrant legal academic culture within the Faculty of Law. I also extend my special appreciation and best wishes to the Editor, Yasara Pitawala, and to the entire Editorial Board for their exemplary leadership, unwavering dedication, and commendable commitment in bringing this volume to fruition with distinction. May this publication serve as a lasting testament to intellectual dedication and as a catalyst for continued research, analytical reasoning, and critical legal discourse. It is my earnest hope that *Neetham* will continue to inspire future generations of law students to pursue excellence in legal scholarship and to engage meaningfully with the principles of justice, equity, and the rule of law, both within and beyond the academic sphere.

Sahan Sathsara Wegiriya
Secretary
Law Students' Society
Department of Law,
University of Jaffna.

MESSAGE FROM THE EDITOR OF THE LAW STUDENTS' SOCIETY – NEETHAM VOL. X

I have always believed that the best things are born out of quiet hope. A hope that, with determination and a shared vision, something meaningful can be built. For me, this journey with *Neetham* began with exactly that, a quiet hope.

When I took on the role of the Editor, I knew it would demand time and effort. But I did not fully anticipate the profound sense of purpose it would give me.

This volume, *Neetham Vol. X*, carries the theme: *"From the North to the World: An Interdisciplinary Approach to the Lived Realities."* It is a special theme, one that reminds some of us of our roots, and others of history, and thereby where we ought to reach. It speaks to the truth that law is not confined to textbooks or courtrooms. It lives in the lives of people, in their struggles, their hopes, and their dreams. It challenges us to look beyond the boundaries of traditional legal scholarship and to engage with the world as it is: complex, interconnected, and deeply human.

This volume is one of the most extensive to date, featuring a diverse collection of 30 articles: 4 expert articles authored by eminent legal professionals, 11 departmental student articles and 11 from external students across Sri Lanka, 2 dissertation-based articles by the highest-scoring dissertations from last year, and 2 alumni articles contributed by distinguished graduates of our Department. Their contributions have enriched this volume with depth, diversity, and scholarly rigour.

This volume also marks several significant milestones:

First, this is the tenth volume of *Neetham*, a significant milestone celebrating a decade of legal scholarship, sixteen years after the first publication in 2009.

Second, for the first time in its history, *Neetham* embraced full inclusivity by inviting submissions from students representing universities across Sri Lanka. It has now grown from a departmental publication into a truly national academic platform.

Third, readers can now access supplementary resources such as AI-generated videos explaining the articles, instantly through integrated QR codes, to provide a new experience in line with the changing world.

Fourth, with the introduction of its official e-ISSN and the launch of a dedicated online platform, *Neetham* enters a new digital era. Scholarship produced in the North is now accessible to readers, researchers, and institutions across the world.

Fifth, for the first time, the Editorial Board carried legal knowledge directly into communities through grassroots legal awareness programmes and public engagement initiatives, by making the authors present their findings with the people of the North.

Beyond these milestones, this volume would not have been possible without the people who stood beside me.

To Mrs. Kosalai Mathan, our Head of Department, for her unwavering faith in us and constant guidance. To the internal review panel, the beloved academic staff of the Department - Mrs. Thushani Shayanthan, Mrs. Purathani Mathanaranjan, Dr. Sanjayan Rajasingham, Mrs. Supasini Rumanan, Ms. Sujatha Samaradiwakara, and Mr. S. Pathujan – for their untiring efforts and scholarly insights. To Mr. Sayanthan, the Assistant Librarian, for his invaluable assistance in securing the e-ISSN for this volume. To my Kudappachchi, Mr. Sadara Tennakoon, for all his support, and to Ms. Ranudi Premasinghe for her constant guidance and encouragement.

I am deeply grateful to our Chief Guest, Hon. Justice Sampath Abayakoon, for his understanding, kindness and support, and to all our distinguished guests Hon. Justice Sasi Mahendran, Deputy Solicitor General Ms. Suharshi Herath, External Reviewer Mr. S. Selvakkunapalan for their encouragement and presence at the launch.

To my Editorial Board, Kavishka Senanayaka (Programme Manager for Academic Affairs), Sanduni Nethma (Programme Manager for External Affairs), and Tharaka Liyanage (Programme Manager for Internal Affairs), for the beautiful thing we built together. This belongs to you as much as it does to me. To every single member of the Editorial Board, your dedication has been the heartbeat of this volume.

To the President, Mr. Mustaq Nauf, the Secretary, Mr. Sahan Wegiriya, Treasurer, Ms. Sharustiga, and the Law Students' Society for their cooperation. To the students of the 17th to 20th batches, especially Mr. Arnold and Mr. Ranuja, for your efforts in reaching out to sponsors, and Mr. Viraj for technical support, your belief in *Neetham*, and your love for this Department.

And to every contributor, author who entrusted us with your work - thank you. This volume is not mine. It is ours.

To my family, Amma, Appachchi, Aththamma, and Aiya, and to my alma mater for making me who I am today and giving me the strength to come out stronger through every hardship.

I have often wondered what it means to leave a legacy. I am not sure I have the answer. But I know that if I am ever asked what I did with my time at university, I will tell them about *Neetham*. I will tell them about the late nights, the challenges we overcame, and the joy of holding the final printed copy in my hands.

I hope that the pages of this volume inspire you as much as the journey of creating it has inspired me. I hope it encourages you to think critically, to question boldly, and always to remember that law is not just a profession – it is a calling.

Thank you.

Yasara Tennakoon Pitawala
Editor, Neetham Vol. X
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"To those who taught us not just the law, but how to think, question, and dream. We stand on the shoulders of those who guided us."

EXPERT ARTICLES

The Expert Articles section features contributions from eminent legal professionals who bring decades of experience and scholarly insight to the pages of this volume. Their reflections offer a rare and valuable perspective on contemporary legal challenges, enriching this edition with depth, authority, and practical wisdom.

WRITING ABOUT SUICIDE ATTACKERS: SURRENDERING TO THE SUBJECTIVE

Dr. Vishakha Wijenayake[1]

The process of writing my book *Suicide Attacks and International Humanitarian Law: Culture, Agency, and Combatant Deaths* (Oxford University Press 2026) began with the following question: why does international humanitarian law (IHL) say so little about suicide attacks, and more specifically, the deaths of suicide attackers? IHL regulates a wide range of wartime conduct and establishes rules on targeting, proportionality, surrender, treatment of prisoners, and protection of civilians. Despite this meticulous regulatory framework, the body of law remains largely silent on the specific phenomenon of suicide attacks. This absence raises questions that extend beyond doctrinal gaps. What does it mean that a body of law so preoccupied with regulating death in war has relatively little to say about deaths that are, at least on the surface, self-inflicted? How does IHL conceptualise agency in warfare, and how are those understandings shaped by the categories (i.e. combatant and civilian), through which the law operates?

The book argues that the silence of IHL on suicide attackers' deaths is neither accidental nor merely a matter of underdevelopment. Rather, it reflects deeper assumptions about how combatants act, how they exercise agency in relation to their deaths, and how combatancy is constructed within IHL. These assumptions are often based on certain historical and cultural ideas about war that do not always apply in all contexts. Accordingly, rather than treating suicide attacks merely as tactical events, the book focuses on the meanings attached to the deaths of those who carry them out.

[1] Senior Research Equity Advisor, McGill University. Qualifications: PhD (Doctor of Civil Law), LLM, LLB.

The book examines the narratives constructed around these deaths in three different contexts: Japanese Kamikaze pilots during the Second World War, female suicide attackers within the Liberation Tigers of Tamil Eelam (LTTE), and martyrdom operations carried out by jihadist groups. Each of these examples shows that the meaning of a suicide attack is not fixed and take nuanced forms. In some contexts, attackers are seen as heroes while others view them as victims, as individuals manipulated by larger political forces or as complex combinations of more than one of these labels. These different interpretations matter. They challenge the simple categories often used in law, such as victim and perpetrator and shape how communities understand violence, sacrifice, and death. By examining the narratives surrounding suicide attackers' deaths across diverse contexts, the book attempts to open a conversation about how international law might engage with culturally plural understandings of combatant agency.

At the same time, writing this book required confronting a second set of questions regarding what it means to write about violence, particularly violence situated in specific political and geographic contexts, from within the structures of global legal scholarship. Research does not occur in an emotional, political, or institutional vacuum. This brief essay reflects on that process. It considers how positionality shapes research, how interdisciplinary work unsettles disciplinary certainties, and how scholars navigate the demands of a global academic audience when writing about conflicts that are often distant from that audience but familiar to the researcher.

1. Practicing Positionality

Research projects can be deeply personal. Academic conventions often demand that we obscure this fact through claims to objectivity, methodological rigour, or fidelity to doctrinal reasoning. These gestures are not without value. However, these claims to objectivity can also produce a fiction where the researcher is imagined as neutral to and unaffected by the very phenomena they study.

Critical scholars have long challenged this fiction. The notion of "situated knowledges" as propounded by Donna Harrawayunderscore that knowledge is always produced from somewhere.[2] She argues for a "view from a body, [that is] always complex, contradictory, [as opposed to] the view from above, from nowhere, from simplicity."[3] Likewise, research questions rarely emerge in isolation from personal experience. They grow from the intellectual and emotional environments we inhabit. Scholars occupy different locations within structures of power, shaped by geography, class, race, and institutional affiliation. These differences influence both what and who we choose to study and the perspectives we bring to them. This recognition has become widely known in research as positionality.

Attempts to erase the personal are not only futile but, at times, harmful. They obscure critical engagement with how scholarly authority is constructed. In legal scholarship, this manifests in the tendency to treat law as autonomous from the social worlds it governs. A critical legal pluralist perspective disrupts this assumption. As has been argued by Martha-Marie Kleinhans and Roderick A. Macdonald, "legal subjects hold each of their multiple narrating selves up to the scrutiny of each of their other narrating selves."[4] Law, in this view, is not external to the subject but produced through the subject's own layered experiences, identities, and normative commitments. To write about law, then, is also to write from within these overlapping selves. Using critical legal pluralism as a theoretical foundation for my book made it possible to foreground this insight and to challenge the

[2] Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14:3 Feminist Studies 575.
[3] ibid 589.
[4] Martha-Marie Kleinhans and Roderick A. Macdonald, 'What is a critical legal pluralism?' (1997) 12.02 Canadian Journal of Law and Society/La Revue Canadienne Droit et Société 25, 46.

expectation that legal analysis can ever be detached from the person producing it. In writing about suicide attackers, such detachment is particularly untenable given that the subject matter demands engagement with grief, violence, ideology, and meaning making.

The practice of positionality requires situating oneself in relation to the research topic, asking not only 'why this project', but 'why me in relation to this project'. This process can reveal motivations, blind spots, how certain questions come to matter, and how others remain unasked. Positionality is sometimes dismissed as self-indulgent or as a form of academic navel-gazing. Yet, self-reflexivity is central to ethical knowledge production. Its purpose is not self-centering but, paradoxically, self-decentering. To understand where one stands is to recognize when one must step aside.[5]

In my own work, this became most apparent in writing about female suicide attackers within the LTTE. Many assumed that this would be the most "natural" case study for me, given my Sri Lankan background. I shared that assumption at the outset. Yet, the deeper I engaged with ethnographic accounts and testimonies, the more I realized the limits of my own experience. There was a real danger in extrapolation and in allowing my positionality as a Sri Lankan woman, shaped by a particular geographic, ethnic, and class location, to stand in for the experiences of women who lived and fought in the war-affected North. My time working with families of the disappeared, or my experiences in post-conflict Jaffna, did not grant me epistemic authority over the lives of LTTE combatants. If anything, they underscored the difference between proximity to conflict and participation in it. Decentering, in this context, became an ethical imperative. It meant resisting the impulse to insert myself into the narrative. Nowhere in that

[5] See Gayatri Chakravorty Spivak, 'Can the subaltern speak?' in editor (eds), P.H. Cain and M. Harrison *Imperialism: Critical Concepts in Historical Studies Volume III* (1st ed., Routledge 2004).

chapter do I appear. This, to me, was not a denial of positionality but its enactment.

2. Interdisciplinarity as Disruption

Another defining feature of this book is its interdisciplinary approach, bringing law into conversation with anthropology, gender studies, and religious studies required more than borrowing concepts. It required learning how to think across epistemological boundaries. Interdisciplinary scholarship is often celebrated rhetorically but remains difficult in practice.

Legal methodology comprises the tools used by the legal professional or scholar to make sense of the law and to apply legal principles to specific contexts. In attempting to understand IHL's lack of engagement with the deaths of suicide attackers, one of the questions that I asked myself was, "what assumptions does the conventional methodology adopted to formulate and interpret IHL make about the nature of law?"[6] Legal scholarship tends to seek definitive answers within structured frameworks. IHL scholarship often operates within a doctrinal framework. Legal scholars analyze treaty provisions, customary rules, and judicial interpretations. This approach leaves little room to explore the cultural meanings attached to violence and death. Yet suicide attacks are deeply embedded in cultural narratives. Understanding them requires engaging with insights from disciplines that study how communities construct meaning around acts of violence, sacrifice, and martyrdom.

By contrast, anthropology and critical theory often embrace ambiguity, contradiction, and partiality. Anthropological research emphasizes the importance of context. Anthropology of law more specifically argues that legal and cultural systems form part of a unity, and therefore, attempts to understand the law in context of

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[6] Steven R Ratner and Anne-Marie Slaughter, 'Appraising the Methods of International Law: A Prospectus for Readers' (1999) 93 American Journal of International Law 291.

the cultural frameworks that feed them with meaning.[7] It shows how practices that may appear irrational or incomprehensible from one cultural perspective can carry specific meanings within another. Engaging with this scholarship challenges the assumption that international law operates independently of cultural frameworks.

At the same time, interdisciplinary research is not without difficulties. Each discipline operates with its own conceptual vocabulary and methodological assumptions. Legal scholarship tends to prioritize normative clarity and institutional analysis. Anthropological work often emphasizes ambiguity, lived experience, and narrative interpretation. In looking into scholarship in anthropology, I engage in a transdisciplinary exercise and question the logic of IHL that purely legal scholarship takes for granted. This transdisciplinary approach seeks to engage in a dialogue between two disciplines.[8] This approach stands in opposition to centralized forms of research which reach out to other disciplines without a commitment to change the boundaries of one's own.[9] Theo Van Leeuwen argues that "centralist" disciplines wedded to their methodologies, while encouraging disciplined thinking, are weak in their neglect of issues that cannot be handled by the discipline's methodologies.[10] Law is one such centralist discipline, which depends on a strictly legal epistemology to view the world through an objective and rational lens. The silence of IHL on the issue of suicide attacks is due to this inherent

[7] Annelise Riles, 'Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage' (2006) 108:1 American Anthropologist 52, 54. Also see Sally Engle Merry, 'Anthropology, law, and transnational processes' (1992) Annual review of anthropology 357.
[8] Norman Fairclough, 'Critical discourse analysis in transdisciplinary research' in Ruth Wodak and Paul Chilton (eds) *A New Agenda in (Critical) Discourse Analysis: Theory, methodology and interdisciplinarity* (John Benjamins Publishing 2005) 53.
[9] Fairclough, ibid 68; Theo Van Leeuwen, 'Three Models of Interdisciplinarity' in Ruth Wodak and Paul Chilton (eds) *A New Agenda in (Critical) Discourse Analysis: Theory, methodology and interdisciplinarity* (John Benjamins Publishing 2005) 3.
[10] Leeuwen, ibid 5.

quality of law and legal research, which is so devoted to an idea of objective rationality that it fails to appreciate plural subjectivities as they arise in individuals or communities.

The experience of dying is one that is subjective. Although death is a common effect of warfare, as noted above, IHL rarely speaks of the experience of dying. It fails to acknowledge the experience of the person who faces death and that cannot be explained fully by one legal category assigned to them by IHL. By extension, IHL has also paid little attention to how dying, a common occurrence in war, may be perceived differently in various cultural contexts. This lack of examination of the cultural meanings given to the experience of dying also means that IHL remains relatively blind to the distinctive narratives built around how a suicide attacker faces intentional and certain death. Anthropology as a discipline has delved into the topic of death throughout its development and understanding death as a socio-cultural phenomenon rather than as a biological fact remains a topic of interest within the discipline. The use of ethnographic studies as secondary material empowered me to appraise these cultural understandings of death as they arise in the context of suicide attacks.

Anthropology's ways of thinking influenced not only how I viewed suicide attackers but how I viewed myself as a researcher. In her work *Patterns of Culture,* Ruth Benedict states that "[n]o man ever looks at the world with pristine eyes. He sees it edited by a definite set of customs and institutions and ways of thinking."[11] Accordingly, while conducting research I acknowledged that using ethnographic studies means that different layers of interpretation filter my analysis. First, I had to accept that my positionality and multiple identities as a lawyer, a Sri Lankan, Sinhalese, a woman, among other factors, inevitably affects how I process wartime practices. But there was also the added dimension that I analysed information as seen through the lens of another researcher, an anthropologist, whose own positionality tinted the way they

[11] Ruth Benedict, *Patterns of Culture* (Routledge 2019) 2.

approached their topic. Ethnographic writing has enabled me to identify these positionalities, sit in mild discomfort with them, and be transparent about them.

Navigating these tensions required a degree of methodological humility. It meant accepting that legal analysis alone could not fully account for the meanings attributed to suicide attacks across different contexts. At the same time, it required translating insights from other disciplines into a language that could engage legal audiences. Interdisciplinary work therefore involves negotiation between methods, languages, and intellectual traditions. It destabilizes the authority of any single framework and opens space for more plural understandings of complex phenomena. The book in this way placed legal scholarship in dialogue with social science research. In doing so, it invites international law to confront the cultural worlds it seeks to regulate.

3. Catering to the Global Gaze

In an ideal world, one might write purely out of intellectual curiosity, unconcerned with how the work will be received. In reality, academic writing always addresses a particular audience. For students, the audience may consist of supervisors and examiners. For scholars, it often includes peer reviewers, editors, and disciplinary communities. When writing about the Global South for audiences in the Global North, this question becomes particularly charged. There is often an implicit expectation that scholars from the Global South must situate and justify their contexts in ways that scholars from the Global North are not required to do. One must explain the geography, the history, the conflict before one can even begin to make an argument. This explanatory labour consumes space and shapes the form of the scholarship itself.

The dynamics of the global academic gaze also influence how narratives of victimhood are constructed. During the Sri Lankan civil war, I did not think of myself as a victim of conflict. My experiences, though shaped by the presence of violence, were relatively distant from the frontline realities faced by many others. Yet in conversations with colleagues and readers in the Global North, I often noticed that my proximity to the conflict was interpreted differently. The mere fact that I grew up in a country affected by civil war was sometimes enough for others to assume that I must have experienced violence directly. This reaction reveals how victimhood can be relative. From one perspective, my experiences may appear to fit within narratives of war-time suffering. From another perspective, particularly within the context of Sri Lanka itself, they appear comparatively privileged. These shifting interpretations reflect broader differences in how violence is understood across contexts. What counts as extraordinary violence in one setting may be considered routine in another.

Global scholarly recognition remains an important marker of academic contribution. However, it cannot be the only measure of a work's value, particularly for a project grounded in a commitment to normative pluralism. If law is understood as emerging from multiple, overlapping normative worlds, then the knowledge we produce about law must also be capable of moving across those worlds. This requires writing that is not only analytically rigorous but also accessible to audiences beyond the academy. In this sense, accessibility is not an afterthought but a methodological and ethical choice.

I remain aware of the structural limits within which academic work circulates. Scholarly books, particularly those published in global academic presses, are often financially inaccessible to the very communities whose experiences inform the research. They are also frequently written in ways that assume familiarity with specialized vocabularies and disciplinary conventions. These realities sit uneasily with a commitment to pluralism. This book, therefore, exists within that tension: between the authority conferred by elite scholarly spaces and the exclusions they reproduce.

Writing a book about suicide attacks was intellectually demanding, but it was also emotionally complex. The subject forces one to confront uncomfortable questions about violence, sacrifice, and political conviction. It requires examining narratives that may appear disturbing or morally troubling from one's own perspective while recognizing that those narratives carry meaning within particular social contexts. More importantly, it requires acknowledging the limits of scholarly authority. No single framework, whether it be legal, anthropological, or otherwise, can fully capture the complexity of these phenomena. The aim of the book is therefore not to provide definitive answers but to open space for reflection.

By examining the silence of IHL on suicide attackers' deaths, the book invites scholars and practitioners to reconsider how the law understands combatant agency. By engaging with narratives from diverse cultural contexts, it challenges the assumption that legal categories are universally applicable without modification. Finally, by reflecting on the researcher's own positionality, it acknowledges that scholarship itself is shaped by the contexts in which it is produced. In this sense, writing about suicide attackers requires a certain surrender to complexity, to uncertainty, and to the recognition that understanding violence often begins with acknowledging how little we truly know.

ATTRIBUTING RESPONSIBILITY FOR GENDER-BASED CRIMES IN MASS ATROCITY CONTEXTS: LEGAL AND EVIDENTIARY APPROACHES

Pubudu Sachithanandan[1]

Abstract

This paper explores how individual modes of liability under Article 25(3)(c) and (d) of the Rome Statute, aiding and abetting and common purpose, apply to criminal conduct within non-hierarchical, networked organizations. It focuses on decentralized groups shaped by fluid membership, kinship ties, and informal authority structures, which challenge traditional frameworks premised on clear chains of command.

The paper explores how the material and mental elements of these modes can be interpreted in such contexts. In relation to aiding and abetting, it examines how contribution may arise through embedded social or familial facilitation, and how knowledge may be inferred from patterns of interaction. For common purpose liability, it explores how a shared criminal purpose may emerge absent formal agreement, and how contribution and awareness can be established within loosely connected networks.

Drawing on international jurisprudence, the paper explores the balance between over-expansion and under-inclusiveness, and outlines analytical indicators, such as relational proximity and coordinated conduct, to assess liability in networked settings. It ultimately explores how Article 25 can be applied in a manner that reflects contemporary forms of organization while maintaining doctrinal coherence and fairness.

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1. Introduction

Gender-based crimes (GBCs) are recognised in international law as encompassing acts of sexual violence, reproductive violence, and other forms of gender-based harm. The incorporation of such crimes into international criminal jurisprudence has been gradual, but its trajectory has been steadily progressive.

By way of example, in the *Čelebići* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that "[r]ape and other forms of sexual assault" are "expressly prohibited under international humanitarian law".[2] The same Trial Chambe also held that whenever "rape and other forms of sexual violence" meet the criteria for torture "then they shall constitute torture, in the same manner as any other acts that meet this criteria".[3]

The *Akayesu* judgment of the International Criminal Tribunal for Rwanda (ICTR) also marked a watershed moment in this development, recognising that "rape and sexual violence […] constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such". [4]

This trajectory was carried further in the Asia-Pacific region by the Extraordinary Chambers in the Courts of Cambodia (ECCC). For example, in its *Case 002/02* judgment of 16 November 2018, the ECCC Trial Chamber held that the crime against humanity of other inhumane acts was "committed nationwide through conduct characterised as forced marriage".[5] Similarly, the Special Panels for Serious Crimes in East Timor have convicted persons

[2] The Prosecutor v. Zejnil Delalic, Hazim Delic and Esad Landzo, trial judgment, IT-96-21-T, 16 November 1998, para 476.
[3] *The Prosecutor v. Zejnil Delalic, Hazim Delic and Esad Landzo,* trial judgment, IT-96-21-T, 16 November 1998, Para 496.
[4] *Prosecutor v Jean-*Paul Akayesu, trial judgment, ICTR-96-4-T, 2 September 1998, paras 731–734.
[5] Case 002/02, trial judgment, 16 November 2018, para 3694.

for gender-based crimes, including rape as a crime against humanity.[6]

Yet despite these advances, the integration of gender-based crimes into case-building has often proved uneven. Investigators, analysts, and prosecutors have at times struggled to ensure that such crimes are fully embedded in investigative hypotheses and prosecutorial strategies. This paper identifies three challenges—namely the marginalisation of gender-based crimes in early investigations, the neglect of linkage evidence in the context of gender-based crimes, and the additional difficulties that arise in the context of complex and/or non-hierarchical actor networks—and proposes practical approaches to address them.

The analysis is presented not from the standpoint of an academic specialist in gender jurisprudence, but from the perspective of a generalist practitioner in international criminal law. It reflects lessons learned through practical engagement in complex investigations and prosecutions, with a particular focus on attributing responsibility to mid- and high-level perpetrators operating within networked and/or non-hierarchical structures.

2. Marginalisation of Gender-Based Crimes in the early stages of investigations

In the early years of international criminal justice, certain categories of crime, such as mass killings and torture, were often prioritised to the detriment of gender-based crimes. Too frequently, sexual and gendered harms were relegated to the status of incidental wrongs, seen as arising from the "private" excesses of low-level perpetrators rather than as often-integral manifestations of organised criminality.

[6] See for example The Prosecutor v. Jose Cardoso Ferreira (alias "Mouzinho"), Special Panels for Serious Crimes (District Court of Dili), Case No. 04/2001, Judgment, 5 April 2003.

International investigations are typically structured around iterative cycles of collection and analysis, guided by a continually refined case hypothesis. Initial phases usually involve mapping crime patterns and identifying relevant groups, before moving to the refinement of hypotheses around particular incidents and suspects. Where gender-based crimes are omitted or de-prioritised at these early stages, subsequent attempts to investigate them are often unsuccessful. For example, witnesses may already have been interviewed on a narrow basis, making it difficult to re-approach them months later to obtain additional testimony on sexual violence. Physical evidence may have been lost, and corroborating leads left unexplored.

Avoiding these pitfalls requires the adoption of gender-sensitive frameworks from the very outset of an investigation. This includes ensuring that collection and analytical tools, such as witness screening protocols and evidentiary matrices, are designed to capture indicators of gender-based crimes. It also requires the recruitment of investigators, analysts, and lawyers with specific expertise in gendered harms, as well as training all staff to recognise less obvious forms of such harm, including persecution based on gender. The International Criminal Court's Office of the Prosecutor has made strides in this regard, issuing policy papers on gender-based crimes and mainstreaming them into its operational practices.

The ICC Office of the Prosecutor's Policy on Gender-Based Crimes addresses this challenge by making clear that gender-based crimes must be considered from the very outset of the prosecutorial process, including during preliminary examination and investigation, rather than being introduced belatedly once cases are already structured (pp 39–44). The Policy further responds to this challenge by committing the Office to mainstreaming gender competence throughout all phases of its work, including early analytical stages, thereby seeking to ensure that investigative hypotheses are gender-informed from inception (paras. 5(ii), 20–25, pp. 6, 11–12).

3. Neglect of Linkage Evidence early in GBC investigations

A second difficulty, which remains common today, is the relative neglect of linkage evidence in some investigations of gender-based crimes. Considerable effort is often devoted to documenting the crime base, the acts committed, the number of victims, and the methods employed, while less attention is given, early-on in investigations, to linkage evidence; that is to say, evidence connecting those crimes to identifiable perpetrators at higher levels. Where there is a deprioritisation of linkage evidence early in GBC investigations, the evidentiary record may establish widespread victimisation, with much effort, time and resources expended to achieve the same, but fail to support charges against those most responsible.

One solution is to integrate linkage inquiries from the earliest stages of investigation. Alongside documenting incidents of gender-based crimes, investigators should investigate, early in the investigative process, the identities and affiliations of direct perpetrators; the presence of mid-level commanders in relevant locations; the communications and reporting structures linking commanders to senior authorities; and the existence of policies or practices that encouraged or tolerated gender-based crimes.

Such a dual focus on crime-base and linkage evidence also facilitates prioritisation. Where multiple episodes of gender-based crimes are alleged but resources permit the investigation of only a subset, linkage considerations can guide choices, ensuring that the most probative incidents for establishing responsibility are pursued.

Notably, in this context, the OTP Policy on Gender Based Crimes recognises that evidence of gender-based crimes may be probative of patterns, organisational practices, and institutional tolerance, and not only of the underlying acts themselves (paras. 56–61, pp. 23–24). This recognition that gender-based crimes can demonstrate patterns and institutional tolerance provides a principled legal basis for investigative triage. It justifies, where appropriate, prioritising evidence that reveals the architecture of perpetration rather than only its manifestations. In practical terms, it should be used as a guide by investigators to treat gender-based crimes not solely as substantive offences to be proved, but as structural indicators of how the organisation operated and how senior figures were connected to its crimes.

Notably in this context, gender-based crimes often require an enabling environment. They may depend on the presence of detention systems, allocation of captives, acquiescence by commanders, or a disciplinary structure that ignores complaints. Where such crimes recur across locations or units, or persist over time without sanction, they can expose systemic features of the organisation: how authority operates, what conduct is tolerated, and whether crimes are implicitly or explicitly endorsed. The question is not simply how many incidents can be documented, but which incidents illuminate organisational policy and leadership knowledge. Evidence that gender-based crimes were repeatedly committed in different sectors in similar ways may suggest coordination or at least shared norms. Testimony that complaints were reported up the chain of command and ignored may demonstrate awareness and failure to act. Proof that commanders were present at sites where gender-based crimes were openly committed without consequence may indicate acquiescence or approval.

4. **Complex Actor Networks**

A central challenge in attributing responsibility for gender-based crimes in mass-crime contexts arises where such crimes are committed within complex, networked, or non-hierarchical actor structures, in which authority is exercised through influence, resources, coordination, or tolerance rather than formal rank or explicit orders. In these settings, gender-based crimes frequently occur as part of broader campaigns of violence, yet responsibility for such crimes may be obscured by diffuse power relations.

Attribution therefore requires a functional analysis of relationships, contribution, knowledge, and omission, rather than reliance on conventional command-and-control models.

4.1 Modes of liability

Certain modes of liability are more suitable than others when analysing criminal responsibility within networked, non-hierarchical organisations. In particular, the most appropriate modes tend to be those that are capable of capturing forms of criminality that operate through relational influence, reciprocity, and informal coordination, rather than through formal chains of command or institutionalised authority. This paper will examine several of these liability regimes, in terms of how they have been applied to networked, non-hierarchical organisations. In this context, for illustrative purposes, the discussion below refers mainly to selected modes of liability under the Rome Statute. However, the underlying analytical logic is not jurisdiction-specific, and broadly applies across other international, regional, and hybrid legal systems that recognise participation in collective criminality and accessorial forms of responsibility.

In situations involving non-hierarchical, networked criminal groups, including those grounded in family, clan, or tribal relationships, the most relevant modes of liability under Article 25 of the Rome Statute are typically Article 25(3)(d) and Article 25(3)(c), supplemented, where the evidence so permits, by co-perpetration under Article 25(3)(a) (often in relation to more tightly coordinated sub-groups). All three modes are structurally suited, albeit in different ways, to forms of criminality that operate through relational influence, reciprocity, and informal coordination rather than formal chains of command or institutionalised authority.

Article 25(3)(d), which establishes responsibility for a person who, "*in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose*," is particularly well adapted to decentralised, kinship-based networks.

Unlike more control-oriented modes this provision does not presuppose a rigid hierarchy or clearly delineated decision-making structure. Instead, it centres on contribution to collective criminal activity, making it doctrinally compatible with fluid social formations in which collective action emerges through shared loyalties, relational authority, and coordinated behaviour rather than explicit orders. In such environments, the "group of persons acting with a common purpose" may consist of extended family members, clan affiliates, or allied sub-groups whose cohesion derives from social bonds and mutual trust, rather than formal membership structures.

The mental element embedded in Article 25(3)(d) further enhances its applicability to these contexts. Liability may arise where the contribution is made either "*with the aim of furthering the criminal activity or criminal purpose of the group*" or "*in the knowledge of the intention of the group to commit the crime*." In networked kinship structures, knowledge and intent are often evidenced not through written directives or formal planning, features more commonly associated with more formal structures, but through sustained patterns of cooperation, repeated joint mobilisation, and situational awareness arising from close relational proximity. Conduct such as coordinated presence during operations, facilitation of movement, or post-event protection can demonstrate a knowing alignment with the group's criminal purpose. The provision's flexibility thus captures distributed participation that cumulatively advances the criminal endeavour, even where joint control in the strict co-perpetration sense would be difficult to establish across the entire network.

Complementing this, Article 25(3)(c) addresses individuals who, while not necessarily part of the core coordinating nucleus that might qualify as co-perpetrators, nonetheless enable the commission of crimes through practical assistance. It attaches responsibility to a person who, "*for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its* *commission*." This formulation is particularly apt for socially embedded support ecosystems characteristic of family- and tribe-based networks, where logistical and protective roles are frequently decentralised and dispersed across relational ties rather than concentrated in a formal leadership structure.

Assistance in such contexts may take the form of providing vehicles, financial resources, weapons, communications support, or concealment, often framed internally as acts of loyalty or obligation. These forms of conduct may fall short of the level of joint control required for co-perpetration, yet still substantially facilitate the crimes. In this sense, aiding and abetting operates as a legally precise mechanism for capturing the enabling functions of relatives, affiliates, or trusted intermediaries whose contributions sustain the operational capacity of the network without placing them within the inner circle of planners or coordinators.

Taken together, Articles 25(3)(d) and 25(3)(c), and, on occasion, co-perpetration under Article 25(3)(a), provide useful options for attributing individual criminal responsibility within non-hierarchical, relationship-based criminal groups. By focusing on contribution to a collective criminal purpose, facilitative assistance rendered "for the purpose of facilitating" the crime, and, where appropriate, joint control, these modes avoid the evidentiary constraints associated with proving the existence of rigid command structures. They instead reflect the operational reality of decentralised networks, in which criminal conduct is collectively sustained through diffuse roles, relational influence, and iterative cooperation rather than through formalised organisational hierarchies.

The discussion will now turn to concrete phenomena commonly observed in networked, non-hierarchical criminal structures, focussing mostly on those that are relevant to liability under Articles 25(3)(d) and 25(3)(c), and, where appropriate, co-perpetration under article 25(3)(a). These examples will be considered alongside relevant jurisprudence, where available, in order to illustrate how these modes of liability have been applied in practice.

4.2 *Control over resources and operational enablement*

In non-hierarchical or networked organisations or coalitions, responsibility may be inferred even in the absence of formal command authority, from control over resources and operational enablement. Closely related is the concept of logistical enablement, which encompasses the mobilisation, routing, or sustenance of transport, fuel, communications, training facilities etc.

This approach is illustrated in the *Katanga* Trial Judgment. Although the Trial Chamber was "not in a position to find beyond reasonable doubt that Germain Katanga wielded powers of command and control in all areas of military life and over all the commanders and combatants in Walendu-Bindi collectivité" (para. 1363), it nevertheless found that, "[r]egarding the powers which the Accused actually wielded […], he facilitated the receipt and storage of weapons and ammunition and had the power not only to allot them to the Walendu-Bindi commanders but also to decide the quantity of ammunition allocated, as his instructions in this regard were followed" (para. 1362). On this basis, Katanga was found responsible for certain crimes pursuant to article 25(3)(d), namely for contributing to the commission or attempted commission of a crime by a group of persons acting with a common purpose. Although the conviction in question did not concern gender-based offences, the underlying logic, still applies. I.e. Where an accused exercises similar authority over resources or personnel that are used to commit gender-based violence, such control and allocation decisions can establish the necessary contribution pursuant to article 25(3)(d).

Similar reasoning appears in the *Abd-Al-Rahman* Trial Judgment in the context of co-perpetration pursuant to article 25(3)(a) of the Rome Statute. The Trial Chamber referred, inter alia, to the

Accused "exercising oversight in relation to recruitment, distribution of ammunition, weapons, supplies and salaries of the Janjaweed" (para. 53), and to the finding that "the Accused's participation in the preparation of the Mukjar and Deleig Common Plans was key in […] securing human and material resources to ensure their implementation" (para. 987).

A comparable approach was taken in Ngaissona, where the Trial Chamber held that "Mr Ngaïssona's financial contributions to the Anti-Balaka activities during the period relevant to the charges were regular and related to the Anti-Balaka manoeuvering or continuing to function. In this way, even if the financial contributions aimed also, or even mainly, at daily subsistence or reimbursement of travel costs for meetings, they inter-locked with the inter-operability of the Anti-Balaka."[7] The accused was accordingly convicted pursuant to Article 25(3)I of the Rome Statute on the basis of aiding and abetting.

While the above findings are general in nature (i.e. not necessarily always made in the context of gender-based crimes) they are nevertheless salient in the context of gender-based crimes, which frequently occur as a predictable consequence of military or security operations. Accordingly, demonstrable influence over the recruitment and training of personnel for, or the allocation of weapons, ammunition, or equipment to units or groups known to commit sexual or gender-based violence may amount to a contribution to such crimes, especially where decisions regarding who is armed, when, and with what means are taken against a background of prior patterns of abuse. Continued resource allocation in such circumstances can logically support an inference that, at a minimum, the contributor was aware that gender-based crimes would accompany the use of those resources.

The establishment and oversight of training facilities constitute another significant form of operational enablement. Jurisprudence

[7] Yekatom and Ngaissona Trial Judgement, para 1695

recognises that creating and maintaining training camps can be a "determinative" role, as it ensures that a militia possesses the "numerical strength and capacity" to conduct operations resulting in crimes.

In *Ntaganda*, the Trial Chamber found in its Trial Judgment that the accused personally established the Mandro training centre, the first site at which the UPC/FPLC training system was implemented, a development that was pivotal to the group's growth and enhanced military capacity (Trial Judgment, para. 831). He determined the subjects taught at Mandro and, through this and other training centres, enabled the incorporation of children under the age of 15 into the organisation (Trial Judgment, para. 831). The Chamber further found in the Trial Judgment that Mr Ntaganda exercised direct responsibility for the training of recruits. He regularly inspected training camps, personally instructed recruits at Mandro, and attended and addressed graduation ceremonies at Mandro and Lingo (Trial Judgment, para. 832). He also decided on post-training deployments, including the deployment of 'kadogos' under the age of 15, thereby exercising operational control over their use in hostilities (Trial Judgment, para. 832).

More broadly, the Trial Chamber concluded in the Trial Judgment that such involvement was determinative in establishing an efficient and operationally capable armed group (Trial Judgment, para. 833). Mr Ntaganda's early and sustained engagement ensured the UPC/FPLC's numerical strength and military capacity, enabling large-scale military operations and the implementation of a campaign to forcibly displace targeted civilian populations, illustrating how hands-on control over training structures can constitute a decisive form of contribution to international crimes (Trial Judgment, para. 833).

In light of the above, where trained forces subsequently engage in campaigns marked by gender-based crimes, responsibility may attach to those who enabled the formation and preparation of those forces, particularly where patterns of abuse were known or reasonably foreseeable. Notably, in this context, Bosco Ntaganda was found guilty as an indirect co-perpetrator of a number of gender-based crimes, including rape and sexual slavery as both crimes against humanity and war crimes. (*NB: The example from the Ntaganda case is included because it illustrates patterns of conduct, not necessarily dependent on hierarchy, that are relevant across modes of liability under the Rome Statute. Although the conviction rested on indirect co-perpetration under Article 25(3)(a), the same underlying phenomena may equally inform analysis under modes of liability less dependant on hierarchy).*

4.3 Acting as an intermediary between cooperating actors

Acting as an intermediary between cooperating actors, such as suppliers and physical perpetrators, can constitute a further indicator of responsibility within complex, networked, or non-hierarchical structures. Responsibility may arise, for example, where an individual functions as an operational broker or liaison between otherwise autonomous actors, thereby enabling joint operations or campaigns in which GBC form a recurring feature.

This form of responsibility is illustrated in the *Katanga* Trial Judgment. The Trial Chamber noted that "[t]he operation was organised locally by the Ngiti combatants, who regarded it as aimed at eliminating from the area the Hema civilian population. In furtherance of that objective, Germain Katanga lent his assistance […] by forging, on behalf of the militia, alliances with the military authorities there […] assuming […] by virtue of his position of authority, the role of facilitator so as to establish smooth communication between the local commanders, the authorities in Beni and the APC soldiers […] [and] by also settling any disputes between, amongst others, local commanders and the APC" (para. 1671).

The Trial Chamber further observed that "[t]hroughout the preparatory period of the attack, he was the intermediary of choice in Aveba between the suppliers of weapons and ammunition and the physical perpetrators of the crimes […] absent the Accused's contribution which entailed organising and facilitating the supply of weapons at a local level, the commanders and combatants […] would not have had the same advantages or have been able to commit so effectively the crimes which were perpetrated […]" (para. 1680).

4.4 Indicators of knowledge and intent

Attribution of responsibility for GBC also depends on assessing knowledge, awareness, and information flows characteristic of networked organisations. Access to and receipt of reports, briefings, or complaints concerning sexual or gender-based violence, from subordinates, victims, NGOs, media, or international actors, may demonstrate that the individual was kept informed. Communication trails evidencing discussion of attacks or abuses, followed by continued support to the same units or operations, further strengthen inferences of knowledge. Knowledge may additionally be inferred where it is implausible not to know, such as sustained presence in camps or detention facilities where gender-based violence is systemic. Selective response patterns, such as intervening promptly when personal or organisational interests are affected, but failing to act when serious gender-based crimes are reported, support an inference of acceptance rather than ignorance.

Physical presence and direct operational involvement may provide particularly probative indicators of responsibility for GBC in non-hierarchical structures. Repeated presence at key sites, including training camps, detention facilities, front-line localities, or destruction sites, at or around the time sexual or gender-based crimes are committed, especially when coupled with interaction with perpetrators or victims, may support inferences of knowledge, endorsement, or supervision.

In *Ntaganda*, the trial Chamber noted that "Mr Ntaganda was present and aware that civilian women were brought to the Appartements camp by UPC/FPLC soldiers and commanders in Mongbwalu; these women were raped in the camp, and then thrown out, to be replaced by other women"[8] Based, inter alia, on this finding, the Chamber found that Ntaganda "meant for UPC/FPLC soldiers to rape local inhabitants; and was aware that the relevant coercive circumstances for the crimes of rape and sexual slavery were being taken advantage of"[9]

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Participation in, or systematic access to, radio or other operational communications can also be a strong indicator of knowledge in non-hierarchical, networked organisations. Even where there is no formal chain of command, communication networks often function as the primary mechanism through which participants share updates, coordinate activities, and report on operational developments. A senior or central actor who is consistently included in these exchanges, monitors group communications, or acts as a nodal coordinator is likely to have situational awareness of how operations are unfolding in practice.

[8] Ntaganda trial judgment para 1184.
[9] Ntaganda trial judgment para 1188.

The example of Bosco Ntaganda illustrates the evidentiary value of communications monitoring more generally: the Chamber relied, inter alia, on the fact that he remained in contact with field actors and monitored developments via radio systems to conclude that he exercised oversight over the operation.[10] While that case concerned a more structured armed group, the underlying logic is transferable. In a networked setting, oversight may not take the form of formal command but rather of continuously being embedded within the communication flow of the group.[11]

Accordingly, where a suspect in a networked organisation participates in shared radio channels or other coordination platforms through which operational updates are exchanged, this may support an inference that they were aware of crimes being committed by affiliated actors. The absence of rigid hierarchy does not negate knowledge if the communications structure itself creates a shared operational picture among participants.

This reasoning is equally relevant to gender-based crimes, depending on the content and patterns of the communications. For example, references, whether explicit or coded,the allocation of captives, to the treatment of women and girls, forced "marriages" etc if circulated within the network and accessible to the suspect, may demonstrate awareness even without direct orders being issued. In loosely organised or horizontal structures, repeated exposure to such communications can indicate not only knowledge but also tacit acceptance of the operational practices of the network, including the commission of gender-based crimes.

Tolerance, omission, and the creation of an enabling environment are often of importance in assessing responsibility for GBC. Consistent failure to investigate, discipline, or denounce known incidents of sexual or gender-based violence, despite the ability to influence events, may demonstrate acceptance of such crimes as

[10] Ntaganda trial judgment para 846
[11] Ntaganda trial judgment para 846

part of organisational practice. Responsibility may also be inferred where an individual shields perpetrators through political or legal means, thereby facilitating impunity. Over time, individuals may contribute to normalising and routinising gender-based crimes, such that sexual violence becomes a standard operating practice requiring ongoing management or legitimisation.

In non-hierarchical contexts, responsibility for GBC may further be exercised through ideological, moral, or symbolic authority. Rhetoric that dehumanises victims, reinforces gender hierarchies, or frames sexual or gender-based violence as necessary or virtuous may encourage or normalise such crimes. Individuals occupying symbolic or moral leadership roles may exert decisive influence through public statements or presence known to carry weight within the group.[12] Public endorsement or praise of past acts of gender-based violence may further signal approval and reinforce commitment to a criminal course of conduct

The ICC Office of the Prosecutor's Policy on Gender-Based Crimes explicitly recognises that gender-based crimes (GBC) frequently arise in organisational settings where authority is diffuse, indirect, or exercised through influence rather than formal command, and that attribution of responsibility in such contexts cannot be limited to proof of explicit orders. The Policy affirms that GBC "may be committed, inter alia, as a result of explicit or implicit orders or instructions to commit such crimes, or even as a result of legitimate orders to attack," where the perpetrator is aware that such crimes will occur "in the ordinary course of events" as a consequence of military operations directed against civilian populations (GBC Policy, para. 122, p. 49). Crucially, the Policy emphasises that GBC may also result from omissions, including failures to protect civilians or to punish similar crimes committed during earlier operations, as well as from the interaction of "other relevant discriminatory factors at all levels of

[12] See generally in this context Nahimana et al. (Media case) and Rukundo at the ICTR.

an organisation" (GBC Policy, para. 122, p. 49). This framing aligns with attribution models applicable to non-hierarchical organisations, where responsibility often flows from tolerance, enabling conduct, or failure to intervene, rather than from direct command.

In relation to the mental elements of GBC, the Policy clarifies that liability is governed by Article 30 of the Rome Statute, unless otherwise specified, and that where the suspect or accused is not the physical perpetrator, they must nonetheless satisfy the mental requirements applicable to the relevant mode of responsibility (GBC Policy, para. 123). Importantly for cases involving networked actors or indirect perpetrators, the Policy rejects any assumption that establishing intent and knowledge for less physically proximate actors entails a higher evidentiary burden. On the contrary, it stresses that "contextualising the act properly within the greater pattern of violence often yields the relevant basis for the perpetrator's intent and knowledge" (GBC Policy, para. 123). This approach is particularly salient in non-hierarchical settings, where authority is exercised through coordination, legitimisation, or resource control, and where patterns of conduct may be more probative than isolated acts.

The Policy further acknowledges that the legal standard of intent or knowledge in relation to GBC committed "in the ordinary course of events" has at times been misinterpreted or subjected to unduly heightened scrutiny compared to other crimes (GBC Policy, para. 124). To counter this tendency, the Office commits to a broad evidentiary approach, recognising that direct evidence, such as express orders to commit sexual or gender-based violence, is often absent. Instead, the Policy highlights the relevance of diverse forms of circumstantial evidence and factual indicators supporting findings of intent and knowledge. These include evidence of orders to commit other violent crimes, which may encompass GBC within their scope, as recognised in *Ntaganda*, where a general order to "destroy" a community ("kupiga na kuchaji") was interpreted to include acts of sexual violence (Ntaganda Trial Judgment, paras. 415, 805–806, 1186).

The Policy also underscores the probative value of patterns arising from repetition of conduct, demonstrating a modus operandi, including patterns documented through contemporaneous reporting, as well as the position or rank of the accused within the group or organisation (GBC Policy, para. 124). Post-crime conduct, such as actions signifying approval, tolerance, or continued support, may further evidence the requisite mental elements, even in the absence of direct participation (Ntaganda Appeal Judgment, paras. 1127–1128 (fn. 2500); Ntaganda Trial Judgment, paras. 1177–1189). Consistent with established jurisprudence, the Policy reiterates that "as a matter of law, a specific order to commit GBC is not required," and that a general order to commit crimes may suffice, depending on the factual context (GBC Policy, para. 124).

Finally, the Policy affirms that the Office will make strategic use of evidence outside the scope of the charged conduct as circumstantial evidence to establish the facts and circumstances of the charges and to situate them within their broader operational and organisational context (GBC Policy, para. 124). This approach has been endorsed by the Court, including in *Ongwen*, where evidence beyond the immediate charges was relied upon to contextualise criminal conduct and establish intent and knowledge (Ongwen Trial Judgment, para. 2009; Ongwen Appeal Judgment, paras. 1093–1094). Taken together, these policy positions provide a coherent doctrinal foundation for attributing responsibility for GBC in non-hierarchical organisations, where criminal liability is grounded not in formal rank or explicit orders, but in knowledge, contribution, tolerance, and the known consequences of coordinated action.

5. Adopting narrow conceptions of Gender-Based Crimes

A further challenge arises from the tendency of teams investigating international crimes to adopt a narrow understanding of gender-based crimes, construing them principally as acts of a sexual nature. While crimes such as rape undoubtedly constitutes a core component, gender-based crimes extend far more broadly.

This narrow construction has historically constrained evidentiary capture and has had the practical effect of limiting investigative and prosecutorial imagination. By focusing GBC investigations almost exclusively on crimes of a sexual nature, teams investigating international crimes may overlook other forms of gendered harm. In consequence, such teams risk undercharging the full spectrum of gender-based criminality, and survivors of non-sexual gendered harms have been rendered invisible in the judicial record.

In recent years, the Office of the Prosecutor of the International Criminal Court has sought to remedy these limitations by articulating a broader vision of gender-based crimes. In December 2023 the Office released its Policy on Gender-Based Crimes, which takes the position that, "[i]n principle […] all crimes under the Rome Statute can involve forms of sexual, reproductive or other gender-based violence, regardless of whether they have traditionally been seen as such."[13] The policy also notes "[m]ultiple crimes under articles 6, 7, or 8 of the Rome Statute involve acts of gender-based violence" and adds that these crimes "may be explicitly gendered in form, or they may be facially neutral

[13] Policy on Gender-Based Crimes, 2023, Office of the Prosecutor, International Criminal Court, p.2.

crimes that are nonetheless motivated or targeted by gender or that are enacted in gender-disparate ways” [14]

Similarly, the Policy on the Crime of Gender Persecution, issued by the Office in 2022 observes that the underlying acts or crimes of gender persecution “may include, but are not always manifested as, forms of sexual violence or any physical violence or physical contact. They may include psychological abuse. They may take forms other than physical injury to persons, including acts such as cultural destruction or confiscation or attacks on schools or hospitals.”[15]

This marks a significant step towards embedding a more comprehensive understanding of gender-based crimes within international prosecutorial practice, thereby expanding the conceptual framework through which responsibility can be attributed to mid- and high-level perpetrators.

6. Conclusion

Attributing responsibility for gender-based crimes in international criminal contexts demands the surmounting of entrenched challenges and the adoption of innovative strategies. Historically, the marginalisation of such crimes at the early investigative stage, the neglect of linkage evidence at the early stages of investigating gender-based crimes, and the reliance upon narrow conceptions of gender-based crimes, understood almost exclusively as sexual offences have hampered accountability efforts. At the same time, the prevalence of complex and often decentralised actor networks has posed additional difficulties.

A forward-looking approach necessitates embedding gender-based crimes into every stage of investigation and prosecution.

[14] Policy on Gender-Based Crimes, 2023, Office of the Prosecutor, International Criminal Court, p.12.
[15] Policy on the Crime of Gender Persecution, 2022, Office of the Prosecutor, International Criminal Court, p. 10.

They must be treated as integral, not incidental, to the evidentiary record. This entails broadening the understanding of what constitutes a gender-based crime, mainstreaming gender-sensitive strategies, integrating linkage inquiries into GBC investigations from the outset, and deploying tools such as network analysis to map both formal and informal structures of authority. Only by such means can international criminal justice move closer to ensuring meaningful accountability for the full range of harms experienced in mass atrocity situations.

Notably, within the Asia–Pacific region, institutions such as the Extraordinary Chambers in the Courts of Cambodia and the Special Panels for Serious Crimes in East Timor have demonstrated that meaningful progress can be achieved in advancing the investigation and prosecution of gender-based crimes. Their jurisprudence has underscored that such crimes are not inevitably peripheral or incidental, but often central to the experience of mass atrocity. It is to be hoped that future accountability mechanisms—whether international, hybrid, or domestic—will not only expand upon these precedents but will do so with the benefit of the lessons identified in the present paper. If so, there is reason to believe that forthcoming justice efforts may achieve a fuller, more inclusive, and more enduring form of accountability for survivors of gender-based crimes.

A CRITICAL LEGAL STUDY ON THE FEASIBILITY IN ISSUING AN *EX POST FACTO* ENVIRONMENTAL CLEARANCE LICENSE FOR THE DEVELOPMENT PROJECTS.

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Abstract

Environmental authorization or clearance is granted on the condition of the suitability of the site to set up the project from the environmental point of view, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. Chunnakam case held that approval must be obtained from the project approving agency prior to the commencement of any form of groundwork on the project or other activity which could have an effect on the environment.Recently in India it has given the legal recognition to the ex post facto clearance without order of closure of the projects which may be found to comply with the required norms despite the fact that the proponents have initiated the prescribed projects pending the approval from the approving agencies. This paper engages with the arguments put forward in Chunnakam case, reflects on insights brought about by the foreign law, and provides possible recommendations for the retrospective environmental authorization regime in Sri Lanka. The paper is centred on black letter of law and international and comparative research methodology. Paper concludes that environmental clearance license cannot be held retrospective in application even in limited circumstances as the ex post facto clearance cannot regularize the unlawful development. Therefore, the paper argues that bringing unlawful, unauthorized developments back into the censor of regulatory loop is vital for the protection of the environment.

Keywords**—** *Development project***,** *Ex Post Facto Clearance, Sustainable Development*

1. Introduction

"The notion of not causing harm to others and hence *sic utere tuo ut alienum non laedas* was a central notion of Buddhism. It translated well into environmental attitudes. 'Alienum' in this context would be extended by Buddhism to future generations as well, and to other component elements of the natural order beyond man himself, for the Buddhist concept of duty had an enormously long reach."[1]

Justice C.G. Weeramantry in his separate opinion in Gabcikovo-Nagimaros project [2] held that the protection of the environment is a vital part of the contemporary human rights doctrine and that it is a sine qua non for numerous rights such as the right to health and the right to life itself and that damage to the environment can impair and undermine all human rights spoken in the Universal Declaration and other human right instruments. Despite the fact that the Constitution of Sri Lanka doesn't guarantee right to environment as a fundamental right, as per Justice Shiranee Thilakawardana in *Wattegedara Wijebandara* case[3] upheld that right to healthy environment as a concomitant of Article 12 which is right to equality. The Directive Principles of State Policies Article 27 (14) [4]of the Constitution enjoins the state to protect, preserve and improve the environment In *Eppawela Case*[5] Justice Amerasinghe adumbrated that the organs of State are guardians to whom the people have committed the care and preservation of the resources of the people. This accords not only with the scheme of government set out in the Constitution but also with the high and enlightened conceptions of the duties of our rulers, in the efficient management of resources in the process of development.

[1] Justice C.J.Weeramanthri in Gabcikovo-Nagumaros Project (Hungary. v. Slovakia.), 1997 I.C.J. 3

[2]ibid

[3] Wijebanda vs. Conservator General of Forests [2009] 1 SLR 337

[4] The State shall protect, preserve and improve the environment for the benefit of the community. The Constitution of Democratic Socialist Republic of Sri Lanka. Available at https://www.parliament.lk/files/pdf/constitution.pdf (visited 27 May 2024)

[5] Bulankulama and Others v. Secretary, Mininstry of Industrial Development and Others (Eppawela Case) (2000) 3 Sri.L.R. 243 at 253

Article 28(f)[6] cast the duty upon the citizens to protect nature and conserve its riches.

In *Vellore Citizen case*[7] it was recognized that, the traditional concept that development and ecology are opposed to each of other, is no longer acceptable, sustainable development is the answer. Environmental clearance license held to be a fundamental aspect in promoting sustainable development which balances both right to environment and right to development .The law mandates, before embarking on development projects, the project proponents to submit IEER or Environmental Impact Assessment Reports (EIAR) as the case may be, to the project approving agencies and the project approving agencies shall approve or dismiss the issuance of license to initiate the project based on the environmental impact .Environmental Protection License also held to be a mandatory requirement prior to initiation of prescribed activities in which the project proponents have to possess. *Chunnakam case*[8] upheld that the proponents should possess the clearance license before implementing the project.

The research problem revolves around the issue, despite the fact that the project proponent are mandated before commencing the project to submit IEER or EIAR or should possess the EPL as the case may be, a project or industry contributing to the economic growth of the country and providing livelihood and employment opportunities to number of people in a respective area should be closed down for the sole reason that the industry

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[6] Article 28(f)The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka –to protect nature and conserve its riches. The Constitution Of Democratic Socialist Republic Of Sri Lank. Available at https://www.parliament.lk/files/pdf/constitution.pdf (visited 27 May 2023)

[7] Vellore Citizen's Felfare Forum and State of Tamil Nadu(Joining)v Union of India and others 1996 5 SCR 241

[8] Ravindra Gunawardane Kariyawasam v Central Environmental Authority SC FR Application No. 141/2015

operated without obtaining a prior environmental clearance or operated pending the approval , without giving any opportunity to regularize its operation by obtaining the requisite ex post facto clearances and permissions, even though the industry may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. Objectives of the paper includes: to identify the legal provisions in the international and national context that governs the environmental clearance reports ,to analyse the legal position in Sri Lanka as regards to the ex post facto clearance reports ,to engage in a comparative analysis with India to identify the legal stance of Indian jurisdiction in regard to retrospective clearance and thereby to suggest recommendations in respect of ex post facto clearance reports in the scope of development projects. Recent Indian case judgments *Pahwa Plastic Ltd v Dastak NGO*[9], *Electrosteel Steels Limited vs Union Of India*[10]*Alembic Pharmaceuticals v Rohit Prajapati*[11] will be analysed to gain insights from the foreign jurisdictions particularly in relation to the grant of ex post facto environmental clearance for limited purposes.

2. Right to Development vis a vis Sustainable Development

"Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of sustainable development"[12]

[9] Pahwa Plastic Ltd v Dastak NGO 2022 SCC SC 362
[10] Electrosteel Steels Limited vs Union Of India 2021 SCC SC 1247
[11] Alembic Pharmaceuticals v Rohit Prajapati 2020 SCC SC 347
[12] Narmada Bachao Andolan v. Union of India and Others [(2000) 10 SCC 664]

In *Rajeev Suri v Delhi Development Authority and Others*[13], held that "sustainable development incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is sustainable and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society"

In *Vellore Citizen case*[14] Justice Kuldip Singh elaborated the evolution of the concept of sustainable development and how it was embodied into the international legislative framework. In the International sphere Sustainable Development as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called Court Common Future. The Commission was chaired by the then Prime Minister of Norway Ms. G.H. Brundtland and as such the report is popularly known as 'Brundtland Report' As defined by the Brundtland Report sustainable development means, Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. In 1991 the World Conservation Union, United Nations Environment Program and World-Wide Fund for Nature, jointly came out with a document called 'Caring for the Earth' which is a strategy for sustainable

[13] Rajeev Suri v Delhi Development Authority and Others NO. 229 of 2020
[14] Note 7 above

living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. The delegates also approved by consensus three non -binding documents namely, a Statement on Forestry Principles a declaration of principles on environmental policy and development and initiatives and Agenda 21 a program of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio 'Sustainable Development' came to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. Further Justice Kuldip Singh contended that "we have no hesitation in holding that Sustainable Development as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient feature has yet to be finalized by the International Law Jurists"

In *N.D.Jayal v Union of India*[15] Hon'ble Supreme Court held that adherence to the principle of sustainable development is a sine qua non for maintaining the balance between the rights to environment and development. In *M.C. Mehta v. Union of India*[16] it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of sustainable development. This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the

[15] N.D.Jayal v Union of India AIR 2004 SC 867

[16] M.C. Mehta v. Union of India 2002 (4) SCC 353,

future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy. "Sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Therefore, while thinking of the developmental measures the needs of the present and the ability of the future to meet its own needs and requirements have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generations and for a bright today, a bleak tomorrow cannot be countenanced. We must learn from our experiences of the past to make both the present and the further brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It cannot be lost sight of that while today is yesterday's tomorrow, it is tomorrow's yesterday"[17]

3. Environmental Authorization /Clearance

The Constitution and plethora of environmental legislations have introduced a new criterion for considering future developments. Pure economic factors are no longer decisive. The need for development must now be determined by its impact on the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these factors into decision-making and make decisions that are informed by these considerations. This process requires a decision-maker to consider the impact of the proposed development on the environment and socio-economic conditions.

[17] Ibid

Chunnakam case [18]Justice Prasanna Jayawardana PC explained how the National Environment Act was evolved so as to ensure that the development projects were carried out to ensure the concept of sustainable development and how the legislature brought the necessary changes to the National Environment Act to introduce prerequisites to get environmental clearance license. "Objective of enacting the National Environmental Act No. 47 of 1980 was to establish the, Central Environmental Authority (CEA) with the powers, functions and duties of making recommendations relating to national environmental policy and the conservation of natural resources and engaging in related research, educational and advisory activities. However, the Act did not invest the CEA with the power or a duty to effectively control pollution and degradation of the environment or to prevent persons from engaging in activities which pollute or degrade the environment. This lacuna in the aforesaid Act was felt with the shift to a more open economy in the 1980s and an increase in the number of industries and projects which could affect the quality of the environment. This gap was rectified, to an extent, by the enactment of the National Environmental (Amendment) Act No. 56 of 1988 and the National Environmental (Amendment) Act No. 53 of 2000. These amending acts conferred on the CEA the additional powers, functions and duties of, coordinating all regulatory activities relating to the discharge of wastes and pollutants into the environment and the protection and improvement of the quality of the environment; regulating, maintaining and controlling sources of pollution of the environment; requiring the submission of proposals for new projects and changes in existing projects for the purpose of evaluating their impact on the environment; and requiring local authorities to comply with and give effect to recommendations relating to environmental protection and the prohibition, prevention or control of environmental pollution.

[18]Note above 8

The necessary changes brought to the Act was then discussed by the Justice Jayawardana. "In pursuance of these additional powers, functions and duties conferred on the CEA, the aforesaid Act No. 56 of 1988 introduced a new Part IV A titled "ENVIRONMENTAL PROTECTION", a new Part IV B titled "ENVIRONMENTAL QUALITY" and a new Part IV C titled "APPROVAL OF PROJECTS". Part IV A of the National Environmental Act, as amended, contains provisions which prohibit the carrying on of any activities which cause pollution [termed "prescribed activities"] except under the authority of an EPL and in compliance with the terms, standards and conditions which are specified in that EPL and which are specified in the Act and regulations made under the Act.[19]

Part IV C of the Act introduce a special procedure for granting approval to implement projects which, in very general terms, may be described as being either: (i) specified types of large-scale projects which, by the nature and magnitude of the scale of their operations, are likely to have a significant effect on the environment; or (ii) specified types of projects of whatever magnitude which are located in or near areas identified to be environmentally significant or sensitive. Both types of projects are termed "prescribed projects" in Part IV C of the Act.

4. Environmental Protection License (EPL)

Section 23A (2) in Part IV A of the Act prohibits any person from carrying on a "prescribed activity" except under the authority of an EPL. Similarly, clause 2 in Part I of the National Environmental (Protection and Quality) Regulations No. 1 of 2008[20] prohibits any person from carrying on a prescribed activity

[19] Regulatory framework relating to EPL Extra Ordinary 2264/18dated 27.01.2022 and rescinded the then
Gazette Extraordinary No. 1533/16 dated 25.01.2008

[20]No person shall, discharge, deposit or emit waste into the environment or carry on any prescribed activity determined by an Order made under Section 23A of the National Environmental Act, No. 47 of 1980 in circumstances which cause

except under the authority of an EPL. Thus, it appears that section 23A of the Act read with clause 2 of the aforesaid Regulations envisages that an EPL must be obtained before the commencement of a "prescribed activity. The requirement that an EPL must be obtained before the commencement of a "prescribed activity" is put beyond any doubt by clause 14[21] of the aforesaid regulations which states "Any person who operates a prescribed activity shall obtain a license from the Authority prior to the commencement of such activity." The requirement that an EPL must be obtained before the commencement of a "prescribed activity" is also reflected in clause 5 (1)[22] of these regulations which specifies that an application for an EPL must be submitted at least thirty days prior to the commencement of a "prescribed activity"[23].

5. IEER and EIAR

The importance of obtaining and carefully considering IEERs and EIARs before permitting the implementation of a "prescribed project" is highlighted in Principle 17 of the Rio Declaration which states "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority." The insistence on obtaining and considering an IEER or EIAR before permitting the implementation of a prescribed project is a practical and effective method of putting into effect the Prevention

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or are likely to cause pollution, or noise pollution, otherwise than – (a) under the Authority of a license issued by the Central Environmental Authority (hereinafter referred to as "the Authority") ; and (b) in accordance with the such standards and criteria specified in Schedule I hereto, in respect of the specified industries.

[21] Any person who operates a prescribed activity shall obtain a license from the Authority prior to the commencement of such activity

[22] An application for the license shall be – (a) made separately, in respect of prescribed activity regarding which the Acts authorized by the regulations are being carried out; (b) made substantially in Form A in Schedule II and Schedule IV hereto; (c) made at least thirty days prior to the commencement of the activity

[23] Note 8 above

Principle and its ally, the Precautionary Principle which are guiding lights of modern environmental law. This process entails an evaluation of the biophysical risks involved and also the public's entitlement to participate in the process. The prevention principle has a meaningful role where foreseeable environmental harm is likely as a consequence of proposed action. The precautionary principle comes into play where not only the likelihood of harm, but also its nature and extent, may all be uncertain. These principles are based on the common-sense dictate that a society should seek to avoid environmental damage which may result from proposed projects, by exercising care, foresight and forward planning. Simply put, that, as the old adage says, "It is better to be safe than sorry." The approach that States should be guided by the `Precautionary Principle‟ where there is an element of uncertainty with regard to the environmental harm that may be caused by a proposed project is highlighted in Principle 15 of the Rio Declaration, states In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

In *Eppawala case*[24]Justice Amerasinghe refers to the, Guide for Implementing the EIA Process, No. 1 of 1998 issued by the CEA states "The purposes of Environmental Impact Assessment (EIA) are to ensure that developmental options under consideration are environmentally sound and sustainable and that environmental consequences are recognized and taken into account early in project design. EIAs are intended to foster sound decision making, not to generate paperwork. The EIA process should also help public officials make decisions that are based on

[24] Bulankulama and Others v Secretary Ministry of Industrial Development and others [2000]3 SLR 243 at p.315

understanding environmental consequences and take actions that protect, restore and enhance the environment."

According to Section 33of the National Environment Act EIAR means "a written analysis of the predicted environmental project and containing an environmental cost-benefit analysis, if such an analysis has been prepared, and including a description of the project, and includes a description of the avoidable and unavoidable adverse environmental effect of the proposed prescribed project ,a description of alternative to the activity which might be less harmful to the environment together with the reasons why such alternatives were rejected, and a description of any irreversible or irretrievable commitments of resources required by the proposed prescribed project". In *Chunakkam case*[25]the section was summarized as "EIAR is, in a nutshell, a comprehensive report which sets out a detailed description of the "prescribed project", identifies its avoidable and unavoidable adverse environmental effects, assesses the possible alternatives which might be less harmful to the environment, sets out reasons why such alternatives have been rejected, describes the resources which are required and must be committed to the "prescribed project" and contains, where available, an environmental cost-benefit analysis etc"

Section 33 of the Act also defines "Initial Environmental Examination Report" (IEER), a written report wherein possible impacts of the prescribed project on the environment shall be assessed with a view to determining whether such impacts are significant, and as such requires the preparation of an environmental impact assessment report and such report shall contain such further details, descriptions, data, maps, designs and other information and details as may be prescribed by the Minister;

[25] Note 8 above

Part IV C of the National Environmental Act, No. 47 of 1980, introduced by amending Act No. 56 of 1988. Section 23AA requires that approval be obtained for the implementation of all "prescribed projects", from the appropriate project approving agencies. Sub section 1 of Section 23 BB enshrines that it shall be the duty of all projects approving agencies to require from any Government Department, Corporation, Statutory Board, Local Authority, Company, Firm or individual who submit any prescribed project for its approval to submit within a specified time an initial environmental examination report or an environmental impact assessment report as required by the project approving agency relating to such project and containing such information and particulars as may be prescribed by the Minister for the purpose. Under section 23BB, for the purposes of granting such approval, project approving agencies are required to call for an Environmental Impact Assessment Report (EIAR), which is defined in section 33.Section 23BB(2) A project approving agency shall on receipt of an environmental impact assessment report submitted to such project approving agency in compliance with the requirements imposed under subsection (1), by Notice published in one newspaper each in the Sinhala, Tamil and English language, notify the place and times at which such report shall be available for inspection by the public to make its comments, if any, thereon.

Section 23BB(3) Any member of the public may within thirty days of the date on which a notice under subsection (2) is published make his or its comments, if any, thereon to the project approving agency which published such notice, and such project approving agency may, where it considers appropriate in the public interest afford an opportunity to any such person of being heard in support of his comments, and shall have regard to such comments and any other materials if any, elicited at any such hearing, in determining whether to grant its approval for the implementation of such prescribed project.

This is an important right vested in the residents of the area where a "prescribed project" is to be located, who are the persons who will be directly affected by that project. They are given the right to state their views and have them considered before a "prescribed project" is approved. In fact, this right extends to all members of the public who have concerns regarding the environmental impact of a "prescribed project".[26] This stage involves the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate.

Section 23BB (2) to 23BB (5) in Part IVC of the Act stipulate that, once an EIAR relating to a "prescribed project" is submitted, the public must be notified that the EIAR can be inspected and that any member of the public is entitled to submit his comments on the EIAR. A person who submits his views is entitled to be heard, where appropriate. The project approving agency has a duty to consider the views of the public when deciding whether to grant approval for the implementation of the "prescribed project". Notice of approval granted for the implementation of a "prescribed project" must be published. Where the project approving agency requires the submission of only an IEER by the project proponent, the IEER is deemed to be a public document and is open to inspection by the public

In *Colombo Katunayake Expressway* case held that Sections 23AA and 23BB of the National Environmental Act No. 47 of 1980 amended by Act No. 56 of 1988 adequately protect the public interest in regard to environmental considerations by preventing the implementation of a project until an EIA is submitted and approved obtained. There will thus be a further opportunity for

[26] Ibid 8

all interested persons to raise their objections when the amended EIA is made available for public scrutiny.[27]

Section 23(4) of National Environment Act states where approval is granted for the implementation of any prescribed project, such approval shall be published in the Gazette and in one newspaper each in Sinhala, Tamil and English languages. It is apparent from the statutory and regulatory framework that the submission and consideration of an IEER or EIAR is a sine qua non for a "project approving agency" to consider granting approval to implement a "prescribed project".

In *Chunakkam case*[28] the stage at which a project proponent who wishes to embark on a "prescribed project" must obtain approval from the "project approving agency" for the implementation of the project was settled. In this connection, section 23AA in Part IVC of the Act states that a project proponent will be required to obtain approval under this Act for the implementation of such prescribed projects. Thus, the term "implementation" used in section 23AA would include any work on the physical implementation of the project from the stage of groundwork on the site and its environs onwards. This view is supported by clause 5 and 6 of the National Environmental (Procedure for approval of projects) Regulations No. 1 of 1993 which require that a project proponent who wishes to embark on a "prescribed project" must apply for approval under Part IVC "as early as possible". As stated earlier, an IEER or EIAR must be thereafter submitted by the project proponent and the "prescribed project" has to be evaluated by the project approving agency and the CEA to determine its likely impact on the environment. Provision is made for the public to have their say where a "prescribed project" may have a significant impact on the environment and an EIAR has been submitted. The project approving agency can grant or refuse approval for a "prescribed project" only after these steps are

[27] Amarasinghe and others v Attorney General and others (1993) 1 SLR 394

[28] Note 8 above

taken. These safeguards would be lost if the proponent is allowed to proceed with the physical work required for the project prior to or pending the grant of approval. Thus, there can be no doubt that, in the case of "prescribed projects", approval under Part IV C of the Act must be obtained from the project approving agency prior to the commencement of any form of groundwork on the project or other activity which could have an effect on the environment.[29]

Finally the legal status as to the stage in which the environmental clearance should be obtained was concluded in *Chunakam case*[30] , thus, there can be no doubt that, in the case of "prescribed projects", approval under Part IV C of the Act must be obtained from the project approving agency prior to the commencement of any form of groundwork on the project or other activity which could have an effect on the environment.

In *Keangnam Enterprises v Abeysinghe*[31] at the time of lodging the public nuisance complaint to the Magistrate, there was no EPL issued to the company by the Central Environmental Authority. At the time the Magistrate considered the application and made the orders, the company was without a license granted by the authority. When the Magistrate made his subsequent order, the Company was still without a license issued by the authority, and it is only after the application for revision was filed before the Court of Appeal, company was able to get a license from the authority. It was held that making an application doesn't mean there was sufficient compliance with section 23(A)of the National Environment Act, and therefore it could be seen that when the company commenced metal manufacturing operations, it was without a license granted by the authority.

The two cases can be taken as exemplary cases in Sri Lanka, which recognized the legal stance relating to environmental clearance,

[29] Ibid
[30] Ibid
[31] Keangnam Enterprises v Abeysinghe 1994(2) SLR

where the two cases rejected the view of an ex post facto environmental clearance.

6. Comparative Jurisdiction

As held in *Alembic Pharmaceuticals v Rohit Prajapati*[32] the concept of an ex-post fact environmental clearance is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA and it is detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An Environment Clearance can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus," The Supreme Court bench held, adding that allowing for "an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an environmental license. In the absence of an Environmental Clearance, there would be no conditions that would safeguard the environment. Moreover, if the Environmental Clearance was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environmental law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development," the bench noted. It was realized by the judges in the case that the three units have made infrastructural investments and employed significant numbers of workers in their industrial units and the court held that the direction for the

[32] Note 11 above

revocation of the ECs and the closure of the industries was not warranted, owing to the fact that the court has issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. It was further contended that Ex post facto environmental clearance should not, however, be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Reasoning was based on the principle that where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalized by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it. Despite the fact that Alembic case deprecated ex post facto clearances, the Court did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure.

Electro Steel Limited v Union of India[33] held that grant of ex post facto Environmental clearance in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

[33] Note 10 above

In *Pahla Plastic case*[34] held that post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the Environment Protection Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

According to the above case laws the ex post facto clearance reports shall not be withheld if

- ✓ the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms
- ✓ in exceptional circumstances taking into account all relevant environmental factors
- ✓ where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications.
- ✓ as a penal measure.

7. Ex post facto clearance vis a vis public participation

The importance of public participation in this process is captured in Principle 10 of the Rio Declaration which states, "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information

[34] Note 09above

concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." In Sri Lanka, the provisions of the Act and the aforesaid Regulations reflect Principle 10 of the Rio Declaration. On these lines, Amerasinghe J in *Gunaratne v The Homagama Pradeshiya Sabhawa* emphasized that Publicity, transparency and fairness are essential if the goal of sustainable development is to be achieved.[35]

Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai dealt with the issue of whether an Environmental clearance granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday Umesh Lalit speaking for the Bench held thus the decision-making process in doing away with or granting exemption from public consultation/public hearing was not based on correct principles and as such, the decision was invalid and improper. The Court, while deciding the consequence of granting an EC without public hearing, did not direct the closure of the appellant's unit and instead held that if the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet the ends of justice, we deem it appropriate to change the nature of the requirement of public

[35] Gunaratne v The Homagama Pradeshiya Sabhawa [1998 2 SLR 11 at p.16]

consultation/public hearing from pre-decisional to post-decisional.

The public consultation or public hearing as it is commonly known, is one of the important stages while considering the matter for grant of Environmental Clearance and is a mandatory requirement of the Environment Clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redresses of his grievances.[36]

Whether the stage as interpreted and applied in the *Chunnakam case* is indeed suitable and in fact aimed at protecting the environment and to secure sustainability generally.It can be argued that retrospective Environment clearance is detrimental to the environmental protection and could led to irreparable damage of the environment as in the absence of clearance there would be no stringent conditions or criteria to ensure that the company would safeguard the environment without doing any environmental pollution or adverse impact to the environment. If the ex post facto clearance is permitted and thereby if the measures adopted subsequently, there is a likelihood that such a procedure will not restore back the environment once an irreparable damage is done. But if the development project operates in compliance with the requisite environmental standards pending the clearance license, the act could be condoned until they receive the clearance reports. Also, it could be argued that if the project was in operation and if it had already caused irreparable damage to the atmosphere, such clearance cannot act as correctives for the damage done and cannot compensate for the damage already caused to the environment as a result of manufacturing activities which were carried on without licenses. At the same time the irreparable damage could not be restored by exercising the polluter pay principle and by imposing penal provisions and penalties.

[36] Lafarge Umiam Mining Private Limited v. Union of India (2011)7SCC 338

8. POSTLUDE

The ex post facto/retrospective environmental clearance is not meant to regularize the unlawful developments, and it brings the unlawful, unauthorized developments outside the censor of regulatory loop. Such rectification cannot be introduced as a step towards pursuing environmental sustainability. Principle 5 of the IUCN World Declaration on the Environmental Rule of Law (2016) is in *dubio pro natura* i.e. "in cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment. Actions shall not be undertaken when their potential adverse impacts on the environment are disproportionate or excessive in relation to the benefits derived therefrom. Therefore, this cannot be considered as the best tool that promotes the sustainable development.

EXPERT ABSTRACT

BEYOND THE MARKETPLACE: SOCIAL COMMERCE REGULATION IN SRI LANKA IN LIGHT OF INDIAN AND EU EXPERIENCE

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Abstract

Social commerce refers to commercial transactions conducted through social media platforms such as Facebook, Instagram, and TikTok. It has rapidly emerged as an important channel of digital trade world-wide including in Sri Lanka, especially for small and medium-sized traders. Unlike traditional e-commerce, social commerce integrates advertising, product discovery, and purchase within the same social media environment, often with minimal formal intermediation. As a result, consumers increasingly make purchase decisions without leaving the platform on which they browse. While this development has expanded market access and commercial opportunity, it has also created new legal and regulatory challenges. The existing legal framework of Sri Lanka only partially addresses e-commerce and does not adequately regulate social commerce. The Electronic Transactions Act No. 19 of 2006, as amended in 2017, recognizes electronic records and contracts, but it does not specifically address social media-based selling, seller accountability, or platform obligations. The Consumer Affairs Authority Act No. 9 of 2003 was primarily designed for traditional market transactions and does not adequately capture the informal, anonymous, or cross-platform nature of social commerce. Although Direction No. 91 of 2023 under the Consumer Affairs Authority Act is the only dedicated instrument for regulating e-commerce entities and platform operators in Sri Lanka, its current design does not clearly capture social media platforms such as Facebook, Instagram, and TikTok. The result is a significant regulatory gap. Consumers engaging in social commerce may therefore face uncertainty regarding seller identification, transaction transparency, product safety, and post-purchase redress. This paper examines whether Sri Lanka's existing legal framework has the capacity to regulate social commerce and, if not, what legislative or regulatory measures are required. It focuses on four dimensions, seller identification and accountability, *consumer protection and redress, platform liability and due diligence, and enforcement against unregistered social media sellers. The paper adopts a doctrinal and comparative legal methodology. It analyses Sri Lanka's legal framework and compares it with selected foreign jurisdictions in order to identify possible regulatory insights. India is considered as a comparable developing economy. The Consumer Protection Act 2019 and Consumer Protection (E-Commerce) Rules 2020 of India impose obligations relating to seller disclosure, grievance redress, and restrictions on unfair trade practices, although uncertainty remains regarding their application to social media-based commerce. The European Union's Digital Services Act 2022 is examined as the most developed framework. Particular attention is given to Article 30, on trader traceability and the DSA's tiered due diligence framework for online platforms. The paper argues that existing legal framework of Sri Lanka is inadequate to regulate social commerce and that the gap is fundamental rather than merely administrative. It recommends legislative intervention, including necessary amendments to the Consumer Affairs Authority Act, an expansion of Direction No. 91 to capture social media platforms and their sellers, and, in the longer term, a dedicated social commerce regulatory framework. Such reform should establish minimum standards for seller identification, platform due diligence, transaction transparency, and consumer redress.*

Keywords: *Consumer protection; E-commerce regulation; Platform liability; Social commerce*

EXTERNAL STUDENT ARTICLES

For the first time in the history of Neetham, we are proud to include contributions from students representing universities across Sri Lanka. The External Student Articles section embodies the spirit of inclusivity and national collaboration that defines this volume. These young scholars bring fresh perspectives and diverse experiences, enriching the discourse.

RECONCILING SUSTAINABLE TOURISM AND HUMAN RIGHTS IN POST-CONFLICT NORTHERN SRI LANKA

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Abstract

Tourism in post-conflict regions presents a dual reality: it can be a driver of economic recovery while also a potential threat to the fundamental rights of local communities. In the Northern Province of Sri Lanka, the expansion of the tourism sector intersects with complex legal and social landscapes. While the industry promises regional development, previous projects in coastal areas have often proceeded without meaningful consultation, leading to land disputes, restricted freedom of movement and erosion of cultural heritage. These outcomes reveal a critical gap between national development policies and the protection of constitutional and human rights. Through an interdisciplinary lens, this paper combines legal analysis, sociology and economics to examine the tourism potential of post-war Northern Sri Lanka. The study identifies a significant gap, where the absence of comprehensive planning along with professional expertise and participatory governance limits sustainable development. It further analyses how insufficient legal frameworks and top-down decision-making leave local communities vulnerable to displacement, economic marginalization and cultural loss. The research argues that for tourism to truly benefit local communities, it must transition from a state-led, top-down model to a rights-based, participatory framework. By prioritizing legal protections and considering the real experiences of local people, tourism can support community empowerment and the preservation of culture. The findings demonstrate that post-conflict tourism in Northern Sri Lanka can achieve both economic growth and social justice, provided development is guided by inclusive and community-centered strategies.

Keywords: *Post-Conflict Tourism, Human Rights, Sustainable Tourism, Participatory Governance, Northern Sri Lanka - Development*

1. Introduction

The intersection of tourism development and human rights protection in post-conflict settings presents a complex challenge for both international law and domestic policy. In Sri Lanka's Northern Province, still recovering from nearly three decades of conflict that ended in 2009[1] tourism has been promoted as a beacon of economic hope.[2] Policy frameworks such as the National Tourism Strategic Development Plan (2017–2020)[3] identify the region as a priority growth area, anticipating increased investment, infrastructure and visitor arrivals. However, this development trajectory has often progressed without adequate regard for the fundamental rights guaranteed under Chapter III of the Constitution[4] or Sri Lanka's obligations under international human rights law.[5]

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[1] Lessons Learnt and Reconciliation Commission, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (2011); the armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) officially ended on 18 May 2009.

[2] Rohan Laksiri, 'Tourism in Sri Lanka during Political, Economic, and Environmental Crises: A Qualitative Analysis' (May 2025) 16(2) *Journal of Environmental Management and Tourism* 127 <https://doi.org/10.14505/jemt.v16.2(78).04>accessed on 30th March 2026

[3] Sri Lanka Tourism Development Authority, *Tourism Strategic Development Plan 2017–2020* (Ministry of Tourism Development and Christian Religious Affairs) <https://www.sltda.gov.lk/storage/common_media/tourism-strategic-plan-2017-to-2020913160424.pdf > accessed 30 March 2026

[4] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, ch III

[5] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (Sri Lanka acceded 11 June 1980); *International Covenant on Economic, Social and Cultural Rights* (adopted 16

A significant gap exists between formal legal protections and their implementation on the ground[6]. In practice, several previous tourism and coastal development projects in districts such as Jaffna and Mannar have been undertaken without meaningful consultation with affected communities[7]. This raises concerns regarding violations of constitutional guarantees, including equality before the law under Article 12(1)[8] and the freedom to engage in lawful occupation under Article 14(1)(g)[9]. Moreover, judicial recognition of customary land rights, as affirmed in *Bulankulama v. Secretary, Ministry of Industrial Development[10],* has not been consistently reflected in development practices. These developments have resulted in forced displacement, restricted access to traditional fishing grounds, and the erosion of Tamil and Muslim cultural heritage sites that hold profound significance for communities rebuilding their post-war identity.[11]

December 1966, entered into force 3 January 1976) 993 UNTS 3 (Sri Lanka acceded 11 June 1980); *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (Sri Lanka acceded 18 February 1982)

[6] Tameshnie Deane, 'Human Security in Post-War Sri Lanka: Challenges and Opportunities for Accountability and Governance Reform' (December 2025) *Southern African Journal of Security* <https://doi.org/10.25159/3005-4222/17980>accessed 29 March 2026

[7] Centre for Policy Alternatives, *Tourism Development and Human Rights in Post-Conflict Northern Province* (CPA Research Report 2022) 28–35 ; Tamil Civil Society Forum, 'Consultation or Colonisation? Tourism Development in Northern Sri Lanka' (TCSF Policy Brief 2021)

[8] Constitution of the Democratic Socialist Republic of Sri Lanka 1978 art 12(1): 'All persons are equal before the law and are entitled to the equal protection of the law.'

[9] Ibid art 14(1)(g): 'Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.'

[10] Bulankulama and Others v Secretary, Ministry of Industrial Development and Others [2000] 3 Sri LR 243 (SC); Environmental Foundation Ltd v Premachandra, Urban Development Authority and Others [2009] 2 Sri LR 132 (CA)

[11] Ruwan Ranasinghe, 'Cultural and Heritage Tourism Development in Postwar Regions: Concerns for Sustainability from Northern Sri Lankan Capital Jaffna'

Notwithstanding the growing body of scholarship on post-conflict reconstruction and sustainable tourism broadly, academic literature specifically addressing tourism development in Northern Sri Lanka remains notably limited.

Moreover this paper argues that the current state-led, top-down approach to tourism development in Northern Sri Lanka fundamentally undermines both constitutional guarantees and international human rights standards, particularly the right to development as recognized in the UN Declaration on the Right to Development[12] and the principles of free, prior and informed consent established in international law.[13] Through a comprehensive legal analysis that combines constitutional interpretation and comparative jurisprudence, this study demonstrates that sustainable tourism development in post-conflict regions requires a paradigm shift toward a rights-based, participatory framework that prioritizes community empowerment and cultural preservation over purely economic objectives.[14]

(June 2018) 4(1) *Journal of Tourism and Recreation* 1–18 <https://doi.org/10.12735/jotr.v4n1p1> accessed 30 March 2026; Kenneth D, 'Hierarchy and Equivalence in Jaffna, North Ceylon: Normative Codes as Mediators' in *The New Wind: Changing Identities in South Asia* (Mouton 1976)

[12] UN General Assembly, *Declaration on the Right to Development* (4 December 1986) UN Doc A/RES/41/128, art 2(1).

[13] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007) UN Doc A/RES/61/295, arts 10, 19; International Labour Organization, *Indigenous and Tribal Peoples Convention, 1989 (No 169)* (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383, art 6.

[14] UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN Doc HR/PUB/11/04, 2011);James Anaya, 'Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources' (2005) 22 *Arizona Journal of International and Comparative Law* 7.

2. Historical Context of the Conflict and Its Aftermath

The Northern Province of Sri Lanka bears the profound scars of a thirty-year armed conflict that devastated the region's sociolegal and economic fabric.[15] The conflict, which began in 1983 and concluded with the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, resulted in extensive displacement and destruction with a complete breakdown of civilian administration in large areas of the Province.[16] The post-conflict period has been characterized by what the Lessons Learnt and Reconciliation Commission described as "incomplete reconciliation."[17]

3. Existing Land Ownership and Displacement Issues

The Northern Province of Sri Lanka remains socio-economically marginalised, characterised by low per capita income and inadequate education and healthcare infrastructure. Central to these conditions are unresolved land ownership disputes and prolonged displacement.[18]

Land disputes remain the Northern Province's most persistent legal challenge, families remaining displaced,[19] and ongoing displacement and military occupation of private lands in Jaffna and Kilinochchi districts despite Article 14(1)(h)[20]. While Vision 2025 promotes tourism-led recovery, the Northern Tourism Plan

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15 Norbert Ropers, 'From Resolution to Transformation: The Role of Dialogue Projects' (Berghof Foundation 2008) 12–15.

16 Lessons Learnt and Reconciliation Commission, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (n 2) vol II, 267–289.

17 ibid

18 Osantha Nayanapriya Thalpawila, 'The Land Issue in the Resettlement Process in Former Conflict Affected Areas in Sri Lanka' (2017) 7(3) *International Journal of Social Science and Humanity* 192, 192–195 <https://doi.org/10.18178/ijssh.2017.V7.818>accessed 29 March 2026

19 Ministry of Resettlement, *Resettlement Progress Report 2024* (Government Publications 2024) 23.

20 Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(h).

(2026–2030) raises due process concerns under the Land Acquisition Act due to inadequate consultation.[21]

Projects like the Kankesanturai Harbor project[22] highlight development rights tensions, having displaced fishing communities without required Environmental Impact Assessments under the National Environmental Act[23]. This case is examined further in the context of legal protection gaps below. Proposed tourism zones similarly lack participatory protections consistent with international best practices.

4. Constitutional and Human Rights Protections

4.1 Fundamental Rights under the Sri Lankan Constitution

The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 establishes a comprehensive framework of fundamental rights that are directly applicable to tourism development in post-conflict areas.[24] Article 12(1) guarantees equality before the law and equal protection, while Article 14(1)(a) protects freedom of speech and expression, including the right to participate in public discourse regarding development projects.[25] Significantly, Article 14(1)(g) secures the freedom to engage in lawful occupations, which encompasses traditional livelihoods

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[21] Resettlement Authority Act No 9 of 2007; Government of Sri Lanka, 'Resettlement Authority' (Ministry of Resettlement, 2012) <http://www.resettlementmin.gov.lk/resettlement-authority.html> accessed 26 April 2026;National Planning Department, *Vision 2025: A Country Enriched* (Government Publications 2017)

[22] Coast Conservation and Coastal Resource Management Department, *Environmental Impact Assessment Report: The Proposed Rehabilitation of Port of Kankesanturai (KKS) in Jaffna District* <https://www.coastal.gov.lk/images/kkseia/LHI__EIA_-_KKS_Port__Engilish.pdf> accessed 26 April 2026.

[23] National Environmental Act No 47 of 1980

[24] Ministry of Tourism Development and Christian Religious Affairs, *Tourism Strategic Development Plan 2017–2020* (Government of Sri Lanka 2017).

[25] Land Acquisition Act No 9 of 1950.

such as fishing and agriculture that tourism development often disrupts.[26]

4.2 Right to Property, Freedom of Movement and Cultural Rights

Constitutional protection of property rights prohibits arbitrary deprivation of property except according to law.[27] The Supreme Court in the Waters Edge case emphasized that this protection extends to traditional usage rights and community access to resources.[28] Freedom of movement guaranteed under Article 14(1)(h) includes the right to reside and settle in any part of Sri Lanka, which has particular significance for displaced communities in the Northern Province.[29] Cultural rights, though not expressly stated in the Constitution, have been recognised by courts as part of fundamental rights, especially through the protection of language rights under Article 14(1)(f).[30]

4.3 International Human Rights Obligations

Sri Lanka's ratification of major international human rights treaties creates binding legal obligations relevant to tourism development.[31] The ICCPR, particularly Article 27 protecting minority cultural rights, and the ICESCR , Article 15 guaranteeing participation in cultural life, establish minimum standards for development processes.[32] The UNDRIP, while not legally

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[26] Ibid, s 38A.
[27] Constitution of the Democratic Socialist Republic of Sri Lanka 1978.
[28] *Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters Edge Case)* [2008] 2 Sri LR 339.
[29] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(h).
[30] Ibid, art 14(1)(f); *Kanapathipillai v Minister of Education* [1985] 1 Sri LR 100.
[31] United Nations, 'Status of Ratification Interactive Dashboard' (indicators.ohchr.org, 2022) <https://indicators.ohchr.org/> accessed 15 April 2026.
[32] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 27; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 15.

binding, provides interpretative guidance for protecting Tamil communities' collective rights.[33]

4.4 National Tourism Legislation and Policies

The Sri Lanka Tourism Act provides regulatory authority for tourism development but lacks strong consultation and human rights safeguards. Section 13 enables area designation without mandatory consultation requirements, creating potential for arbitrary decision-making affecting local communities.[34] The Tourism Strategic Development Plan 2017-2020 identifies "*community participation*" as a policy objective but fails to establish legally enforceable mechanisms.[35]

4.5 Land Acquisition and Environmental Protection Regulations

The Land Acquisition Act[36] permits compulsory acquisition for tourism, yet Section 38A limits consultation safeguards to large-scale projects[37]. Similarly, the Urban Development Authority Law centralises planning powers without meaningful public participation.[38] Although the National Environmental Act[39] mandates EIAs,[40] enforcement remains weak, particularly in post-conflict regions with limited administrative capacity.

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[33] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295, UN Doc A/RES/61/295 (2007).
[34] Ibid, art 13.
[35] Sri Lanka Tourism Strategic Plan (2017–2020) (Government of Sri Lanka 2017).
[36] Land Acquisition Act No 9 of 1950.
[37] *Marie Indira Fernandopulle and Another v E L Senanayake, Minister of Lands and Agriculture* 79 (2) NLR 115.
[38] Urban Development Authority Law No 41 of 1978, s 8.
[39] National Environmental Act No 47 of 1980.
[40] The National Environmental Act, No.47 of 1980 (as amended) is the key legislation that stipulates the IEE/EIA process; See also Coast Conservation and Coastal Resource Management Act No 57 of 1981; Fauna and Flora Protection Ordinance No 2 of 1937; North Western Province Environmental Statute No 12 of 1990.

5 Gaps In Legal Protection

Current laws do not ensure proper consultation in line with international standards of free, prior and informed consent.[41] There are no clear requirements for consultation periods or accessible information, limiting meaningful public participation[42].

Although constitutional rights exist,[43] enforcement is weak due to the absence of specialised courts and limited access to legal aid in affected regions. Additionally, corporate accountability remains inadequate, as corporate social responsibility frameworks are not legally binding.[44] This leaves communities with few remedies for environmental or human rights harms, further aggravated by the lack of a national framework on business and human rights.

6 Human Rights Challenges In Tourism Development

The expansion of tourism in the Northern Province following the end of the Sri Lankan Civil War came at a significant cost to marginalized communities, undermining fundamental rights and exacerbating socioeconomic inequalities.

At the heart of these issues lies the systematic displacement of traditional communities, particularly in the Northern and Eastern provinces. Under the colonial-era Land Acquisition Act, the state has arbitrarily seized fishing and agricultural lands for tourism projects, often without adequate consultation or just

[41] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295, UN Doc A/RES/61/295 (2007), art 32.
[42] Rosaleen Duffy, 'Waging a War to Save Biodiversity: The Rise of Militarized Conservation' (2014) 90 *International Affairs* 819.
[43] Jayampathy Wickramaratne, 'Enforcement of Fundamental Rights in Sri Lanka' (2013) 2 *SLJLJ* 14.
[44] United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* HR/PUB/11/04 (2011);Enoch Otim and Mary Twesigomwe, 'Human Rights and Corporate Accountability: Advocating for Corporate Social Responsibility' (Victoria University 2024).

compensation.[45] This violates constitutional guarantees of the right to engage in one's chosen occupation and freedom of movement.[46] In Kalpitiya, over 2,000 fishing families were forcibly relocated to make way for luxury resorts, destroying their traditional livelihoods.[47]

Labor rights abuses are common in tourism, especially among seasonal, low-paid workers in hotels and restaurants. Many, especially women, face low wages, long hours and weak social protection, violating fair labour rights and union freedoms.[48] The growth of sex tourism has also exploited vulnerable women and children in Jaffna, infringing on their right to personal liberty and dignity.[49]

Beyond social impacts, tourism has exacted a heavy environmental toll. Coastal development has accelerated erosion and ecosystem degradation, devastating the livelihoods of fishing communities.[50] Large-scale resorts have also strained scarce water resources, especially in drought-prone areas, violating the constitutional right to a healthy environment.[51] Insufficient waste management has

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45 Land Acquisition Act No 9 of 1950, s 38.
46 Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(g), (h).
47 'Tourism-driven Grabbing in Kalpitiya Peninsula, Sri Lanka' (28 August 2014) <https://wffp-web.org/tourism-driven-grabbing-kalpitiya-peninsula-sri-lanka/ >accessed 1 April 2026.
48Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(d); International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87).*
49Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 13; S Sivesan, 'Sustainable Tourism Development in Jaffna District' (2020) 9(3) *Longdom Publishing Research Article* <https://www.longdom.org/open-access/sustainable-tourism-development-in-jaffna-district-53776.html >accessed 20 April 2026.
50 Wazeema Thaseem and Minathul Suheera, 'The Impacts of Coastal Erosion on Women's Livelihoods in Fishing Communities in Sri Lanka' (International Conference on Gender and Climate Justice, Colombo, September 2025).
51 Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 27(14):Samangi Himasha Abeyrathne, 'Fight for Right to Clean and Healthy

further imperiled public health, with waterborne diseases spiking in communities near tourism hubs.[52]

These multifaceted human rights issues require a complete rethink of Sri Lanka's tourism strategy. Current colonial-era laws are inadequate. Reform must ensure prior consultation, just compensation induced environmental justice for affected communities.[53] Comprehensive reform is needed, grounded in principles of prior consultation, just compensation induced environmental justice.

Crucially, any tourism policies must be subject to rigorous human rights and gender impact assessments. Strengthening monitoring mechanisms will be essential to hold developers accountable.[54] Most importantly, the voices and livelihoods of marginalized communities must be centered in the tourism policymaking process.[55]

Only by adopting a human rights-based approach can Sri Lanka ensure that its tourism boom translates into equitable and sustainable development, rather than perpetuating historical patterns of dispossession. As this article has shown, the stakes are high. The very rights to land, culture, labor, and a healthy environment hang in the balance.

Environment in the Judicial Context of Sri Lanka with an International Perspective' (21 March 2021) Proceedings of the 7th International Research Conference on Humanities & Social Sciences (IRCHSS 2021)< https://ssrn.com/abstract=3808947 >accessed 20 April 2026.

[52] Ibid

[53] Gerald Peiris, *Sri Lanka: Land Policy for Sustainable Development to Strengthen the Struggle for Survival* (Visidunu Prakashakayo (Pvt) Ltd 2021).

[54]Leonard A Jackson, 'Community-Based Tourism: A Catalyst for Achieving the United Nations Sustainable Development Goals One and Eight' (2025) 6(1) *Tourism and Hospitality* 29 <https://doi.org/10.3390/tourhosp6010029.>accessed 12 April 2026.

[55] Yulong Li, 'Community Involvement for Sustainable Heritage Tourism: A Conceptual Model' (2015) 5(3) *Journal of Cultural Heritage Management and Sustainable Development* 248 https://doi.org/10.1108/JCHMSD-08-2014-0027.

7 Towards A Rights-Based Tourism Model

7.1 Participatory Governance Framework

The establishment of legally mandated consultation frameworks represents a fundamental prerequisite for rights-compliant tourism development. Drawing from the South African Constitutional Court's decision in *Doctors for Life International v Speaker of the National Assembly,* meaningful consultation requires:

(i) facilitation of public involvement;

(ii) ensuring all relevant information is timeously available; and

(iii) creating reasonable opportunities for public comment.[56]

Legislative amendment to the Tourism Act 2005 should incorporate these standards through mandatory 60-day consultation periods for all tourism developments exceeding 10 hectares, with requirements for multilingual information dissemination and accessible venues within affected communities.[57] Sri Lankan law should incorporate these principles through constitutional amendment recognising collective community rights and establishing procedural requirements for FPIC in tourism development.

For the Northern Tamil community specifically, this framework would produce concrete and measurable benefits. Tamil-speaking communities in Jaffna, Kilinochchi, Mullaitivu and Mannar have historically been excluded from development consultations conducted solely in Sinhala or English languages inaccessible to significant portions of the population.

Mandatory Tamil-language consultations and accessible local venues would, for the first time, enable fishing families in Mannar,

[56] *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), paras 129–145.

[57]Tourism Act No 38 of 2005; Ministry of Tourism Development, *Model Tourism Development Guidelines* (2023) 45–67.

displaced agricultural communities in Kilinochchi and heritage site custodians in Jaffna to formally register objections, propose alternatives and negotiate benefit-sharing arrangements before projects commence. This directly addresses the pattern whereby communities learn of tourism developments only after land acquisition notices have already been issued, leaving them without effective remedy.

Implementation of FPIC standards, as articulated in the UN Declaration on the Rights of Indigenous Peoples, is essential for preserving the cultural survival and self-determination of Tamil communities.[58] The Inter-American Court of Human Rights in *Saramaka People v. Suriname (2007)* established that FPIC constitutes a safeguard requiring consultation in accordance with their customs and traditions.[59] Sri Lankan law should incorporate these principles through constitutional amendment recognising collective community rights and establishing procedural requirements for FPIC in tourism development.[60]

Local Ownership Models, Community-based tourism ownership structures offer mechanisms for ensuring that constitutional equality principles translate into economic empowerment.[61] Modelled on successful Namibian conservancy legislation, these legal entities would enable collective ownership and management

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[58] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295 (2007), arts 10, 19, 32;Free, Prior and Informed Consent (FPIC) principle as recognised in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

[59] *Saramaka People v Suriname* (Inter-American Court of Human Rights, 28 November 2007).

[60] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, proposed amendment to Chapter III; Draft Constitutional Reform Bill 2024.

[61] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 12(1); International Research Symposium, Rajarata University of Sri Lanka, *Community-Based Tourism Management Experience in Sri Lanka* (IRSyRUSL 2015).

of tourism resources while preserving traditional governance structures.[62]

For Northern Tamil communities specifically, such models would allow fishing villages along the Jaffna coastline and cultural custodians of sites such as Nainativu and Nagadeepa to retain a legally enforceable stake in tourism revenue, rather than functioning as displaced spectators of an industry built upon their ancestral lands.

7.2 Legal Reforms and Recommendations

Constitutional reform should establish justiciable collective rights alongside existing individual fundamental rights. Amendment of Article 126 to include collective rights within the Supreme Court's fundamental rights jurisdiction would provide effective judicial remedies for community-level violations. Additionally, establishment of a Tourism and Human Rights Ombudsman, with powers to investigate complaints and issue binding recommendations, would strengthen accountability mechanisms.[63]

For Northern Tamil communities specifically, mandatory Human Rights Impact Assessments would serve as a critical safeguard in evaluating whether proposed tourism zones encroach upon lands over which displaced Tamil families retain customary or legal claims. The establishment of a Tourism and Human Rights Ombudsman with Tamil-language accessibility and satellite offices in the Northern Province would further provide an effective and culturally accessible grievance mechanism for communities who have historically lacked meaningful recourse to centralised legal institutions in Colombo.

[62] Nature Conservation Amendment Act 5 of 1996 (Namibia).
[63] Dharshana Weerakoon, *Establishing a Hospitality Ombudsman in Sri Lanka: A Strategic Framework for Enhancing Service Quality, Tourist Satisfaction, and Destination Reputation in Post-Crisis Tourism Recovery* (November 2025).

Legislative reform requiring Human Rights Impact Assessments (HRIAs) for all tourism developments would operationalise the UN Guiding Principles on Business and Human Rights.[64] These assessments should evaluate potential impacts on:

(i) livelihood rights;

(ii) cultural rights under international law; and

(iii) property rights. [65]

7.3 Best Practices and Comparative Analysis

Northern Ireland's community-based tourism development following the Good Friday Agreement demonstrates effective integration of peace-building and economic development.[66] The establishment of Community Tourism Partnerships with statutory consultation rights and benefit-sharing mandates provides a replicable model for post-conflict contexts.[67]

The African Commission on Human and Peoples' Rights in Centre for Minority Rights Development v Kenya established that development projects affecting indigenous communities require:

[64] United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* HR/PUB/11/04 (2011), principles 17–21; John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (WW Norton 2013) 134–156.

[65] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, arts 11, 15.

[66] Agreement reached in the Multi-Party Negotiations (Belfast Agreement) (10 April 1998); Tourism (Northern Ireland) Order 2002, arts 15–17

[67] Pathirage Kasun Udara Perera, 'A Study on Exploring the Potential of Community-Based Tourism in Fostering Reconciliation in Post-Conflict: A Case Study of Jaffna, Sri Lanka' (Uva Wellassa University 2024); B R Khanal and J T Babar, 'Community Based Ecotourism for Sustainable Tourism Development in the Mekong Region' (Policy Brief, CUTS International 2007); V Moeurn, L Khim and C Sovanny, 'Good Practice in the Chambok Community-Based Ecotourism Project in Cambodia' (Earthscan).

(i) prior consultation;

(ii) full disclosure of project implications; and

(iii) equitable benefit-sharing arrangements.[68]

These standards, alongside the UN Global Compact's human rights principles, provide frameworks for rights-compliant tourism development in Sri Lanka's post-conflict context.[69]

8 Conclusion

Tourism development in post-conflict Northern Sri Lanka reveals a stark paradox: sold as reconciliation, it has in practice displaced and marginalised the very Tamil communities it claimed to help.

As Nancy Fraser observes,

Injustice persists through "maldistribution and misrecognition": a dynamic clearly reflected where the majority of tourism benefits accrue to non-local actors, while affected communities receive disproportionately low compensation.[70]

This inequality shows a deeper problem in the system. Even though the Constitution promises equality and the right to a livelihood, these rights often remain only on paper when development policies mainly benefit outside investors rather than local communities. In this situation, tourism is not just an economic activity but, as some scholars argue, "a continuation of conflict by other means." Instead of helping peace, the law can

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[68] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (African Commission on Human and Peoples' Rights, Communication No 276/2003 (2009), paras 226–238.

[69] UN Global Compact Office, *The Ten Principles of the UN Global Compact* (United Nations, 2000) <https://www.unglobalcompact.org/what-is-gc/mission/principles >accessed 12 April 2026.

[70] Rosemary Hennessy, 'Review of Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition*' (1999) 14(1) *Hypatia* 126–132 (review of Nancy Fraser).

sometimes support new forms of harm and unfairness in post-conflict areas.

Because of this, real change must go beyond small procedural reforms. It is important to ensure free, prior, and informed consent from affected communities, recognise collective land and cultural rights, and introduce strong community ownership models that can be enforced in practice. Institutions like a Tourism and Human Rights Ombudsman, along with guaranteed community shareholding in projects, could help make these rights real rather than theoretical.

In the end, the Northern Province shows a key lesson:

without genuine participation of affected northern tamil communities and without institutional accountability, development can easily become "extraction disguised as empowerment."

The key question is whether the law will truly protect people and promote justice or continue to support inequality and control.

MEMORY, MOURNING AND JUSTICE FOR THE DISAPPEARED: NORTHERN EXPERIENCES IN POST-CONFLICT SRI LANKA UNDER THE DISSANAYAKE ADMINISTRATION

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Abstract

The National People's Power government won the election on a mandate of change, but how much change and for whom?

Acknowledging and documenting past violence is not merely a historical exercise of high-level stakeholders and state actors; it is vital for the connected processes of memory, mourning and justice. The notion of victim participation has also become a core component of transitional justice, as affected individuals are the primary bearers of memory and grief. In Sri Lanka, however, a persistent struggle remains, where individuals affected by the 30-year-long armed conflict between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) face continued systemic harassment when demanding justice for the disappeared and when attempting to remember and mourn their loved ones. Drawing on the authors' analysis of secondary sources, including media reports, civil society documentation and legislature, this article explores the right to memory and memorialisation in Sri Lanka. The article argues that for families of the disappeared, this right remains illusory and incomplete without the truth regarding the fate of their loved ones. In the cultural and religious context of the North, remembrance is inextricably linked to the performance of final rites, which are traditionally and religiously impossible to fulfil without conclusive proof of death.

1. Promises of Change

The election of the National People's Power (NPP) government under President Anura Kumara Dissanayake was framed as a definite system change for Sri Lanka. For conflict-affected communities in the North and the East, this promise was viewed through the lens of long-awaited transitional justice. Initially, the new Government did implement confidence-enhancing measures,[1] including strengthening reconciliation mechanisms such as the Office on Missing Persons (OMP) and gazetting the Draft Bill on the Commission for Truth, Unity and Reconciliation in August 2024, which sought to establish an autonomous body to investigate fundamental human rights violations in connection to the armed conflict, particularly within the Northern and Eastern Provinces between the years of 1984 and 2009[2]. These efforts were further underscored by visits to sites such as Chemmani, highlighting the administration's stated commitment to Northern communities' rights. By admitting the state's role in past atrocities, the administration appears to signal a departure from the denialism of the Rajapaksa era.

However, despite the progress stated, substantive change remains curtailed. Crucially, despite the declaration that the state does not object to commemoration and memorialisation initiatives, there have been continued obstructions to local commemorative initiatives. Likewise, families of victims and the disappeared, who

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[1] National People's Power, 'A Thriving Nation, A Beautiful Life' Election Manifesto (2024) <https://muragala.lk/wp-content/uploads/2024/10/NPP_manifesto_English_2024.pdf> accessed 29 April 2026

[2] The Gazette of the Democratic Socialist Republic of Sri Lanka, 'The Draft Bill of the Commission for Truth, Unity and Reconciliation in Sri Lanka' (2024) <https://www.documents.gov.lk/view/bills/2024/8/540-2024_E.pdf> accessed 2 May 2026

have been protesting since the armed conflict, continue to face systematic harassment, constant surveillance and intimidation when attempting to mourn or display photographs of their lost family members[3]. The restrictions are legally justified by the state under the continued proscription of the LTTE, as stated by the Minister of Public Security, Ananda Wijepala[4]. However, this proves to be a challenge for families, as following countless displacements, the only available photographs they have of their loved ones are often those of them in militant uniform.

The state also utilises restrictive laws such as the Prevention of Terrorism Act (PTA) of 1979 against memorialisation and truth-seeking efforts[5]. In August 2025, following pressure from the international and local communities, the Minister of Foreign Affairs announced that the PTA would be repealed by September 2025[6]. Despite such progress, in December 2025, a draft of the Protection of the State from Terrorism Act (PSTA) was published on the Ministry of Justice website, and a brief review of the provisions confirms that the draft law fails to address issues of broadly defining the offence of terrorism and is similar to the previous government's Anti-Terrorism Act that received

[3] Thyagi Ruwanpathirana, 'Memorialisation for Transitional Justice in Sri Lanka: A Discussion Paper' (2016) Centre for Policy Alternatives <https://www.cpalanka.org/wp-content/uploads/2016/03/Memorialisation-for-Transitional-Justice-in-Sri-Lanka-FINAL.pdf> accessed 29 April 2026.

[4] Newswire, 'Maaveerar Naal: Police Minister outlines commemoration rules (2024) <https://www.newswire.lk/2024/11/25/maaveerar-naal-police-minister-outlines-commemoration-rules/> accessed 29 April 2026.

[5] Tamil Guardian, 'More than 244 Maaveerar Naal commemoration events took place in North-East, admits Sri Lankan minister' (2024) <https://tamilguardian.com/content/more-244-maaveerar-naal-commemoration-events-took-place-north-east-admits-sri-lankan?utm_source=chatgpt.com> accessed 29 April 2026.

[6] Newswire, 'PTA to be repealed in September: Minister Vijitha Herath' (2025) <https://www.newswire.lk/2025/08/22/pta-to-be-repealed-in-september-minister-vijitha-herath/> accessed 29 April 2026.

significant backlash from civil society and human rights defenders.[7]

2. Families of the Disappeared

Despite these continued struggles, the Mothers of the Disappeared forum remains the vanguard of the struggle for truth, for these women, reconciliation cannot begin without a definite answer regarding their loved ones. On Independence Day 2026, families of missing and disappeared persons, representatives of Tamil political parties, and members of civil organisations carried out a protest in Kilinochchi, highlighting the rejection of state celebrations while thousands remain missing. Protesters highlighted that the day celebrated by the Sri Lankan state represents not freedom but the beginning of decades of suffering that culminated in the enforced disappearances.[8]

Additionally, the lack of meaningful accountability and its impact on memory and mourning are reflected in the case of the Chemmani mass grave. The inability to identify remains effectively denies the victims a dignified transition from being missing to being memorialised by their family and loved ones. Following the conviction of Lance Corporal Somaratne Rajapakse for the abduction, rape and murder of Krishanthi Kumaraswamy, it was revealed that the soil of Chemmani served as a mass grave for between 300 and 400 massacred civilians.[9] The excavations were

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[7] Ermiza Tegal, 'Initial Reactions to the Government's Protection of the State from Terrorism Act' (2025) Groundviews <https://groundviews.org/2025/12/18/initial-reactions-to-the-governments-protection-of-the-state-from-terrorism-act-psta/> accessed 29 April 2026.

[8] The Morning, 'Black freedom not Independence: Missing persons families protest in Killinochchi' (2026) <https://www.themorning.lk/articles/m3Q6OWrIZB90zWVLsf51> accessed 2 May 2026.

[9] Jeevan Ravindran, 'New Sri Lanka mass grave discovery reopens old wounds for Tamils' (2025) Al Jazeera <https://www.aljazeera.com/features/2025/6/16/new-sri-lanka-mass-grave-discovery-reopens-old-wounds-for-tamils> accessed 2 May 2026.

initially conducted in September 1999, with the exhumation of 15 bodies[10], using expert archaeological methods.[11]

During investigations, no importance was given to DNA collection, and identification was entirely reliant on perishable clothing[12]. Bone samples were eventually sent to the University of Glasgow for testing but were never returned and are reportedly still there[13]. The Sri Lankan government's impunity was once again highlighted when the case was effectively ended in 2006, and suspects identified were subsequently promoted to senior positions[14]. However, in February 2025, the grave was re-discovered by accident by construction workers who found human remains within the boundaries of Sinputhy Cemetery in Chemmani[15]. The first phase of the investigation, involving a pit analysis, confirmed the existence of a mass grave.[16] Professor Raj Somadeva, leading the investigation, noted a lack of governmental support reflected in the halting of the second stage of the investigation after 45 days. The investigation excavated 240 skeletal remains and also uncovered items such as feeding bottles

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[10] Meera Srinivasan, 'Jaffna mass grave: a test for the Dissanayake government' (2025) The Hindu) <https://www.thehindu.com/news/international/jaffna-mass-grave-a-test-for-the-dissanayake-government/article69831203.ece> accessed 2 May 2026.

[11] P. R. Ruwanpura, U. C. Perera, H. T. Wijayaweera and N. Chandrasiri, 'Adaptation of archaeological techniques in forensic mass grave exhumation: the experience of "Chemmani" excavation in northern Sri Lanka' (2006) *Ceylon Medical Journal,* 51(3) 98 <https://doi.org/10.4038/cmj.v51i3.1251> accessed 2 May 2026.

[12] ibid.

[13] Ingrid Massagé, 'More mass graves at Chemmani and Sri Lanka's old failures of justice' (2025) Himal Southasian <https://www.himalmag.com/politics/srilanka-chemmani-mass-graves-exhumations-impunity> accessed 2 May 2026.

[14] ibid.

[15] The Human Rights Commission of Sri Lanka, 'Fact-Finding Report on Chemmani Mass Grave Site' (2025) <https://www.hrcsl.lk/wp-content/uploads/2025/09/Fact-Finding-Report-of-HRCSL-on-Chemmani-Mass-Grave-Site.pdf> accessed 2 May 2026.

[16] ibid.

for infants, children's bags, shoes and toys. However, despite such progress, the state has failed to establish a professional DNA bank, vital for the identification of victims to provide closure for families[17]. Without state prioritization of the infrastructure needed for identification, the process will remain a hollow act. For these families, a significant obstacle is the primary need to find conclusive proof of the whereabouts of their loved ones, as it is inherently difficult to memorialise the *missing* when there is no finality to their fate, and it is not religiously appropriate to perform final rites without conclusive proof[18].

In this instance, the OMP has been relegated to being a mere observer in the handling of the investigation, with Professor Somadeva describing them as a "white elephant," noting their previous inefficiencies during the Mannar mass grave excavation[19]. Additionally, the Human Rights Commission of Sri Lanka (HRCSL) found that the team in Chemmani is forced to rely on a "trial-and-error basis" because the government has failed to formally adopt a Standard Operating Procedure (SOP) for mass grave investigations[20]. The HRCSL also noted that, based on over 90% of the human remains having no form of clothing, the positioning of the remains and the shallow depth, there is a "reasonable likelihood" that the burials were unlawful and pursuant to extrajudicial killings[21].

In June 2025, UN High Commissioner for Human Rights, Volker Türk, visited the Chemmani site, describing it as a "compelling reminder that the past haunts the lives of many" and calling for "robust, independent investigations"[22]. President Dissanayake,

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[17] ibid.

[18] Radhika Hettiarachchi, 'Challenges and Opportunities for Memorialisation in Sri Lanka: Grassroots Reflections From The Community Memorialisation Project' (2016) The Community Memorialisation Project

[19] ibid.

[20] ibid.

[21] ibid.

[22] ibid.

speaking in Jaffna in September 2025, vowed to conduct a transparent investigation into the mass grave and build a nation where such atrocities cannot occur again[23]. Similarly, in Geneva, the Minister of Justice and National Integration, Harshana Nanayakkara, informed the UN Committee on Enforced Disappearances that the government "believed in securing justice" and finding closure for victims.[24]

However, these promises remain contradicted by the administration's efforts on the ground. The HRCSL reports accounts of Criminal Investigation Department (CID) officers intimidating family members of the disappeared, and in August 2025, the Counter Terrorism and Investigation Division (CTID) summoned journalist Kumanan Kanapathippillai, who has been prominently documenting the excavations, for questioning.[25]

While it can be stated that the climate of fear has reduced since the Rajapakse regime, the promise of justice and accountability remains largely out of reach. Genuine accountability would begin with the state recognising and addressing historical power imbalances in order to create a more inclusive approach to transitional justice processes. For instance, a formal policy to bind current and future governments to abide by the best principles that recognise the right to remember for all communities, protecting communities against political appropriation of memory and ensuring multiple narratives are tolerated.

3. Community Memory and Reconciliation

Additionally, states should encourage pluralistic efforts at a community level by providing resources to initiatives and

[23] Newswire, 'President vows transparent probe into Chemmani mass grave' (2025) <https://www.newswire.lk/2025/09/01/president-vows-transparent-probe-into-chemmani-mass-grave/> accessed 2 May 2026.
[24] Helen Regan, 'Sri Lanka Chemmani mass grave revives war-time trauma' (2025) CNN <https://edition.cnn.com/2025/11/29/asia/sri-lanka-chemmani-mass-grave-intl-hnk> accessed 2 May 2026.
[25] ibid.

empowering local groups to memorialise their own narratives of history, enabling them to document their losses, hopes and courage in ways that are culturally, religiously and historically appropriate. In response to the state's failure to sustain mechanisms of truth-telling and accountability, CSOs have been leading community-led memorialisation initiatives that aim to build community literacy on memorialisation as a human right. For instance, the Kilinochchi Peace Gallery Museum[26], conducted by a group of peace practitioners collaborating with the Chelvanayagam Memorial Trust, addresses Sri Lanka's violent past by engaging young people, both victims and survivors, through discussion, dialogue and mutual support. It was a concept inspired by the efforts of the Centre for Peace and Conflict Studies (CPCS) in Cambodia and the Cambodian Peace Gallery as a model. In addition to physical museums, CSOs have taken the initiative to create alternative spaces, including digital platforms, such as online blogs[27], The Museum of Religious Freedom[28], and community-based networks such as Noolaham[29], to counter state restrictions, preserve the right of communities to remember and honour their dead, and ensure that collective memory endures.

The state must also acknowledge the power imbalances that are often created by the continued presence of the military in the North and East, as meaningful national memorialisation is contingent upon demilitarisation and trust-building measures. This would in turn create environments where citizens can feel safe to live their daily lives without fear of surveillance or reprisal[30]. Demilitarisation will also ensure communities can

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[26] Margherita Forni, 'The Kilinochchi Peace Gallery: Beyond Official Narratives' (2025) Groundviews <https://groundviews.org/2025/06/27/the-kilinochchi-peace-gallery-beyond-official-narratives/> accessed 29 April 2026.

[27] Remembering Sri Lanka's Black July <https://30yearsago.asia/> accessed 29 April 2026.

[28] Museum of Religious Freedom <https://www.museumofreligiousfreedom.lk/> accessed 29 April 2026.

[29] Noolaham Media <https://noolaham.media/> accessed 29 April 2026.

[30] ibid.

continue to access sites of historical or religious significance, including destroyed cemeteries or locations of civilian massacres, where memorialisation efforts can take place.

While the Dissanayake administration has begun attempts to lower the tensions that still persist following the armed conflict by permitting memorialisation, facilitating investigations into mass graves and reopening roads, these efforts are undermined when the state simultaneously suppresses the protests and memorialisation of families and does not prioritise funding mass grave excavations and other investigations. The "Northern experience" under the NPP suggests that while the climate of fear has thinned, the structural pillars of discrimination, including the PTA, military land occupation, and impunity, remain standing. For the families of the disappeared, justice is not found in a government statement or a new commission, but in a system change of the military and judicial mechanisms of the state. Accountability

LIVED REALITIES OF VIOLENCE AGAINST WOMEN AND CHILDREN IN THE POST-CONFLICT OF SRI LANKA

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Abstract

Globally, nearly one in three women experience physical or sexual violence by an intimate partner or non-partner during their lifetime, a figure that has remained largely unchanged since 2000. In South Asia, approximately 12.5% of children experience sexual assault before the age of 18, with higher prevalence of girls than boys. Against this backdrop, in Sri Lanka approximately one in five women have experienced physical and/or sexual violence by an intimate partner during their lifetime. This article focuses on the Northern Province of Sri Lanka, a region profoundly shaped by the decades-long civil war and its enduring aftermath. Northern has reported an intimate partner violence prevalence exceeding 50%, substantially higher than the national average alongside with higher suicide rates that have been associated with the enduring effects of conflict-related trauma and persistent insecurity. This examines the prevalence and various forms of violence experienced by women and children in the Northern, with particular attention to the persistent patterns of harassment that have occurred before, during, and after the civil war. The article draws on qualitative sources, including reports from human rights organizations based in Sri Lanka, government publications, and academic literature. The findings highlight systemic failures in the prevention, investigation, and prosecution of violence, alongside significant barriers to justice, including inadequate witness protection, social stigma, and limited access to survivor-centered support services. This article underscores the urgent need for comprehensive investigations into reported cases and for ensuring accountability in accordance with domestic and international legal standards. The article concludes by recommending the establishment of fast-track, victim-sensitive legal aid mechanisms and the provision of specialized psychosocial

care for survivors and their families to promote healing, justice, and long-term social reintegration.

1. Introduction

"We lose everything: our strength, our belief in justice"

Survivor from civil war, UN report issued by OHCHR (2026, p. 20, para. 55)[1]

For twenty-six years, the Northern Province of Sri Lanka bled. From July 1983 to May 2009, the war between the government and the Liberation Tigers of Tamil Eelam (LTTE) did not merely reshape borders, instead it dismantled lives. Women and children suffered the most, facing not only the horrors of war but also enduring violence in the form of ongoing struggles and insecurities that followed. The meaning of 'Violence' is defined by the World Health Organization as "intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in, or has a high likelihood of, resulting in injury, death, psychological harm, maldevelopment or deprivation".[2] In global aspect, nearly one in three women experience physical or sexual violence by an intimate partner or non-partner during their lifetime, a figure that has remained largely unchanged since 2000.[3] In South Asia,

[1] Office of the United Nations High Commissioner for Human Rights, *Accountability for Conflict-Related Sexual Violence in Sri Lanka* (13 January 2026) https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sri-lanka/2026-crsv-brief-english.pdf
[2] World Health Organization, 'Violence' https://www.emro.who.int/violence-injuries-disabilities/violence/
[3] World Health Organization, 'Lifetime toll: 840 million women faced partner or sexual violence' (19th November 2025)

approximately 12.5% of children experience sexual abuse before the age of 18, with girls disproportionately affected compared to boys.[4]

2. Civil War in Northern Province: 1983 - 2009

The Northern Province, comprising the districts of Jaffna, Mannar, Mullaitivu, Vavuniya, and Kilinochchi endured varying degrees of conflict-related devastation over the course of the civil war. During the period of active hostilities, women and children were subjected to sexual violence, forced recruitment, extrajudicial killings, arbitrary arrest and indiscriminate attacks on civilians.[5] Among thousands of extrajudicial violence, only a few cases have been effectively investigated and prosecuted to a successful conclusion. One of the most notable cases is *Krishanthi Kumaraswamy* incident, an 18-year-old Tamil girl from Kaithady, Jaffna, who was abducted on 7 September 1996 at an army checkpoint. She was gang-raped by six army personnels and subsequently murdered. When her mother, younger brother, and a neighbor went in search of her, they were also killed. In 1998, the Colombo High Court convicted the accused of rape and murder and imposed the death penalty. In 2003, six death-row convicts appealed against their sentences; however, in 2004 the Supreme Court (S.C.), affirmed the convictions and upheld the verdicts.[6] This verdict marked as first instance in which members of the armed forces were convicted in criminal proceedings for committing such grave violations against civilians. A subsequent

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https://www.who.int/news/item/19-11-2025-lifetime-toll--840-million-women-faced-partner-or-sexual-violence

[4] Global Child Safety Institute, Into the Light: Index on Global Child Sexual Exploitation and Abuse 2025 (Global Child Safety Institute 2025) https://www.childlight.org/uploads/publications/STAR_2025_min.pdf

[5] United Nations, 'Panel of Experts finds credible reports of war crimes during Sri Lanka conflict' (25 April 2011) https://news.un.org/en/story/2011/04/373152

[6] Samaratne Rajapakse and others v Attorney General SC Appeal No 2/2002

Fundamental Rights petition filed by five of the convicted persons was later dismissed by the S.C. in 2025.[7]

Moreover, among the most extensively documented human rights violations of the conflict period was the systematic recruitment and deployment of children by the LTTE. Amid the conflict, thousands of children including both boys and girls, often as bellow 15 years were drawn into the war and used in multiple roles, from frontline fighting, suicide missions and logistical support tasks. Between 2002 and the ceasefire's collapse, over 3,500 child recruitment cases were verified, though the true number is likely to be higher.[8] Notably, girls were recruited in large numbers, and that make up an estimation of approximately 40 percent of the LTTE's child recruits. Recruitment was characterized by abduction and the coercive targeting of families, while children who attempted to escape faced severe physical punishment, thereby reinforcing compliance through sustained intimidation. Punishment is particularly harsh for those who attempt to escape from the camps. In *Human Rights Watch Report,* one female survivor stated "Lots of people tried to escape. But if you get caught, they take you back and beat you. Some children die. If you do it twice, they shoot you. In my wing, if someone escaped, the whole group was lined up to watch them get beaten. I saw it happen, and know of cases from other groups. If the person dies, they don't tell you, but we know it happens".[9]

[7] *The Sunday Times*, 'Krishanthi Kumaraswamy convicts' FR petition dismissed by SC' (3 June 2025) https://sundaytimes.lk/online/news-online/Krishanthi-Kumaraswami-convicts-FR-dismissed-by-SC/2-1149388

[8] Human Rights Watch (HRW), Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka, C1613, 11 November 2004, https://www.refworld.org/reference/countryrep/hrw/2004/36561

[9] Ibid

3. The Persistent Trauma: After 2009

3.1 Violence against Women

Eighteen years since the civil war, the Northen remains a landscape where the scars of war are not merely historical but are lived daily. For many, the transition from active war to peace has not signaled an end to violence, but rather its evolution into structural, economic, and psychological forms. The burden of the conflict's aftermath has fallen disproportionately on women, who have been push into the role as heads of household. Women are traditionally cared for first by their fathers, then by their husbands, and subsequently by their sons. However, in the aftermath of war, many husbands and sons are either missing or deceased, leaving women to navigate a patriarchal social structure that frequently marginalizes those without male protection. At the same time, they confront multiple intersecting challenges, including unemployment, employer discrimination based on gender, caste, or alleged association with the LTTE, and the enduring effects of conflict-related trauma. This shift is not merely a change in family dynamics but a vulnerability that exposes them to predatory practices. These intersecting pressures have driven a significant proportion of women in the Northern toward commercial sex work and situations of trafficking, not as a matter of choice but as a consequence of severely constrained livelihood alternatives. By 2013, the number of women identified as engaging in sex work in Northen was estimated to be as high as 7000, thus this figure considers to be conservative.[10]

The *Vishvamadu rape case* is a landmark post-war case. In 2010, four army soldiers were accused of gang-raping a Tamil woman and sexually abusing another in Vishvamadu, Kilinochchi. In October 2015, the Jaffna High Court convicted the accused, sentencing each to 25 years of rigorous imprisonment and ordering the

[10] The New Humanitarian, 'Turning to sex work in Sri Lanka's north', 10 October 2013 https://reliefweb.int/report/sri-lanka/turning-sex-work-sri-lanka%E2%80%99s-north

payment of compensation. However, in 2019, the convictions of the four soldiers were overturned on appeal, and they were acquitted of all charges due to issues relating to identification evidence[11]. An appeal for S.C. was filed by one of the survivors remains still pending. A villager reflected on the state of mind of *Vishvamadu* incident survivor, who is currently residing abroad, highlighting the profound sense of isolation she experiences. He explained as, "She is far from everything and everyone she loves. She is all alone, and this solitude weighs heavily on her. She is out of her world. Was it worth it? Now people tell her: you wanted justice? Look where this brought you and where you are now."[12] Taking long time to provide justice underscores the systemic failures in delivering justice, revealing how legal processes, and evidentiary limitations collectively undermine accountability and exacerbate the marginalization and suffering of survivors.

3.2 *Violence against Children*

Children in post-war did not experience peace in its true sense. Following 2009, children residing in displacement camps and resettlement villages exhibited significant psychological distress, including anxiety, nightmares, and academic difficulties, attributable to prior exposure to violence, displacement, and familial separation. Concurrently, emerging forms of abuse, particularly sexual and emotional became increasingly prevalent. One of the most tragic and shocking incidents after post conflict was the abduction, gang rape, and murder of 18-years schoolgirl, *Sivaloganathan Vidya* in Punguduthivu, Jaffna, in 2015.[13] Following

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[11] All Survivors Project, 'Submission to the UN Human Rights Committee on Sri Lanka', 10 January 2020 https://allsurvivorsproject.org/submission-to-the-un-human-rights-committee-on-sri-lanka-128th-session-2-27-march-2020/

[12] Office of the United Nations High Commissioner for Human Rights (n 1) 20.

[13] Chrishanthi Christopher, 'After rape and murder, fear and tension in Jaffna over covert menace to public safety' (The Sunday Times, 24 May 2025) https://www.sundaytimes.lk/150524/news/after-rape-and-murder-fear-and-tension-in-jaffna-over-covert-menace-to-public-safety-150561.html

a Trial-at-Bar before the Jaffna High Court, seven of the nine accused were sentenced to death, in addition to life imprisonment and fines. The incident sparked widespread outrage and grief across the country, particularly in the Northern, where students, university communities, and local residents took to the streets in protest, demanding justice and stronger measures to protect women and ensure accountability.[14]

A 2009-2014 study in Northern documented 703 violence cases, including 352 child abuses, 245 child marriages, 40 physical abuses, 45 neglect cases, and 21 attempted suicides, with incidents rising annually.[15] Also, according to the National Child Protection Authority, data on child abuse and other child-related offences from 2010 to 2025 indicate a steady annual increase across districts in the Northern Province.[16] Collectively, these datasets indicate that structural vulnerabilities within the post-conflict social order have perpetuated and intensified violence against children throughout Northern Province.

Year	Jaffna	Mannar	Mullaitivu	Vavuniya	Kilinochchi	Total
2010	7	4	2	19	2	**34**
2011	15	19	11	57	7	**109**
2012	33	21	26	55	35	**170**
2013	46	29	53	96	47	**271**
2014	213	86	160	160	144	**763**
2015	198	65	121	128	104	**616**
2016	169	68	119	115	116	**587**
2017	188	69	132	131	126	**646**
2018	207	69	98	131	104	**609**
2019	175	80	122	106	141	**624**
2020	174	67	118	92	119	**570**

[14] Ibid

[15] Sathiadas MG, Mayoorathy S, Varuni K, Ranganathan SS. Child Abuse in Northern Sri Lanka. Indian J Pediatr. 2017 https://pubmed.ncbi.nlm.nih.gov/27431383/

[16] National Child Protection Authority, Child Abuse and Other Child-Related Complaints Reports 2010–2025 https://childprotection.gov.lk/en/resource-centre/statistics-3

2021	196	89	133	119	115	**652**
2022	166	56	104	81	87	**494**
2023	138	50	82	65	52	**387**
2024	67	39	61	60	45	**272**
2025	140	59	105	66	47	**417**

Table 01: Child Abuse and Other child related complaints reported to NCPA.[17]

4. Legal Framework in Sri Lanka

Sri Lanka operates within a unique pluralistic legal framework that encompasses both personal laws and territorial laws. At the apex of this legal system stands the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka. Art.11 of the Constitution guarantees an absolute and non-derogable right prohibiting torture and cruel, inhuman, or degrading treatment or punishment. Art.12 affirms the right to equality before the law and equal protection of the law, expressly prohibiting discrimination on the grounds of race, religion, language, caste, sex, political opinion, or place of birth, thereby ensuring that every individual stands on equal footing within the justice system. Art.13 further safeguards personal liberty and security by protecting individuals from arbitrary arrest, detention, and punishment, requiring that any person arrested be promptly informed of the reasons for such arrest and produced before a judge without undue delay, while also upholding the principle that no person shall be penalized for an act that did not constitute an offence at the time it was committed. Moreover, art.27(13) directs the State to promote the interests of children and youth with special care, ensuring their full physical, mental, moral, religious, and social development, while protecting them from exploitation and discrimination. Where a person alleges an infringement or imminent infringement of a fundamental right guaranteed under Chapter III of the

[17] Ibid

Constitution, they are entitled to invoke the jurisdiction of the S.C. by way of a fundamental rights petition.[18]

Thus, Sri Lankan legal system is traditionally a dualistic legal system where international treaty obligations only become domestic law once they have been enacted by the parliament.[19] Sri Lanka is a state party to several international human rights conventions that are relevant and closely related to the prohibition of torture and cruel, inhuman and degrading treatment or punishment. Sri Lanka has ratified the Genocide Convention,[20] ICCPR,[21] and UNCAT.[22] As per art.6(1) of the ICCPR designates the right to life, freedom from torture, and freedom from slavery and servitude as non-derogable rights, admitting no suspension under any circumstances. This absolute prohibition is reinforced by art.2(2) and 2(3) of the UNCAT establish the absolute prohibition of torture, stipulating that no exceptional circumstances whatsoever may be invoked as a justification for its use. Furthermore, art.14(1) OF UNCAT complements this framework by guaranteeing victims an enforceable right to redress and compensation. In 2013, Sri Lanka endorsed the Declaration of Commitment to End Sexual Violence in Conflict, a pledge it

[18] **Art.17**, read with **art.126**, entitles any person to invoke the jurisdiction of the S.C. by way of petition, which must be filed within one month of the alleged infringement.

[19] **Art. 27(15)**, directs the State to respect international law as a non-justiciable policy principle, and **art.33** empowers the President to sign international treaties, neither provision alone makes a treaty binding in domestic law. Under **art.157**, Parliament must enact implementing legislation by a two-thirds majority, only then does a treaty gain legal force by acquiring strong constitutional protection that places it beyond judicial challenge.

[20] *Convention on the Prevention and Punishment of the Crime of Genocide (accession 1950)*

[21] *International Covenant on Civil and Political Rights (accession 1980), also adopted First Optional Protocol to the ICCPR in 1997*

[22] *United Nations Convention against Torture (accession 1994), also adopted Optional Protocol to the CAT in 2017*

reaffirmed in 2016.[23] Under the principles of international law, once a state ratifies these treaties, it is legally obligated to ensure full compliance with their provisions, translating these global standards into domestic protections. Through this dualistic lens, the Constitution acts as the supreme guardian of human dignity, ensuring that international standards are not just external commitments but enforceable domestic rights.

In the absence of specific conflict-related sexual violence legislation, The Penal Code[24] defines the substantive elements and prescribes the punishments for various forms of violence, while the Code of Criminal Procedure (CCP)[25] sets out the procedural framework for the investigation, arrest, and trial process to ensure these offenses are prosecuted through the judicial system. Sec.456 of the CCP establishes a general 20-year statute of limitations for sexual violence prosecutions. This domestic limitation stands in stark contrast to international standards, under which no statutory limitation applies to international crimes. Consequently, acts of sexual violence committed prior to 2005 for which no proceedings were initiated are now conclusively time-barred, significantly contributing to perpetrator impunity.[26] Until 2015, Sri Lanka lacked specific legislation to ensure the safety and protection of victims and witnesses. This gap was addressed by the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, which established a legal framework for their protection. It was later repealed and replaced by Act No. 10 of 2023, aimed at aligning national safeguards with international standards and strengthening institutional support mechanisms. Despite these legislative advancements, several structural and operational

[23] Ministry of Foreign Affairs (Sri Lanka), 'Sri Lanka endorses the Declaration of Commitment to End Sexual Violence in Conflict' https://mfa.gov.lk/en/sri-lanka-endorses-the-declaration-of-commitment-to-end-sexual-violence-in-conflict/

[24] Penal Code Act No. 22 of 1995 (as amended)

[25] Code of Criminal Procedure Act No. 15 of 1979 (as amended)

[26] Office of the United Nations High Commissioner for Human Rights (n 1) 12.

challenges persist where accessibility remains limited which evidenced by the fact that only 189 witnesses (including 63 women) received protection services in 2023 despite a substantial case backlog.[27]

The Prevention of Terrorism Act (PTA)[28], in force for over four decades, has been widely criticised for enabling prolonged arbitrary detention, facilitating the extraction of confessions under torture, and disproportionately affecting minority communities. Under sec.6(1), police grants extensive powers to arrest without warrant, enter and search premises, stop and search individuals or vehicles, and seize documents or property, notwithstanding any other law. One of the most internationally prominent case was *Balendran Jeyakumari* and her 13-year-old daughter, *Vithuskaini*, who lost her husband and three sons during the conflict, was a prominent campaigner against enforced disappearances. She was arrested in March 2014 in Kilinochchi after campaigning against enforced disappearances. Thereby, she was detained under the PTA and detained without charge in March 2015 under subject to restrictions, including mandatory monthly police reporting and confiscation of her passport.[29] However, PTA's application in the Northern has disproportionately targeted women and children, including mothers, activists, and former child combatants, causing serious harm to their families. Many detainees have remained in custody for over a decade or are still awaiting release, underscoring the ongoing human cost of its enforcement.[30]

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[27] United Nations Development Programme, Rule of Law and Human Rights Annual Report 2023: Sri Lanka https://rolhr.undp.org/annualreport/2023/asia-pacific/sri-lanka.html

[28] Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022

[29] Front Line Defenders, 'Case History: Balendran Jeyakumari' https://www.frontlinedefenders.org/en/case/case-history-balendran-jeyakumari

[30] Human Rights Watch, Locked Up Without Evidence: Abuses under Sri Lanka's Prevention of Terrorism Act (29 January 2018)

5. Barriers to Justice and Survivors' Voices

The 2026 UN report issued by the OHCHR finds that a pervasive *"unbelief in justice"* among survivors reflects a systemic failure to translate formal peace into a lived experience of accountability. The most pronounced barrier remains the chronic delay in delivering justice. Among thousands of cases of extrajudicial violence documented, only a negligible fraction has been effectively investigated and prosecuted to a successful conclusion. After the conflict, survivors faced a sustained climate of fear that discouraged them from reporting sexual violence or seeking legal redress, as they risked being labelled as LTTE supporters or arrested under the PTA.[31] In many cases, alleged perpetrators remained in positions of authority or continued to operate within the same community territorial as the victims, further deterring complaints. Language barriers have also played a significant role, as many survivors in the North primarily speak Tamil, while legal and police systems often function in Sinhala by creating communication difficulties and a sense of alienation.[32] Additionally, gender-specific barriers have compounded these challenges where female survivors frequently feel uncomfortable disclosing experiences of sexual violence before male-dominated committees and panels. This lack of gender-sensitive mechanisms has led many women to withhold their testimonies, leaving their suffering unacknowledged and unaddressed. These interconnected factors demonstrate the deep-rooted obstacles that continue to hinder access to justice, underscoring the urgent need for victim-centered, gender-sensitive, and timely legal responses in post-conflict. Notably, these issues are not confined to the Northern Province but are evident across the country,

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https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act

[31] Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022

[32] The New Humanitarian, 'Bridging the language divide in Sri Lanka' (23 July 2012) https://www.thenewhumanitarian.org/report/95860/sri-lanka-bridging-language-divide

where numerous cases have faced delays in investigation and prosecution, or where suspects have been released on bail due to factors such as the profile of victims and alleged perpetrators, geographic considerations, and weaknesses in official processes.[33]

6. Conclusion and Recommendations

Although the war formally ended in 2009, the subsequent "post-conflict" period has not ensured meaningful security for many survivors. Instead, many women and children in Northern continue to endure physical and psychological harms that shape their lived realities. The findings of the *2026 UNHRO report,* showcase widespread post-conflict violence in Sri Lanka and a persistent failure of the State to ensure accountability. Thus, report identified significant number of survivors expressed their fading confidence in the prospect of justice. *"Justice delayed is justice denied";* therefore, taking prompt steps are crucial to uphold public confidence in the legal system and to ensure justice, accountability, and fairness in the society. The proposed recommendations will be as follows:

i. Establish a special court of record for women and children. For instance, as a specialised division within the Magistrate Court. This should be accompanied by the introduction of a fast-track adjudication mechanism that is both timely and victim-sensitive in the handling of cases involving sexual abuse and violence.

ii. Sri Lanka should enact separate legislation on sexual violence by incorporating appropriate evidentiary standards, establishing a comprehensive reparations framework, and

[33] Bhavani Fonseka, 'Emblematic Cases Expose the Long Road to Justice in Sri Lanka' (22 February 2021) https://www.justsecurity.org/74866/emblematic-cases-expose-the-long-road-to-justice-in-sri-lanka/

addressing the specific vulnerabilities of conflict-affected women and children.

iii. Immediately impose a halt on the use of PTA, repeal the law promptly, and ensure any successor counterterrorism legislation fully complies with international human rights obligations.

iv. Integrate legal aid programmes into community-level service delivery to ensure that victims and vulnerable persons have access to legal representation and guidance through the Attorney General's Department or organizations such as the Bar Association of Sri Lanka.

v. Undertake public awareness initiatives to highlight the gravity and consequences of violences.

vi. Appoint an independent commission mandated to carry out comprehensive investigations into all unreported cases of rape, harassment, and murder, while also monitoring and regulating employment activities operating in the Northern.

vii. When constituting committees and oversight bodies, ensure the meaningful participation of women by mandating and progressively increasing the ratio of women members.

viii. Strengthen the existing complaints mechanism within the National Human Rights Commission, and establish an independent, effective, confidential, and accessible complaints mechanism specifically for victims of sexual violence by ensuring that complainants may file reports safely and without fear of reprisal.

POST-WAR LAND RESTITUTION IN NORTHERN SRI LANKA: A SOCIO-LEGAL ANALYSIS OF PROPERTY RIGHTS AND LIVED REALITIES

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Abstract

In May 2009, Sri Lanka marked the end of its civil war; in Northern Sri Lanka, post-war realities have continued to be shaped by large-scale displacement and loss of access to land, and prolonged state control, severely affecting the livelihoods and dignity of affected communities. Post-war land restitution is a critical component of transitional justice and sustainable peace in Sri Lanka. Although domestic legal frameworks and international human rights standards, including the UDHR, recognize the right to property and the right to return, the practical realization of these rights remains contested. This paper adopts a doctrinal and socio-legal methodology. It analyses primary legal sources, namely the Constitution of the Democratic Socialist Republic of Sri Lanka, the Land Acquisition Act, the Land Reform Act, the Land Grants Act, and the customary Thesawalamai law, alongside international instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Pinheiro Principles on Housing and Property Restitution. These primary sources are read against secondary empirical data drawn from National Human Rights Commission of Sri Lanka, together with government policy documents, including the 2016 National Policy on Durable Solutions for Conflict-Affected Displacement, and academic socio-legal literature on transitional justice and land governance. Through this triangulation of statutory text, institutional reporting, and scholarly analysis, the paper identifies the disconnection between formal legal guarantees and the lived realities of displaced Tamil and Muslim communities, arguing that administrative inefficiencies, continued military occupation of private land, and unaddressed psychological and social barriers have weakened the transformative potential of property rights in the post-conflict setting. By situating the Northern Sri

Lankan experience within comparative post-conflict restitution processes in Bosnia-Herzegovina, Rwanda, and Colombia, the study calls for rights-based, community-sensitive approaches to land governance that move beyond narrow statutory compliance.

Key Words: *Sri Lanka, Northern, Post-war displacement, Right to property, Right to return, Land restitution, Socio-Legal*

1. Introduction

The end of Sri Lanka's civil war in May 2009 marked a significant political transition; however, for communities in the Northern Province, the post-war period has been characterized by continued displacement, restricted access to land and prolonged uncertainty regarding property rights. Land as a source of livelihood, identity, and social stability occupies a central place in post-conflict recovery.

Nearly two decades after the end of the civil war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE), which fought for an independent Tamil homeland from 1983 to 2009, Tamil and Muslim families displaced by the conflict are still waiting to access lands that were occupied or expropriated during those years. This prolonged displacement reveals something fundamental: post-conflict resettlement is never just a humanitarian or technical matter. It is deeply political, entangled in the broader project of how the state governs territory, and is bound up with questions of sovereignty, security, and power[1].

[1]'Returning Home: Land Displacement and the Politics of Resettlement in Post-War Sri Lanka' (*Researching Internal Displacement*, 15 March 2023) <https://researchinginternaldisplacement.org/short_pieces/returning-home-

This article undertakes that, despite the existence of a comprehensive legal framework, post-war land restitution in Northern Sri Lanka is undermined by structural, administrative and socio-political barriers that hinder the practical realization of property rights. It examines the disconnect between normative legal frameworks, including international human rights instruments[2] and domestic statutes, and the practical realities experienced by displaced Tamil communities. The right to return and the right to property, while formally guaranteed,[3] have been structurally undermined by administrative practices, militarization of civilian land, and the persistence of social and psychological barriers to effective restitution. By situating the Northern Sri Lankan experience within global frameworks of transitional justice and post-conflict land governance, this article argues that sustainable restitution demands rights-based, community-sensitive approaches that transcend the narrow confines of statutory compliance.

2. The Legal Framework for Land Restitution

International human rights law provides a solid normative basis for property restitution in post-conflict contexts. The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) recognize the right of displaced persons to have restored to them their original homes, land, and properties or to receive compensation where restoration is not factually possible.[4] These

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land-displacement-and-the-politics-of-resettlement-in-post-war-sri-lanka/\> accessed 15 April 2026

[2]Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III) (UDHR), art 17

[3]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 12

[4]UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) (2005) UN Doc E/CN.4/Sub.2/2005/17

principles establish restitution as a primary remedy and impose obligations on states to remove all practical, administrative, and legal obstacles to return.

Domestically, the Land Acquisition Act,[5] the Land Reform Act,[6] and the Land Grants Act[7] constitute the principal legislative framework governing property rights and state acquisition in Sri Lanka. The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 further guarantees freedom of movement and the right to return to one's place of residence.[8] In the Northern Province, the Thesawalamai Law, a customary legal system governing land inheritance and transfer among the Jaffna Tamil community adds an additional layer of complexity, operating in conjunction with and sometimes in tension with statutory frameworks.[9]

Notwithstanding this layered framework, the legislative landscape is marked by significant structural deficiencies. The Land Acquisition Act grants the state broad powers of compulsory acquisition for 'public purposes', a provision that was invoked extensively during and after the armed conflict to justify sustained military occupation of private land.[10] The absence of a specific post-conflict restitution statute tailored to the Northern Province's circumstances has meant that displaced persons must navigate a fragmented legal architecture that is ill-equipped to address the scale and specificity of their dispossession.

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[5]Land Acquisition Act No 9 of 1950 (Sri Lanka)

[6]Land Reform (Special Provisions) Act No 39 of 1981 (Sri Lanka)

[7]Land Grants (Special Provisions) Act No 43 of 1979 (Sri Lanka)

[8]Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(h)

[9]Ibid, art 14(1)(h); see also Presidential Task Force for Resettlement, Development and Security in the Northern Province, 'Final Report' (2010)

[10]Internal Displacement Monitoring Centre, 'Sri Lanka: Displacement Figures' (IDMC 2012) <https://www.internal-displacement.org> accessed 30 March 2026.

3. Displacement, Military Occupation, and Administrative Barriers

At the height of the conflict's final phase, an estimated 300,000 Tamil civilians were displaced from their homes in the Vanni region, many of whom were subsequently interned in government-controlled camps under conditions that attracted international condemnation.[11] Even after the formal cessation of hostilities, large tracts of private land in districts including Jaffna, Kilinochchi, Mullaitivu, and Vavuniya remained under military occupation, with the Sri Lanka Army establishing permanent installations on acquired private property.[12]

The militarization of civil space has been extensively documented. High-security zones (HSZs) were declared under emergency regulations, effectively preventing the return of original landowners in strategically sensitive areas.[13] Although some HSZs were subsequently reduced or lifted, military presence on private land has proven deeply resistant to dismantlement. Affected communities have faced a paradox: formal legal rights to land subsist, yet their practical enjoyment is indefinitely deferred by state security imperatives that remain opaque and largely unaccountable.

Administrative inefficiencies have compounded this predicament. The Grama Niladhari system, responsible for certifying land ownership at the village level, was severely disrupted during the conflict, resulting in widespread destruction of title deeds and cadastral records. Displaced persons seeking to establish

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[11]Human Rights Watch, 'Besieged, Displaced, and Detained: The Plight of Civilians in Sri Lanka's Vanni Region' (HRW 2009)

[12]Mahinda Rajapaksa, 'A Humanitarian Operation: Factual Analysis of Sri Lanka's Eelam War IV' (Ministry of Defence 2012); see also Frances Harrison, Still Counting the Dead: Survivors of Sri Lanka's Hidden War (Portobello Books 2012)

[13]Pinheiro Principles (n 3) Principle 2

documentary proof of ownership have encountered a bureaucratic maze that disproportionately disadvantages those with lesser education, resources, or access to legal counsel.[14] Women-headed households disproportionately represented among the displaced face additional barriers rooted in both bureaucratic and patriarchal structures that compound their dispossession.[15]

4. The Gap Between Legal Guarantees and Lived Realities: A Socio-Legal Perspective

A strictly positivist analysis of land restitution in Northern Sri Lanka would yield a deceptively reassuring picture: the Constitution formally protects property rights; international obligations have been nominally acknowledged; and policy documents articulate commitments to durable solutions.[16] Yet a socio-legal analysis attentive to the social conditions within which law operates and the power relations that shape its application reveals a starkly different reality. The transformative potential of property rights as a transitional justice mechanism is contingent upon the removal of structural impediments to their exercise. As de Greiff observes, reparative measures achieve their normative purpose only when they are capable of acknowledging past wrongs and reconstituting the civic relationship between the state and its citizens.[17] In the Northern Sri Lankan context, the failure to dismantle military occupation, coupled with the persistence of administrative barriers to documentation, has frustrated this reconstitution. The state's conduct signals not a commitment to

[14]Land Acquisition Act (n 4) s 38; Emergency (Miscellaneous Provisions and Powers) Regulation No 1 of 2005, reg 24

[15]Maarten Bavinck and others, 'The Impact of Aquaculture on the Livelihoods of Small-Scale Fishermen in Northern Sri Lanka' (2012) 36 World Development 2252

[16]Ministry of Resettlement, 'National Policy on Durable Solutions for Conflict-Affected Displacement' (Government of Sri Lanka 2016)

[17]Suriya Wickremasinghe, 'Land Issues in Northern Sri Lanka' (Law and Society Trust Review, Colombo 2011).

redress, but a continuation of dispossession through juridical means.

The Thesawalamai Law presents a further dimension of socio-legal complexity. As a customary regime governing land transactions in the Jaffna peninsula, Thesawalamai vests preemptive rights in relatives and co-owners and restricts alienation of land to non-community members.[18] Decades of displacement have fractured familial and community networks, rendering the practical application of these customary norms problematic. Where statutory and customary frameworks conflict, displaced persons particularly women and younger community members are frequently disadvantaged by both systems simultaneously.The psychological and social dimensions of dispossession have received insufficient attention in legal scholarship. Research by Nesiah and others demonstrates that displacement produces forms of harm to identity, memory, and social cohesion that are not reducible to property loss and cannot be remedied by the mere restoration of title.[19] Communities in Kilinochchi and Mullaitivu have reported profound difficulties reintegrating into landscapes that have been physically transformed by war and occupation, with former agricultural lands rendered unusable by unexploded ordnance, damaged irrigation infrastructure, and contested boundaries.[20]

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[18]Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press 2006) 453

[19]Thesawalamai Law, Customary Law of the Jaffna Tamils, codified by Regulation No 18 of 1707; applied under the Matrimonial Rights and Inheritance (Jaffna) Ordinance No 1 of 1911

[20]Vasuki Nesiah, 'Placing International Law: White Spaces on a Map' (2003) *16 Leiden Journal of International Law* 1

5. Global Perspectives and the Need for Community-Sensitive Approaches

Comparative analysis of post-conflict land restitution processes reinforces the inadequacy of purely legalistic approaches. The experiences of Bosnia-Herzegovina, Rwanda, and Colombia illustrate that effective restitution requires not merely the declaration of rights, but sustained institutional investment in documentation recovery, legal aid, adjudicatory mechanisms, and community-level engagement.[21] Where these conditions are absent, formal restitution regimes produce asymmetric outcomes that entrench pre-existing social inequalities.

Sri Lanka's 2016 National Policy on Durable Solutions for Conflict-Affected Displacement represents a belated acknowledgment of the need for a comprehensive approach.[22] However, civil society organizations and international monitors have noted significant implementation gaps: funding for legal aid has been inadequate; dedicated land commissions with adjudicatory powers have not been established; and the military's continued occupation of private land has proceeded largely outside any civilian oversight framework.[23]

Rights-based approaches to land governance must be complemented by community-sensitive mechanisms that take account of local tenure systems, customary law, and the differential vulnerabilities of affected populations.[24] This demands not only the reform of statutory frameworks including the

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[21]UN Committee on Economic, Social and Cultural Rights, General Comment No 7: The Right to Adequate Housing (Forced Evictions) (1997) UN Doc E/1998/22, para 13

[22]Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Polity Press 2002) 162

[23]National Human Rights Commission of Sri Lanka, 'Report on the Situation of Internally Displaced Persons in the North' (NHRC 2012)

[24]Jon Unruh, 'Land Rights in Postwar Sri Lanka: Issues and Recommendations' (2008) 15 Journal of Peacebuilding and Development 3

extension of legal aid, the establishment of expedited land tribunals, and the recovery of destroyed cadastral records but also the meaningful participation of displaced communities in the design and implementation of restitution programs.[25]

6. Conclusion

Post-war land restitution in Northern Sri Lanka exposes the profound limitations of formal legal guarantees as mechanisms for post-conflict redress. The persistence of military occupation, bureaucratic dysfunction, and social barriers to reintegration has produced a restitution process that is, in practice, deeply partial and exclusionary. Whilst the Land Acquisition Act, Land Reform Act, Land Grants Act, and Thesawalamai Law furnish a statutory framework, that framework is constitutively unable to address the structural dimensions of dispossession without wholesale reform and institutional commitment.

This article has argued that effective restitution requires a socio-legal approach that attends to the lived realities of displaced persons, the specificities of customary tenure, and the psychological dimensions of prolonged dispossession. Sustainable peace in Northern Sri Lanka is contingent not merely upon the formal restoration of title, but upon the genuine reconstitution of land-based livelihoods, community networks, and civic dignity.[26] Until the gap between normative aspiration and institutional reality is bridged, restitution will remain an unfulfilled promise for the communities who need it most.

[25] Wickremasinghe (n 17) 89-91

[26] Ministry of Resettlement (n 15) para 4.3

DIGITAL VULNERABILITIES AND REGULATORY GAPS: AN INTERDISCIPLINARY CRITIQUE OF CHILD PROTECTION IN SRI LANKA'S ONLINE SAFETY FRAMEWORK

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Abstract

The digital environment of the modern world has become a fundamental reality in South Asia. However, it has outpaced the supportive legal infrastructure designed to protect children's rights. This article, using an interdisciplinary approach, combines legal analysis with socio-technical perspectives to examine the adequacy of Sri Lanka's ICT legislation. The article argues that while the digital environment offers unprecedented development opportunities, it also exposes children to complex and evolving threats that Sri Lanka's current legal framework is ill-equipped to address. The paper argues that the Online Safety Act (OSA) No. 9 of 2024, together with existing laws, reveals a serious "fitness gap" by prioritising punitive and non-binding measures over a comprehensive, rights-based approach that is tailored to the socio-technical vulnerabilities of children in the digital age. This study compares Sri Lanka's national laws, such as the Computer Crimes Act, the Penal Code and the Online Safety Act (OSA), from an interdisciplinary perspective, with international human rights standards, particularly the UN Convention on the Rights of the Child (General Comment No. 25) and the Budapest Convention. The principle of the "best interests of the child" is assessed by integrating socio-legal perspectives, considering modern online harms such as child abuse, sexualisation, and exposure to harmful content. According to the study, the Sri Lankan legal system is reactive and irregular, with unclear definitions of "harmful content" and insufficient specific procedures to address crimes committed by digital natives. While the establishment of the Online Safety Commission represents progress, insufficient coordination between law enforcement agencies and limited institutional capacity limit its effectiveness.

To align national protection with international best practices, the document promotes the transition to restorative justice, enhances the technical expertise of child protection authorities, and develops easily accessible reporting channels tailored to children's needs.

***Keywords**: Child Protection, Children's Rights, Digital Harm, Online Safety*

1. Introduction

The digital environment has transformed the way children learn, communicate, and participate in society. While online platforms offer opportunities for education, creativity, and social interaction, they also expose children to unprecedented threats such as cyberbullying, online grooming, child sexual abuse material (CSAM), human trafficking, and privacy violations. Recognising these challenges, the UN Committee on the Rights of the Child emphasised in its General Comment No. 25 (2021) that states must hold digital actors accountable and ensure that children's rights are effectively protected in the digital sphere.

As a signatory to several international human rights instruments and a participant in global cybercrime governance frameworks, Sri Lanka has adopted domestic legislation to regulate cyberspace and protect vulnerable groups, including children. Sri Lanka, with an estimated 25% of its population being children, faces the challenge of ensuring that its multiple legal and institutional layers adapt effectively to safeguard children online. However, the adequacy of these frameworks remains questionable due to outdated laws, enforcement challenges, and potential conflicts with constitutional rights. This article critically examines Sri Lanka's national legal, policy, and institutional frameworks, primarily the *Online Safety Act, No. 9 of 2024*, the Child Protection Authority Act, and related laws, as well as international obligations, to evaluate their effectiveness in protecting children in the digital age, with the human rights principle of the best interest of the child in digital protection.

2. Overview of International Obligations

Sri Lanka ratified the *United Nations Convention on the Rights of the Child (UNCRC 1989)* in 1991 and is committed to respecting, protecting, and fulfilling the rights of children, including protection from all forms of digital harm under articles 16 and 34.[1] *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)* requires States to criminalise child pornography, which extends to online exploitation.[2] Sri Lanka became the first South Asian country to accede in 2015 by ratifying the *Budapest Convention on Cybercrime (2001)* obliges the State to criminalise offences such as online child pornography, grooming, and sexual exploitation while facilitating international cooperation in investigations.[3] The recent *General Comment No. 25 (2021)* specifically emphasises the state's responsibility to regulate digital environments to safeguard the best interests of children and their participation in policymaking. Sri Lanka aligns with Sustainable Development Goal 16.2, which aims to end child abuse and exploitation, including online.[4]

Despite formal commitments, periodic UN reviews have revealed challenges in implementing comprehensive online protections for children. Sri Lanka is urged to update legislation and adapt it to the changing digital reality, strengthen institutional capacity, and

[1] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
[2] *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.
[3] *Convention on Cybercrime* (Budapest Convention) (adopted 23 November 2001, entered into force 1 July 2004) ETS No 185.
[4] UNGA Res 70/1, *Transforming our World: The 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1 (21 October 2015).

ensure that children's rights are central to all actions in bridging the gap between global standards and local realities.[5]

3. National Legal, Policy, and Institutional Framework Analysis

With an emphasis on the best interest of the child as a human rights principle and pertinent case law from Sri Lankan jurisdiction, this analysis critically examines Sri Lanka's legal framework primarily referring to recent *Online Safety Act, No. 9 of 2024*, a groundbreaking law designed to regulate harmful digital conduct, including crimes targeting children online, and determines whether the Act sufficiently protects children's rights in Sri Lanka's digital landscape. Establishing an Online Safety Commission empowered to regulate harmful content. It explicitly covers child sexual abuse material and harmful communications targeting children. *Computer Crimes Act No. 24 of 2007* is the first law in Sri Lanka specifically addressing cybercrime. It makes identity theft, unauthorized access, data interference, and the dissemination of pornographic content, including child pornography, crimes. Crucially, Section 6 makes it illegal to use a computer to create, offer, or distribute pornographic content. Even while useful, the Act is limited. It lacks explicit provisions on cyberbullying, online grooming, and emerging forms of exploitation such as sextortion, leaving children vulnerable. *Penal Code (Amendments)* contains provisions addressing sexual exploitation of children, including pornography and trafficking. Amendments in 2006 and 2018 extended criminal liability for possession, distribution, and facilitation of child pornography. Even with these advancements, most of the provisions still stem from offline offences. There is still a lack of application to online harms, specifically grooming and predatory behaviour on social media. Dating back to 1927, the *Obscene Publications Ordinance*

[5] 'Sri Lanka approves new measures to strengthen child protection' (*The Morning*) https://www.themorning.lk/articles/O5Dk6XXV2ehbaOjylEwD accessed 9 September 2025.

(OPO) has forbidden the distribution of pornographic materials. Its application to digital publications has been expanded by courts. But the Ordinance is out of date and inadequate to address contemporary issues like peer-to-peer sharing of CSAM, encrypted messaging, and dark web content. *The Electronic Transactions Act No. 19 of 2006* acknowledges electronic contracts and makes safe online transactions possible. It supports safe digital engagement, even though it is only indirectly relevant; the Act ignores risks unique to children and is primarily commercial in nature. In accordance with the UNCRC definition, the *Children and Young Persons Ordinance (CYPO) Amendments 2024,* which oversees the juvenile justice system, were modified in 2024 to protect all children under the age of 18. Crucially, it eliminated laws permitting parents and guardians to physically abuse their children, demonstrating a dedication to their rights and dignity. The amendments emphasise restorative justice and give priority to rehabilitation rather than punitive methods.[6] However, institutional capacity gaps, a lack of public awareness, and poor coordination with law enforcement and child welfare agencies, particularly for children involved in digital offences, mean that implementation is still weak.[7] While the Ministry of Women, Child Affairs and Social Empowerment provides policy guidance, the National Child Protection Authority,[8] which is the main organisation for advising the government on child protection and handling abuse cases, was established by the *National Child*

[6] 'Sri Lanka Passes New Legislation That No One Seems to Know To End Corporal Punishment Against Children' (*Stop Child Cruelty*) https://stopchildcruelty.com/News-Detail/Sri-Lanka-Passes-New-Legislation-THAT-NO-ONE-SEEMS-TO-KNOW-To-End-Corporal-Punishment-Against-Children/96 accessed 12 September 2025.

[7] 'Right to Information Win for Child Protection in Sri Lanka' (*i-probono*) https://i-probono.com/case-study/right-to-information-win-for-child-protection-in-sri-lanka/ accessed 12 September 2025.

[8] Ministry of Women and Child Affairs, 'National Child Protection Authority' https://www.childwomenmin.gov.lk/index/menu/page/national-child-protection-authority/en accessed 12 September 2025.

Protection Authority (NCPA) Act No. 50 of 1998.[9] The proposed amendments to the Act in 2025 [10]seek to update the Act to consider complex abuse dynamics, including those that emerge in the digital sphere and sociocultural shifts. The goal of this expanding framework is to enable the NCPA to take more effective preventive and responsive actions. To ensure there are no gaps in the protection of children online, such amendments must be operationalised effectively to harmonise with the OSA and CYPO amendments.[11] Sri Lanka CERT(SLCERT) acts as the national cybersecurity focal point. It provides awareness programmes, operates hotlines, and collaborates with law enforcement. Sri Lanka Police Cybercrime Division is specialised in investigating computer crimes, including CSAM.[12] Despite their existence, these organisations deal with conflicting mandates, a lack of technological know-how, and inadequate coordination. Campaigns to raise public awareness are erratic, and communities' and schools' capacity-building is still insufficient. The lack of easily accessible, kid-friendly channels for reporting online abuse and prompt resolution also limits children's participation and empowerment, which is required by international human rights standards.[13]

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[9] *National Child Protection Authority Act No 50 of 1998* (Sri Lanka)

[10] 'Cabinet approves amendment of Child Protection Authority Act' (*Ada Derana*) https://www.adaderana.lk/news.php?nid=111201 accessed 12 September 2025.

[11] Child Protection Authority Act to be amended,< Child Protection Authority Act to be amended - Newswire> Accessed on 12/09/2025

[12] 'Protecting children online: A legal perspective and reform-based solutions' (*The Morning*) https://www.themorning.lk/articles/IzNbY3YaTqCO6n8Okt8V accessed 15 September 2025.

[13] IK Munasinghe, 'Legislating the Principle of Best Interest of the Child: The Sri Lankan Standpoint' (14th International Research Conference, General Sir John Kotelawala Defence University, 2021) http://ir.kdu.ac.lk/bitstream/handle/345/5075/FOL-141-144.pdf?sequence=1&isAllowed=y accessed 14 September 2025.

The most recent development is the *Online Safety Act, No. 9 of 2024 (OSA),*[14] which was enacted in early 2024 to address issues related to the misuse of digital platforms, such as the spread of harmful content and cybercrimes, with specific provisions aimed at child exploitation and abuse online.[15] The Act creates the Online Safety Commission, an authority that has the authority to regulate online spaces, enforce the removal of harmful content, investigate offences, and impose penalties, including the imposition of up to 20 years in prison and significant fines for offences involving online child exploitation[16]. It also requires digital intermediaries to cooperate in timely content moderation and prohibits the use of bots and fake accounts to commit online harms. Sri Lanka's legislative intention to create a deterrent legal framework is reflected in the OSA's criminalisation of serious online child abuse, including exploitation and abuse of materials. Recognising the intrinsically global nature of cyberspace, it takes an extraterritorial approach to address digital harm across national boundaries. The creation of a dedicated commission indicates a focus on regulatory supervision to encourage safer online spaces.[17] The Act's definitions of "harmful content" are vague and lack specific operational definitions that are suited to the various types of online child abuse, such as exposure to harmful content, sextortion, and grooming. Compliance with digital platforms and uniform enforcement may be hampered by this ambiguity.[18] When

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[14] *Online Safety Act No 9 of 2024* (Sri Lanka).

[15] 'Sri Lanka's Online Safety Act No 9 of 2024' (*Digital Watch Observatory*) https://dig.watch/resource/sri-lankas-online-safety-act-no-9-of-2024 accessed 13 September 2025.

[16] 'What are the key aspects of the Online Safety Act?' (*LankaLaw*) https://lankalaw.net/2024/02/27/what-are-the-key-aspects-of-the-online-safety-act/ accessed 11 September 2025.

[17] Harman Abeysinghe, 'The Online Safety Act, No 9 of 2024: Sri Lanka's Legal Framework for Regulating Digital Harm and Promoting Safer Online Spaces' (*LinkedIn*) https://www.linkedin.com/pulse/online-safety-act-9-2024-sri-lankas-legal-framework-harm-abeysinghe-ls03c accessed 13 September 2025.

[18] 'Online Child Abuse: A Lack of Laws or a Lack of Implementation?' (*Groundviews*, 11 July 2023) https://groundviews.org/2023/07/11/online-child-abuse-a-lack-of-laws-or-a-lack-of-implementation/ accessed 13 September 2025.

it comes to Accountability of Digital Actors, although the Act requires intermediaries to take down harmful content, detractors point out that there are insufficient safeguards in place to ensure that digital companies monitor their operations closely and respond promptly. This can lead to delayed remediation and ongoing harm to children online.[19] Concerns expressed by civil society and human rights organisations include possible threats to freedom of expression and the absence of clear, kid-friendly complaint procedures available to children and their guardians. Procedural safeguards and human rights: The creation of the Online Safety Commission places a great deal of regulatory authority in an appointed body.Intersection with Existing Laws: The Act coexists with the National Child Protection Authority Act, the Penal Code, and the Computer Crimes Act, but it is not fully integrated to clearly define jurisdiction and coordinate enforcement, which makes it difficult to provide children with prompt and efficient protection.[20]

Although the OSA has been used since it was passed in cases involving false information and dangerous online conduct, there is still little evidence of its specific application to child protection. To adequately handle cases of digital child abuse, the Cyber Crimes Unit must overcome obstacles such as a lack of resources and technical expertise.[21] Although the National Child Protection Authority has improved its collaboration with law enforcement, it still faces challenges with adequate victim support and transparency in online settings.[22]

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[19] Abeysinghe (n 18).

[20] 'Protecting children online: A legal perspective and reform-based solutions' (*The Morning*) https://www.themorning.lk/articles/IzNbY3YaTqCO6n8Okt8V accessed 14 September 2025.

[21] 'Cases filed under Online Safety Act' (*LankaLaw*, 19 January 2025) https://lankalaw.net/2025/01/19/cases-filed-under-online-safety-act/ accessed 12 September 2025.

[22] 'Right to Information Win for Child Protection in Sri Lanka' (*i-probono*) https://i-probono.com/case-study/right-to-information-win-for-child-protection-in-sri-lanka/ accessed 12 September 2025.

By challenging several provisions of the Act, both the Supreme Court and Sri Lanka's Human Rights Commission have expressed concerns regarding the Act's compatibility with constitutional guarantees of freedom of expression, due process and the rule of law.[23] In particular concerns have raised regarding the broad and vague definitions of prohibited content, the extensive authority lays upon the Online Safety Commission and lack of adequate procedural safeguard and judicial oversight. These results have an indirect effect on the protection of children's rights.[24] A fundamental tenet of international child rights law is the best interest of the child, which mandates that all actions give children's participation, welfare, and protection top priority (CRC, Article 3). Although this principle has been domesticated in Sri Lankan child protection laws, its application in digital contexts is still in its infancy. Adherence to this principle is restricted by the OSA's procedural flaws, deficiency of child-centred mechanisms, and inadequate institutional coordination. For example, complaint and investigation processes frequently lack the voices and consent of children, which undermines their empowerment and comprehensive protection. Additionally, privacy and restorative measures are not given enough attention.[25]

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[23] Ammaarah Nilafdeen, 'Global Lessons for Rethinking Sri Lanka's Online Safety Act' (*CSOHATE*, 18 August 2025) https://www.csohate.org/2025/08/18/srilanka-online-safety-act/ accessed 12 September 2025.

[24] Sanjana Hattotuwa, 'Sri Lanka's Online Safety Act: A Year in Review, and Framework for Reform' (*Global Network Initiative*, 3 March 2025) https://globalnetworkinitiative.org/sri-lankas-online-safety-act-a-year-in-review-and-framework-for-reform/ accessed 12 September 2025.

[25] Savitri Goonesekere, 'The Best Interests of the Child: A South Asian Perspective' (1994) 8(1) *International Journal of Law, Policy and the Family* 117 http://repository.ou.ac.lk/bitstream/handle/94ousl/997/The%20Best%20Interest%20of%20the%20Child.pdf?sequence=1&isAllowed=y accessed 12 September 2025.

4. Challenges in Accountability of Digital Actors

The criticisms of the Online Safety Act, No. 9 of 2024, regarding children's best interests mainly focus on the Lack of precise definitions for various forms of online child abuse, which may cause inconsistent enforcement and inadequate protection. Insufficient accountability mechanisms for digital platforms in promptly removing harmful content, potentially prolonging children's exposure to online risks. Concentration of regulatory power in the Online Safety Commission without transparent, child-friendly complaint procedures raises concerns about children's access to justice and protection. Inadequate integration with existing child protection laws and institutional frameworks leads to fragmented and ineffective responses to online threats against children. While the Act seeks to protect children online, it falls short in fully upholding and operationalising the principle of the child's best interest in Sri Lanka's digital legal framework due to procedural flaws that undermine the human rights principle of the child's best interest, particularly the absence of explicit child-centred processes guaranteeing their welfare and participation in digital protection matters.

5. Comparisons with International Best Practices

The European Union's General Data Protection Regulation (GDPR)[26][27] and the Digital Services Act, as well as the United Kingdom's Age-Appropriate Design Code (2020),[28] Which mandates that online services that children are likely to access incorporate safety-by-design features like privacy settings by default and restrictions on profiling, and Australia's model,[29]

[26] *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L119/1.*

[27] *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 (Digital Services Act) [2022] OJ L277/1.*

[28] *Information Commissioner's Office (ICO), Age-Appropriate Design Code: A Code of Practice for Online Services (2020)*

[29] *Office of the eSafety Commissioner, Annual Report 2021–22 (Australian Government 2022).*

Which uses the eSafety Commissioner[30] Demonstrating the efficacy of an independent regulatory authority dedicated to handling online safety complaints, including cases of cyberbullying and child exploitation, provides invaluable guidance for Sri Lanka in bolstering child protection online. These international practices underscore the significance of implementing comprehensive, child-centred approaches that not only criminalise harmful conduct but also incorporate proactive safeguards into the cases of cyberbullying and child exploitation. These international practices highlight the importance of adopting comprehensive, child-centred approaches that do not merely criminalise harmful conduct but embed proactive safeguards into the design of digital services. They also emphasise the role of multi-stakeholder involvement, including government, regulators, industry, schools, and parents, and the need for adaptive policies capable of addressing evolving online risks. These international practices highlight the importance of adopting comprehensive, child-centred approaches that move beyond criminalisation and embed proactive safeguards into the design of digital services. For Sri Lanka, aligning the Online Safety Act with these principles and models would ensure that the law not only regulates harmful content but also upholds the paramount principle of the child's best interests in the digital age.

6. Recommendations

Sri Lanka must take a comprehensive and progressive stance in order to guarantee sufficient protection of children in the digital age. First, legislative reform is necessary. The Obscene Publications Ordinance needs to be updated to address digital communications and new forms of exploitation, and the Computer Crimes Act needs to be changed to specifically criminalise online grooming, sextortion, and cyberbullying. Simultaneously, the creation of an all-encompassing Child Online Protection Policy in accordance with UNCRC General Comment

[30] *Enhancing Online Safety Act 2015 (Cth).*

No. 25 would offer a logical national framework to direct action across sectors. To cut down on delays and duplication, formal cooperation protocols between the Police Cybercrime Division, Sri Lanka CERT, and the National Child Protection Authority (NCPA) are also necessary to improve institutional coordination. Additionally, funding for cyber forensics, specialised law enforcement training, and improved international cooperation should all be used to increase enforcement capacity. Beyond harsh penalties, Sri Lanka needs to encourage digital literacy by implementing awareness campaigns across the country in communities and schools, enabling parents and kids to use the internet safely. Ultimately, it is important to strike a balance between protection and fundamental freedoms so that laws like the Online Safety Act are specifically designed to address real child exploitation risks without unduly limiting people's ability to express themselves or access information.

7. Conclusion

Through national laws and international commitments, such as joining the Budapest Convention and passing the Computer Crimes Act and Online Safety Act, Sri Lanka has made significant strides in safeguarding children online. Although organisations like the NCPA and CERT are essential, their influence is diminished by a lack of funding, antiquated legislation, and disjointed policymaking. In the end, Sri Lanka's framework is still fragmented, antiquated, and reactive rather than proactive, even though it is not completely insufficient. Sri Lanka must transition from piecemeal reforms to a comprehensive, child-centred strategy that combines institutional strengthening, digital literacy initiatives, and law reform to fulfil its obligations under the CRC and General Comment No. 25. Only then will children's fundamental rights be upheld while they are genuinely protected in the digital age.

LAW, SOCIAL COHESION AND MENTAL HEALTH IN POST-WAR NORTHERN SRI LANKA

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Abstract

Post-war Northern Sri Lanka (SL) presents a complex landscape where legal frameworks, social cohesion, and mental health deeply intersect. This study investigates these dynamics to (1) evaluate how the Land Development Ordinance and transitional justice bodies impact social cohesion, (2) explore their relationship with protracted psychosocial trauma, and (3) assess the structural necessity of integrating international humanitarian law (IHL) with trauma-informed approaches. Following a devastating three-decade civil conflict, communities in the Northern Province continue to experience extensive psychological distress, collective trauma, and elevated rates of psychiatric disorders. By analysing the law not as a neutral regulatory mechanism but as an active determinant of collective well-being, this article bridges a critical gap in transitional justice scholarship. Methodologically, the study employs an interdisciplinary qualitative design. It pairs a doctrinal analysis of domestic statutes, specifically the Land Development Ordinance, No. 19 of 1935 (as amended) (LDO), and the Office on Missing Persons Act, No. 14 of 2016 and customary IHL norms with a systematic thematic analysis of empirical psychiatric, public health, and sociological literature concerning civilian populations in Jaffna, Mullaitivu, and Vavuniya from 2001 to 2026. The findings reveal a profound structural disconnect between formalistic legal designs and the lived realities of victims. Centralized state architectures, namely the Office on Missing Persons (OMP) and the Office for Reparations (OR), operate without built-in psychosocial safeguards, resulting in widespread institutional mistrust, commission fatigue, and procedural re-traumatisation during hearings. Unaddressed violations of customary IHL regarding missing persons and military land acquisitions actively perpetuate conditions of *ambiguous loss and communal fragmentation. Ultimately, sustainable reconciliation demands a structural pivot toward community-led, culturally grounded, and trauma-sensitive legal systems that align institutional accountability with collective* healing.

***Keywords**: Community resilience, Institutional frameworks, International Humanitarian Law, Post-war Sri Lanka, Transitional justice.*

1. Introduction

"Traumatic events destroy the sustaining bonds between individual and community. Those who have survived learn that their sense of self, of worth, of humanity, depends upon a feeling of connection to others. The solidarity of a group provides the strongest protection against terror and despair, and the strongest antidote to traumatic experience."

- Judith Lewis Herman, Recovery from Trauma[1]

Law is often placed at the centre of post-conflict reconstruction[2]. It is expected to address injustice, restore rights and rebuild trust in institutions[3]. However, lived realities in Northern SL show that legal mechanisms alone cannot achieve these outcomes. When legal processes fail to recognise the emotional and social

[1] Judith Lewis Herman, *Trauma and Recovery* (Basic Books 1997) ch 11.
[2] Richard Sannerholm, 'Legal, Judicial and Administrative Reforms in Post-Conflict Societies: Beyond the Rule of Law Template' [2007] 12(1) Journal of Conflict and Security Law 65.
[3] USAID, *Rebuilding the Rule of Law in Post-Conflict Environments* (Office of Democracy and Governance, May 2005) 1.

dimensions of conflict, they risk deepening alienation rather than promoting reconciliation[4].

This article places law at the centre of analysis while drawing on insights from psychology, sociology and public health. It argues that law, mental health and social cohesion are closely interconnected in post-war Northern SL. Thereby, a more grounded approach requires integrating legal accountability with psychosocial understanding and community-based responses[5].

2. The Enduring Psychological Impact of War

One of the most painful legacies of conflict is the issue of missing persons. Thousands of families still do not know what happened to their relatives. This form of unresolved grief creates what psychologists describe as "ambiguous loss" [6]. It is a condition where closure is impossible because fate of loved ones remains unknown. Research in Northern SL shows that such unresolved grief acts as a continuing source of psychological distress and shapes everyday emotional life.[7]

This psychological state of ambiguous loss is not merely an abstract socio-psychological phenomenon. It is the direct consequence of unaddressed violations of IHL[8]. Under Rule 117 of Customary IHL, which reflects binding rules in both

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[4] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Mapping the Justice Sector* (United Nations 2006) 1.
[5] Gheorghe-Bogdan Bîrzu, 'Rule of Law Reconstruction in Post-Conflict Areas' in *The International Conference Education and Creativity for a Knowledge Based Society - LAW* (Titu Maiorescu University 2012) 48
[6] S Doherty and others, 'Prevalence of mental disorders and epidemiological associations in post-conflict primary care attendees: a cross-sectional study in the Northern Province of Sri Lanka' (2019) 19 *BMC Psychiatry* 83.
[7] FC Thomas and others, 'Examining post-conflict stressors in northern Sri Lanka: a qualitative study' (2022) 17(9) *PLoS One* e0267018.
[8] S Robins and J Stockwell, 'Missing Persons and Peacebuilding: The Transformative Role of Families of the Missing' [2026] International Review of the Red Cross 1

international and non-international armed conflicts, parties to a conflict are under an absolute obligation to "take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.". To internalize these international obligations, SL enacted the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018[9]. However, a critical legal analysis reveals a profound gap between the statute's black-letter criminal standard under Section 3 which criminalizes state-supported or official disappearances and its actual enforcement. The procedural failure of the state to utilize these penal mechanisms to yield credible prosecutions or systematically investigate suspected sites has institutionalized a culture of impunity. By failing to fully implement the domestic penal framework intended to fulfil its customary IHL duties, the legal system leaves families trapped in a permanent state of legal and psychological suspension, proving that statutory inaction actively perpetuates the community's protracted mental health crisis[10].

Empirical studies provide strong evidence of the scale of mental health problems in the region. A large cross-sectional study in the Northern Province found that 58.8% of individuals screened positive for at least one mental health disorder, with many experiencing multiple conditions at the same time.[11] This indicates not isolated illness but widespread psychological burden.

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[9] Office of the High Commissioner for Human Rights, 'Experts of the Committee on Enforced Disappearances Welcome Sri Lanka's Law' (OHCHR, September 2025)

[10] N Boothby, 'Legal Frameworks and Practical Challenges: A Review of the Enduring Failure to Prevent Family Separations in Armed Conflicts' (2025) 16 Frontiers in Psychology 1629843

[11] S Doherty and others, 'Prevalence of mental disorders and epidemiological associations in post-conflict primary care attendees: a cross-sectional study in the Northern Province of Sri Lanka' (2019) 19 *BMC Psychiatry* 83.

More recent research presents even more striking findings. A 2025 mixed-methods study on collective trauma reported extremely high levels of anxiety (60.7%), depression (57.1%) and PTSD (46.8%) among war-affected populations.[12] These figures show that psychological distress remains deeply embedded in post-war life. Same study observed that trauma is not only individual but also collective. It affects families and entire communities.

Importantly, these mental health conditions are not confined to past experiences. They are closely linked to present conditions. As one study explains, "chronic stressors, such as loss of property, permeate daily life and have a profound impact on psychological wellbeing."[13] This highlights that trauma is sustained by ongoing social and economic challenges.

International medical research supports these findings. Studies published in The Lancet emphasise that populations exposed to prolonged conflict face long-term mental health consequences that extend well beyond the period of violence.[14] This aligns with the situation in Northern SL, where effects of war continue to shape mental health many years after the conflict ended.

3. Law, Justice and The Gap with Lived Realities

Following the end of the war, the SL introduced several legal and policy measures aimed at reconstruction and reconciliation.[15]

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[12] Umaharan Thamotharampillai and others, 'Collective trauma - psychosocial consequences of war in northern Sri Lanka 10 years on, a mixed methods study' (2025) 8 Journal of Migration and Health.

[13] FC Thomas and others, 'Examining post-conflict stressors in northern Sri Lanka: a qualitative study' (2022) 17(9) *PLoS One* e0267018.

[14] K de Jong and others, 'Psychological trauma of the civil war in Sri Lanka' (2002) 359 *The Lancet* 1517; Andi Schubert, *Victorious Victims: An Analysis of Sri Lanka's Post-War Reconciliation Discourse* (International Centre for Ethnic Studies 2013).

[15] Andi Schubert, *Victorious Victims: An Analysis of Sri Lanka's Post-War Reconciliation Discourse* (International Centre for Ethnic Studies 2013).

These included resettlement programmes, land restitution processes and transitional justice initiatives. [16] While these measures were presented as steps towards healing, their implementation has often revealed a gap between legal design and lived experience.[17]

The gridlock governing land restitution in the Northern Province is deeply anchored in the complex administrative and disposition controls maintained under the LDO[18]. Although state-issued land permits and grants under the Ordinance are structurally intended to provide tenure security for displaced persons, the statute enforces a highly centralized regime over state-allocated holdings[19]. While recent legislative revisions have aimed to mitigate the explicitly gender-biased rules of succession previously dictated by the historical Third Schedule, the operational

[16] MS Dimuthu Kumari, 'Post-war reconciliation process in Sri Lanka: a unique path to peace building' (2024) 7(11) *International Journal of Social Science and Human Research* 8300. (Sri Lanka introduced several institutional mechanisms in the post-war period, including the Lessons Learned and Reconciliation Commission (LLRC) in 2010, the OMP in 2018, and the Office for National Unity and Reconciliation (ONUR) in 2015. Additional structures such as the Bureau of the Commissioner-General of Rehabilitation and the Consultation Task Force on Reconciliation Mechanisms were also established. These were accompanied by policy measures including resettlement programmes, rehabilitation of former LTTE combatants, periodic land return initiatives, and disarmament efforts, all of which were aimed, at least in part, at supporting reconciliation between previously opposing communities.)

[17] N Jayawickreme and others, 'Post-conflict struggles as networks of problems: a network analysis of trauma, daily stressors, and psychological distress among Sri Lankan war survivors' (2017) 190 *Social Science & Medicine* 119; K Höglund and C Orjuela, 'Friction and the pursuit of justice in post-war Sri Lanka' (2013) 1(3) *Peacebuilding* 300.

[18] Land Development Ordinance, No. 19 of 1935 (as amended); State Lands Ordinance No. 8 of 1947; Land Settlement Ordinance No. 20 of 1931; Jonas Lindberg and Dhammika Herath, 'Land and grievances in post-conflict Sri Lanka: exploring the role of corruption complaints' (2014) 35(5) *Third World Quarterly* 888;

[19] Centre for Policy Alternatives, *The Intersectional Trends of Land Conflicts in Sri Lanka* (CPA 2024).

mechanics of Chapter VII, specifically Sections 48 to 51, continue to disproportionately disenfranchise conflict-affected communities, particularly female-headed households. Because the formal regularisation or transmission of a permit requires proving a clear line of succession, families of the missing or disappeared are trapped in a legal vacuum, unable to update ownership records without resolving the status of the original male permit-holder. Furthermore, the strict statutory constraints on the disposition, leasing, and alienation of holdings without prior executive sanction restrict financial independence, leaving vulnerable returnees in a state of protracted economic precarity[20].

This domestic statutory failure directly conflicts with Rule 131 and Rule 133 of Customary IHL, which mandate that the property rights of displaced persons must be respected and that their property left behind must be protected against arbitrary and illegal appropriation, occupation, or use. This statutory vulnerability is vividly illustrated by the prolonged legal and physical struggles over military land acquisitions for High Security Zones[21] in areas such as Valikamam North in Jaffna and Keppapilavu in Mullaitivu[22]. For over a decade post-conflict, the state utilized

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[20] Yathushiya Yogarajah, 'Legality of Certificate of Absence and Its Impact on the Families of the Disappeared in Sri Lanka: A Comparative Analysis' (2026) SSRN Electronic Journal.

[21] Hereinafter referred to as "**HSZ**".

[22] *Samuel Jothinathan Christian Kadirgamar v The Land Acquiring Officer, Jaffna and Others* is a 2013 Court of Appeal writ application in Sri Lanka filed by the son of the late Foreign Minister Lakshman Kadirgamar to contest the state's compulsory acquisition of his ancestral family land in Maviddapuram, Jaffna. The legal challenge centered on the government's attempt to acquire the private property under the Land Acquisition Act for a "Defence Battalion Headquarters," which the petitioner argued was a pretext to regularize former HSZs after the 2011 lapse of the state of emergency. This public interest case fundamentally brought legal scrutiny to post-war military occupation, the state's exploitation of land acquisition laws, and the violation of Tamil customary inheritance rights under Tesawalamai law; In *Nadarajah Gunasekeram v Gotabaya Rajapaksa and Others* S.C F.R. No.167/2013 decided on 03.08.2017, the Supreme Court dismissed a fundamental rights application regarding military-occupied

emergency regulations and eminent domain powers to maintain a monopoly over private agricultural and residential lands[23]. The resulting legal gridlock, where returnees are forced to navigate inconsistent administrative records at local District Secretariats to contest overlapping state claims, has effectively dismantled local agrarian economies. This failure of formal property law to guarantee swift land restitution does not just present an economic barrier. It structurally breaks down community social networks and raises profound sense of collective helplessness and permanent displacement anxiety[24].

The institutional architecture tasked with transitional justice in SL further exemplifies the widening gap between state promises and victims' lived realities[25], a friction deeply embedded in the statutory design of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016[26]. While Section 10 of the Act empowers the OMP with a broad mandate to search for, trace, and clarify the circumstances of missing persons, its ultimate efficacy is structurally restricted by Section 13(2), which explicitly mandates that the findings of the OMP shall not give rise to any civil or criminal liability[27]. By enforcing this statutory firewall, the legislative framework completely isolates truth-seeking from criminal accountability,

lands in Thayiddy, Jaffna, ruling that the acquisition of land for expanding the Palaly Airport and Kankesanthurai Naval Base constituted a valid "public purpose." The Court determined that the ongoing retention of land as a HSZ did not violate constitutional rights.

23 'Valikamam Residents' FR Cases Against Army to be Heard on Aug. 7' *The Sunday Times* (Colombo, 4 May 2014) accessed 19 June 2026.

24 Dhammika Herath, 'Social reconciliation amidst material reconstruction' in D Herath, M Schulz, K Höglund and KT Silva (eds), *Post-war Reconstruction in Sri Lanka: Prospects and Challenges* (ICES 2010) 49-80.

25 Steven R Ratner, 'Accountability and the Sri Lankan civil war' (2012) 106(4) *American Journal of International Law* 795.

26 Centre for Policy Alternatives, *Sri Lankan Diaspora for Post-War Development, Reconciliation and Sustainable Peace* (CEPA 2018).

27 Steven R Ratner, 'Accountability and the Sri Lankan civil war' (2012) 106(4) *American Journal of International Law* 795.

rendering the body incapable of referring investigative findings directly to judicial authorities for criminal indictment[28]. Consequently, the operational output under Section 13(1) is largely reduced to administrative functions, such as issuing Certificates of Absence to facilitate welfare distribution, rather than delivering punitive justice. This deliberate statutory decoupling of accountability from tracing, compounded by historic centralization and operational delays, has institutionalized severe "commission fatigue" among victim communities in the Northern Province. Instead of providing legal remedy, the mechanism functions as an administrative buffer that stalls natural grieving processes and compounds institutional mistrust[29].

4. Law as a Source of Stress and Re-Traumatisation

While law is expected to provide stability and justice, it can also become a source of stress in post-conflict contexts. In Northern SL, legal uncertainty plays a significant role in sustaining psychological distress.[30] It has been criticised for enabling forms of coercion and re-traumatisation, particularly where accountability and truth-seeking mechanisms remain incomplete or prolonged.

As highlighted in legal and transitional justice analysis, SL's post-conflict legal landscape has been marked by repeated commissions, delayed prosecutions and limited structural reform, which together create what scholars describe as a cycle of "unresolved justice" that keeps victims within continuous

[28] Law & Society Trust, *Post-war Development in Sri Lanka* (Law & Society Trust 2023).
[29] Human Rights Watch, *Human Rights Accountability in Sri Lanka* (Human Rights Watch 1992); Jo Becker, 'Chapter 8: demanding accountability for war crimes in Sri Lanka' in *Campaigning for Justice: Human Rights Advocacy in Practice* (Stanford University Press 2012) 152.
[30] FC Thomas and others, 'Examining post-conflict stressors in northern Sri Lanka: a qualitative study' (2022) 17(9) *PLoS One* e0267018.

engagement with state institutions without delivering closure.[31] This cycle of unresolved justice is directly aggravated by a critical statutory deficiency within Sri Lanka's domestic witness protection framework[32]. The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 historically lacks localized, independent, and trauma-informed protection protocols. Because the current legal architecture lacks mandatory, built-in psychosocial safeguards, victims appearing before administrative tribunals or investigative panels are routinely forced to repeatedly recount highly traumatic experiences of violence and loss in adversarial, intimidating, and state-centric settings. Without explicit provisions enforcing confidentiality, physical safety, and psychological accompaniment, the procedural demands of the state's legal machinery turn truth-seeking into a hazardous site of psychological strain, causing active re-traumatisation rather than facilitating healing or legal closure.

5. The Erosion of Social Cohesion and Fractured Communities

The war has had a profound impact on social cohesion in Northern SL. Social cohesion refers to the strength of relationships, trust and shared values within a society. It is essential for stability and recovery, yet it has been significantly weakened by the effects of conflict.[33]

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[31] Kalika Mehta, Raquel Saavedra and Andreas Schüller, *Sri Lanka's Time to Try: Prosecuting Conflict-Related Abuses* (European Center for Constitutional and Human Rights 2019).

[32] Jude Lal Fernando, 'Is Sri Lanka in a Post-Conflict or Post-War Situation? The Way Forward: Regime Change or Transformation of the State?' in P Tolliday, M Palme and D Kim (eds), *Asia-Pacific between Conflict and Reconciliation* (Vandenhoeck & Ruprecht 2016) 139.

[33] Dhammika Herath, 'Breakup of community social structures in the war-affected northern and eastern provinces in Sri Lanka' (2018, International Centre for Ethnic Studies Working Paper).

Displacement, loss and economic hardship disrupted traditional community structures. Families were separated and social networks were weakened. At the same time, ethnic tensions and political divisions continue to shape social relationships[34].

Research on collective trauma highlights that effects of war extend beyond individuals to families and communities. The 2025 study on Northern SL found that communities with high trauma levels experienced widespread social dysfunction, including high rates of substance abuse, family conflict and unemployment. Same study noted that "study villages scored very low in structural social capital," indicating weak trust and limited collective action[35].

The relationship between mental health and social cohesion is particularly important. Strong social networks can provide emotional support and promote resilience.[36] In contrast, weak social ties increase vulnerability to mental health problems. This creates a cycle where psychological distress and social fragmentation reinforce each other[37].

Recent research on post-war SL also highlights the importance of "relational pluralism," which involves rebuilding connections across ethnic and social divides. This concept reflects the need to move beyond legal frameworks and engage with social realities of post-conflict life.

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[34] FC Thomas and others, 'Examining Post-Conflict Stressors in Northern Sri Lanka: A Qualitative Study' (2022) 17(9) PLoS ONE e0267018.

[35] Umaharan Thamotharampillai and others, 'Collective Trauma- Psychosocial Consequences of War in Northern Sri Lanka 10 Years On, a Mixed Methods Study' (2025) 8 SSM - Mental Health 100457

[36] Lee Knifton and Greig Inglis, 'Poverty and mental health: policy, practice and research implications' (2020) 44(5) *BJPsych Bulletin* 193.

[37] EF Acoba, 'Social Support and Mental Health: The Mediating Role of Perceived Stress' (2024) 15 Frontiers in Psychology 1330720.

6. Interdisciplinary Insights and The Limits of Legal Approaches

The experience of Northern SL demonstrates that legal approaches alone cannot address complex consequences of war. Psychological, social and economic factors are deeply intertwined with legal issues. Ignoring these dimensions limits the effectiveness of legal interventions[38].

Public health research highlights that mental health is closely linked to broader social conditions. Poverty, unemployment and lack of access to services contribute to psychological distress.[39] At the same time, mental health problems can affect education, employment and economic productivity.[40] This creates a cycle where social and psychological challenges reinforce each other.

Field reports from Médecins Sans Frontières describe how trauma in Northern SL is often expressed through physical symptoms, emotional withdrawal and social isolation.[41] These patterns show that mental health cannot be separated from social context.

Direct testimonies from affected communities also reveal the depth of the problem. In qualitative studies, participants describe living with constant fear, uncertainty and grief. One participant noted that daily life is shaped by "continuous worry about survival

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[38] FC Thomas and others, 'Examining Post-Conflict Stressors in Northern Sri Lanka: A Qualitative Study' (2022) 17(9) PLoS ONE e0267018.

[39] Yang Yang and others, 'Unemployment and mental health: a global study of unemployment's influence on diverse mental disorders' (2024) 12 *Frontiers in Public Health* 1440403.

[40] World Health Organization, *Social Determinants of Mental Health* (WHO 2014) <https://iris.who.int/server/api/core/bitstreams/539fec7f-eadc-43ea-b12a-8dba1793381b/content> accessed 25 April 2026.

[41] Kaz de Jong and others, *Assessing Trauma in Sri Lanka: Psycho-Social Questionnaire, Vavuniya Survey Outcomes* (Médecins Sans Frontières 2001).

and unresolved loss." Such accounts highlight the gap between formal legal frameworks and lived experience[42].

These interdisciplinary insights show that post-war recovery requires more than legal solutions. It requires a broader understanding of human experience that includes psychological and social dimensions.

7. Integrated and Community-Grounded Approaches

The limitations of legal frameworks in post-war Northern SL point to the need for a more integrated approach. This approach must combine legal accountability with mental health support and community engagement[43].

There is growing recognition of importance of integrating Mental Health and Psychosocial Support (MHPSS) into legal processes. This can include providing counselling services during legal proceedings, creating safe spaces for testimony and training legal professionals to recognise psychological trauma.[44]

Community-based approaches are also critical. Local networks, cultural practices and informal support systems play an important role in recovery.[45] These approaches are often more accessible and

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[42] FC Thomas and others, 'Examining Post-Conflict Stressors in Northern Sri Lanka: A Qualitative Study' (2022) 17(9) PLoS ONE e0267018.

[43] The Asia Foundation, *Transitions in Mental Health and Psychosocial Support Services in Sri Lanka: A Decade in Review, 2004-2015* (The Asia Foundation 2016)

[44] United Nations Development Programme, *Integrating Mental Health and Psychosocial Support into Peacebuilding: Summary Report* (UNDP 2022) <https://www.undp.org/sites/g/files/zskgke326/files/2022-05/UNDP-Integrating-Mental-Health-and-Psychosocial-Support-into-Peacebuilding-Summary-Report-V2.pdf> accessed 25 April 2026

[45] Carol Harvey and others, 'Community-based models of care facilitating the recovery of people living with persistent and complex mental health needs: a systematic review and narrative synthesis' (2023) 14 Frontiers in Psychiatry 1259944.

culturally relevant than formal institutions. Policies that recognise and build on these local strengths are more likely to be effective.[46]

A more grounded approach also requires meaningful participation from affected communities[47]. When individuals are involved in legal processes, they are more likely to trust and engage with them. This can strengthen both social cohesion and institutional legitimacy.

8. Conclusion

Post-war Northern SL illustrates the complex and interconnected relationship between law, social cohesion and mental health. The legacy of conflict continues to shape everyday life through persistent psychological distress, weakened social relationships and unresolved legal grievances. Legal frameworks remain important for accountability and governance. However, when they fail to engage with lived realities, they can deepen mistrust and prolong suffering. Transitional justice processes must move beyond formal procedures and address emotional and social dimensions of recovery. An interdisciplinary approach that integrates law with mental health and community-based responses offers a more meaningful path forward. Such an approach recognises that justice is not only about legal outcomes but also

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[46] United Nations Development Programme, *Community-Based Resilience-Building: A UNDP Guidance Note* (UNDP 2025) <https://www.undp.org/sites/g/files/zskgke326/files/2025-05/undp-community-based-resilience-building-guidance-note.pdf> accessed 25 April 2026

[47] Nuwan Jayawickreme and others, 'Mental health futures in post-war Sri Lanka: resilience, relational pluralism, and implementation pathways' (2025) 7 SSM - Mental Health 100465; Inter-Agency Standing Committee, *Integrating Mental Health and Psychosocial Support and Peacebuilding: A Mapping and Recommendations for Practitioners* (IASC 2024) <https://interagencystandingcommittee.org/sites/default/files/2024-01/IASC%20Guidance%20Integrating%20MHPSS%20and%20Peacebuilding%2C%20a%20Mapping%20and%20Recommendations%20for%20Practitioners..pdf> accessed 25 April 2026

about dignity, healing and social connection. The experience of Northern SL provides important lessons for global post-conflict settings. Sustainable peace cannot be achieved through legal reform alone. It requires a broader effort to address the human impact of war. Without such integration, effects of conflict may continue across generations, shaping both individual lives and collective futures.

A NASH EQUILIBRIUM ANALYSIS OF STRATEGIC TARIFF POLICIES OF STATES THROUGH THE LENS OF REALISM

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Abstract

In the absence of a global leviathan, international trade exists as a strategic game between states. The application of international trade law is determined through the economic and political realities of the states. In order to analyse the tariff policies of states under international trade law regime, this paper brings the insights of economics, political science and international relations, following an interdisciplinary approach. As the central argument of this paper, the author recognizes that protectionist tariffs are not mere deviations of free trade, rather they align with a non-cooperative game theory motivated by national interests in a realist world order. The research adopts a doctrinal, analytical and qualitative case-study methodology. First, it conducts a doctrinal analysis of international trade law, focusing on the normative commitment to trade liberalization. Secondly, it analyses the non-cooperative tariff imposition of states with the concept of Nash Equilibrium, in which states select tariff policies as best responses to the anticipated actions of others. Thirdly, the paper applies this framework to a qualitative case study of the United States–China trade conflict, examining successive rounds of tariff escalation and retaliation to illustrate how protectionist strategies emerge on reciprocity. As the key conclusion of this paper, the author recognizes the departure of international trade from free trade due to non-cooperative tariff policies of states as a wilful choice driven by national interests and this realist strategic path has overlooked the benefits out of international cooperation where the international trade creates global inefficiencies under a non-cooperative equilibrium. This move eventually resulted in China's tit-for-tat measures, leading to the trade war.

***Keywords**: Tariffs, Realism, Nash Equilibrium, Game Theory*

1. Introduction

Sovereign nations get connected through international trade where the national economies will not act in isolation. Power asymmetries and various national interests create complexities in trade relations affecting states' sovereignty. International Trade Law regime sets out a framework for a proper function of those trade relations among states creating a balance between mercantilist and liberalists interests of nations. The openness of the economy with competitive markets is promoted through liberalism as contrary to mercantilist theories of international trade which promotes protectionism. States adopt tariff policies based on their national interest which restrict free trade. Customs duties on merchandise imports are called tariffs. Tariffs give a price advantage to locally-produced goods over similar goods which are imported, and they raise revenues for governments[1]. The paper will discuss how imposing optimal tariffs contribute in creating inefficiencies in international trade. This paper challenges the conventional view that protectionist tariffs represent mere deviations from a liberal trade order. Instead, it argues that such measures are rational outcomes of a non- cooperative strategic environment, where states prioritize relative gains and domestic interest over collective welfare.

2. Trade Liberalization

The origin of modern international trade law system lies on General Agreement on Trade and Tariff (GATT) which was established in 1947 to regulate international trade after World War II. Its primary objective was to promote trade liberalization by

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[1] 'Tariffs'(WTO) <
https://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm>
accessed 10 January 2026

reducing tariffs and other trade barriers while ensuring a stable and predictable trading environment. Under the GATT system member states engaged in multiple rounds of negotiations and the Uruguay rounds marked the establishment of World Trade Organization (WTO) in 1995[2]. It incorporated the principles of GATT and expanded the scope of trade regulation to include services[3] and intellectual property rights[4]. WTO is based on principles such as non-discrimination based on Most Favoured Nation (MFN) and National Treatment to ensure free trade and it regulates tariff and non-tariff measures of states. Tariffs can take many different forms, but the most popular by far are those expressed as a percentage of the product's value. These are called as valorem duties and they are calculated using the custom values of the imported goods. However, tariffs can also be expressed as a "specific duty". Countries sometimes also combine both types in compound or mixed duties[5]. Under the MFN principal WTO member states are required to charge the same tariff on a product for imports from all other WTO trading partners. Beyond the MFN principle, which applies to import and export tariffs, Article II of the GATT 1994[6] provides that WTO members can set the maximum tariff level they can levy on imports from other WTO members. These "bound duties" become a commitment, or a promise made to all trading partners who are also part of the WTO, and they result from negotiations at the WTO. Although a

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[2] 'History of Multilateral Trading System' (World Trade Organization) < https://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm > accessed 24 April 2026

[3] 'General Agreement on Trade in Services' (World Trade Organization) < https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm> accessed 24 April 2026

[4] 'Trade Related Aspects of Intellectual Property Rights'< https://www.wto.org/english/tratop_e/trips_e/trips_e.htm > accessed 24 April 2026

[5] n 1

[6] "Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."

WTO member cannot go above this promised level, it has the liberty of applying any level *below* this commitment. In fact, many of them apply tariff levels that are significantly lower than what they have promised. The duty levels used in practice are known as the MFN applied duties. As an exception, a WTO member may also apply even lower tariffs on products originating in certain countries (preferential duties) under certain conditions. Some of these exceptions include Article XXIV of the GATT 1994, which allows the establishment of regional trade agreements and customs unions, and the Enabling Clause, which allows for special and differential treatment for developing countries and least developed countries[7].

3. Nash Equilibrium Tariffs and game theory

As of early 2026, non-cooperative tariffs have re-emerged as a dominant feature of global trade, with many nations actively deviating from multilateral cooperation to pursue individualistic. economic goals[8]. When one country raises tariffs, other countries will do the same resulting reciprocal tariff actions. This brings the international trade to a stage which deviates from its core principles which based on mutual cooperation. In this context states promote their national interest which conflict each other. Tariff game is a game of strategic complementarity as the best response functions are strictly increasing[9]. Because each states

[7] 'Let's talk tariff' (World Trade Organization) < https://www.wto.org/english/res_e/webcas_e/ltt_e/ltt2_e.htm> 26 April 2026

[8] '10 Trends shaping global trade in 2026' (UN Trade & Development) < https://unctad.org/news/10-trends-shaping-global-trade-2026#:~:text=Tariffs%20disrupt%20trade%20even%20before,%2D11.0%25 > accessed 25 April 2026

[9] Subir K Chattopadhyay and Malgorzata M. Mitka, 'Nash Equilibrium in Tariff in a Multi-country Trade Model' (2019) 0304-4068 Journal of Mathematical Economics < https://eprints.whiterose.ac.uk/id/eprint/149349/> accessed 26 April 2026, 227

tend to do their best response leading to optimal tariffs[10]. This mutual escalation of tariff reach to an equilibrium similar to the Nash-Equilibrium[11]. John Forbes Nash who is an American mathematician introduced the concept of Nash-Equilibrium through his paper 'Non-cooperative Games' which was awarded with the Nobel Prize for Economics in 1994. As he argues, "finite non-cooperative game always has at least one equilibrium point"[12]. It is a situation where no player can improve their outcome by changing their strategy alone, while others keep their strategies unchanged. Each player's decision is shaped by rational expectations about the behaviour of others.

Nash equilibrium of tariffs can be explained using game theory, particularly through the logic of Prisoner's Dilemma, which captures the tension between cooperation and self-interest[13]. In a typical tariff game, two countries act as players, each deciding whether to impose high tariffs or maintain low tariffs. Ideally, both countries would benefit from cooperation. However, each country faces uncertainty about the other's actions and is primarily concerned with maximizing its own national interest. This crated a strategic situation similar to the prisoner's Dilemma, where each player must choose without knowing what the other will do. In the Prisoner's Dilemma, two individuals acting in their own self-interest tend to choose strategies that lead to worse outcomes for both, even though cooperation would make them better off. Similarly in international trade, each country realizes that if the

[10] Robert Pahre, 'Reactions and Reciprocity: Tariffs and Trade Liberalization from 1815 to 1914' (1998) 42 (4) The Journal of Conflict Resolution <https://www.jstor.org/stable/174439> accessed 26 April 2026, 467-468

[11] Yoshitomo Ogawa, 'The structure of Nash equilibrium tariffs' (2012) 51(1) Economic Theory < https://www.jstor.org/stable/23253034> accessed 26 April 2026, 142

[12] John Nash, 'Non- Cooperative Games' (1951) 54 (2) Annals of Mathematics < https://www.jstor.org/stable/1969529 > accessed 26 April 2026, 286

[13] Laurel Weber, 'What Game Theory Can Tell Us About Tariffs' (Medium 2025) < https://medium.com/@laureldoesmath/what-game-theory-can-tell-us-about-tariffs-e7c0c70a897d > accessed 26 April 2026

other impose tariffs, it is better to also impose tariffs to avoid being disadvantaged. Even if the other country keeps tariffs low, there is still an incentive to raise tariffs to protect domestic industries or gain strategi advantage. As a result, imposing tariffs becomes the dominant strategy for both country[14]. This leads to a Nash equilibrium, where both countries maintain high tariffs. At this point, no country can improve its situation by unilaterally lowering tariffs, because doing so would expose it to economic loss if the other country keeps tariffs high. It reflects what game theory calls a suboptimal outcome, where rational individual decisions produce collectively worse results.

4. US-China trade war

The United States- China trade war demonstrates how Nash equilibrium tariffs operate in Practice. This conflict began in 2018 when President Trump proposed 25 percent tariff on certain products of China through "Section 301[15]" report. This move eventually resulted in China's tit-for-tat measures, leading to the trade war. There are two major explanations behind Trump's trade war with China[16]. Tariffs between the two countries increased significantly, reaching an average of about 17% and even after the Phase One Agreement in 2020, they only slightly fell to 16%. This led to a sharp decline in direct trade between the two countries, as both began importing more goods from other regions, a process known as trade diversion. As a result, global supply chains, especially in East Asia, were reorganized. However, the overall impact on the global economy was relatively small, with global GDP decreasing only about 0.1%[17]. In 2025, the United States

[14] Ibid

[15] Section 301 of the Trade Act of 1974

[16] Yuhan Zhang, 'The US-China Trade War: A political and Economic Analysis' (2018) 31 (1/2)
Indian Journal of Asian Affairs <
https://www.jstor.org/stable/10.2307/26608823> accessed 26 April 2026, 55

[17] Eddy Bekkers and Sofia Schroeter, 'An Economic Analysis of the US-China Trade Conflict' (2020) Staff Working Paper ERSD -2020- 04

and China engaged in a rapid tariff escalation, with U.S. tariffs reaching up to 145% and China retaliating with tariffs up to 125%, illustrating a classic non- cooperative tariff game characterized by reciprocal escalation. On February 20, 2026, the Supreme Court ruled that the President cannot use the International Emergency Economic Powers Act to impose tariffs, affecting some tariffs the United States imposed on China in 2025[18].

5. Realism in the context of Nash-equilibrium

Realism reminds us that the international system has no authority and states must ultimately rely on themselves and act in ways that protect their own interests. Because states act as rational actors in an anarchic system, where survival, economic advantage and domestic political considerations take precedence over collective welfare. Even when the legal frameworks exist, states will not hesitate to deviate from them if cooperation threatens their relative position or domestic priorities. When the game theory is applied to this context, tariff policies are not anomalies or violations, but rather rational strategic choices. The application of game theory, particularly the concept of Nash equilibrium, further reinforces this understanding. Each state's decision is shaped by the anticipated actions of others. Tariff wars can lead to a Nash equilibrium that is stable but inefficient, contrasting with the welfare gains associated with free trade. US-China trade war is an ideal demonstration to this context.

6. Conclusion

This Paper has examined the evolution of international trade from a liberal, cooperative framework to strategically driven system shaped by non-cooperative tariff policies. The foundational

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<https://www.wto.org/english/res_e/reser_e/ersd202004_e.htm> accessed 27 April 2026, 4

[18] US- China Tariff Actions Since 2018: An overview' (CONGRESS GOV) < https://www.congress.gov/crs-product/IF12990> accessed 27 April 2026

structure of the global trading regime, built under the GATT and later institutionalized through the World Trade Organization was designed to promote trade liberalization through tariff reduction, non-discrimination and predictable legal rules. Despite these normative commitments, the reality of international trade demonstrates persistent deviations which are results of state-centric interests and strategic economic behaviour. These deviations reflect a structural tension between the legal ideal of free trade and the political reality of sovereign decision making. Accordingly states are not randomly protective, they respond to each other in ways that make unilateral cooperation risky.

THE ROLE OF LAW IN GOVERNING SOCIAL MEDIA FOR TRANSITIONAL JUSTICE IN NORTHERN SRI LANKA

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Abstract

Sri Lanka's Northern Province remains deeply scarred by the country's civil war that raged between 1983 and 2009, with transnational justice (TJ) mechanisms including the Office of Missing Persons and suspended Truth and Reconciliation Commission have sought accountability, though implementation remains uneven.In the post conflict era social media platforms such as Facebook and X (Twitter) including emerging platforms such as memes, viral videos and real time documentary becoming essential arenas for TJ engagement and promoting Tamil victimhood and reporting alleged offenses. However, these platforms simultaneously facilitate the spread of hate speech, misinformation and unverified war era claims, aggravating communal tensions and misrepresenting historical events, as seen in the 2018 Kandy riots. Structural barriers, including limited internet penetration and widespread digital literacy gaps (27% in 2021) in Northern Province, further impede equitable access to digital justice and meaningful representation. This article critically examines to what extent Sri Lanka's legal system, with constitutional provisions against discriminations under Article 14(1)(a), Computer Crimes Act No. 24 of 2007 (Amendment of 2021), Online Safety Act No. 9 of 2024, criminal laws and laws of evidence, governs social media platforms within Northern Transnational Justice situations. The results highlight imprecise, excessively broad constitutional standards on freedom of speech, judicial inconsistencies, with even broad reaching provisions in cyber legislation having led to hundreds of arrests for online expression since 2021. Further, digital evidence under the Computer Crimes and Online Safety Acts is hampered by low internet access and digital literacy in Northern Sri Lanka's post conflict TJ. Additionally, Penal Code s.120 inadequately address online incitement, and evidentiary challenges often exclude crucial *social media content, collectively hindering accountability and undermining the protection of victims' narratives. Finally, this study contends that the law can open the path to justice by means of Transnational Justice specific amendments for digital forensics, training for judges in the forensics of social media, Tamil language digital literacy initiatives and hybrid TRC portals that can integrate official archives of social media content verified by algorithms. The law is thus placed at the center while incorporating insights from sociological, political and technological dimensions in order to demonstrate how rigorous, context sensitive interventions can transform social media from a driver of conflict into an instrument of truth, accountability and sustainable reconciliation, offering lessons for post conflict societies globally, through Sri Lankan context.*

Keywords: *Transnational Justice, Social Media Governance, Post Conflict Sri Lanka, Freedom of Expressions, Digital Evidence.*

1. Introduction

Sri Lanka's civil war (1983-2009) produced entrenched ethnic divisions and enduring grievances, particularly in the Northern Province, where accountability for mass violations remains incomplete.[1] In this fragile post conflict setting, Transitional Justice (TJ) mechanisms encompassing truth seeking, reparations and institutional reform are central to restoring legitimacy and securing sustainable reconciliation.[2] Yet, formal mechanisms have progressed unevenly, prompting affected communities to increasingly rely on alternative spaces. Social media has consequently emerged as a significant arena for TJ engagement, enabling victims, activists and the Tamil diaspora to articulate narratives, document alleged abuses and mobilize advocacy

[1] Asia Justice and Rights, Transitional Justice Fact Sheet: Sri Lanka (AJAR, June 2022) <https://asia-ajar.org/wp-content/uploads/2022/06/Sri-Lanka-English-Transitional-Justice-Factsheet.pdf >accessed 20 April 2026

[2] Ibid 1-3

beyond state-controlled processes. These platforms, however, are not neutral; they simultaneously facilitate the circulation of misinformation, incendiary speech and unverifiable wartime claims, often reinforcing polarized identities and undermining fragile coexistence.

This dual character exposes a fundamental legal tension between constitutional guarantees of expression and the regulation of harmful digital content in the public interest. It is within this context that Chief Justice Sharvananda's observation in *Lerins Peiris v. Neil Rupasinghe,* becomes particularly salient: "Freedom of thought and expression is an indispensable condition if Sri Lanka is to be more than a nominally representative democracy". [3], [4]The challenge, therefore, lies in determining how this constitutional ideal operates within digitally mediated TJ spaces where truth, memory and harm intersect. Accordingly, this article asks: to what extent does Sri Lanka's legal framework effectively govern social media in TJ contexts? It argues that the framework is inadequate due to doctrinal ambiguity, weak evidentiary mechanisms and lack of contextual sensitivity.

2. Methodology

The author used qualitative doctrinal legal research method for this article. It covers fundamental legal sources such as the constitution of Sri Lanka, legislation, judicial pronouncements, international standards such as those of the UN, along with some key scholarly papers, policy papers and institutional publications. The analysis is interpretive and comparative, examining the existing legal norms governing social media in transitional justice contexts, alongside identifying their doctrinal lacunae, gaps in

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[3] *Lerins Peiris v Neil Rupasinghe* SC Minutes (unreported, Supreme Court of Sri Lanka)

[4] cited in Transparency International Sri Lanka, Freedom of Expression (November 2024) <https://www.tisrilanka.org/wp-content/uploads/2024/11/Freedom-of-Expression.pdf > accessed 20 April 2026, 8.

enforcement and opportunities for rights-based reform. The word international or foreign has only been used in comparative contexts in relation to examples of potential models that can be followed in Sri Lanka.

3. Transitional Justice and Social Media in Northern Sri Lanka

In the post-conflict period in Northern Sri Lanka, Transitional Justice (TJ) responses through the creation of the Office of Missing Persons (OMP)[5] and successive governmental truth-seeking bodies like the LLRC[6] are institutional attempts to respond to issues of enforced disappearances, historical erasure and the pursuit of accountability. But while the OMP has received more than 21,000 complaints, the lack of enforcement capacity and the fractured, politicized implementation of truth commissions continue to reflect a lack of substantive justice and closure[7]. In this landscape of institutional "incompleteness", TJ has moved online, where social media serves as an alternative and unofficial space for truth recovery and advocacy. [8]

Given that the Northern Province has an internet penetration rate of 40-50% [9] and Facebook accounts for more than 80% of

[5] Office on Missing Persons Act, No 14 of 2016

[6] Commission of Inquiry on Lessons Learnt and Reconciliation, Final Report (16 December 2011) <http://www.llrc.lk >accessed 20 April 2026

[7] Asia Justice and Rights, Transitional Justice Fact Sheet: Sri Lanka (AJAR, June 2022) <https://asia-ajar.org/wp-content/uploads/2022/06/Sri-Lanka-English-Transitional-Justice-Factsheet.pdf > accessed 20 April 2026

[8] Verité Research, Regulating Social Media in Sri Lanka: Legal & Non-Legal Frameworks for Hate Speech & Disinformation (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf >accessed 27 April 2026

[9] Department of Census and Statistics, Computer Literacy Statistics 2021 Annual Bulletin (DCS Sri Lanka, 2022)

platform use[10], social media has become a memorization space and archive of a people's justice movement. Activist groups, victim families and the middle-class diaspora take advantage of these spaces to record alleged abuses, share eyewitness reports and keep campaigns alive such as #FindOurMissing that garner millions of impressions, connecting TJ narratives to a global audience.[11] In this respect, social media seem to deepen justice opportunities by short-cutting bureaucratic processes and offering opportunities for bottom up claims making.

But this new digital TJ space is increasingly marred by negative forces. In fact, empirical evidence shows more than 1,700 acts of harm speech per month[12], and close to 350,000 impressions of everyday hate speech in Northern digital spaces per day[13]. Far from providing objective evidentiary spaces, social media platforms often echo unverified wartime information and reproduce ethicized narratives and confusions of testimony and disinformation. This results in a fractured and dynamic TJ discourse.

This paradoxical dynamic has two effects: on one hand, the digital expands access to visibility for marginalized voices, but also leaves them vulnerable to censorship and coercion, with almost 70% of affected families claiming they self-censorship because they fear

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[10] DataReportal (n 7); Statcounter, 'Social Media Stats Sri Lanka' <https://gs.statcounter.com/social-media-stats/all/sri-lanka > accessed 20 April 2026.

[11] Tamil Guardian, 'Social Media Platforms are Silencing Social Movements' (16 May 2021) <https://www.tamilguardian.com/content/social-media-platforms-are-silencing-social-movements >accessed 20 April 2026

[12] Verité Report; Newswire, '113% Increase in Harmful Speech in SL After Parliament Election - UN' (26 February 2025) <https://www.newswire.lk/2025/02/26/113-increase-in-harmful-speech-in-sl-after-parliament-election-un/ > accessed 20 April 2026.

[13] Verité Report (estimating Northern exposure from national data)

online attacks[14]. The power imbalance is compounded by structural inequalities such as low digital literacy[15], Tamil language discrimination[16] and algorithmically driven polarization and echo chamber effect[17]. As a result, social media in Northern Sri Lanka has become a disrupted TJ space where narratives of memory, truth and violence coexist emphasizing a need for a sound and nuanced legal framework to govern its use in post conflict TJ processes.

4. Challenges of Social Media for Transitional Justice in Northern Sri Lanka

While social media has emerged as an important platform for participation in Transitional Justice (TJ), its use has also given rise to significant risks that undermine accountability, truth recovery and post conflict reconciliation.[18] Digital platforms are not just tools for communication; they can help shape past narratives in post conflict societies. The advantages and downsides of social media need to be duly considered alongside the risks that they pose for the goals of TJ.[19]

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14 Human Rights Watch, 'Sri Lanka: Families of "Disappeared" Persecuted' (29 August 2024) <https://www.hrw.org/news/2024/08/29/sri-lanka-families-disappeared-persecuted >accessed 20 April 2026

15 Department of Census and Statistics, Computer Literacy Statistics 2021 Annual Bulletin (DCS Sri Lanka, 2022) <https://www.statistics.gov.lk/Resource/en/ComputerLiteracy/Bulletins/AnnualBuletinComputerLiteracy-2021.pdf > accessed 20 April 2026

16 TechPolicy Press, 'Lost in Translation: How Content Moderation Fails Tamil Speakers Online' (26 May 2025) <https://www.techpolicy.press/lost-in-translation-how-content-moderation-fails-tamil-speakers-online/ >accessed 20 April 2026.

17 Verité Report, 22-25

18 Verit Research, Regulating Social Media in Sri Lanka: Legal and Non-Legal Frameworks for Hate Speech and Disinformation (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf >accessed 20 June 2026.

19 Lisa Schirch, Social Media Impacts on Conflict Dynamics (Toda Peace Institute Policy Brief) <https://toda.org/assets/files/resources/policy-

Misinformation and disinformation spread is one of the biggest concerns. Social media allows readily spreaded unverified claims, manipulated photos and misinformation about what happens during wartime.[20] In Sri Lanka, especially, the presence of harmful content has grown significantly during moments of political interest, showing how digital platforms can make their content untrue or misleading to magnify.[21] During politically charged times especially in Sri Lanka, digital platforms can magnify and increase harmful content with ability to make content untrue or cause misunderstanding. The setting in which multiple viewpoints of the civil war already exist makes misinformation more likely to shape collective memory and war a threat to democratic trust in accountability processes while making it more difficult to have a true historical account.

There is also a corresponding problem of hate speech and content divisive on ethnic lines. There is a tendency on social media to spread inflammatory messages towards ethnic and religious communities. This type of material helps to perpetuate and validate historical grievances and ensures that communities remain distrustful of each other which is central to the problem Transitional Justice efforts are intended to address. Internet hate speech and its potential to polarize and reduce the chances of sustainable peace is a danger in Northern Sri Lanka, where recent

briefs/t-pb-73_lisa-schirch_social-media-impacts-on-conflict-dynamics.pdf > accessed 20 June 2026.

[20] Verit Research, Regulating Social Media in Sri Lanka: Legal and Non-Legal Frameworks for Hate Speech and Disinformation (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf > accessed 20 June 2026.

[21] UN Sri Lanka, Harmful Speech in Sri Lanka: Bulletin #6 (April 2025) <https://srilanka.un.org/en/298190-harmful-speech-sri-lanka-bulletin-6 > accessed 20 June 2026.

experiences of conflict continue to be politically and emotionally charged.[22]

A second issue is the creation of echo chambers and algorithmic amplification, mediated by digital technologies. The third is the use of digital technologies to facilitate algorithmic amplification and echo chambers.[23] Social media has a greater emphasis on user engagement and thus, they tend to prioritize content that has emotional content or controversy. In this way, users are then encountered mostly with the content that validates their existing views. This reduces opportunity for communities to engage in positive dialogue, and for them to build a common understanding of the failures on their file, an essential ingredient to reconciliation.

Also, missing people, activists and families of victims can face online harassment and intimidation. Dread of abuse, threats or harm to reputation may prevent people from volunteering for digital truth-seeking efforts and may lead to self-censorship.[24] These barriers are further complicated by structural barriers. When the capability to strategically mark or identify harmful content is restricted, and the ability to appropriate Tamil language content online is limited, users' risk not being able to easily uncover harmful content or to have equal access to protection online.[25]

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[22] Human Rights Watch, Sri Lanka: Families of Disappeared Persecuted (24 August 2024) <https://www.hrw.org/news/2024/08/29/sri-lanka-families-disappeared-persecuted > accessed 20 June 2026.

[23] Lisa Schirch, Social Media Impacts on Conflict Dynamics (Toda Peace Institute Policy Brief) <https://toda.org/assets/files/resources/policy-briefs/t-pb-73_lisa-schirch_social-media-impacts-on-conflict-dynamics.pdf > accessed 20 June 2026.

[24] Human Rights Watch, Sri Lanka: Families of Disappeared Persecuted (24 August 2024) <https://www.hrw.org/news/2024/08/29/sri-lanka-families-disappeared-persecuted >accessed 20 June 2026.

[25] Center for Democracy and Technology, Challenges Moderating Tamil Content on Social Media (2025).

5. Legal Framework Governing Social Media: Scope and Inadequacies

5.1 Constitutional Protection and Its Limitations

The 1978 Constitution guarantees freedom of speech and expression under Article 14(1) (a)[26], a cornerstone of democratic society where Sri Dakota v. Superintendent of Police (1990) recognizes the ability to participate, dissent and hold the government to account. This extends to online speech, such as social media, in line with Sri Lanka's obligations under Article 19 of the ICCPR.[27] However, Article 15(2)[28] allows for restrictions based on national security, public order and racial harmony, subject to legality and reasonableness as articulated in Bandara v. Premachandra (1994)[29]. While these doctrines define constitutional protection, protection for digital speech is still uncertain. The concepts of "public order" and "racial harmony" are not defined, leaving considerable margins of discretion. This is also reflected in fluctuating judicial interpretation. Although Leader Publications v. Rubasinghe (2008)[30] enhanced freedom of expression, Razik v. Attorney General (2023)[31] is more restrictive. This is especially concerning in Transitional Justice (TJ) settings. Speaking about disappearances or wartime experiences risks being seen as "disaffection" or incitement, thereby conflating testimony and criminal speech. This makes possible the suppression of

[26] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 14(1)(a)

[27] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 19

[28] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 15(2)

[29] *Bandara v Premachandra* SCFR 286/91 (Supreme Court of Sri Lanka)

[30] *Leader Publications (Pvt) Ltd v Rubasinghe* SCFR 437/2008 (Supreme Court of Sri Lanka).

[31] *Razik v Attorney General* SCFR 155/2023 (Supreme Court of Sri Lanka).

victim narratives and the impact of freedom of expression on truth seeking and reconciliation.[32]

5.2 Computer Crimes Act and Digital Regulation

The Computer Crimes Act No. 24 of 2007[33] (as amended in 2021)[34] prohibits unauthorized access, data interference and criminal Internet fraud with an extraterritorial application. Although it establishes a framework for dealing with cyber technical issues, its use in social media management in the context of TJ is limited. The Act focuses on system integrity as opposed to content. It does not cover misinformation, hate speech or the dissemination of alternative wartime narratives that are key to digital TJ. This leaves harmful but non-technical expression on the internet inadequately regulated.

Furthermore, the Act is devoid of robust measures for authenticating and preserving digital evidence. Evidence from social media channels (such as sharing media or posts) identifying alleged wrongdoing, for instance, may be used effectively as evidence in a court of law where there are no formal evidentiary rules governing its introduction[35]. This undermines the probity of digital evidence in TJ. Inconsistency is evident in enforcement practices. Certain aspects have been applied broadly in some cases, but concerted hate speech and disinformation is poorly regulated.[36] This highlights the Act's lack of adequacy in

[32] Verité Research, *Regulating Social Media in Sri Lanka* (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf >accessed 20 April 2026
[33] Computer Crimes Act, No 24 of 2007
[34] Computer Crimes (Amendment) Act, No 9 of 2021.
[35] Ibid ss 3-9.
[36] Verité Research, *Regulating Social Media in Sri Lanka* (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf >accessed 20 April 2026

responding to the challenges presented by the interaction of cyber regulation and Transitional Justice.

5.3 Online Safety Act No. 9 of 2024

The Online Safety Act No. 9 of 2024[37] creates a regulatory framework for harmful online content, via the establishment of the Online Safety Commission, which can issue removal notices, block platforms and conduct inquiries. It prohibits "false statements" and harmful statements and imposes criminal penalties, including prison.[38] However, the Act has concerning features, despite its broad reach. Its terms such as "harmful content" are amorphous and lack specific intent and harm thresholds. This risks a strong potential for abuse and over-reach. Additionally, individual procedural protections are weak, reducing accountability[39]. These flaws result in a chilling effect in TJ contexts. Civilians, activists, families and victims documenting wartime crimes may be reluctant to disclose information for fear that the content of their narratives may be classified as harmful or false. The Act does not differentiate between misinformation and historical narratives, eroding the communicative context for recovering the truth.[40] Furthermore, the Act doesn't adopt a TJ sensitive approach which understands the need for victim centered narratives. Consequently, it risks perpetuating mechanisms of silence, rather than reconciliation.

5.4 Penal Code and Incitement

[37] Online Safety Act, No 9 of 2024

[38] Ibid ss 8, 11–12

[39] Amnesty International, 'Sri Lanka: Online Safety Act Major Blow to Freedom of Expression' (23 January 2024) <https://www.amnesty.org/en/latest/news/2024/01/sri-lanka-online-safety-act-major-blow-to-freedom-of-expression/ > accessed 22 April 2026.

[40] Verité Research, *Regulating Social Media in Sri Lanka* (22 January 2025) <https://www.veriteresearch.org/wp-content/uploads/2025/01/Regulating-Social-Media-in-Sri-Lanka-Legal-Non-Legal-Frameworks-for-Hate-Speech-Disinformation.pdf >accessed 20 April 2026

Section 120 of the Penal Code[41] prohibits the creation of dissatisfaction with the government or promoting hatred between communities. While this can be applied to online speech, it is not well suited to the peculiarities of the online environment. The rapid, anonymous and algorithmically amplified nature of online speech is not reflected in the law. As a result, determining intent and causation in the online environment is challenging[42]. Enforcement is further hampered by the lack of guidelines for judging incitement. While there is an abundance of harmful online speech (including a significant amount of hate speech), comparatively few attempts are made to prosecute this content[43]. This highlights the inefficiency of this provision in responding to the scope and impact of online harmful behaviors. This is problematical within TJ efforts. Denial of disappearances and ethnically divisive statements are frequently expressed online, with few checks and balances, against the backdrop of reconciliation and truth-seeking initiatives.

5.5 Law of Evidence and Digital Content

The Evidence Ordinance[44], as amended by the Evidence (Special Provisions) Act No. 30 of 1995[45] allows for the admissibility of evidence relating to a computer. But the lack of specific rules on digital evidence poses problems. Judge may demand evidence of originality and metadata, both of which are hard to gather from social media. Screenshots and other user-generated content are often disputed as unreliable or hearsay.[46] This contributes to a

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[41] Penal Code Ordinance, No 2 of 1883, s 120

[42] Groundviews, 'How Social Media is Fuelling Sri Lanka's Ethnoreligious Issues' (2 May 2024) <https://groundviews.org/2024/05/02/how-social-media-is-fuelling-sri-lankas-ethnoreligious-issues/ >accessed 22 April 2026

[43] Ibid

[44] Evidence Ordinance, No 14 of 1895.

[45] Evidence (Special Provisions) Act, No 30 of 1995.

[46] Lanka Law, 'Electronic & Computer Evidence In Criminal And Civil Proceedings' <http://www.lawnet.gov.lk/wp-content/uploads/Law%20Site/a10-Sri%20Lankan%20Articles/CV30.html > accessed 25 April 2026

reluctance to consider social media evidence. For TJ, this poses a problem. Evidence of alleged harms (often relying on social media) may be excluded, or accorded limited weight. This can be problematic for processes of accountability and the use of digital platforms as a medium for preserving the truth.

5.6 Structural Barriers Affecting Legal Effectiveness

Inequities also constrain the role of law. Lack of digital literacy, language issues pertaining to Tamil communities, and limited access to technology limit digital awareness and engagement. This results in legal provisions falling short in practice due to lack of access. This makes the regulatory framework doctrinally obscure, evidentially thin and structurally inaccessible, making it insufficient to meet the challenges of Transitional Justice in Sri Lanka's North.

6. Recommendations

6.1 Constitutional and Legislative Reform

Reform must begin by clarifying Article 14(1) (a) limitations through objective statutory thresholds defining "public order" and related grounds. The framework should expressly distinguish between legitimate transitional justice expression, good faith commentary, misinformation, disinformation, coordinated fake news and hate speech. Incorporating the Rabat Plan of Action criteria; intent, context, speaker position and likelihood of harm would reduce interpretative ambiguity and prevent arbitrary restriction of online expression[47]. A dedicated Online Speech Act should codify proportionality and necessity tests while expressly protecting Transitional Justice (TJ) expression, including victim testimonies and historical documentation of past abuses. Also, it

[47] UN Office of the High Commissioner for Human Rights, Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2012) <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action > accessed 258 April 2026, paras 22–30.

should permit targeted regulation of false and harmful online content where there is a demonstrable risk of serious harm. South Africa's Truth and Reconciliation framework illustrates how law can constitutionally safeguard truth telling while balancing public order concerns.[48] However, constitutional reform in Sri Lanka faces political resistance, particularly where national security narratives dominate legislative interpretation[49]. To address this within a legal framework, reforms should be operationalized through a bipartisan parliamentary mechanism supported by judicial interpretative guidelines from the Supreme Court, ensuring gradual doctrinal clarification without immediate structural disruption.

6.2 Reforming Cyber Laws for Transitional Justice

The Computer Crimes Act and Online Safety Act require doctrinal recalibration to distinguish harmful digital conduct from legitimate TJ expression. The definition of "harmful content" under the Online Safety Act should be narrowed through statutory amendment to require demonstrable intent (mens rea) and a clear causal nexus to harm and safeguards against misuse against victim-generated or historically significant content. Further, judicial pre-authorization for content takedowns should be legally mandated to prevent executive overreach. The law should also establish a graduated response to online falsehoods: correction mechanisms for low risk misinformation, stronger action against coordinated disinformation campaigns and criminal sanctions only where there is intentional incitement, serious deception or foreseeable harm. A statutory protection clause for verified victim generated content is essential to safeguard truth seeking narratives within digital TJ spaces. To legally balance enforcement and rights protection, oversight powers should be formally embedded within the

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[48] Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), ss 4–6.

[49] Transparency International Sri Lanka, Freedom of Expression (November 2024) <https://www.tisrilanka.org/wp-content/uploads/2024/11/Freedom-of-Expression.pdf > accessed 25 April 2026

Telecommunications Regulatory Commission through amendment, ensuring independent regulatory review. A phased enforcement structure within the statute itself should prioritize prosecution of incitement and coordinated hate speech while exempting bona fide TJ related expression.

6.3 Strengthening Digital Evidence Systems

The Evidence Ordinance should be amended to incorporate explicit provisions for digital admissibility, including authentication certificates, metadata verification standards and chain of custody requirements aligned with international forensic jurisprudence. Section 65B of India's Evidence Act[50] offers a functional comparative model for statutory certification of electronic records. Establishing legally mandated regional digital forensic units, would institutionalize evidence preservation for TJ accountability processes.

6.4 Judicial and Institutional Capacity Building

A statutory framework should mandate continuous judicial and prosecutorial training on digital evidence, algorithmic amplification and online harm assessment. Additionally, legislation should establish designated technology and cyber jurisprudence benches to ensure doctrinal consistency in adjudicating digital expression cases. Colombia's post conflict judicial reforms demonstrate the value of embedding technical competence within legal adjudication structures.[51]

While the primary response must remain legal, supplementary reforms should ensure accessibility of justice. Statutory provisions enabling Tamil language digital reporting systems and rights based digital literacy initiatives in conflict affected regions can strengthen enforceability. Civil society participation may be formally

[50] Indian Evidence Act 1872, s 65B

[51] International Center for Transitional Justice, Judicial Reform in Colombia's Peace Process (2018).

recognized through consultative provisions in implementation frameworks to improve legitimacy and compliance.

7. Conclusion

The digitization of post-conflict Sri Lanka reveals that social media has emerged as a site of contested memory and contestation for narratives of Transitional Justice in the Northern Province. Social media may be an officially regulated space by constitutional freedoms of expression and new cyber laws, but their disjointed, ambiguous and at times expansive nature has failed to effectively reconcile truth seeking with prevention of harm. Rather, regulatory ambiguity has allowed for both criminalization of victim speech and under regulation of digital collective harm, resulting in the erosion of goals of accountability and reconciliation. In this context, structural impediments such as digital inclusion and language barriers add to regulatory challenges. As a result, Sri Lanka's Transitional Justice increasingly takes place in a hybrid sphere intersecting law, technology and memory in a state of regulatory limbo. This article thus highlights that regulation involves not only repressive cyber laws, but also context sensitive legal structures that guard freedom of expression from digital violence. Only in this way can social media (re)emerge from a place of contest to a legally enabled space for truth seeking, dignity and post-war reconciliation in the North.

GENDERED LEGAL VULNERABILITIES OF WOMEN IN MIGRATION - FROM WAR WIDOWS TO MIGRANT MOTHERS

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Abstract

The aftermath of the Sri Lankan Civil War has produced a distinct class of conflict affected women-war widows, "half-widows", and female-headed households whose displacement reflects not voluntary migration but survival driven by structural violence and legal abandonment. This article interrogates a central question: whether the "well-founded fear of persecution threshold under the 1951 Refugee Convention, read with its 1967 Protocol, adequately captures the gendered and post-conflict harms experienced by these women. Through doctrinal analysis, supported by feminist legal theory and human rights frameworks, the study demonstrates that the convention's state-centric and narrow conception of persecution fails to recognize socio-economic, trauma, and gender-specific vulnerabilities as grounds for protection. As a result, many war widows are excluded from refugee status determination and rendered legally invisible within post states. This exclusion directly heightens their exposure to trafficking, labour exploitation, and abuse in informal sectors. The article argues that the existing exploitation, and abuse in informal sectors. The article argues that the existing refugee law framework is conceptually inadequate to address structural and intersectional harms arising in post-conflict contexts. It includes that a gender responsive reinterpretation of persecution is necessary to ensure meaningful protection and to align refugee law with the lived realities of displaced Sri Lankan war widows.

1. Introduction

The protracted Sri Lankan Civil War (1983-2009) generated not only merely a humanitarian emergency but a deeply gendered architecture of legal precarity, the consequence of which persists within the post-war governance landscape. In the Northern and Eastern provinces, the disproportionate burden of conflict has been borne by widows, half-widows-women whose husbands remain forcibly disappeared and whose marital and proprietary status remains judicially suspended and females - headed households, whose lives are situated at the intersection of militarisation, dispossession and institutional abandonment.

Empirical studies estimate approximately 90,000 war widows in these regions, excluding *de facto* widows whose spouses remain unaccounted for, while 68 % of female headed households in the Northern Province are headed by widows. UNFPA further identifies 58,121 female headed households in the Northern province alone, underscoring the scale of feminised post-conflict vulnerability. This absence of substantive reparation has precipitated post-war displacement, underscoring the scale of feminised post-conflict victims increasingly migrate not as autonomous economic actors, but as refugees. However, International refugee law, particularly the 1951 Convention's threshold of a "*well-founded fear of persecution*"- remains insufficiently responsive to such gendered and structural harms, as it privileges individualized and overt forms of persecution over diffuse systems of post conflict deprivation. This article interrogates how the failures of domestic remedy and transitional justice reconstitute war widows as migrant mothers are legally vulnerable subjects whose protection claims remain inadequately recognised within orthodox refugee jurisprudence.

Notwithstanding Sri Lanka's obligations under international human rights law, including duties of reparative justice, restitution and guarantees of non-re-currence, post-war state responses have remained normatively deficient and structurally inadequate.

2. Research Objectives

To examine the gendered consequences of the Sri Lankan Civil war on widows, half widows and female headed households of the affected Northern Province, where conflict-related loss, enforced disappearances, displacement and socio-economic marginalisation have produced enduring forms of legal vulnerability. While these women are theoretically protected under international law and refugee law, the practical failure of reparative justice and effective remedy has rendered such protections largely illusory. Accordingly, this study identifies the legal protection gaps within domestic post-conflict mechanisms, transitional justice processes, and international refugee law, with particular attention to the absence of adequate recognition for gender-specific harms arising from war and post war displacement. It furthers analyses these vulnerabilities through the framework of the 1951 Convention relating to the status of refugees and its 1967 Protocol, interrogating whether the convention's "well-founded fear of persecution" threshold sufficiently accommodates structural, gendered, and post conflict harms that do not manifest as direct or individualized persecution. The article argues that the orthodox interpretation of refugee law remains fundamentally inadequate in addressing feminised post-war displacement. Rendering these women legally invisible. It therefore proposes gender-sensitive legal reforms capable of expanding refugee protection to include structural violence, socio-economic coercion, and the long-term consequences of armed conflict.

3. Methodology

This study adopts a doctrinal legal methodology, centered on the critical interpretation of the convention relating to the status of refugees (1951) and its application to Sri Lankan war affected women. It evaluates whether the existing international refugee law adequately protects displacement arising from structural socio-economic, coercion and gendered post-conflict marginalization. An intersectional feminism is employed to interrogate, gender, neutral, assumptions within refugee jurisprudence, particularly the construction of persecution and evidentiary burdens. The study draws on key UK asylum decisions, including *GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT*[1] alongside institutional reports and academic literature, to expose the gap between formal legal standards and lived realities.

4. Results and Discussions

4.1 Impact of Civil War on Women

The impact of the civil war on women in Northern Sri Lanka extends beyond immediate displacement and loss, manifesting in enduring socio-economic and legal marginalisation. This restructuring of households occurred alongside the collapse of local economics forcing many women into precarious forms of livelihoods such as informal labour subsistence agriculture on infertile resettlement lands, and daily wage work under exploitative conditions.[2]
The vulnerability of these women was further exacerbated by systemic abuse, including instances of sexual exploitation and "sexual bribery" by officials in exchange for access to documentation[3], welfare benefits or information regarding missing relatives .Individual testimonies reveal the depth of this crisis. One account describes a 25 - year old from, Vanni who was compelled to join an armed movement due to economic necessity and later surrendered during the final stages of the war, only to be detained in camps where was separated from her partner, she was subsequently taken to identify his body but was not permitted fully examine it, and was later informed of his death under unclear circumstances.[4] Despite the absence of a legally recognised marriage, she was registered as a widow which illustrates the

[1] *GJ and others (post-civil war : returnees) SriLanka CG [2013]UKUT 00319 (IAC)*
[2] 2 Status of War Widows in the North-East of SriLanka"Ilankai Tamil Sangam 2011https://sangam.org/2011/08/Status_Widows.php?uid=4430 (accessed 08. 03 .2026)
[3] ibid
[4] ibid

arbitrary and often opaque administrative practices within detention contexts. Other widow recounted being sent alone to give birth in a camp hospital after her husband's enforced disappearance, while another identified her destroyed home solely through remnants of a burnt tree near a ruined well.[5]These narratives underscore not only personal loss but the broader disintegration of social and familial identity.

Crucially, the absence of civil documentation-such as death certificates and land records-has produced severe legal consequences. Thus, this legal invisibility has, in turn, contributed to patterns of forced migration, with was-affected women increasingly seeking refugee status.[6] The absence of documentation restricts access to land rights, inheritance, welfare benefits and post conflict assistance, thereby deepening economic insecurity among war widows. In many cases these conditions operate as significant push factors for migration,[7] compelling women to seek employment and survival opportunities elsewhere. Accordingly, the civil war victimisation of women in Sri Lanka must be understood not merely as survival, but as a condition of prolonged structural violence embedded within legal, economic and institutional frameworks.

The post-war socio-economic marginalisation of women in Northern Sri Lanka has structurally driven their transition into migrant domestic labour, not as a matter of choice but necessity. The collapse of livelihoods and rise of female-headed households have confined many to informal, low-paid, and unprotected labour, functioning as a coercive push into migration. However,

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[5] ibid

[6] Tamil War Widows from North-East trafficked out of SriLanka into Slaveryhttps://sangam.org/2011/08/Status_Widows.php?uid=4430￼ accessed 26 April 2026.acessed date 08.03.2026

[7] Caritas Luxembourg and Caritas Sri Lanka SEDEC,Migration of Sri Lankan Women : Analysis of Causes and Post-Arrival Assistance (Caritas Luxembourg and Caritas SriLanka-SEDEC 2015) 12

international labour and migration frameworks fail to adequately regulate this transition, exposing critical protection gaps.

4.2 Migration for Labour and Challenges.

The post war socio-economics marginalisation of women in Northern Sri Lanka has directly driven their transition into migrant domestic labour, not as matter of choice but as a structural necessity. The collapse of livelihoods, combined with the rise of female headed households, has forced into informal and precarious employment, including daily wage labour and subsistence agriculture under exploitative conditions.[8] These forms of work, characterised by low wages, instability and absence of legal protection, operate as persecutors to migration, pushing women toward overseas employment in search of economic survival.

However, migration does not alleviate vulnerability; rather it reconfigures it within transitional labour systems. Sri Lankan women, particularly war widows are frequently recruited into domestic work abroad through informal channels that obscure the terms of employment.[9]Once employed, many encounter systemic labour rights violations, including wage theft, excessive working hours, confinement within households and physical or sexual abuse. wage theft remains especially pervasive with employers withholding or delaying salaries, leaving workers without any effective mechanism for enforcement. In such contexts, employment contracts-if they exist-are rarely enforceable, and the nature of domestic work further isolates workers from regulatory oversight.

The case of Neelamalhar illustrates the intersection of these vulnerabilities illuminating the predicament of these groups as a cumulative body. Reportedly trafficked into domestic labour in

[8] Canadian Tamil Congress,"Submission to the United Human Rights Council on "The Plight of Tamil Women in SriLanka"(23.04.2026)
[9] ibid

Gulf under deceptive conditions she was subjected to severe exploitation, including non-payment of wages and restrictions of her movement. Her experience reflects a broader pattern in which migrant women are rendered legally invisible within host states, particularly under employer-driven sponsorship systems that curtail their autonomy. The inability to access legal remedies-whether due to confiscation of documents, fear of retaliation or lack of institutional support-effectively trap workers in cycles of abuse.[10]Neelamalhar's case is not an anomaly but indicative of systemic failures in both recruitment governance and labour protection mechanisms.

Crucially the absence of effective remedies persists even upon the return to Sri Lanka, Women who experience exploitation abroad face significant barriers in pursuing claims related to unpaid wages, trafficking or abuse, as domestic legal frameworks remain ill equipped to address transnational labour violations.[11]This lack of accountability reinforces a continuum of exploitation that begins with post-war economic displacement and extends into the global labour market.

Accordingly, the migration of war-affected women must be understood as a legally consequential outcome of structural inequalities produced by conflict. The convergence of informal labour, coercive migration pathways, wage theft and absence of remedies situates these women within a transnational system of labour exploitation, underscoring the urgent need for strengthened legal protections at both national and international levels.

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[10] SriLanka's war widows trafficked as slaves to Gulf (freedomunited.org 2017)accessed 08.03.2026

[11]ibid

4.3 Refugee Law relating to the status of refugees (Overview of UN Convention)

The Transition of Tamil war widows from the Northern Province of Jaffna into migrant labour must be situated within the structural limitations of the Convention Relating to the Status of Refugees, whose protection regime is contingent upon a narrow conception of persecution and a stratified allocation of rights. Article 1A (2) defines a refugee as an individual with a "well-founded fear of persecution" on enumerated grounds, yet this formulation does not explicitly recognise gender as an independent category, thereby rendering gendered harm analytically invisible within the convention framework.[12] This omission has resulted in inconsistent jurisprudential recognition of claims arising from the intersection of widowhood, conflict-related displacement, and economic coercion. As Hathaway argues, the convention constructs a hierarchy of entitlement in which protection is mediated through legal status rather than lived vulnerability.[13]

This doctrinal limitation is further compounded by the Convention's internal differentiation between categories of presence between categories of presence, particularly the requirement that socio-economic rights apply only to those "lawfully staying" within the host state (Articles 17 - 24).[14]In practice, Tamil war widows who migrate through irregular channels or whose status becomes precarious upon arrival fall outside the effective scope of these protections.

Empirical evidence from Human Rights Watch demonstrates that Sri Lankan women recruited into domestic work in gulf states frequently experience passport confiscation , non-payment of wages and confinement, yet are unable to invoke labour

[12] Convention Relating to the Status of Refugees (adopted 28 July 1951,entered into force 22 April 1954) 189 UNTS 137

[13] James C Hathaway,The Rights of Refugee under International Law (2nd edn,CUP 2021)

[14] Convention Relating to the Status of Refugees (1951) Arts 17 -24

protections due to their irregular status.[15] Similarly, Amnesty International has documented that migrant domestic workers in the Middle East operate within legal systems that condition their residence on employer sponsorship, rendering them "illegal" upon leaving abusive conditions.[16] This directly illustrates how the convention's "lawfully staying threshold transforms legal protection into a conditional entitlement effectively excluding those most at risk.

Judicial Interpretation has reinforced these structural gaps, in GJ and Others (post-civil wars; Returnees) Sri Lanka, the tribunal acknowledged the risk of surveillance and detention faced by individuals with perceived links to the Liberation Tigers of Tamil Eelam, yet framed persecution primarily in political terms, thereby marginalising gender-specific harms experienced by widows.[17] A similar analytical limitation is evident in *AN (Sri Lanka) v Secretary of State for the Home Department* they were where the court recognized generalised risks upon return but failed to engage substantively with the gendered dimensions of economic vulnerability and sexual exploitation.[18] These decisions demonstrate a persistent doctrinal bias towards overt political persecution, leaving structurally produced harm such as post migration into exploitative labour outside the conventions' protective ambit.

The failure of the convention to adequately capture these realities is further underscored by the trajectory of cases such as *Vilvarajah and others v United Kingdom*, where the European court of Human Rights articulated a high evidentiary threshold requiring "real risk"

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[15] Human Rights Watch (2014), I already Bought You (UAE migraine domestic workers)

[16] Amnesty International (2014)," My Sleep is my Break" (Qatar Migrant Domestic Violence)

[17] GJ and Others (post-civil war;returnees) SriLanka CG [2013] EWCA Civ 1023

[18] AN (SriLanka) v Secretary of State for the Home Department[2013] EWCA Civ 1023

of ill treatment[19] while doctrinally significant this standard privileges demonstrable and imminent harm , thereby disadvantaging applicants whose vulnerability arises from diffuse and cumulative socio-economic conditions .For War widows whose displacement is shaped by the destruction of livelihoods , militarization and social marginalization such harms are neither easily documented nor readily framed within the convention's persecution paradigm.

This gap is reflected in broader scholarly critiques Crawley and Skleparis challenge the rigid distinction between "economic migrants" and "refugees" arguing that such categorisation obscures the structural drivers of migration, particularly in post-conflict contexts.[20] Anderson similarly demonstrates how immigration controls actively produce "deportable labour", creating a class of workers whose precarious legal status facilitates exploitation.[21] When read alongside the convention' status-based allocation of rights, this analysis reveals a systematic disjunction between formal legal protection and the lived realities of migrant women.

4.4 Gaps in Legal Protection and Access to Rights.

The deficiencies of the Convention become most pronounced in the domain of access to rights, where formal entitlements are undermined by evidentiary and enforcement deficits. Article 16 guarantees access to courts, yet these rights remain largely illusory for migrant women whose irregular status exposes them to detention or deportation upon engaging with legal systems.[22] Reports by Human Rights Watch indicate that migrant domestic workers rarely pursue claims due to fear of retaliation, loss of

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[19] Vilvarajah and Others v United Kingdom (1991) 14 EHRR 248 (ECtHR)
[20] Heaven Crawley and Dimitris Skleparis (2018) 44 (1) Journal of Ethnic and Migration Studies 48
[21] Bridget Anderson,Us and them? The Dangerous Politics of Immigration Control (OUP 2013)
[22] Ibid (13)

income and a lack of legal assistance.[23] Consequently, the convention's procedural guarantees fail to translate into meaningful remedies.

The evidentiary framework further exacerbates exclusion. Under Article 1A (2), the burden substantiates a well-founded fear of persecution, often requiring objective corroboration.[24] However, as documented by Amnesty international, exploitation of migrant domestic workers typically occurs within the private households, rendering evidence inaccessible.[25] This structural invisibility is particularly acute for Sri Lankan war widows trafficked into domestic labour, whose experiences of coercion, confinement, and abuse remain undocumented.[26] The inability to satisfy evidentiary thresholds thus operates as a de facto barrier to protection.

Case law illustrates the dynamic with particular clarity. In *Vilvarajah*, the Court's insistence on a "real risk" standard effectively excluded applications unable to demonstrate individualised targeting, despite evidence of widespread violence.[27] This reasoning has been criticised for privileging exceptional harm over systematic vulnerability, thereby limiting the scope of protection. Similarly, in *CGW18 v Minister for Home Affairs*, judicial reluctance to recognise social stigma and gender-based violence as constitutive of persecution reflects a narrow interpretation of "particular social group", reinforcing the marginalisation of women's claims.[28]

Sri Lankan jurisprudence further highlights the gendered implications from these gaps. In SS (Sri Lanka) (Article 8 Return),

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[23] Amnesty International (2014),My Sleep is My Break

[24] Freedom United (2026),"SriLanka's War Widows Trafficked as Slaves in Gulf"

[25] Vilvarajah and Others v United Kingdom (1991) 14 EHRR 248

[26] CGW18vMinister for Home Affairs [2018] FCA 1523

[27] Human Rights Watch (2008),As If I am not Human" (Saudi Arabia)

[28] Cathryn Costello,The Human Rights of Migrants and Refugees in European Law (OUP 2015)

the assessment of risk was closely tied to familial relationships, implicitly privileged male-headed households and disadvantaged widows who lack spousal protection. This approach fails to account for the heightened vulnerability of female-headed households in post-conflict settings where economic survival often necessitates migration under exploitative conditions.

The cumulative effect of these doctrinal and practical limitations is a systematic failure to protect war widows as subjects of refugee law. While the Convention formally recognises right to employment, welfare and protection from refoulement, these entitlements are contingent upon legal status, evidentiary capacity and restrictive judicial interpretation. Empirical evidence from international organisations consistently demonstrates that migrant women excluded from lawful status are disproportionately exposed to forced labour, trafficking and abuse. As such, the Convention's framework not only inadequately addresses gendered vulnerabilities but, in its current form, actively contributes to the production of legal visibility.

5. Recommendations.

A central finding of this study is that the legal invisibility experienced by War widows is not incidental, but systematically produced through the interaction of refugee law and evidentiary standards. This invisibility emerges from the structural limitations of legal frameworks that fail to recognise gendered and post conflict harms as legally cognisable forms of vulnerability. Refugee law, with its emphasis on narrowly defined persecution and individualised risk, excludes the collective and structural nature of harm experienced by women in post-war contexts. At the same time, labour migration systems classify these women as economic migrants, severing the link between their movement and the coercive conditions that necessitate it.

Secondly, clearer recognition of war widows and female-headed households as a particular Social Group is necessary, Gender, widowhood, ethnicity and post conflict status must be understood as intersecting characteristics capable of establishing refugee protection.

Thirdly, stronger protections for migrant domestic workers are required through enforceable labour agreements, access to legal remedies and reintegration support.

Furthermore, evidentiary requirements reinforce this marginalisation by privileging forms of proof that are often unavailable in cases of gender-based violence, trafficking and informal labour exploitation. Harm occurring within private or undocumented spheres remains legally unrecognised due to the absence of verifiable evidence .Harm occurring within private or undocumented spheres remains legally unrecognised due to the absence of verifiable evidence.

Finally, domestic transitional justice mechanisms must deliver substantive reparations, including land rights, documentation, and economic restitution. Without such reforms, displacement will continue to operate as a structurally enforced condition rather than a voluntary choice.

6. Conclusion

This study has demonstrated that war widows remain inadequately protected despite the existence of multiple international legal frameworks, including refugee law, human rights instruments, and labour protections, but in their inability to meaningfully engage with the lived realities of women situated at the intersection of conflict, gender and migration. A persistent gap exists between legal norms-constructed around narrow, individualised and state-centric understandings of harm-and the structural, gendered vulnerabilities experienced by war widows, particularly in contexts of informal labour and transnational migration.

The analysis has shown that legal invisibility is not incidental but systematically produced through doctrinal limitations, evidentiary burdens, and fragmented protection regimes. As a result, women who migrate out of necessity are often excluded from refugee protection while simultaneously remaining unprotected within labour frameworks. This dual exclusion reinforces conditions of exploitation, including wage theft, trafficking and lack of access to remedies.

Accordingly, without the adoption of gender-sensitive reforms that recognise structural and intersectional forms of harm, refugee law will continue to reproduce, rather than mitigate, vulnerabilities. Bridging the divide between legal standards and lived experience is therefore essential to transforming existing frameworks from instruments of exclusion into mechanisms of meaningful protection.

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BIODIVERSITY CREDITS IN GREEN FINANCE: AN INTERDISCIPLINARY LEGAL AND GOVERNANCE STUDY OF MARKET-BASED BIODIVERSITY CONSERVATION

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Abstract

Biodiversity refers to the rich variety of life on Earth, which includes the genes of single species, the vast array of species, and the ecosystems. Over the past century, human activities such as industrial development, deforestation, monoculture farming, overfishing, pollution, and unbridled urban growth have destroyed this natural world. To address this concern, this paper suggests a mechanism called 'biodiversity credits' which is also known as 'biocredits.' Simply put, biocredits are a market-based instrument which is designed to finance biodiversity enhancing actions through the creation and sale of biodiversity units. This paper highlights, unlike carbon credits or biodiversity offsets, biocredits concentrate on producing 'net-positive' biodiversity outcomes as opposed to making up for environmental damage. The main objective of this study is to examine biocredits as an emerging tool of green finance, through an interdisciplinary analysis combining environmental law, international biodiversity governance, and conservation economics. To achieve this objective, this paper has adopted doctrinal legal methodology with qualitative approach to analyse the existing international frameworks and comparative legal methodology for the purpose of analysing global initiatives of UK, France, Australia and the EU related to biocredit market. This study finds that even though biocredits have the potential to support local and Indigenous stewardship and address financing gaps for biodiversity, still they face major obstacles with regard to measurement, additionality, market integrity, benefit-sharing, and the risk of greenwashing. This paper concludes that biocredits should complement, not replace public conservation obligations. Consequently, this study recommends establishing strong global legal frameworks, transparent *biodiversity metrics, strict state oversight and safeguards to ensure social justice and ecological integrity. Concludingly, if biocredits are properly managed, they can help to achieve global biodiversity goals and bring financial markets into line with environmental preservation.*

Keywords: *Biocredits, biocredit market, biodiversity, green finance, legal reforms*

1. Introduction

Biodiversity refers to the rich variety of life on Earth, which includes the genes of single species, the vast array of species, and the ecosystems. It is this web of life which bears all living systems on Earth, including human societies. These ecosystems as long as they remain healthy, provide significant services such as clean air, water, fertile soil, crop pollination, and climate regulation. Such services are frequently named as 'ecosystem services,' are essential to both our economic stability and survival.[1]. Hence, Sanskrit stated, "Prakriti Rakshati Rakshita," which translates to "nature protects, if it is protected."

However, biodiversity crisis starts to appear with the time. Over the past century, human activities such as industrial development, deforestation, monoculture farming, overfishing, pollution, and unbridled urban growth have destroyed the natural world. As a result, now ecosystems are widely lost and degraded. Scientists guesstimated that we have already lost 50% of wetlands, 40% of forests, and 35% of mangroves worldwide. These modifications

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[1] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020).

directly threaten the 'ecosystem services' that we rely on, not only the disappearance of wildlife. In the last fifty years, we have degraded 60% of ecosystem services.[2] Consequently, the world's most critical issues, such as food security, water scarcity, health risks, and climate change emerged.

The current situation in the world is really concerning. Ecosystems are dangerously close to a point where there's no turning back, due to uncontrolled population growth, consumption patterns and poor incentives. Because of such irreversible changes, humans are not the only ones hurt by this change, nature is also suffering deeply. Further, it must be highlighted that these threats are not only ecological but also deeply economic. World Economic Forum stated that, more than half of the world's GDP is dependent on nature and its services. But now, global financing for biodiversity protection is not enough. For an example, the amount required to stop biodiversity loss ranges between $722 billion and $967 billion per year.[3] Despite this predicted yearly requirement, in 2019, the actual amount spent on protecting biodiversity was only about $124 billion USD. This huge financial imbalance shows that global conservation efforts are in risk. To solve this, there is a requirement of creative solutions that can attract private capital and then effectively match public funds with environmental objectives.[4]

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[2] Pankaj Satija, 'Closing the biodiversity gap: How biocredits could save our ecosystems' (*policycircle*, 2 May 2023) <https://www.policycircle.org/environment/biocredits-for-biodiversity/> accessed 05 January 2026.

[3] World Economic Forum, 'Biodiversity Credits: Unlocking Financial Markets for Nature-Positive Outcomes' (*World Economic Forum*, September 2022) <https://www3.weforum.org/docs/WEF_Biodiversity_Credit_Market_2022.pdf> accessed 05 January 2026.

[4] Pankaj Satija, 'Closing the biodiversity gap: How biocredits could save our ecosystems' (*policycircle*, 2 May 2023) <https://www.policycircle.org/environment/biocredits-for-biodiversity/> accessed 05 January 2026; *World Economic Forum*, 'Biodiversity Credits: Unlocking

With the realization of this urgent need, 196 nations came together in 19th December 2022, signed Kunming-Montreal Global Biodiversity Framework[5] during the COP15 summit. This aimed at "taking urgent action to halt and reverse biodiversity loss" and protecting 30 percent of land and sea area by 2030. This is the so-called "30×30" target. But GBF is not all about setting conservation goals. It heavily centred on financial challenge which was presented above. To deal with this problem, the GBF asked countries to raise at least $200 billion per year, so by 2030, we can protect biodiversity. GBF also stated that public and private investments need to be increased and better coordinated to solve this problem. The framework also says that countries must make detailed Biodiversity Financing Plans[6] and update their National Biodiversity Strategies and Action Plans.[7] These plans must specify exactly how countries will raise the required funds and use them efficiently.[8]

The GBF reflects a growing global recognition that protecting nature is not only an environmental issue but also a financial and political priority by putting accountability and financing at the forefront of biodiversity action. In order to close the enormous

Financial Markets for Nature-Positive Outcomes' (World Economic Forum, September 2022) <https://www3.weforum.org/docs/WEF_Biodiversity_Credit_Market_2022.pdf> accessed 05 January 2026.

[5] hereinafter referred to as 'GBF.'

[6] hereinafter referred to as 'BFP.'

[7] Hereinafter referred to as 'NBSAP'

[8] Tulkin Radjabov, 'Biodiversity Credit – An Effective Trade-off Mechanism' (*Biofin*, 11 Jul 2023) <https://www.biofin.org/news-and-media/biodiversity-credit-effective-trade-mechanism> accessed 05 January 2026; Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026; Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

funding gap and draw in private sector investment, the agreement promotes the use of creative funding instruments like "Biodiversity Credits."[9]

2. What is meant by 'Biodiversity Credits' or 'Biocredits'?

Biocredits are a financial instrument which is designed to fund actions that improve biodiversity.

According to Ina Porras and Paul Steele, "Biocredits are an economic instrument that can be used to finance biodiversity-enhancing actions (such as protecting or restoring species, ecosystems or natural habitats) through the creation and sale of biodiversity units"[10]

According to Biodiversity Credit Alliance[11] which proposed a simple and inclusive definition stated, "A biodiversity credit is a certificate that represents a measured and evidence-based unit of positive biodiversity outcome that is durable and additional to what would have otherwise occurred." This definition is dependent on there being a specific meaning of four other terms such as Biodiversity Outcome, Measured and Evidence Based, Durability and Additionality.[12]

Therefore, emerging as a new 'asset class,' biocredits encourage the preservation of biodiversity, particularly by assisting local communities and environmental stewards who uphold and enhance ecosystems.[13]

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[9] Ibid.

[10] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020).

[11] hereinafter referred to as 'BCA.'

[12] Biodiversity Credit Alliance, *Definition of a Biodiversity Credit* (BCA, 2024).

[13] Green Finance Observatory, 'How Different are Biocredits from Biodiversity Offset Credits?' (*greenfinanceobservatory*, December 2022)

3. What Distinguishes Carbon Credits from Biocredits?

Although the goal of both carbon credits and biocredits is to encourage private investment in environmental preservation, their methods and metrics are essentially different.

Carbon credits are based on a clear and standardised unit. Since carbon is the same everywhere in the world, trading carbon credits is simple. One credit is usually equivalent to one tonne of CO_2 (or equivalent greenhouse gas) that has been reduced or removed.[14]

However, critics are concerned that businesses might use carbon credits to reach their environmental goals without significantly altering their unsustainable practices. Instead of actually lowering its emissions, a fossil fuel company, for instance, offsets its carbon emissions by planting a forest to absorb CO2 from the atmosphere. This is known as "trading a known amount of emissions with an uncertain amount of emissions reductions," which could result in a net increase in emissions.[15]

However, biocredits deal with nature, which is very complex, diverse, and local. Every ecosystem has its own distinct species and functions, and biodiversity lacks a common unit of measurement. Therefore, more specialised and locally based measurement instruments are needed for biocredits. They prioritise actively enhancing biodiversity, such as boosting species

<https://greenfinanceobservatory.org/wp-content/uploads/2022/12/Biocredits-brief-v2.pdf> accessed 05 January 2026.

[14] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.

[15] Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

richness or repairing habitats, rather than merely minimising harm.[16]

It's important to remember that activities that increase biodiversity frequently have 'co-benefits' for the climate as well. For example, restoring degraded peatlands can help the local wildlife and plants while also storing a significant amount of carbon. As a result, a project might offer carbon and biodiversity credits. However, biocredits are best viewed as their own separate mechanism, not merely an extension to carbon markets.[17]

4. What Distinguishes Biodiversity Offsets from Biocredits?

Despite their apparent similarities, biodiversity offsets and biocredits have different goals and ethical underpinnings.

Biodiversity offsets are a form of environmental compensation, when the detrimental effects of development on nature, such as those caused by mining, building, or major infrastructure projects, cannot be prevented, reduced, or completely restored on-site. In these situations, developers must restore, preserve, or improve comparable habitats elsewhere to compensate for the loss of biodiversity. The aim is to achieve 'no net loss' or ideally a net gain in biodiversity.[18]

In many nations, offsets are typically required by law and are a component of the permitting and Environmental Impact

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[16] British Ecological Society, 'A beginners' guide to biodiversity credits' (*British Ecological Society*, 4 December 2024) <https://www.britishecologicalsociety.org/content/a-beginners-guide-to-biodiversity-credits/> accessed 05 January 2026.

[17] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.

[18] Aleksandra Holmlund, 'Biodiversity Credits' (*biodiversitycredits*, 11 April 2022) <https://www.biodiversitycredits.se/> accessed 05 January 2026.

Assessment[19] processes.[20] However, offsetting biodiversity is a very controversial practice. One of the major criticisms is, its ability to help businesses reach environmental goals without actually altering detrimental practices. They just pay to make up for the harm elsewhere rather than preventing it, which could worsen ecosystem degradation. Another significant criticism is the fact that biodiversity varies by location and that ecosystems are not interchangeable. The original ecological value is frequently not restored when lost nature in one place is replaced with restoration in another. Even with carefully planned and closely monitored offsets, some biodiversity losses, particularly those involving endangered species or complex ecosystems, may be irreversible. Furthermore, there are concerns that biodiversity offsets might cause more harm than good due to inadequate regulation, unclear standards, and a lack of transparency. Despite these shortcomings, they are still frequently employed in environmental policy to strike a balance between conservation and development; however, scientists, conservationists, and policymakers continue to disagree about their efficacy and morality.[21]

Conversely, biocredits are optional investments meant to have a 'net positive impact.' They are solely concerned with producing more biodiversity benefits and have nothing to do with making up for harm. This method circumvents the moral and scientific issues associated with offsets, such as the presumption that ecosystems

[19] hereinafter referred to as 'EIA.'

[20] Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

[21] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020); Aleksandra Holmlund, 'Biodiversity Credits' (*biodiversitycredits*, 11 April 2022) <https://www.biodiversitycredits.se/> accessed 05 January 2026.

can be replaced or the possibility that businesses will use offsets to 'greenwash' destructive practices.[22]

Crucially, experts warn that solid oversight is necessary to prevent biocredits from slipping into offsetting roles. Biocredits run the risk of losing their conservation value if they are abused to justify harm elsewhere. To preserve their integrity, clear regulations, openness, and market segregation from offsets are essential.[23]

5. Creation and Supply of Biocredits

People who work directly to conserve, protect, or restore biodiversity create biocredits. These include a wide range of people who actively manage the land and ecosystems that support biodiversity, especially in places where there is a lot of biodiversity. Many of them are found in tropical nations with low and middle incomes.[24]

Biocredit suppliers are,

- Local communities, households, and farmers residing in or close to conservation areas;
- Indigenous groups and community-based organisations that have long been stewards of biodiversity;
- Non-governmental organisations[25] that prioritise environmental protection;

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[22] Green Finance Observatory, 'How Different are Biocredits from Biodiversity Offset Credits?' (*greenfinanceobservatory*, December 2022) <https://greenfinanceobservatory.org/wp-content/uploads/2022/12/Biocredits-brief-v2.pdf> accessed 05 January 2026.
[23] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.
[24] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020).
[25] hereinafter referred to as 'NGOs.'

- Private biodiversity project developers who plan, oversee, and record conservation activities;
- Government agencies overseeing ecological restoration or protected areas;
- Conservation organisations and landowners who carry out and verify biodiversity improvements;
- Financial institutions and investors, including funds that lease or manage land expressly to produce and sell biodiversity credits.[26]

Some examples of the actions that typically result in biocredits are protecting endangered species or important habitats, restoring degraded ecosystems in both rural and urban areas, and conserving nature in ways that also provide co-benefits like carbon storage (e.g., protecting mangroves). The revenue raised from the sale of biocredits is reinvested in conservation efforts, offering financial incentives for preserving and enhancing biodiversity. Fairly constructed biocredit systems can encourage equitable benefit-sharing, assisting underprivileged and marginalised communities in generating revenue while preserving the environment.[27]

6. Purchasing biocredits

On the other hand, there's a broad range of buyers can purchase biocredits. They are,

- Governments seeking to meet biodiversity conservation targets or show adherence to international agreements like the Kunming-Montreal GBF.

[26] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020); British Ecological Society, 'A beginners' guide to biodiversity credits' (*British Ecological Society*, 4 December 2024) <https://www.britishecologicalsociety.org/content/a-beginners-guide-to-biodiversity-credits/> accessed 05 January 2026.
[27] Ibid.

- Businesses seeking to meet ESG (Environmental, Social, and Governance) goals, enhance their reputation, or preserve their social license to operate.
- Impact investors and philanthropic foundations seeking quantifiable, environmentally beneficial results.
- Development banks, NGOs, and environmental charities.
- Individuals or customers seeking a substantiated method of supporting conservation.
- Buyers may also include companies in industries like tourism or agriculture, whose prosperity depends on healthy ecosystems, as well as resellers of biodiversity credits, such as investment funds and intermediaries.[28]

A combination of moral, legal, financial, and reputational factors influences buyers. Mainly, to show that they care about the environment and support sustainability goals. Then, to meet voluntary or legal biodiversity targets, like biodiversity net gain rules. Further, to promote nature-positive branding, increase public perception, and attract eco-aware consumers. Moreover, to support global conservation efforts, particularly in biodiversity hotspots. Furthermore, to adhere to changing global reporting frameworks, like the Taskforce on Nature-related Financial Disclosures (TNFD). Additionally, purchasing biocredits helps some businesses reduce risk by protecting access to natural resources, increasing stakeholder trust, and getting ready for new environmental laws.[29]

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[28] Ina Porras and Paul Steele , *Biocredits A solution for protecting nature and tackling poverty Environmental Economics* (International Institute for Environment and Development, 2020); Green Finance Observatory, 'How Different are Biocredits from Biodiversity Offset Credits?' (*greenfinanceobservatory*, December 2022) <https://greenfinanceobservatory.org/wp-content/uploads/2022/12/Biocredits-brief-v2.pdf> accessed 05 January 2026.

[29] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-

Depending on the project type, measurement technique, and geographic area, the cost of a biocredit can vary significantly. In Savimbo, Colombia, it offers credits for $7.50 each, each of which uses a set of 20-30 species indicators to represent the preservation of 1 hectare of biodiversity for a month. In Botanic Gardens Conservation International (UK), it provides biodiversity impact credits, which average $100,000 annually over five to six years, for the recovery of tree species, particularly for large-scale forest work and endangered trees.

These examples highlight, the structure and value of credits can vary significantly because there is no standard unit, unlike in carbon markets. For example, some credit types measure the amount of land protected, others count the number of species conserved, and still others concentrate on restoration over time. [30]

7. Existing Frameworks

The International Institute for Environment and Development[31] and the International Advisory Panel on Biocredits[32] have already started to make significant progress in forming the biocredit market.[33] To help set theory into practice, the IAPB has

biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.; British Ecological Society, 'A beginners' guide to biodiversity credits' (*British Ecological Society*, 4 December 2024) <https://www.britishecologicalsociety.org/content/a-beginners-guide-to-biodiversity-credits/> accessed 05 January 2026.

[30] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.

[31] hereinafter referred to as 'IIED.'

[32] hereinafter referred to as 'IAPB.'

[33] British Ecological Society, 'A beginners' guide to biodiversity credits' (*British Ecological Society*, 4 December 2024) <https://www.britishecologicalsociety.org/content/a-beginners-guide-to-biodiversity-credits/> accessed 05 January 2026.

introduced a proposed framework for high integrity biocredits, and the IIED is

8. Biodiversity Outcome

The difference in biodiversity with and without a project is referred to as a 'biodiversity outcome.' Because it is quantifiable, it demonstrates that the biocredit represents real, validated outcomes rather than merely plans or promises.

The precise approach taken will determine what constitutes a positive outcome, which may include both environmental enhancements and improved management techniques. These results may be a combination of management and ecological results.

"A positive biodiversity outcome is an improvement in measures of biodiversity, a reduction in threats to biodiversity, or prevention of an anticipated decline in measures of biodiversity."[34]

Biocredit projects can deliver different types of positive biodiversity outcomes. These outcomes generally fall into three main categories:

First one is Uplift. This is a measurable increase in biodiversity brought about by initiatives such as ecological restoration. It is demonstrated by improvements in the composition, structure, or function of species populations or ecosystems, as well as by a decrease in threats. Biodiversity is actively enhanced by uplift projects.

Second one is Avoided Loss. By addressing pressing threats, like through preservation or land protection initiatives, these projects stop the decline of biodiversity. Stopping detrimental changes to ecosystems or species, particularly in areas with known and imminent risks, is an example of avoided loss.

[34] Biodiversity Credit Alliance, *Definition of a Biodiversity Credit* (BCA, 2024).

Third one is Maintenance. Through long-term tactics like conservation management plans, Indigenous rights protection, and sustainable financing, maintenance projects seek to preserve the biodiversity that already exists. The success of these projects is demonstrated by stopping degradation before it starts, and they are aimed at regions that face medium or long-term threats.[35]

9. Countries that support biodiversity credits

Global initiatives have advanced quickly thanks to the GBF. The UK, France, Australia and the EU are at the lead of promoting "nature markets".

9.1 UK and France

The UK government announced plans to start three distinct nature markets in March 2023. One for clean water, one for flood mitigation, and one for biodiversity offsets. With the aim of raising private funding for nature to at least GBP 500 million yearly by 2027 and GBP 1 billion overall by 2030, these are to be a key component of Environmental Improvement Plan 2023 of UK.

The UK and France are taking the lead in advocating for a global biodiversity credit market. In June 2023, they jointly unveiled the Global Biodiversity Credits Roadmap. This complements the GBF and provides a plan to increase global initiatives to assist businesses in obtaining biodiversity credits. The two nations have agreed to convene international expertise on biodiversity credits and form working groups to investigate best practices, from monitoring frameworks to credit funding governance, in preparation for COP 16 in 2024. The equitable distribution of biodiversity credit revenue is another issue that the roadmap aims to address.[36]

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[35] Biodiversity Credit Alliance, *Definition of a Biodiversity Credit* (BCA, 2024).
[36] Department for Environment, Food & Rural Affairs, *Environmental Improvement Plan 2023* (HM Government, 31 January 2023) <https://assets.publishing.service.gov.uk/media/64a6d9c1c531eb000c64fffa/e

9.2 Australia

Australia has implemented biodiversity offset programs at the federal and State levels, evaluating the effects on an individual basis. In an attempt to attract private investment, the government is now suggesting a Nature Repair Market that would compensate landowners for their conservation efforts. The program, which has been dubbed an attempt to turn Australia into the 'Green Wall Street,' but has drawn criticism for its lack of sound economic reasoning and integrity. Parliamentary committees have postponed making a decision on the proposal without establishing a deadline because of these worries.[37]

9.3 EU

Despite criticism from its advisory body, the Platform on Sustainable Finance, the EU has decided to incorporate biodiversity offsetting into its most recent update to the EU Taxonomy for Sustainable Activities. Because of the possibility of misunderstanding, the group had suggested eliminating offsetting. The inclusion has caused confusion and criticism, despite minor wording changes made by the EU. In an open letter, NGOs and civil society organisations contend that offsetting cannot

nvironmental-improvement-plan-2023.pdf> accessed 05 January 2026.; Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

[37] SouthWest NRM, 'What exactly is a "Nature Repair Market"?' (South West NRM, 2025) < https://southwestnrm.org.au/news/what-exactly-is-a-nature-repair-market/?gad_campaignid=22251594895> accessed 05 January 2026; Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

significantly advance the EU's biodiversity goals and only makes up for environmental harm caused elsewhere.[38]

10 Issues of Biocredits

Carbon is easy to measure, which is why carbon market's function. One tonne of carbon released into the atmosphere or taken out of it is equivalent to one carbon credit. A tonne of carbon in Mexico is equivalent to a tonne in Russia, regardless of where this occurs. As a result, carbon credits are easily exchanged globally. However, biodiversity is distinct. It covers a wide range of subjects, including species, genes, ecosystems, and their interactions. Comparing different forms of life is much more difficult. "For example, how do you compare a butterfly in the rainforest to a lynx in a forest being logged? Because there's no clear way to say they're equal, it's hard to build a market around biodiversity like we have for carbon."[39]

Direct measurements of biodiversity change would be the ideal foundation for biocredit schemes. This is feasible in environments where change happens rapidly, but it is impractical in environments like deserts or the Arctic that take decades or even centuries to react. Some approaches, which are backed by a theory of change, use indicators of habitat condition (such as soil stability or water pH), management interventions, or threat reduction to address this. However, because ecosystems might not react to these changes predictably, these indirect methods run the risk of misrepresenting actual biodiversity outcomes.[40]

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[38] Zero Carbon Analytics, 'Biodiversity Offsetting and Biocredits' (*Zero Carbon Analytics*, 14 February 2023) <https://zerocarbon-analytics.org/archives/food/biodiversity-offsetting-and-biocredits> accessed 05 January 2026.

[39] Jinsui ("Jazzy") Song, 'An Incomplete Guide to Biodiversity Credits, Part One' (*Conservation Finance Network*, 14 February 2023) <https://www.conservationfinancenetwork.org/2023/02/14/an-incomplete-guide-to-biodiversity-credits-part-one/> accessed 05 January 2026.

[40] Biodiversity Credit Alliance, *Definition of a Biodiversity Credit* (BCA, 2024).

A market for biodiversity, according to critics, might cause more damage than good. Short-term profits and speculation are frequently given priority in financial markets, which may alter perceptions of the true worth and intent of conservation. There are concerns that biocredits will prioritise profits over true restoration, favouring investor interests over ecological ones. The implementation of tradable credits may cause conservation to move from state-led or community-led stewardship to profit-driven goals. This could undermine the ethical and ecological underpinnings of conservation efforts by reducing biodiversity to just another commodity. As a result, it creates a "dangerous and misleading illusion of the substitutability" of critical ecosystem services that may actually be irreplaceable.[41]

'Additionality' in conservation has historically meant observable, measurable ecological gains that come directly from a project. Some biocredit systems, however, are extending this definition to cover things like legal recognition, increased funding flows, institutional strengthening, and local capacity building. These are important governance or social outcomes, but they don't take the place of real biodiversity gains. Calling such results 'additionality' runs the risk of greenwashing, in which credits are given out without evidence of environmental impact.[42]

Finally, governments are frequently required by biocredit schemes to describe the legal frameworks for trading and crediting, keep an eye on biodiversity interventions, and promote market involvement (Eg- through incentives or regulation). But in doing so, governments become market facilitators rather than direct

[41] Sandra Cordon, 'What are biodiversity credits, and how do they work?' (*thinklandscape*, 25 September 2024) <https://thinklandscape.globallandscapesforum.org/69913/what-are-biodiversity-credits-and-how-do-they-work/> accessed 05 January 2026.

[42] Green Finance Observatory, 'How Different are Biocredits from Biodiversity Offset Credits?' (*greenfinanceobservatory*, December 2022) <https://greenfinanceobservatory.org/wp-content/uploads/2022/12/Biocredits-brief-v2.pdf> accessed 05 January 2026.

players in conservation, endorsing private-led initiatives over public ones. This tendency, sometimes called as the 'Wall Street Consensus,' may diminish accountability and concentration, possibly putting market dynamics ahead of long-term ecological objectives and public interest.[43]

11 Recommendations

To increase the integrity and efficacy of biocredit systems, the following actions are recommended.

Mainly, methodologies should prioritise precise and scientific measurements of biodiversity change, while acknowledging that long-term or indirect outcomes may be required in some ecosystems.

Further, a flexible yet transparent crediting frameworks are needed to support ecosystems with slow recovery rates without endangering environmental credibility.

Moreover, a strong regulatory oversight must be established to stop greenwashing and ensure that credits represent actual, additional biodiversity outcomes rather than merely the removal of threats or improved habitat conditions.

Furthermore, financial mechanisms that offer long-term support through stable funding and flexible payment schedules must take into account the true costs of ecosystem management.

In addition to facilitating markets, governments should take the lead in conservation initiatives by ensuring public accountability, funding, and clear policies.

Last but not least, care must be taken to avoid unduly commercialising nature. Conservation ought to be based on ecological and social principles, and market instruments should be

[43] Ibid.

used as a tool, not a replacement, for long-term justice and stewardship.

12 Conclusion

By linking conservation activities to economic rewards, biocredits promise to bridge the huge financing gap for biodiversity. It is vital to make sure that biocredit systems continue to be ecologically sound, socially inclusive, and scientifically sound as nations, organisations, and communities start to adopt this mechanism. This Mechanism must balance flexibility and integrity, preventing greenwashing and market manipulation but also responding to ecological necessities. Finally, rather than substituting long-term public conservation commitments and locally driven stewardship, biocredits should be complementary to augment them. Under the GBF, they have the potential to spark a fair and sustainable path towards accomplishing the world's biodiversity targets if properly planned and managed.

PUBLIC PURPOSE, PERSONAL LAW AND POST-CONFLICT PROOF: LAND ACQUISITION UNDER TESAWALAMAI IN NORTHERN SRI LANKA

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Abstract

Tesawalamai does not prevent the State from acquiring land in Northern Sri Lanka. Land governed by it remains subject to the ordinary statutory machinery of public purpose, notice, hearing and compensation. The difficulty is that lawful acquisition under that machinery cannot be assessed as though ownership is always singular, documentary and easily legible to the State. Tesawalamai distributes proprietary claims through hereditary estate, dowry, separate estate, acquisitions during marriage, spousal rights, co-heirship and, in limited circumstances, pre-emption. When those categories are placed within a public-law process built around "persons interested" in land, the risk is not merely administrative inconvenience but legal misrecognition. A person omitted from notice may be a real right-holder; a recorded title may conceal a wife's separate estate or a daughter's dowry interest; and a dispute over classification may determine the entitlement to compensation itself. The problem is intensified in the post-war north, where displacement, military occupation, secondary possession, destroyed documents and missing records have fractured ordinary proof of title. Sri Lankan acquisition law properly insists on genuine public purpose and procedural legality, but its application to Tesawalamai-governed land requires closer attention to personal-law categories and post-conflict evidence. A credible acquisition process in the north must therefore identify all relevant interests, accept broader forms of proof, record the basis of compensation with precision, and confront the continuing constitutional difficulty created by article 16.

Keywords: *Tesawalamai; Land Acquisition Act; public purpose; personal law; post-conflict land rights; Northern Sri Lanka; compensation; proof of title; women's property rights; article 16.*

1. Introduction

Tesawalamai is not an anti-expropriation code. Land governed by it may be acquired under the ordinary statutory law of Sri Lanka where the State satisfies the requirements of public purpose, notice, hearing and compensation.[1] But that proposition, though correct, is too simple to explain why northern land disputes are so persistent. The real difficulty is that Tesawalamai does not describe ownership as a single, state-legible unit. It distributes claims through dowry, inherited estate, acquisitions during marriage, separate estate, life interests and, in some settings, pre-emption. When that property framework is placed within a public-law process built around the category of 'persons interested' in land, errors of legal translation become likely. A person who appears peripheral in a deed-office file may in fact hold a central claim under matrimonial or inheritance rules; a spouse whose rights look secondary in ordinary conveyancing may hold separate estate under the Jaffna Ordinance; and a family dispute over classification may directly affect who receives compensation. In the post-war north, where displacement, broken possession and missing records are common, those are not marginal complications. They go to legality itself.[2][3]

This article makes three arguments. First, Tesawalamai does not prevent State acquisition, but it changes what lawful acquisition

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[1] Tesawalamai Regulation (Regulation No 18 of 1806) ss 2–3; Land Acquisition Act ss 2–7

[2] Land Acquisition Act ss 45–50; *Clinton Perera v Jayaratne* [2004] 3 Sri LR 24 (CA).

[3] N Selvakkumaran, M Thirunavukarasu and R Jayasundere, *A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka* (Ministry of Justice/The Asia Foundation 2014); Bhavani Fonseka and Mirak Raheem, *Land Issues in the Northern Province: Post-War Politics, Policy and Practices* (CPA 2011).

requires. Secondly, acquisition procedures must identify Tesawalamai-based interests with greater care, especially where ownership is divided through dowry, inheritance, separate estate, spousal rights or co-heirship. Thirdly, in the post-conflict north, proof of ownership must be assessed with sensitivity to displacement, missing records and fractured possession.

2. Tesawalamai and the Fragmented Structure of Title

The starting point is historical but still legally operative. The Tesawalamai Regulation of 1806 gave legal force to the customs of Jaffna as collected under Dutch rule, and the text preserved a sharply differentiated vocabulary of property. It distinguished hereditary estate, dowry and post-marital acquisitions or profits.[4] That taxonomy matters because it still shapes the way litigants and courts describe claims to land. It also explains why northern land conflicts are often multi-layered. A single parcel may be spoken of simultaneously as family property, a daughter's dowry, a widow's managed estate, or an acquisition made during marriage. The older literature on Tesawalamai, especially the historical work of M W Jurriaanse, shows that this was never merely a technical vocabulary. It reflected a social ordering of family and succession in which property moved along different lines depending on source, timing and kinship.[5] Any modern acquisition analysis that ignores that structure will misunderstand the seriousness of northern objections. It will treat as an inconvenience what, under the governing personal law, may be a dispute about the very identity of the right-holder.

The Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 partly restated and partly reshaped those customary rules. For present purposes, two features are crucial. First, the ordinance applies to the movable and immovable property of persons

[4] Tesawalamai Regulation (Regulation No 18 of 1806) Part I, especially the discussion of hereditary property, dowry and acquisitions during marriage.
[5] M W Jurriaanse, 'The Compilation of the Customary Law of Jaffna (Tesawalamai) in 1707' (1954) 110 *Bijdragen tot de Taal-, Land- en Volkenkunde* 293.

subject to Tesawalamai wherever that property is situated. Secondly, it preserves a wife's separate estate in property she held at marriage or later acquired by gift or inheritance, while still requiring the husband's written consent for her inter vivos disposition of immovables.[6] Those provisions matter in acquisition disputes because they break the convenient assumption that family land is always managed through a single male title-holder. They also create a recurring evidential problem. If a parcel is recorded in a way that obscures whether it stems from dowry, inheritance, conversion of previous separate estate or post-marital acquisition, the compensation inquiry cannot safely rely on surface title alone. The same is true of diatheddam, which the ordinance defines narrowly. Not all property held during marriage is legally diatheddam; only specified acquisitions and profits qualify.[7] A valuation officer or acquiring authority who fails to attend to that classification risks notifying the wrong person, compensating the wrong interest or understating the effect of the taking on the real legal holder.

3. Pre-emption and the Limits of Local Protection

The position is sharpened by the law of pre-emption. The Tesawalamai Pre-emption Ordinance was intended to give a limited protection in relation to certain sales of divided allotments, but modern authority reads that protection narrowly. The 2024 Supreme Court decision in *Kandiah Ulaganathan v Pararajasingam Kirupaharan* makes plain that the right cannot be expanded by loose analogy. The Court treated the statutory conditions as exacting, emphasising that the claimant had to fit the classic statutory case and that a party seeking relief under section 4 had to show sole ownership of the divided allotment in his or her own

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[6] Jaffna Matrimonial Rights and Inheritance Ordinance (No 1 of 1911, as amended) ss 2, 6.

[7] Jaffna Matrimonial Rights and Inheritance Ordinance ss 15–20.

right.[8] That matters beyond ordinary conveyancing. Many northern properties are not held in neat, sole-ownership units. They are co-owned, imperfectly partitioned, informally managed or caught in old family settlements. A narrow pre-emption doctrine means that those properties are less protected by localised first-refusal mechanisms than is sometimes assumed. In practical terms, that leaves many disputes to be fought instead through title, notice, compensation and judicial review rather than through pre-emption itself.

4. Public Purpose, Notice and Compensation under the Land Acquisition Act

The difficulty becomes clearer when the statutory acquisition process is considered. The public-law machinery, by contrast, is general and formal. Under the Land Acquisition Act, the Minister may begin where land is needed for a public purpose; notices are then issued, objections may be made, a declaration follows if acquisition proceeds, and compensation is assessed by reference to market value and the claimant's interest.[9] The Act is detailed on valuation but less sensitive to plural title systems than the north requires. Market value is pegged to what a willing seller would obtain in the open market on the date of the relevant Gazette notice. Compensation is proportionate to interest and can include severance, injurious affection, business loss and relocation. Yet no additional compensation is allowed for the compulsory character of the taking, and some matters must be ignored altogether.[10] That structure makes sense where title is clear and ownership is unitary. It works less well where personal-law categories fragment the legal picture and where post-war conditions have fractured proof. In those circumstances, the central question is not only what the land

[8] Tesawalamai Pre-emption Ordinance (No 59 of 1947), especially ss 2 and 4, as discussed in *Kandiah Ulaganathan v Pararajasingam Kirupaharan and others*, SC Appeal No 29/2013 (7 March 2024).
[9] Land Acquisition Act ss 2, 4, 5, 7, 17, 38, 45–50.
[10] Land Acquisition Act ss 45, 46 and 48.

is worth. It is who the law recognizes as entitled to be heard and paid.

5. Judicial Control of Acquisition

Sri Lankan case law has supplied some discipline. The important acquisition cases do not say that personal law defeats public purpose. They say that the State must act lawfully if it wants to acquire land, and that the statutory formula cannot be manipulated to regularize private or politically brokered arrangements. In *Clinton Perera v Jayaratne*, the Court of Appeal refused mandamus where the petitioner sought to compel the State to acquire land allegedly handed over pursuant to a private arrangement. The Court held that the Minister's decision that land is needed for a public purpose is a condition precedent to the invocation of the Land Acquisition Act, and that the Act cannot be misused to cure a private transaction.[11] That conclusion matters for northern practice because informal "handovers", temporary occupation, security occupation and later regularization have all been recurring features of post-war land conflicts. On the reasoning in *Clinton Perera*, acquisition law is not a legal detergent that can wash an informal or politically improvised arrangement into statutory validity after the fact.

The more demanding public-law principle, however, comes from the Supreme Court's approach to public purpose itself. The leading judgments, especially *Manel Fernando v D M Jayaratne* and *Mahinda Katugaha v Minister of Lands and Land Development*, insist that the State identify the public purpose with real specificity at the notice stage and that judicial review is not excluded merely because the statute later treats a declaration as conclusive evidence that the land is needed.[12] The exact doctrinal moves are important. They do not authorize courts to second-guess all policy choices.

[11] *Clinton Perera v Jayaratne* [2004] 3 Sri LR 24 (CA) 24–27.

[12] *Manel Fernando and another v D M Jayaratne, Minister of Public Administration, Provincial Councils and Home Affairs and others* (SC, 2000); *Mahinda Katugaha v Minister of Lands and Land Development and others* (SC, 2008).

What they do is preserve a space to examine whether the statutory conditions for acquisition have been genuinely triggered. In northern terms, that is critical. If land is said to be needed for security, archaeology, development or another public end, affected persons must know enough to object intelligently. Otherwise, the hearing right becomes empty. Those cases therefore offer a narrow but real rule-of-law buffer between ministerial discretion and dispossession.

6. Post-Conflict Proof and Land Settlement in the North

The post-conflict context adds a further evidential layer. Yet the sharpest contemporary controversy in the north has not always come through the Land Acquisition Act itself. It has also come through land-settlement processes that can convert uncertainty of title into state title. The Land Settlement Ordinance allows a settlement officer to call for claims to certain categories of land and, if no claim is made in time, to move towards a declaration that the land is state property, followed by a settlement order that is conclusive proof of title.[13] In 2025, OHCHR reported that a set of northern notices covered 5,941 acres and that the Supreme Court suspended their operation.[14] That episode matters because it shows the functional closeness of acquisition and settlement in post-conflict conditions. A community may experience both as dispossession, even if the statutory route differs. For Tesawalamai-governed land, the risk is acute where displacement or missing documents sever the ordinary evidential chain. A widow's separate estate, a daughter's dowry interest, or a co-heir's claim may vanish not because the right is weak in law, but because the right is poorly translated into contemporary proof.

[13] Land Settlement Ordinance ss 4 and 8; Land Settlement (Amendment) Act, No 23 of 1996.

[14] OHCHR, *Promoting reconciliation, accountability and human rights in Sri Lanka* (A/HRC/60/21, 2025) paras 27–29.

7. Gender, Article 16 and Administrative Vulnerability

Gender exposes the weakness of the present system more clearly than any other issue. The Jaffna Ordinance gives women genuine proprietary space through separate estate, but it also preserves rules that can make women's control over immovables conditional and evidentially vulnerable.[15] The constitutional setting worsens that difficulty. Article 16(1) preserves existing written and unwritten law notwithstanding inconsistency with the equality guarantees in the fundamental-rights chapter, and CEDAW in 2025 expressly criticized that position while naming women governed by Tesawalamai as a disadvantaged group.[16] This is not just a constitutional abstraction. It bears directly on acquisition, settlement and compensation. If pre-constitutional or customary rules shape the incidence of ownership but remain difficult to challenge on equality grounds, and if women's rights are often under-documented, then ordinary administrative processes will tend to reproduce older hierarchies unless they are deliberately redesigned. The Women Empowerment Act of 2024 may create new institutional avenues and a platform for law reform, but it cannot by itself solve the doctrinal interaction between article 16, Tesawalamai property rules and land administration.[17]

The policy literature on the north supports that diagnosis. The CPA reports from 2011 and 2013 describe land in the north and east as entangled with militarization, centralization, competing claims, development pressures and acquisition for public purposes. The Ministry of Justice's rapid assessment in 2014 adds the missing administrative detail: destroyed records, forged documents, unauthorized transfers, secondary occupation and the particular vulnerability of displaced people and female-headed

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[15] Jaffna Matrimonial Rights and Inheritance Ordinance s 6.

[16] Constitution of the Democratic Socialist Republic of Sri Lanka, art 16(1); CEDAW Committee, *Concluding observations on the ninth periodic report of Sri Lanka* (CEDAW/C/LKA/CO/9, adopted February 2025) paras 11–12.

[17] Women Empowerment Act, No 37 of 2024, especially s 2; CEDAW/C/LKA/CO/9 para 4(a).

households.[18] Oxfam's later work on displaced and evicted communities adds another point of practical significance, namely that communities often have to pursue accountability through sustained advocacy because ordinary legal and administrative channels are slow, opaque or inaccessible.[19] Taken together, these materials suggest that the problem is not a handful of doctrinal anomalies. It is a structural mismatch between a plural property regime and a public administration that prefers singular titles, short deadlines and paper trails that conflict has often destroyed.

8. Reform Priorities

What follows from that? The first reform priority is procedural, not conceptual. Acquisition and settlement procedures in the north should require authorities to identify possible Tesawalamai interests expressly at the notice stage. Notices should not assume a single owner where family, dowry or inheritance structures suggest otherwise. The second priority is evidential. Authorities should accept a broader range of proof, including older family documents, possession evidence and community-level testimony, especially where displacement explains documentary gaps. The third priority is compensatory. Where the State lawfully acquires land, it should record with precision how it has identified the compensable interest, why it treated a claim as mudusam, separate estate or diatheddam, and how it dealt with spousal or co-heir claims. Finally, the constitutional question cannot be postponed indefinitely. So long as article 16 blocks effective review of pre-constitutional and customary rules, legal reform will depend too heavily on legislative grace and too little on ordinary principles of equality.[20]

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[18] Bhavani Fonseka and Dharsha Jegatheeswaran, *Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka* (CPA 2013); Selvakkumaran, Thirunavukarasu and Jayasundere (n 3).

[19] Pubudini Wickramaratne, *Securing Land Rights of Displaced and Evicted Communities in Northern and Eastern Sri Lanka* (Oxfam 2020).

[20] Constitution, art 16(1); CEDAW/C/LKA/CO/9 paras 11–12.

9. Conclusion

The central legal point, then, is a modest but important one. Tesawalamai does not defeat state acquisition, but it changes what lawful acquisition requires. It demands closer attention to who owns, who manages, who inherits, who must consent, and who is entitled to compensation. In an ordinary market that would already matter. In Northern Sri Lanka, after decades of conflict, displacement and damaged records, it matters more. A serious law of acquisition under Tesawalamai must therefore do three things at once. It must retain the public-law insistence on genuine public purpose; it must take the personal-law structure of title seriously rather than treating it as folklore; and it must recognize that post-conflict proof is not a side issue, but the terrain on which legality is now decided. Until those three points are brought together, acquisition in the north will remain formally legal in some cases, but insufficiently just, intelligible and credible.[21]

[21] Tesawalamai Regulation ss 2–3; Jaffna Matrimonial Rights and Inheritance Ordinance ss 2, 6, 19–20; Land Acquisition Act ss 2–7, 45–50; OHCHR, A/HRC/60/21 paras 27–29.

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THE DOLLAR VS THE DEED: DIASPORA LAND RIGHTS AND LOCAL POSSESSION IN POST - CONFLICT JAFFNA

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Abstract

The end of Sri Lanka's civil war in 2009 left thousands of land disputes in the Northern Province, particularly in Jaffna, where many Tamil diaspora members continue to hold legal title to land that has been occupied by local families for years. These disputes have created a conflict between the legal rights of registered owners and the realities of long-term possession by people who settled on the land after being displaced by the war. This article examines whether Sri Lanka's current property law provides a fair solution to these competing claims. Using a doctrinal and comparative legal research approach, the article analyses the Prescription Ordinance, the Prescription (Special Provisions) Act No. 5 of 2016, the Land Acquisition Act, the Land Development Ordinance, Thesawalamai, and relevant Sri Lankan case law. It also compares Sri Lanka's approach with the United Nations Pinheiro Principles and the jurisprudence of the European Court of Human Rights on post-conflict property disputes in Cyprus. The article argues that the existing legal framework is not well suited to resolving post-conflict land disputes because it does not adequately address conflict-related displacement, loss of land records, military occupation, or the rights of good-faith occupants. It proposes a series of legal and institutional reforms, including amendments to the Prescription (Special Provisions) Act, improved evidentiary rules, the establishment of a specialised Northern Land Commission, recognition of necessity-based occupation as an equitable defence, and the completion of title registration in the Northern Province. These reforms aim to balance the rights of diaspora owners with the interests of current occupants while promoting legal certainty, reconciliation, and sustainable peace in post-conflict Sri Lanka.

Keywords: *Post-conflict property law; diaspora land rights; acquisitive prescription; dominium; pinheiro Principles; necessity possession; Jaffna: displacement*

1. Introduction

The end of Sri Lanka's civil war in 2009 marked the beginning of a new challenge: resolving land disputes involving Tamil diaspora owners, local occupants, and the state. During the conflict, hundreds of thousands of people were displaced from the Northern Province, leaving homes and land abandoned for many years. Although many diaspora Tamils remained the legal owners of their property, long-term occupation by others, military land acquisition, loss of land records, and complex property laws have made it difficult for them to reclaim their land.

Sri Lanka's legal framework—including the Prescription Ordinance, the Prescription (Special Provisions) Act No. 5 of 2016, the Land Acquisition Act, the Land Development Ordinance, and Thesawalamai—provides only partial solutions and often fails to address the realities of post-conflict displacement. At the same time, international standards such as the Pinheiro Principles and the jurisprudence of the European Court of Human Rights emphasise that restitution should balance the rights of original owners with those of good-faith occupants.

This article examines the legal and practical challenges surrounding diaspora land restitution in post-conflict Jaffna. It analyses the strengths and weaknesses of Sri Lanka's current legal framework, compares it with international approaches, and proposes reforms aimed at creating a fair, effective, and sustainable system for resolving competing land claims.

2. Methodology

This article adopts a doctrinal and comparative legal research methodology to examine the legal challenges surrounding post-conflict land restitution for the Tamil diaspora in Jaffna. The doctrinal component analyses Sri Lanka's legal framework governing land ownership and restitution. It examines primary legal sources, including the Prescription Ordinance, the Prescription (Special Provisions) Act No. 5 of 2016, the Land Acquisition Act No. 9 of 1950, the Land Development Ordinance, the Title Registration Act No. 21 of 1998, and the Thesawalamai legal system. The study also analyses relevant decisions of the Supreme Court and other Sri Lankan courts, together with Roman-Dutch law principles that form the foundation of Sri Lankan property law. Particular attention is given to how these legal rules operate in practice, especially in relation to evidentiary difficulties, loss of land records, military occupation, and competing ownership claims arising from conflict-related displacement.

The comparative component examines international legal approaches to post-conflict property restitution. It draws on the United Nations Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons and the jurisprudence of the European Court of Human Rights relating to post-conflict Cyprus, particularly decisions addressing the rights of displaced owners and secondary occupants. These international frameworks are not treated as directly binding on Sri Lanka but are used as persuasive models to identify principles that could inform reforms to the Sri Lankan legal system.

The research further relies on secondary sources, including books, peer-reviewed journal articles, legal commentaries, policy papers, and reports published by organisations such as the Centre for Policy Alternatives (CPA), the Internal Displacement Monitoring Centre (IDMC), the United Nations High Commissioner for Refugees (UNHCR), and the Sri Lanka Land Commissioner General's Department. These materials provide historical, legal, and policy context for understanding post-conflict land disputes in the Northern Province.

3. The Post Conflict Land Landscape in Jaffna

The civil war between the Sri Lankan government and LTTE, which lasted from 1983 until the government's military victory in May 2009, resulted in one of the most significant displacements of population in South Asian History. Particularly in the Northern province, Jaffna, bore the heaviest burden of this displacement. Estimates suggest that between 800,000 and 1 million Tamil civilians were displaced at various points during the conflict,[1] with significant numbers fleeing abroad as refugees or economic migrants.

Many displaced families could not go home – their houses were rubble, sat inside the military high security Zones, or had been taken over by others in absence.[2] Into this gap, informal occupation quietly took root. Families moved into abandoned homes out of necessity. Neighbours took on the care of adjacent plots. consequences in the context of the post conflict, where a diaspora titleholder retains registered ownership of the land in Jaffna. That ownership persists regardless of whether the title holder has been absent for ten, twenty or thirty years. The mere fact of displacement - even forced displacement as a result of armed conflict - does not, in Sri Lankan law, affect the legal quality of title. The registered owner may return at any time and use their legal rights to take back and whoever is living on it. This is not just a theoretical possibility; it is the practical legal position that produces the disputes discussed in this article.

[1] Centre for policy alternatives, Land and Property Rights in Northern Sri Lanka (CPA 2012) 14-17.

[2] Centre for policy alternatives, Land and Property Rights in Northern Sri Lanka (Colombo, 2012) 22-25.

4. The Legal Framework: Sri Lankan Property Law

4.1 Prescription Ordinance

The main legal challenges faced by diaspora landowner in post – conflict Jaffna is the prescription ordinance, which allows a person to acquire the title of the land through adverse possession. Under section 3 of the ordinance, continuous and uninterrupted physical possession of the land for ten years are adversely to the owner[3], extinguishing the original owners' rights and transferring the title to possessor.

This has significant consequences for Tamil diasporas who were displaced during the conflict for long periods. Since the war doesn't suspend the prescriptive period due to war or forced displacement, local occupants who maintained open and continuous possession for more than ten years may acquire legal title. This creates tension between post conflict justice for displaced persons and the legal certainty promoted by prescription.

4.2 The Prescription (Special Provisions) Act No. 5 of 2016: Partial Legislative Relief

In response to concerns that conflict-related displacement results in the loss of property rights through prescription, Parliament enacted the Prescription (Special Provisions) Act No. 5 of 2016[4]. Crucially, the 2016 Act overrides the general principles of prescription embodied in section 3 and 10 of the Prescription Ordinance for a specific time period.

The act is designed to protect "disadvantaged persons" -who were forced to flee due to militant terrorist groups between 1 May 1983 and 18 May 2009.[5] Under section 2(1) of the act, the standard ten-

[3] *Terunnanse v Manike* (1829) 1 NLR 200; *Fernando v Wijesooriya* (1947) 48 NLR 320.

[4] Prescription (Special Provisions) Act No 5 of 2016.

[5] Prescription Ordinance No 22 of 1871, s 3

year prescription period doesn't begin to run against a disadvantaged person for as long as they remain disadvantaged. Further, the Act operates retrospectively back to May 1983 to May 2009. Anyone who asserted prescriptive rights over these lands during the conflict period is legally required to relinquish them.

4.3 The Land Acquisition Act No 9 of 1950: The State as a Third Claimant

The Land Acquisition Act No 9 of 1950 empowers the Minister to acquire any land for a 'public purpose', upon payment of compensation.[6]This statute has been repeatedly deployed in the Northern Province as a mechanism for military retention of Tamil-owned land, creating a conflict in which the state is simultaneously a third-party claimant, the adjudicator of competing claims, and the entity responsible for implementing any resolution.

After the civil war ended in 2009, around 84,675 acres of Tamil civilian land came under military control. By February 2025, over 2,500 acres in Jaffna were still occupied. In March 2025, Gazette No. 2430 declared that unclaimed land in the Northern Province could become state land, a move widely criticised by civil society.[7]

4.4 Thesawalamai: The Customary Law Dimension

A dimension of the Jaffna land problem that is routinely under-examined is the operation of Thesawalamai. Thesawalamai places restrictions on the transfer of land owned by persons subject to this law and gives special rights to co-owners. In particular, the Thesawalamai Pre-Emption Ordinance provides statutory rights of pre-emption in favour of co-owners and co-sharers. Section 3(1) states that when such immovable property is sold, co-owners

[6] Land Acquisition Act No 9 of 1950 s 2.
[7] Gazette No 2430, Extraordinary, 14 March 2025 (Sri Lanka).

have the right to purchase it first, before any third party, at the agreed price or market value.[8]

In *Sivagnanalingam v Suntheralingam*, the Supreme Court held that the application of Thesawalamai depends on permanent residence in the Northern Province. The Court further emphasised that the idea of "permanent home" is central in determining both domicile and inhabitancy under this legal system.[9]

4.5 The Land Development Ordinance State Grants and Weaker Titles

A further complication in the title landscape is the Land Development, under which the Sri Lankan state has historically granted parcels of land in the Northern Province to individual occupants.[10] Where diaspora-claimed land was originally held under a permissive state grant rather than by absolute *dominium* derived from purchase or inheritance, the title may be weaker than assumed. The grant may have been conditional upon continued occupation or productive use — conditions that a diaspora member who left during the conflict cannot have satisfied. This is not a fringe issue: in the post-war period, a significant proportion of contested northern land sits on a spectrum between absolute private title and state-granted permissive occupation, and the distinction has material consequences for any restitution framework.

5. Challenges: The Tension Between Title and Possession

5.1 The Evidentiary Crisis

The most practical problem is loss of land records in the Northern Province during the war. Title deeds, survey plans, revenue records, and cadastral maps were destroyed in military operations,

[8] Thesawalamai Pre-Emption Ordinance (Cap 59) s 3(1); Matrimonial Rights and Inheritance (Jaffna) Ordinance No 1 of 1911.

[9] *Sivagnanalingam v Suntheralingam* [1999] 1 Sri LR 145.

[10] Land Development Ordinance (Cap 272). (11)

consumed by displacement, or lost during administrative breakdown. As a result, Diaspora occupants are unable to produce continuous documentary proof of ownership, while local occupants also lack formal record explaining how and when they entered possession.

This creates evidentiary gap in land litigation, under the standard of rei vindicatio action, a plaintiff must establish valid title before the court considers any defense of possession. before the burden shifts to the defendant to prove an independent and adverse possessory claim. The legal framework does not adequately address situations of conflict – related displacement. Even though prescription special provision offers protection against loss of title through prescription, it does not provide a clear method for proving ownership where primary documents have been destroyed.

In practice, courts are often required to decide land disputes without reliable documentary evidence, relying instead on incomplete or indirect proof. This results in uncertainty and inconsistent outcomes, highlighting a structural weakness in the current legal system governing post-conflict land claims.

5.2 The Prescription Gap and Inaccessibility of Statutory Protection

The Prescription (Special Provisions) Act 2016 designates the period from 1 May 1983 to 18 May 2009 as the operative conflict window for prescriptive time is suspended. However, three structural problems undermine its effectiveness. First, it only applies to people who were unable to claim their rights because of actions by "militant terrorist groups." This is a narrow definition. It may exclude people who were displaced or prevented from accessing their land due to state military operations, even though such displacement was also widespread in the North.

Second, the Act only pauses the limitation period between 1983 and 2009. It does not "undo" prescription that was already completed before 1983 or after 2009. So if someone's ownership was already lost by adverse possession outside that window, the Act cannot revive it.

Third, the Act does not provide any practical help for diaspora members who live abroad. Many are foreign citizens, may face difficulties returning to Sri Lanka, and often cannot afford the cost and effort of pursuing cases in the Jaffna District Courts.

The main gap is for second-generation diaspora heirs. They inherit land legally, but have no real connection to it. Even though their claims are valid, they are hard to enforce without institutional support.

5.3 The Secondary Occupant Problem

Principle 17 of the Pinheiro Principles acknowledges that secondary occupants — persons currently residing in disputed properties — have rights that must be considered, even if the original owner still has a valid claimIn Jaffna, many of these occupants are also Tamil civilians who were displaced during the war and had no other place to go. Some have lived on the land for decades, built their lives there, and maintained the property.

This creates a difficult balance: simply returning land to diaspora owners can harm current occupants, but automatically favouring occupants can also unfairly deny original ownership rights. The challenge is finding a fair solution that does not create a new injustice while trying to correct an old one.

5.4 Thesawalamai and the Applicability Problem

The landmark *Sivagnanalingam v Suntheralingam* case established that the test for the applicability of Thesawalamai is based on permanent residence in the Northern Province (domicile). The critical unresolved question for diaspora titleholders is whether diaspora Tamils who settle permanently abroad and obtain foreign citizenship are considered to have abandoned that domicile.

If they no longer subject to Thesawalamai they may gain more freedom to deal with their land. But at the same time, they lose legal protections like family pre-emption rights, which helped keep land within Tamil families during the conflict. The link between Thesawalamai law and diaspora status is a major unresolved issue in legal scholarship.

5.5 Institutional Deficiencies

Even a legally sound restitution framework will fail without adequate institutional infrastructure. The District Courts of already overloaded and lack enough specialist expertise to handle complex land disputes quickly. The land records system is also weak due to years of conflict and poor administration Legal aid is limited for people who need help defending claims, and appeals can take many years, often a decade or more.

The Grand Chamber in Demopoulos and Others v Turkey recognised that an effective domestic remedy must be accessible, practical, and capable of providing adequate redress within a reasonable time.26 these conditions are not fully met for northern land disputes.

6. Comparative Analysis: International Frameworks

6.1 The UN Pinheiro Principle: Scope and Relevance

The Pinheiro Principles are the main international rules for handling housing and property disputes after conflicts. Principle 21 says states must balance the rights of original owners with those of current occupants, while Principle 16 says the interests of good-faith occupants must also be considered.

Therefore, the Principles support diaspora restitution claims but also require protection for people currently living on the land. Sri Lanka's current system does not properly balance these two interests. It mainly recognizes ownership claims without providing a fair mechanism for resolving the rights of secondary occupants. This gap is what the article highlights.

6.2 The European Court of Human rights and the Cyprus Cases

The jurisdiction of the European Court of Human Rights (ECtHR) on post conflict property disputes, is a useful comparison because it deals with a similar situation: armed conflict, large-scale displacement, and other parties occupying abandoned property.

In *Loizidou v. Turkey*, the court affirmed that displacement by armed force doesn't extinguish legal title, confirming diaspora owners still retain legal title. In Demopoulus and others v. Turkey, the court upheld that physical return of property is not always required. Instead, alternative remedies such as compensation or property exchange can be acceptable if restitution is not practical. The relevance of this is direct; the court accepted that international human rights law doesn't insist on full physical return of land in every case. It allows flexible solutions that balance ownership rights with on-the-ground realities.

7. Recommendations

7.1 Statutory Reform with Evidentiary Substitution

The Prescription (Special Provisions) Act 2016 must be substantively amended to address its two critical structural deficiencies: First, it should extend protection to everyone displaced from the Northern Province between 1983 and 2009, not only those displaced by "militant or terrorist" activity. This is important because many people were also displaced due to state military actions, so the current limitation is too narrow and inaccurate.

Second, it should introduce a system that allows alternative proof of ownership when original documents are missing or destroyed. This could include things like witness statements, tax records, or local knowledge. In such cases, once displacement and loss of records are shown, the burden should shift to the current occupier to justify their possession. This reversal has direct precedent in the evidentiary frameworks adopted in the CRPC process in Bosnia-Herzegovina.

7.2 A Tripartite Tiered Restitution and Compensation Framework

Not all diaspora claims deserve identical treatment. A fair system should not treat all diaspora land claims the same. The strength of each claim differs depending on how the person was displaced, their connection to the land, and the situation of the current occupant. A tiered approach is therefore more just and practical than a single uniform rule, because it allows different solutions based on different types of cases.

7.3 Formalising 'Necessity Occupation' as an Equitable Defense

Rather than creating a new doctrine of title, this article proposes that necessity occupation be formalised as a statutory equitable defence available to secondary because they had no other realistic option after displacement. This defence would not remove the original owner's title. Instead, it would mean that eviction cannot happen unless the occupant is first given fair compensation.

This approach draws directly from the South African Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), under which a court cannot grant an eviction order without considering all the relevant circumstances which requires courts to consider all circumstances before ordering eviction, including the rights and needs of occupants. In Port Elizabeth Municipality v Various Occupiers, the court stressed that the law must include fairness and compassion, not just strict legal ownership.

Applied to Jaffna, this means eviction should not be automatic based only on paper title, especially where it would cause serious hardship. Treating "necessity occupation" as a defence keeps ownership with the diaspora claimant, but ensures that possession is only restored in a fair and proportionate way. This matches the reasoning in Demopoulos and the Pinheiro Principles, which both require balancing restitution with the rights of current occupants.

7.4. A Northern Land Commission with Judicial Powers

The existing court system is structurally unsuited to resolving thousands of complex post-conflict land disputes within a timeframe that has any meaningful impact on the lives of those affected. This article recommends the establishment of a Northern Land Commission — a specialist adjudicative body with judicial powers: the ability to make binding determinations of title, order compensation, impose eviction conditions, and enforce its decisions.

The Commission should operate under simplified evidentiary rules that accommodate the destruction of land records — admitting secondary evidence, taking oral testimony in Tamil and Sinhala, and relying on historical satellite imagery and village surveys where documentary evidence is unavailable. It should be subject to a mandatory twenty-four-month resolution timeline, with appeals available only on questions of law. Its composition should reflect all three affected constituencies — diaspora claimants, local occupants, and state interests — with independent judicial oversight to prevent any single constituency from dominating.

The Commission model draws on the Cyprus Immovable Property Commission (IPC), which the ECtHR in Demopoulos found provided an accessible and effective framework of redress. The critical improvement upon the IPC model is the inclusion of restitution — not merely compensation — as a primary remedy, and the mandatory consideration of secondary occupants' rights before any eviction order takes effect.

7.5 A Title Registration Programme for Northern Properties

The Sri Lankan government enacted the Title Registration Act No 21 of 1998 to move from a deeds-based to a title-based registration system. his system has not been properly implemented in the North due to conflict and weak administration.

The proposal is to create a special, government-funded programme to complete land registration in the Northern Province within five years. It would use mobile units to reach areas like Jaffna, Kilinochchi, Mannar, Mullaitivu, and Vavuniya so people can register their land locally. This programme would work together with the proposed Northern Land Commission, using its decisions to confirm ownership. The final result would be a digital, publicly accessible land registry in Tamil and Sinhala, managed by provincial authorities instead of the military or central government, to reduce bias and improve trust.

8. Conclusion

Land disputes in post-conflict Jaffna are not only about ownership of land. They are also about the long-term effects of war, displacement, and the need to balance the rights of diaspora owners, current occupants, and the state. Although Sri Lankan law protects property rights, the current legal framework does not fully address the problems faced by people who were forced to leave their land during the conflict. The Prescription Ordinance, the limited protection under the Prescription (Special Provisions) Act No. 5 of 2016, military occupation of land, missing land records, and uncertainties under Thesawalamai continue to make land restitution difficult.

The comparative analysis shows that international approaches do not give complete priority to either the original owner or the current occupier. Instead, they try to balance the rights of both groups through fair and practical solutions. While these international models cannot be applied directly in Sri Lanka, they provide useful guidance for improving the country's legal system.

This article argues that Sri Lanka needs both legal and institutional reforms to solve post-conflict land disputes more effectively.

These reforms should include stronger legal protection for displaced owners, better rules for proving ownership when documents have been lost, the establishment of a specialised Northern Land Commission, protection for good-faith occupants who settled on land out of necessity, and the completion of land title registration in the Northern Province. Together, these reforms would create a fairer system, improve legal certainty, strengthen public confidence in the law, and support reconciliation and lasting peace in post-conflict Sri Lanka.

MIGRATION LAW AND LIVED REALITIES OF NORTHERN SRI LANKAN MIGRANTS

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Abstract

Migration is a concept used to define the movement of people from one location to another as a result of different push and pull factors[1]*. As a developing nation, Sri Lanka experiences migration because of the economic, social, political and environmental factors*[2]*. However, when compared with other regions of the nation, the northern province's migratory patterns and motives are different. The history of migration from the north has a strong connection to the civil war that Existed from 1983-2009.Many people migrated to western nations as refugees at that time. Northerners continue to move around sixteen years after the war ended, and it wasn't entirely stopped. The main issues affecting post war migration were a lack of industries, investment, war losses, post war loans and an impression of security. Therefore, this article examines how migration from the northern province continues in the current economic and cultural context. Particularly through irregular or illegal migration pathways rather than formal refugee migration. Because of the strict migration law, visa providing system and asylum rule people use irregular migration rather than apply legal method. Due to the use of irregular migratory routes, which result in significant danger and cause issues including exploitation, unsafe travel and legal difficulties. Sri Lankan immigration law focusses a higher priority on penalizing irregular migrant; it doesn't give more weightage for protecting migrant's right. Additionally, this article explores the*

[1] 'What Is Migration?' (/ Our Migration Story) https://www.ourmigrationstory.org.uk/about/what-is-migration.html accessed 13 January 2026

[2] (Exploring migration causes: Why people migrate | topics | european Parliament) https://www.europarl.europa.eu/topics/en/article/20200624STO81906/exploring-migration-causes-why-people-migrate accessed 13 January 2026

relationship between Sri Lankan migration law and lived realities in northern migrants. More specifically, this paper highlights the need for a sensitive, human centered legal framework and claims that current migration law and policy do not adequately reflect the reality of northern migrants.

1. Introduction

Migration refers to the movement of people from one place to another, often across regional or national boundaries[3].Such movement is generally influenced by a combination of push and pull factors, including economic, social, political and security related consideration. In Sri Lanka migration has been shaped by colonial history, post independent language policies and three-decade civil war that concluded in 2009[4].This article argues that Sri Lankan legal framework that govern migrants, particularly Immigrants and Emigrants Act No.20 of 1948, has failed to adequately address the lived realities of northern migrants in Sri Lanka[5]. Rather than facilitating safe and accessible legal migration pathways, the legal regime primarily focus on criminalizing irregular migration without sufficiently addressing the underlying factors that drive such movement. Therefore, this article examines the historical context of migration from northern Sri Lanka, lived realities of affected communities during and and after war and shortcomings of the current legal framework.

2. Methodology.

This Article adopts doctrinal and qualitative methodology by mainly focusing secondary sources such as policy reports, SLBFE annual reports, official statistics, government legislations and scholarly assessments. The doctrinal approach recognizes the legal

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[3] 'What Is Migration?' (/ Our Migration Story) https://www.ourmigrationstory.org.uk/about/what-is-migration.html accessed 13 April 2024

[4] (Analysis sri lanka: Profile of migration shyamali ranaraja) https://www.freiheit.org/sites/default/files/2025-08/sl-migration_8.pdf accessed 14 April 2026

[5] Immigrants and Emigrants Act No.20 of 1948

analysis of Sri Lankan migration laws particularly the Immigrants and Emigrants Act No.20 of 1948 and related provisions as well as qualitative approach recognize the historical background, push and pull factors and lived realities of northern Sri Lankan migrants.

3. Historical background and push-pull factors of migration in Sri Lanka

The origins of large-scale migration in Sri Lanka can be traced to the colonial period, during which the British recruited Laboure's from south India to work on tea plantation estates. Following independence in 1948, a series of political and linguistic developments, including the adoption of Sinhala as the official language contributed to the emigration of many minority communities, particularly educated and skilled professionals. Migration patterns were further transformed by the civil war that lasted from 1983 to 2009, a large proportion of individuals from Northern province moved to other countries as refugees and asylum seekers due to push factors such as economic collapse, loss of livelihoods and safety and protection[6] .These factors have constantly encouraged northern Sri Lankans to seek opportunities through legal and illegal migration pathways.

4. Forced migration during the civil war and lived realities.

Migration patterns in Sri Lanka underwent a significant transformation from the 1980 onwards, largely in response to escalating ethnic tensions and the outbreak of the civil war. The three-decade civil war, which lasted from 1983 to 2009, become the primary driver of forced migration. Upon the government's rejection of the northern Tamil leaders' request for autonomy, some nationals wanted to begin new nation known as "Ealam".

[6] (Analysis sri lanka: Profile of migration shyamali ranaraja) https://www.freiheit.org/sites/default/files/2025-08/sl-migration_8.pdf accessed 14 April 2026

Subsequently, the Liberation Tigers of Tamil Eelam (LTTE) a militant organization began an armed conflict with the government. The escalation of violence was further intensified by anti-Tamil riots in 1983, Which resulted in widespread displacement and loss of life. A significant number of Tamils left the country, and approximately 3,000 individuals were reportedly killed during the period. Many others sought refuge abroad, with a large proportion relocating to Tamil Nadu, India. Throughout the war (1983-2009) northern people faced severe hardships including threat to the life, security, destruction of homes and infrastructure, loss of livelihood which compelled many to migrated. An estimated 800,000–1 million Tamils fled abroad as refugees or asylum seekers. While some migrated legally as skilled workers, family remuneration migrants or refugees to destination such as Europe, Canada, Australia, India and other migrants relied on irregular migration routes and smuggling networks. These lived realities of life threatening, insecurity directly connect with Sri Lanka's rigid immigration framework, which provide practically little safety or legal avenues for people escaping violence. Therefore, strict laws pushed northern people toward dangerous smuggling networks.

5. Post war lived realities of Northern Tamils

Three decades of civil war ended in 2009, Many people in north hoped that the state would be able recover and grow after the war. However, worries were also raised regarding the possibility of peaceful cohabitation between Muslims, Sinhalese and Tamils. Nonetheless almost 100,000 individuals were dead throughout the war. And the lived realities of northern Tamils continued to be affected by great suffering, loss of family members, damaged livelihoods and destroyed communities. Following the end of the conflict, the government prioritized maintaining control over the Northern Province while undertaking reconstruction of infrastructure, including homes and road networks. Roads and buildings were rebuilt, and basic services such as education and healthcare systems continued to function. However, this partial reconstruction did not address the underlying structural issues. This indicates that the primary reasons of the conflict were not resolved since Tamil people believed their rights and culture were unprotected. In addition, there are lot of critiques. Military control in the north, Reports of abductions and human rights abuses. Unequal rebuilding, Fear of Sinhala rule in Tamil regions. There are almost two million Sri Lankans living abroad. Unfortunately, migration from the northern province continued to happen even after the war. More individuals began suddenly leaving the nation following the end of the conflict. Mainly because of the economic hardships, political refugees, danger or violence and trauma, desperation and hopelessness. Thus "winning the war, instead of winning the peace" is what it truly implies[7].These lived realities of post war directly interacted with Sri Lanka's migration laws.

6. Interaction between lived realities and Sri Lanka's Migration Laws.

People migrated to countries in North America, Europe and Australia for a variety of reasons during the conflict. However, certain nations have stricter visa regulations and more rigorous controls. Because of this, some who are incapable of complying with the legal requirements attempt to use risky or unlawful ways. That lead to number of issues, including the possibility of being arrested or convicted by the law, as well as the possibility of becoming victims of money laundering, drug smuggling, human trafficking, and even terrorism related offences. According to the Sri Lankan Department of immigration and Emigration ,415 illegal migration attempts were reported in 2023.and they found documents and detained those who assisted with them. Many Sri Lankans tried to get to Australia during the conflict, but this is no longer possible since Australia manages migrants beyond its

[7] Researchers U of M, 'After the War: Why Sri Lankan Refugees Continue to Come to Australia' (Find an Expert : The University of Melbourne) https://findanexpert.unimelb.edu.au/news/3140-after-the-war--why-sri-lankan-refugees-continue-to-come-to-australia accessed 18 April 2026

broader and carefully examines requests for asylum and refugee status. Overall, this indicates that strict immigration laws compel Sri Lankans to migrated illegally, which is Hazardous and can result in major legal and personal consequences[8]. This highlights a critical gap that while the lived realities of war, trauma, and economic collapse pushed people to migrate, the existing punitive legal frameworks failed to provide safe and accessible legal alternatives, resulting in serious legal, personal, and humanitarian consequences.

7. Critical Analysis of Sri Lanka's legal framework on migration

Sri Lanka's immigration policy is mainly governed by the Immigrants and Emigrants Act No.20 of 1948[9],Sri Lanka Bureau of foreign employment Act No.21 of 1985[10],Citizenship Act No.18 of 1948[11],prevention of Terrorism Act No.48 of 1979 [12]and the penal code[13]. However, the primary statute is the immigrants and emigration Act, which considers illegal departure to be an offence and recognizes an expense or penalty for it. Under this act ,leaving Sri Lanka without a valid passport or visa ,using fake documents, or entering or leaving in violation of immigration procedures is considered as a crime. Section 45 describes the general offences under the Act [14],and section 45A defines the offences related to unlawful emigration and immigration[15]. Accordingly irregular migration is a criminal offence. Section 45B determines the offences of encouraging unlawful migration and smuggling. Smugglers may face large penalties, long term

[8] (Analysis sri lanka: Profile of migration shyamali ranaraja) https://www.freiheit.org/sites/default/files/2025-08/sl-migration_8.pdf accessed 20 April 2026

[9] Immigrants and Emigrants Act No.20 of 1948

[10] Sri Lanka Bureau of foreign employment Act No.21 of 1985

[11] Citizenship Act No.18 of 1948

[12] prevention of Terrorism Act No.48 of 1979

[13] Penal code

[14] Section 45 of Immigrants and Emigrants Act No.20 of 1948

[15] Section 45 A of Immigrants and Emigrants Act No.20 of 1948

imprisonment or both [16]. Many northern migrants who left in Sri Lanka through irregular channels due to post-war poverty, displacement and lack of employment opportunities, this provision resulted in criminal liability without addressing the underlying socio-economic factors that motivated migration. Therefore, rather than focusing on punishment based legal framework, a human centered legal framework is needed.

8. Recommendation for Human-Centered Migration Law

After the war social and financial infrastructures emerged and expanded heavily in northern regions. Even though the facilities are expanding people used to shift other states in an unexpected manner. Additionally, they mostly employed illegal migratory techniques. As a result, the government struck down immigration laws and penalized those who violated. Rather than penalizing people who migrate illegally the government had to investigate the reasons behind their decisions. This emphasizes that when enforcing laws simultaneously a human centered incident prevention mechanism needs to employ, the government should also take into account the realities of human lives, identifying the motivations behind violating the law and uphold human dignity rights. Poverty, lack of employment opportunities, family pressure and strict laws all play significant roles as reasons behind migration after the war. Thus, all legal and illegal migrants have various reasons for migrating. Therefore, our immigration-related legal system must be changed. Need to punish the smugglers and fraudulent agents severely but at the same time victims of human trafficking should get protection rather than punishments. Additionally, this legal system must incorporate rehabilitation strategies for affected individuals as well as warning or fines for all small violations. Additionally, the rules associated with migration should be flexible, minimize the cost of lawful movement and strengthen international agreements. Ensuring the safety of

[16] Section 45 B of Immigrants and Emigrants Act No.20 of 1948

women, young people and skilled labors are crucial[17]. Therefore, it is crucial to strengthen secure affordable legal migration pathways.

9. Conclusion

A range of factors including social challenges, economic hardship and a civil war contributed significantly to migration patterns in Sri Lanka. Individuals were compelled to migrate both during and after the conflict due to unemployment, poverty and persistent insecurity. While some forms of migration occurred through regular legal channels, others took place through irregular means. However, Sri Lanka's existing legal framework tends to penalize illegal migrants without adequately considering the underlying factors that drive such movements. In addressing this issue, Sri Lanka requires a more human centered migration regime. The legal system should priorities the protection of vulnerable groups, particularly victims of human trafficking while also ensuring the availability of safe and regular migration pathways. At the same time, stricter enforcement measures should be directed towards unauthorized recruitment agents and trafficking networks, rather than disproportionately targeting migrants themselves.

[17] (Analysis sri lanka: Profile of migration shyamali ranaraja) https://www.freiheit.org/sites/default/files/2025-08/sl-migration_8.pdf accessed 14 April 2026

REGULATORY ERASURE OR RESILIENCE? A SOCIO-LEGAL CRITIQUE OF NORTHERN SRI LANKA'S 2026 MICROFINANCE MANDATES

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Abstract

As Sri Lanka transitions into 2026, a critical yet under examined legal shift is restructuring the economic fabric of the Northern Province. While mainstream legal scholarship remains focused on historical or constitutional debates, this article investigates an immediate "contemporary" problem: the implementation of the Microfinance and Credit Regulatory Authority Act (2025/2026). Following a landmark update on January 12, 2026, where the Parliamentary Sectoral Oversight Committee cleared the Bill with critical amendments, this study provides a timely analysis of the friction between national regulatory formalization and localized survival strategies. The research identifies a unique Northern "lived reality": the region's disproportionate reliance on Thrift and Credit Cooperative Societies (TCCS) as the primary shield against predatory debt a point emphasized by the Northern Province Governor on January 2, 2026. The study argues that the original legislative framework threatened the administrative erasure of these volunteer led entities by imposing corporate level compliance and "fit-and-proper" mandates without a separate legal definition for community based institutions. The article examines how the January 2026 amendments which finally introduce a specific legal definition for "community-based financial institutions" attempt to safeguard these grassroots structures from being criminalized as unregulated commercial lenders. As a unique solution, the paper proposes a "Tiered Hybrid Regulatory Model," advocating for the delegation of oversight to Northern Provincial Cooperative Departments to preserve regional communal resilience while maintaining national financial stability. By addressing this 2026 legal frontier, the study contributes to the "From the North to the World" theme, illustrating how Northern regionalism *can inform global conversations on protecting informal social finance from the dangers of centralized over regulation.*

***Key words**: Microfinance regulation, Northern Sri Lanka, Socio-Legal critique, Thrift and Credit Cooperative Societies Regulatory Ensure, Tiered Hybrid Regulatory Model*

1. Introduction

Microfinance regulation has become a serious issue in developing and post-conflict countries where proper financial systems remain weak[1]. In Sri Lanka, the Microfinance and Credit Regulatory Authority Act No. 9 of 2026 (MCRA Act) signals stronger central control to stop unfair lending, improve accountability, and ensure stability[2]. However, it raises major socio-legal concerns for the Northern Province, still recovering from the civil war[3]. This article argues that while the MCRA Act sounds good for borrower protection, it may actually cause "regulatory erasure" applying the same rules to everyone without considering local differences[4].

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[1] See generally B Armendáriz and J Morduch, *The Economics of Microfinance* (2nd edn, MIT Press 2010); P Mader, *The Political Economy of Microfinance: Financializing Poverty* (Palgrave Macmillan 2015) (examining how uniform regulatory models imported from developed economies often fail in post-conflict contexts)

[2] *Daily FT*, 'Microfinance and Credit Regulatory Authority Bill becomes law' (21 March 2026) https://www.ft.lk/front-page/Microfinance-and-Credit-Regulatory-Authority-Bill-becomes-law/44-789879 [accessed 16 June 2026]; *Daily Mirror*, 'New microfinance authority law comes into force replacing 2016 Act' (21 March 2026) https://www.dailymirror.lk/breaking-news/New-microfinance-authority-law-comes-into-force-replacing-2016-Act/108-335939 [accessed 16 June 2026].

[3] Department of Census and Statistics, *Census of Population and Housing 2012* (2015); Centre for Poverty Analysis, 'Female-Headed Households in Post-War Sri Lanka: A Quantitative Assessment' (CEPA Working Paper No 24, 2022).

[4] A Wedagedara, 'Undermining the Commons: The Regulatory Assault on Community Credit', *Progressive International* (10 February 2026) https://progressive.international/wire/2026-02-10-undermining-the-commons-the-regulatory-assault-on-community-credit/en/ [accessed 16 June 2026]; see also CADTM, 'Then as farce, now as tragedy: The second coming of

This is a serious problem for Thrift and Credit Cooperative Societies (TCCS), community-based groups built on trust, mutual help, and shared responsibility[5]. For years, they have supported war-affected, women-headed households through non-profit, member-controlled financial services, very different from commercial microfinance[6]. This article examines whether the January 2026 amendments and the final Act of 20 March 2026 actually solve these problems[7]. It focuses on four areas: understanding TCCS's role in rebuilding the Northern Province after 2009; showing how the original Bill threatened community groups with corporate-style rules; analyzing the legal and social impact of the amendments; and proposing a Tiered Hybrid Regulatory Model inspired by India[8]. The goal is a practical, flexible system that respects local realities while ensuring proper consumer protection and financial stability.

2. Background of the Study.

Northern Province is still recovering from the 26-year war[9]. Jaffna, Kilinochchi, Mullaitivu, and Mannar have 25–30% female-

Microfinance and Credit Regulatory Authority', *Daily FT* (10 December 2025) (contesting "the erasure of community-credit providers").

[5] Co-operative Societies Law No 5 of 1972 http://www.lawnet.gov.lk/statutes/co-operative-societies-law-no-5-of-1972/ [accessed 16 June 2026].

[6] *The Island*, 'Conference: Microfinance and Credit Regulatory Authority Bill – Neither Here nor There' (21 January 2026) https://island.lk/conference-microfinance-and-credit-regulatory-authority-bill-neither-here-nor-there/ [accessed 16 June 2026].

[7] Parliament of Sri Lanka (12 January 2026) https://www.parliament.lk/en/home/parliament-news/view/5019 [accessed 16 June 2026].

[8] NABARD, Status of Microfinance in India 2023-24 (2024) https://www.nabard.org [accessed 16 June 2026].

[9] Wikipedia, 'Sri Lankan Civil War' https://en.wikipedia.org/wiki/Sri_Lankan_Civil_War [accessed 16 June 2026].

headed families, plus landlessness and mental stress[10]. With this new regulation shift, serious socio-legal problems arise. TCCS started under the 1911 Cooperative Ordinance and 1972 law.[11] They run on trust and community support, giving emergency loans, death donations, and seasonal help without big money or strict systems. These volunteer groups were first responders during the 2004 tsunami, COVID-19, and 2022 crisis, helping women manage financially in war-hit areas[12]. The MCRA Act, brought to Parliament on 26 November 2025 and passed on 20 March 2026, is due to ADB pressure and issues like high interest (30–60%), harassment, and financial risks[13]. But centralized control might mess up these small community systems that were

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[10] Centre for Women & Development, Jaffna, cited in *The New Humanitarian* (26 June 2013) https://www.thenewhumanitarian.org/fr/node/253646 [accessed 16 June 2026]; Centre for Poverty Analysis, 'Female-Headed Households in Post-War Sri Lanka: A Quantitative Assessment' (CEPA Working Paper No 24, 2022) https://www.cepa.lk [accessed 16 June 2026].

[11] A Thanenthiran, 'The cooperative movement in the Jaffna district of Sri Lanka from 1911 to 1970' (Open Access Library, Universiti Teknologi MARA) https://openaccess.library.uitm.edu.my [accessed 16 June 2026]; Co-operative Societies Law No 5 of 1972 https://www.ecolex.org/details/legislation/cooperative-societies-law-lex-faoc100165/ [accessed 16 June 2026].

[12] Coalition for Assisting Tsunami Affected Women (CATAW), *Women & Media Collective* https://womenandmedia.org/si/category/cataw/ [accessed 16 June 2026]; Central Bank of Sri Lanka (2023), cited in *The Morning* https://www.themorning.lk/articles/FHOH3Hx4EJw2RN19X2z4 [accessed 16 June 2026].

[13] Parliament of Sri Lanka (20 March 2026) https://www.parliament.lk/en/home/parliament-news/view/4973 [accessed 16 June 2026]; *Vivalanka* https://vivalanka.com/newspage/12188223ai-adb-loan-condition-trumps-consultation-communities-affected-microfinance [accessed 16 June 2026]; *The Morning* https://www.themorning.lk/articles/PdZJSaLUWrcIVj0pq2Mz [accessed 16 June 2026]; *Sunday Observer* (16 November 2025) https://www.sundayobserver.lk/2025/11/16/news-features/66835/pay-or-be-exposed/ [accessed 16 June 2026].

working in a human, non-exploitative way to help people survive[14].

3. Literature Review

The literature on microfinance in Sri Lanka has gradually changed. Earlier studies presented microfinance as a tool for financial inclusion and poverty reduction. However, recent studies take a more critical view on debt traps, gender exploitation, and weak regulation. This review covers four important areas and highlights gaps this article intends to fill.

3.1 Post-Conflict Vulnerability Amplification

After the war ended in 2009, formal MFIs entered the Northern Province through programs like "Uthuru Wasanthaya". Between 2009 and 2011, over Rs 4.1 billion was given as loans with interest rates from 40% to 220%, plus strict group liability[15]. For female-headed households, this became a serious burden. MONLAR and Parliamentary Question No.1182/2025 linked over 200 suicides by 2022 to microfinance debt.[16]

[14] A Wedagedara, 'Undermining the Commons: The Regulatory Assault on Community Credit', *Progressive International* (10 February 2026) https://progressive.international/wire/2026-02-10-undermining-the-commons-the-regulatory-assault-on-community-credit/en/ [accessed 16 June 2026]; see also *The Island*, 'Conference: Microfinance and Credit Regulatory Authority Bill – Neither Here nor There' (21 January 2026) https://island.lk/conference-microfinance-and-credit-regulatory-authority-bill-neither-here-nor-there/ [accessed 16 June 2026].

[15] Central Bank of Sri Lanka, 'Uthuru Wasanthaya programme' (2011) http://archives.dailynews.lk/2011/01/22/bus04.asp [accessed 16 June 2026]; *The Morning* (8 April 2024) https://www.themorning.lk/articles/tDA4W3NuwyTWbSxybNtS [accessed 16 June 2026].

[16] MONLAR study (2024), cited in *The Morning* (8 April 2024) https://www.themorning.lk/articles/tDA4W3NuwyTWbSxybNtS [accessed 16 June 2026]; Parliamentary Question No 1182/2025 (Hon. Sivagnanam Shritharan, MP) (11 November 2025) https://www.parliament.lk/en/business-

3.2 Feminist Political Economy Critique

Women make up 84% of Sri Lanka's microfinance borrowers – nearly 2.4 million women. Feminist scholars argue that microfinance marketed as empowerment actually places women under more financial and social pressure[17]. Recovery methods include intimidation, public humiliation, home visits, and even sexual harassment.[18] Legal reforms allowing women to inherit land have ironically made their assets more vulnerable to creditors[19].

3.3 Legal Pluralism and Community Credit as Commons

Informal community credit systems like ROSCAs, death donation societies, and women's savings groups are based on trust and solidarity, not profit. The National Collective has shown such systems build community assets without courts or police[20].

of-parliament/parliamentary-questions/details/31645/1182 [accessed 16 June 2026].

[17] Via Campesina, 'Srilanka: The Microfinance Trap, Exploitation of Women and Its Consequences' (November 2025) https://viacampesina.org/en/2025/11/srilanka-the-microfinance-trap-exploitation-of-women-and-its-consequences/ [accessed 16 June 2026].

[18] *The Morning* (18 February 2025) https://www.themorning.lk/articles/YC12c53VHWCidpAaAyOR [accessed 16 June 2026]; Transparency International Sri Lanka (TISL), Supreme Court Petition SC SD 14/2024, cited in *Daily Mirror* (24 January 2024) https://www.dailymirror.lk/print/breaking-news/Transparency-International-Sri-Lanka-challenges-Microfinance-Bill-in-Supreme-Court/108-275610 [accessed 16 June 2026].

[19] *The Morning* (18 February 2025) https://www.themorning.lk/articles/YC12c53VHWCidpAaAyOR [accessed 16 June 2026]; Transparency International Sri Lanka, Supreme Court Petition SC SD 14/2024, cited in *Daily Mirror* (24 January 2024) https://www.dailymirror.lk/print/breaking-news/Transparency-International-Sri-Lanka-challenges-Microfinance-Bill-in-Supreme-Court/108-275610 [accessed 16 June 2026].

[20] National Collective conference (21 January 2026), cited in *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026].

3.4 Regulatory Critique of the MCRA Act 2026

Recent literature critiques the MCRA Act for bringing community finance under moneylending regulations, expanding CRIB monitoring without safeguards[21]. CBSL Circular No.1 of 2026 introduced limited protections, but the law still does not address realities faced by vulnerable communities[22].

4. Methodology

This study uses a layered socio-legal approach, mixing doctrinal analysis with critical reading of secondary sources to analyze deeply the MCRA Act, No. 9 of 2026.

4.1 Doctrinal and Normative Analysis

The Act is broken down by comparing its evolution from the November 2025 Bill to the March 2026 Gazette, focusing on three elements: (a) regulatory logic scrutinizing licensing rules (ss. 12–25)[23] and the expansion of CRIB monitoring[24] to figure out if this law is genuinely about protecting borrowers or enforcing "disciplinary neoliberalism"; (b) the penal side evaluating offences

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[21] 'New Microfinance Bill Hunting Smaller Fish in Money Lending Sector?', *Sri Lanka Brief* https://srilankabrief.org/new-microfinance-bill-hunting-smaller-fish-in-money-lending-sector/ [accessed 16 June 2026]; CADTM, 'Then as farce, now as tragedy: The second coming of Microfinance and Credit Regulatory Authority' (December 2025) https://www.cadtm.org/Then-as-farce-now-as-tragedy-The-second-coming-of-Microfinance-and-Credit [accessed 16 June 2026].

[22] Central Bank of Sri Lanka, 'Directions' https://www.cbsl.gov.lk/en/directions [accessed 16 June 2026]; Ceylon Public Affairs, 'CBSL's 2026 Policy Agenda' (9 January 2026) https://ceylonpublicaffairs.com/2026/01/09/cbsls-2026-policy-agenda-prioritizing-public-welfare-and-inclusive-resilience/ [accessed 16 June 2026].

[23] *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026] (referencing licensing rules ss 12–25).

[24] 'Why SL should ban predatory microfinance practices', *Daily Mirror* https://www.dailymirror.lk/print/opinion/Why-SL-should-ban-predatory-microfinance-practices/172-334462 [accessed 16 June 2026].

(ss. 50–53)[25] to see if they end up criminalizing everyday survival practices of member-based groups; and (c) definitional issues – examining the vague "social empowerment" loophole and the new "community-based financial institutions" label, which appears to sideline certain groups.

4.2 Critical Discourse Analysis

The study compares what is written in the law versus the practices that occur on the ground. It puts Central Bank claims about "financial stability" side by side with Northern Provincial Council statements (2 January 2026)[26], National Collective conference critiques (21 January 2026)[27], and media perspective like Island.lk, showing how the push for uniformity can act like enclosing shared financial spaces.

4.3 Evidentiary Synthesis and Ethical Framing

Without fieldwork, the study relies on cross-checking parliamentary debates[28], NGO reports (Yukthi Collective[29], Suriya

[25] Microfinance and Credit Regulatory Authority - A fatal flaw', *The Free Library* https://www.thefreelibrary.com/Microfinance+and+Credit+Regulatory+Authority+-+A+fatal+flaw.-a0777308188 [accessed 16 June 2026] (referencing offences ss 50–53).

[26] Governor of Northern Province, 'The cooperative sector will be strengthened to protect the people from the microfinance debt trap' (2 January 2026) https://np.gov.lk/the-cooperative-sector-will-be-strengthened-to-protect-the-people-from-the-microfinance-debt-trap-hon-governor-assures-in-kilinochchi/ [accessed 16 June 2026].

[27] National Collective conference (21 January 2026), cited in *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026].

[28] Parliament of Sri Lanka, Sectoral Oversight Committee (12 January 2026) https://www.parliament.lk/en/home/parliament-news/view/5019 [accessed 16 June 2026].

[29] Microfinance law sparks criticism from activists', *Newswire* (9 March 2026) https://www.newswire.lk/2026/03/09/microfinance-law-sparks-criticism-from-activists/ [accessed 16 June 2026].

Women's) Development Centre[30]), and South Asian research. A feminist political economy lens centers the real experiences of women-led TCCS and the 2.4 million women borrowers.

4.4 Practical Application

A comparison table matches sections of the Act with National Collective criticisms to clearly show where problems lie section by section. The main limitation is relying on publicly available English and Tamil sources, but this desk-based method still works well for giving a timely critique of a law passed just weeks ago.

5. Research Findings and Discussion

5.1 Centralized Regulation and Its Fatal Loophole

The MCRA Act tries to run everything through one central system, but that logic does not really work in the Northern Province where TCCS function fundamentally as member-owned, non-profit mutual funds rather than formal institutions. , Furthermore, the statute contains a significant structural loophole: a loan only counts as "microfinance business" if its main goal is "social empowerment." So what happens is commercial banks, finance companies, and leasing firms can give out the same kind of small loans but label them as profit-driven, and just like that thereby evading the consumer protection mandates meant to protect borrowers[31]. As pointed out by Transparency

[30] Suriya Women's Development Centre, 'Review and Repair: Microfinance Authority Bill - Safeguard Women's Dignity, Livelihoods and Long-term Security' (7 January 2026) https://polity.lk/review-and-repair-microfinance-authority-bill-safeguard-womens-dignity-livelihoods-and-long-term-security-suriya-womens-development-centre/ [accessed 16 June 2026].

[31] Transparency International Sri Lanka (TISL), 'Amendments fail to meet Supreme Court determination in newly passed microfinance law', *Sri Lanka Brief* https://srilankabrief.org/amendments-fail-to-meet-supreme-court-determination-in-newly-passed-microfinance-law/ [accessed 16 June 2026] (discussing the "social empowerment" loophole in s 2(4), which allows banks to escape customer protection; no income verification, no debt-to-income thresholds, no clear appeal, and restricted legal representation).

International Sri Lanka, this basically means borrower protection depends on how the lender describes their intention, not on the reality of the borrower's situation[32]. They also highlight other gaps the Act doesn't require checking a borrower's income, doesn't set debt-to-income limits, has no proper appeal system, and even limits legal representation in some cases, which ends up recreating the same inequality the Supreme Court already said shouldn't happen[33].

5.2 TCCS as Financial Commons Under Threat

For TCCS in the North, the statutory framework presents an existential challenge. The Governor of the Northern Province even said in January 2026 that these societies are crucial in protecting people from falling into debt traps[34]. But the Act's one-size-fits-all compliance model puts pressure on them extra admin work, financial strain, and rules that just don't match how they operate. Earlier, the draft Bill even lumped TCCS under "moneylending," basically treating community-run mutual aid the same as predatory lenders. At a National Collective conference in

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[32] Transparency International Sri Lanka (TISL), 'Amendments fail to meet Supreme Court determination in newly passed microfinance law', *Sri Lanka Brief* https://srilankabrief.org/amendments-fail-to-meet-supreme-court-determination-in-newly-passed-microfinance-law/ [accessed 16 June 2026] (discussing the "social empowerment" loophole in s 2(4), which allows banks to escape customer protection; no income verification, no debt-to-income thresholds, no clear appeal, and restricted legal representation).

[33] Transparency International Sri Lanka (TISL), 'Amendments fail to meet Supreme Court determination in newly passed microfinance law', *Sri Lanka Brief* https://srilankabrief.org/amendments-fail-to-meet-supreme-court-determination-in-newly-passed-microfinance-law/ [accessed 16 June 2026] (discussing the "social empowerment" loophole in s 2(4), which allows banks to escape customer protection; no income verification, no debt-to-income thresholds, no clear appeal, and restricted legal representation).

[34] Governor of Northern Province, 'The cooperative sector will be strengthened to protect the people from the microfinance debt trap' (2 January 2026) https://np.gov.lk/the-cooperative-sector-will-be-strengthened-to-protect-the-people-from-the-microfinance-debt-trap-hon-governor-assures-in-kilinochchi/ [accessed 16 June 2026].

January 2026, more than 200 practitioners from over 50 organizations across Mannar, Kilinochchi, Jaffna, and Mullaitivu actively opposed this categorization[35]. They showed how these groups actually work community trust, shared responsibility, low or zero interest, and no need for courts or police[36]. Networks like Yuhashakthi and Mahashakthi, built during the war and involving over 10,000 women, have helped people survive displacement and also strengthened women's control over household finances.[37]

5.3 January 2026 Amendments: Progress and Persistent Gaps

After hearings in early January 2026, the Sectoral Oversight Committee did bring in a key amendment they finally defined "community-based financial institutions" properly, recognizing member ownership, non-profit nature, and democratic governance[38]. That's definitely a step forward compared to earlier attempts to erase them. But still, a few major issues remain: there are no clear guidelines yet for small TCCS to actually follow; enforcement is still very Colombo-focused, which creates language and cultural barriers in the Tamil-speaking North; and there's no solid system for debt justice or guaranteed Northern representation on the Authority's Board. Also, no gender quota at all, a notable omission given that around 84% of microfinance

[35] National Collective conference (21 January 2026), cited in *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026].
[36] National Collective conference (21 January 2026), cited in *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026].
[37] National Collective conference (21 January 2026), cited in *Daily FT* https://www.ft.lk/financial-services/Microfinance-and-Credit-Regulatory-Authority-Bill-Neither-here-nor-there/42-787458 [accessed 16 June 2026].
[38] Sectoral Oversight Committee (7 January 2026), cited in Parliament of Sri Lanka https://www.parliament.lk/en/home/parliament-news/view/5019 [accessed 16 June 2026]; *Business News* (12 January 2026) https://businessnews.lk/2026/01/12/parliament-panel-clears-microfinance-authority-bill-with-safeguards-for-community-societies/ [accessed 16 June 2026].

borrowers are women basically the main users have no real voice in decision-making[39].

5.4 Comparative Insights: India's SHG-Bank Linkage Programmed

If you look at India's SHG-Bank Linkage Programmed, it shows a completely different approach that actually works. Since 1992, it's grown massively by March 2024 there were over 14.4 million self-help groups, reaching about 177 million people, and around 85% of these groups are made up only of women[40]. The key thing is that it does not force these groups into strict corporate structures. SHGs stay informal and community-run, but still get access to banking services and support[41]. The results speak for themselves lower interest rates, repayment rates above 95%, and real empowerment outcomes. What's important is that the system treats informal practices like collective responsibility and community audits as strengths, not problems. That idea directly supports the Tiered Hybrid Model proposed in this study.

5.5 Lived Realities and CRIB Surveillance

On the ground, especially for women-headed households (around 25–30% in Northern districts), informal credit is a structural necessity for daily survival. Many people don't trust formal MFIs anymore because of past issues like harassment and aggressive recovery practices, and access to proper banking is still limited. So

[39] Microfinance law sparks criticism from activists', *Newswire* (9 March 2026) https://www.newswire.lk/2026/03/09/microfinance-law-sparks-criticism-from-activists/ [accessed 16 June 2026].
[40] NABARD, 'SDG 5 India: National Bank for Agriculture and Rural Development' (March 2024) https://www.wsbi-esbg.org/sdg-5-india-national-bank-for-agriculture-and-rural-development/; Reserve Bank of India, Master Circular (savings-linked loans ratio 1:1 to 1:4) https://website.rbi.org.in [accessed 16 June 2026].
[41] NABARD, 'SDG 5 India: National Bank for Agriculture and Rural Development' (March 2024) https://www.wsbi-esbg.org/sdg-5-india-national-bank-for-agriculture-and-rural-development/; Reserve Bank of India, Master Circular (savings-linked loans ratio 1:1 to 1:4) https://website.rbi.org.in [accessed 16 June 2026].

they rely on TCCS. But now, extending CRIB monitoring into these community systems raises serious concerns. Experts have warned that bringing grassroots lending into CRIB could actually harm low-income borrowers, turning these support systems into something that feels like surveillance.[42] Instead of helping, it risks making people feel watched or even criminalized, which goes against the Central Bank's whole idea of promoting financial stability.

5.6 Summary of Gaps Addressed

Overall, this study fills four main gaps: it brings in real practitioner voices from January 2026; looks at the Governor's Kilinochchi statement; pulls together detailed data on Northern TCCS, including the 10,000-member women's networks; and builds a forward-looking hybrid model inspired by India's SHG system. All of this sets up a solid base for the recommendations that follow.

6. Recommendations

Based on the doctrinal, socio-legal and comparative findings, this article proposes a Tiered Hybrid Regulatory Model under MCRA section 3(c) and targeted amendments [43]framed to operationalize the Governor's Kilinochchi commitment to "fair and uniform interest rates" for cooperatives[44].

[42] 'Why SL should ban predatory microfinance practices', *Daily Mirror* https://www.dailymirror.lk/print/opinion/Why-SL-should-ban-predatory-microfinance-practices/172-334462; 'New Microfinance Bill: Hunting smaller fish in money lending sector?', *Daily Mirror* https://www.dailymirror.lk/print/opinion/New-Microfinance-Bill-Hunting-smaller-fish-in-money-lending-sector-/172-334873 [accessed 16 June 2026].

[43] MCRA Act No 9 of 2026, s 3(c) (rule-making authority), cited in Parliament of Sri Lanka https://www.parliament.lk/en/home/parliament-news/view/5019 [accessed 16 June 2026].

[44] Governor of Northern Province, 'The cooperative sector will be strengthened to protect the people from the microfinance debt trap' (2 January

6.1 Proportional Regulation: Tier 1 (commercial MFIs, moneylenders) retains full MCRA oversight. Tier 2 (TCCS, community institutions below LKR 50 million assets) receives simplified compliance: waiver of licensing fees, recognition of collective governance, acceptance of community audits, and full CRIB exemption for intra-member loans.

6.2 Decentralized Oversight: Tier 2 oversight devolves to Northern Provincial Cooperative Departments under the 13th Amendment[45], ensuring culturally sensitive, Tamil-language enforcement.

6.3 Grassroots structural Integration: MCRA guidelines must incorporate customary cooperative norms and mandate at least two Northern women TCCS organizers on the Authority's Board, institutionalizing grassroots representation[46].

6.4 Debt-Sustainability Safeguard: The Act's critical omission no income-verification standards or debt-to-income thresholds must be remedied[47]. A statutory cap of 50% of borrower household income on all monthly loan repayments, adapted from NABARD/RBI practice[48], is required as a licensing condition for

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2026) https://np.gov.lk/the-cooperative-sector-will-be-strengthened-to-protect-the-people-from-the-microfinance-debt-trap-hon-governor-assures-in-kilinochchi/ [accessed 16 June 2026].

45 Constitution of Sri Lanka, 13th Amendment, art 154A (establishing Provincial Councils with devolved powers over cooperative development) https://webarchiveweb.wayback.bac-lac.canada.ca/web/20151207194836/https://en.wikisource.org/wiki/Constitution_of_Sri_Lanka/Thirteenth_Amendment [accessed 16 June 2026].

46 'Microfinance law sparks criticism from activists', *Newswire* (9 March 2026) https://www.newswire.lk/2026/03/09/microfinance-law-sparks-criticism-from-activists/ [accessed 16 June 2026].

47 Transparency International Sri Lanka (TISL), 'Amendments fail to meet Supreme Court determination in newly passed microfinance law', *Sri Lanka Brief* https://srilankabrief.org/amendments-fail-to-meet-supreme-court-determination-in-newly-passed-microfinance-law/ [accessed 16 June 2026].

48 Reserve Bank of India, 'RBI recasts framework for microfinance' (31 March 2022) https://beta2.law.asia/rbi-recasts-framework-microfinance/ [accessed 16

all Tier 1 and Tier 2 institutions, directly addressing TISL's finding that absent such thresholds the Act cannot prevent post-war over-indebtedness[49].

6.5 Capacity Building & Impact Assessment: Mandatory province- and gender-disaggregated impact assessments, with debt-relief mechanisms for war-affected Northern borrowers, must occur within six months.

6.7 Stakeholder Co-Design: All implementing rules must be co-designed through mandatory consultations with the National Collective, Suriya Women's Development Centre, and Northern TCCS networks[50]

7. Conclusion

The MCRA Act 2026 – amended in January, passed on 20 March – is a step forward[51]. While it is preferable to outright erasure, a critical examination reveals significant limitations. In the Northern Province, TCCS are not merely community groups; they constitute the very backbone of post-war survival[52]. Nevertheless, this new framework remains fraught with risk. It dilutes

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June 2026] (mandating aggregate loan repayments not exceed 50% of monthly household income).

[49] *Economic Times* (14 May 2022) https://widget.economictimes.indiatimes.com/industry/banking/finance/rbi-removes-lending-rate-cap-on-nbfc-mfis-changes-microfinance-definition/printarticle/90199644.cms [accessed 16 June 2026].

[50] International Collective in Support of Fishworkers (ICSF), 'Sri Lanka: Proposed regulatory body would impact community savings and credit initiatives' https://icsf.net/newss/sri-lanka-proposed-regulatory-body-would-impact-community-savings-and-credit-initiatives/ [accessed 16 June 2026].

[51] *Daily FT*, 'Microfinance and Credit Regulatory Authority Bill becomes law' (21 March 2026) https://www.ft.lk/front-page/Microfinance-and-Credit-Regulatory-Authority-Bill-becomes-law/44-789879 [accessed 16 June 2026].

[52] Governor of Northern Province, 'The cooperative sector will be strengthened to protect the people from the microfinance debt trap' (2 January 2026) https://np.gov.lk/the-cooperative-sector-will-be-strengthened-to-protect-the-people-from-the-microfinance-debt-trap-hon-governor-assures-in-kilinochchi/ [accessed 16 June 2026].

community control with vague hybrid rules and pending guidelines that have not yet been disclosed to stakeholders. This leads to the central question: regulatory erasure or resilience?[53] The truth is, uniform top-down rules don't work in post-conflict places like this. Just look at India. Their SHG-Bank Linkage Programmed proves that hybrid, pluralistic models can protect borrowers and empower communities simultaneously... rather than prioritizing one objective over the other[54]. Consequently... is proposed here Tiered Hybrid Regulatory Model. It balances financial stability with social justice. The matter now hinges on decisive action. If the authorities adopt these changes swiftly through MCRA rules, 2026 could mean real resilience. If not? More of the same marginalization for Sri Lanka's fragile North. The ultimate determination rests with the regulators.

[53] A Wedagedara, 'Undermining the Commons: The Regulatory Assault on Community Credit', *Progressive International* (10 February 2026) https://progressive.international/wire/2026-02-10-undermining-the-commons-the-regulatory-assault-on-community-credit/en/ [accessed 16 June 2026].

[54] NABARD, 'SDG 5 India: National Bank for Agriculture and Rural Development' (March 2024) https://www.wsbi-esbg.org/sdg-5-india-national-bank-for-agriculture-and-rural-development/ [accessed 16 June 2026]; Reserve Bank of India, Master Circular (savings-linked loans ratio 1:1 to 1:4) https://website.rbi.org.in [accessed 16 June 2026].

HYDRO – INDEBTEDNESS: LEGAL, ECONOMIC, AND SOCIAL DIMENSIONS OF GROUND WATER ACCESS AND MICROFINANCE VULNERABILITY IN POST WAR NORTHEN SRI LANKA

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Abstract

How does environmental insecurity translate into financial and legal vulnerability in post - conflict societies? In post war Northern Sri Lanka, groundwater is a critical yet fragile resource underpinning survival, livelihood and economic recovery, particularly in the Jaffna Peninsula where communities depend almost entirely on shallow aquifers threatened by saltwater instrusion, over extraction and contamination. This paper asks why growing groundwater insecurity has coincided with rising microfinance indebtedness and why existing legal framework fail to adequately respond to this reality. Adopting an interdisciplinary approach that integrates legal analysis with environmental and socio - economic perspective, the study examines ground water degradation alongside microfinance practices affecting farming and fishing communities. It critically analyses the microfinance and credit regulatory authority and act No.49 of 2025, demonstrating that while the Act seeks to regulate exploitative lending, it treats loan default as an induvial failure and does not recognize environmentally induced livelihood loss as a structural cause of indebtedness. This study conceptualizes this intersection as hydro – indebtedness a condition in which ground water degradation simultaneously erodes economic stability and access to legal protection. This article argues that without climate and environment sensitive debt regulation microfinance laws risks deepening vulnerability rather than alleviating poverty. In conclusion by foregrounding the lived realities of post war Northern Sri Lanka this article highlights the need to integrate environmental risks into financial regulation and advocates the application of the Public Trust Doctrine to groundwater governance offering insights relevant to coastal and conflict affected regions globally.

***Key words**: Hydro – indebtedness, Groundwater Sovereignty, Microfinance regulations, Post war Northern Sri Lanka, Saltwater intrusion, lived realities.*

1. Introduction

Post war Northern Sri Lanka, Particularly the Jaffna Peninsula, presents a distinctive context where environmental fragility intersects with economic and legal vulnerability. Following the end of the armed conflict in 2009, communities in this region have increasingly relied on ground water as the primary source for drinking, agriculture and small-scale fishing related live hoods. In contracts to other regions of Sri Lanka where surface water resources such as tanks, reservoirs, and canal-based irrigation system form the backbone of irrigation and domestic water supply, the Jaffna peninsula lacks perennial rivers and large scale irrigation infrastructure. As a result, it depends almost entirely on a shallow limestone aquifer system making ground water both indispensable and highly vulnerable to environment stress[1]. Groundwater is an essential natural resource for sustaining life and environment in the Jaffna Peninsula.

In recent years, this fragile groundwater system has come under increasing pressure due to over extraction, saltwater intrusion, and contamination from agricultural and domestic activities. Intensive ground water pumping, particularly for Agriculture in the post war period, has accelerated saline intrusion in coastal areas, thereby reducing water quality and threatening crop productivity [2].At the same time, nitrate contamination associated with excessive

[1] Assessment of Groundwater Quality-Related Damage Costs: A Study in Jaffna District Rachel, M.M., Gunawardena, U.A.D.P.

[2] Application of Geospatial Techniques for Groundwater Quality and Availability Assessment: A Case Study in Jaffna Peninsula, Sri Lanka Kuddithamby Gunaalan , Manjula Ranagalage , M. H. J. P. Gunarathna , M. K. N. Kumari Meththika Vithanage Tharmalingam Srivaratharasan , Suntharalingam Saravanan and T.W.S. Warnasuriya

fertilizer has further degraded groundwater quality, posing risks to human health and increasing the cost of accessing potable water. These environmental challenges have not only undermined ecological sustainability but have also directly affected the economic stability of households that depend on ground water for their survival.

This period of environmental decline has coincided with a rapid expansion of microfinance institutions in Northern Sri Lanka. In the absence of stable income source and reliable water access, many households have increasingly turned to microcredit to sustain agricultural production, manage daily consumption, and cope with livelihood shocks, However, rather than alleviating poverty microfinance has in many cases contributed to cycles of over indebtedness, particularly among rural and women heads households. This raises a critical question how does environmental insecurity particularly groundwater degradation, translate into financial vulnerability and legal exposure in post conflict societies?

Despite the growing recognition of both ground water degradation and microfinance related debt crises, existing legal frameworks in Sri Lanka address these issues in isolation. The Micfinance and Credit Regulatory Act No 49 of 2025 represents a significant step toward regulating lending practices and protecting borrowers from exploitative credit arrangements. However, the Act conceptualizes loan default primarily as an individual financial failure, without adequately recognizing structural and environmental drivers such as resource degradation, climate variability, and post-conflict economic fragility. Consequently, borrowers whose livelihoods are undermined by environmental factors continue to be treated as defaulters within a legal framework that fails to account for the root causes of their indebtedness.

This article argues that the intersection of groundwater insecurity and microfinance indebtedness constitutes a distinct and undertheorized form of vulnerability. It introduces the concept of "hydro-indebtedness" to describe a condition in which groundwater degradation simultaneously erodes livelihood security and intensifies exposure to debt and legal marginalization. By adopting an interdisciplinary approach that integrates legal analysis with socio-economic perspectives and lived experiences, this study seeks to bridge the gap between environmental realities and financial regulation in post-war Northern Sri Lanka.

2. Conceptual framework

The intersection of groundwater degradation and microfinance vulnerability in post war Northern Sri Lanka demands a new analytical vocabulary. Existing scholarship tends to treat environmental insecurity, financial vulnerability, and legal exposure as discrete domains water governance scholars examine resource degradation,[3]development economists analyse debt traps and legal scholars' critique regulatory framework but none of these traditions speaks directly to the conditions in which all three converge simultaneously and mutually reinforce one another. This article proposes hydro- indebtedness as an analytical category to name and the theorize that convergence.

Hydro – indebtedness is defined here as the structural condition in which groundwater degradation simultaneously erodes the economic stability of livelihood – dependent communities and strips them of meaningful access to legal protection, producing a feedback loop in which environmental loss generates debt, debt generates legal exposure and legal exposure deepens environmental and economic precarity.

The first theoretical pillar draws on environmental security tradition. Homer- Dixon's resource scarcity framework establishes that degradation of renewable natural resources generates acute socio – economic stress in fragile and post conflict

[3] R.M.AND DINAR A.The Institutional Economics of Water: Across country Analyses of institutions and performance

communities[4] Critically, Homer -Dixon distinguishes between supply induced scarcity where the resource itself diminishes and structural scarcity where unequal social arrangements determine who bears the cost of diminishment. In Jaffna Peninsula both forms operate simultaneously the aquifer shrinks through salinization and over extraction while the poorest farming and fishing households , lacking capital to sink deeper wells or relocate, absorb a disproportionate share of the loss, groundwater here is not merely a productive input but the foundational condition of survival and its degradation is therefore not a sectoral problem but a civilizational one. Importantly, this article situates groundwater degradation within the post war context rather than treating it as a purely environment phenomenon. The conflict displaced communities whose return under resettlement policy intensified extraction pressure on an already compromised resource.[5] Environmental insecurity in Jaffna is therefore not background it is a direct legacy of war and a continuing dimension of post conflict injustice.

By farming groundwater insecurity, indebtedness, legal exposure as mutually reinforcing processes this concept captures a feedback loop: environmental decline leads to livelihood erosion, which drives borrowing, resulting in default and heightened legal precarity. This integrated framework enables a more grounded analysis of how law operates within lived realities, particularly in post war context such a Northern Sri Lanka.

3. Methodology

This study employs an interdisciplinary socio – legal methodology that combines doctrinal legal analysis with qualitative empirical inquiry to examine the relationship between ground water degradation and microfinance vulnerability in post war Northern

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[4] Homer -Dixon T.F. Environmental Scarcities and Violent conflict Evidence from cases (1994) international security.

[5] Hyndaman, J.and Amarasingam , A., Touring Terrorism : Landscapes of memory in post war Sri Lanka (2014)

Sri Lanka. The legal component consists of a structured doctrinal analysis of the Microfinance and Credit Regulatory Authority Act No 49 of 2025, focusing on its regulatory assumptions regarding loan default, borrower responsibility, and institutional oversight. This is further examined in light of relevant constitutional principles , environmental governance frameworks, and border theories of socio – economic vulnerability in order to assess whether the legal regime adequately responds to structurally produced forms of indebtedness. [6]

The socio – economic component is based on primary qualitative fieldwork conducted in selected communities in the Jaffna District of the Northern Province Ten semi structured interviews were conducted between April and May 2026 with purposively selected participants comprising small – scale farmers and members of carried out with purposively selected participants, including small scale farmers and fishing households residing in Navatkuli, Chavakachcheri , Thirunalvely. [7]Participants were selected because their livelihoods depended directly or indirectly on groundwater resources for agricultural production, domestic consumption or livelihood – related activities. Purposive sampling was employed to ensure that participants possessed direct experience of both groundwater related challenges and household borrowing practices. The interviews explored participants' experiences of water scarcity, groundwater quality deterioration, livelihood disruption, borrowing behaviour, debt accumulation, and perceptions of environmental change. Particular attention was given to understanding how environmental pressures influenced household financial decisions and interactions with formal and informal credit providers. To protect confidentiality, participants

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[6] Microfinance and Credit Regulatory Authority Act No 49 of 2025
Constitution of the Democratic Socialist Republic of Sri Lanka 1978

[7] Semi-structured interviews conducted by the author with six participants from farming and fishing households in Navatkuli, Chavakachcheri, Thirunelvely, Jaffna District, April and May 2026.

are identified through anonymised references throughout this study.

These interviews perceived explored lived experiences of water scarcity, livelihood disruption, borrowing practices, debt accumulation, and perceived environmental change, allowing the study to capture how environmental degradation translates into financial distress at the household level.

To ensure reliability, interview findings were triangulated with secondary sources including reports from development organizations, academic studies, and institutional publications.[8] re relating to ground water governance, rural indebtedness and post conflict livelihoods in Northern Sri Lanka.[9] This triangulation enables validation of individual accounts within Broder structural patterns. Importantly, the study adopts an integrated analytical approach in which legal findings are evaluated against lived experiences rather than treated as separate domains, allowing the law to be assessed in terms of its responsiveness to socio – environmental realties.

4. Environmental context: groundwater degradation in the jaffna peninsula

The Jaffna Peninsula's water system is uniquely dependent on a shallow limestone aquifer, making it highly vulnerable to both natural and human induced pressures. Unlike other regions of Sri Lanka that benefit from river-based irrigation systems, Northern Sri Lanka relies almost entirely on groundwater extraction for domestic use, Agriculture, and small-scale livelihoods, this structural dependence intensifies the socio – environmental consequences of any aquifer disruption.

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[8] Oxfam, Microfinance and over indebtedness in Sri Lanka. Field Report 2023,Post conflict livelihood and debt cycles in Northern Sri Lanka. Centre for poverty analysis.(CEPA)

[9]

One of the most significant threats is saltwater intrusion, driven by over extraction and reduced natural recharge. Studies have consistently shown increasing salinity levels in coastal wells, particularly in densely populated and agriculturally active areas of Jaffna.[10]Post war resettlement has further intensified extraction pressure, as returning populations re -establish Agriculture without corresponding groundwater management infrastructure.

In addition to hydrological stress, land use changes have contributed to aquifer vulnerability. Field interviews conducted for this study indicate the growing presence of Parthenium hysterophorus in affected areas. While this invasive species doesn't directly contaminate groundwater, it reduces native vegetation cover and alters soil structure, thereby decreasing soil permeability and weaking natural groundwater recharge process. This ecological disruption indirectly accelerates groundwater depletion, particularly during dry seasons when recharge is already limited.

Consequently, groundwater degradation in Jaffna cannot be understood solely as a hydrological issue. It is the outcome of intersecting pressures post war demographic change, ecological disruption and unsustainable extraction practices which together produce a structurally fragile water system underpinning rural livelihoods.

5. Socio – Economic Dimensions Microfinance, Livelihood loss and the Dept Spiral

Groundwater degradation in Northern Sri Lanka has direct and immediate consequences for rural livelihoods, particularly among small-scale farmers and fishing communities whose economic activities depend on reliable access to groundwater for cultivation, domestic use, and livelihood-related activities. As water quality

[10] International water management institute, Groundwater resources in the Jaffna Peninsula: Status and challenge 2020) National water supply and Drainage Board, Jaffna water quality Reports 2021-2023

declines and salinity levels increase, agricultural productivity is significantly reduced, leading to unstable incomes and, in many cases, severe livelihood disruption. In such circumstances, households increasingly turn to microfinance not as a means of investment or enterprise development but as a mechanism for coping with economic hardship.[11]

The rapid expansion of microfinance institutions in post-war Northern Sri Lanka has widened access to credit, often without adequate consideration of borrowers' repayment capacity within environmentally vulnerable contexts. Existing studies indicate that many households rely on multiple loans to meet basic consumption needs, resulting in cycles of over-indebtedness. [12]Women are particularly vulnerable within this system, as they are frequently targeted by microfinance schemes and often bear primary responsibility for household financial management, thereby shouldering disproportionate debt burdens.

Findings from the field interviews conducted for this study reinforce these broader structural patterns. Participants from Navatkuli, Chavakachcheri, Thirunelvely, and Kokkuvil consistently reported that declining groundwater quality and increasing water scarcity had adversely affected their livelihoods. Several interviewees explained that reduced agricultural yields and rising expenditure on water access had placed considerable strain on household finances, compelling them to seek credit to sustain cultivation and meet essential household expenses.[13]

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[11] CARE International, Post-Conflict Livelihoods and Debt Cycles in Northern Sri Lanka (CARE 2022).

[12] Oxfam, Microfinance and Over-Indebtedness in Sri Lanka: Field Report (Oxfam 2023); Centre for Poverty Analysis (CEPA), Household Debt and Vulnerability in Sri Lanka's North (CEPA 2021).

[13] Semi-structured interviews conducted by the author with six participants from farming and fishing households in Navatkuli, Chavakachcheri, Thirunelvely, and Kokkuvil, Jaffna District, April and May 2026.

Interview participants further indicated that borrowing was frequently undertaken to address livelihood disruptions associated with environmental stress rather than for productive investment purposes. In a number of cases, respondents reported obtaining additional loans to repay existing debts when agricultural income proved insufficient, thereby creating a recurring cycle of financial dependency.[14]The interviews revealed a common pattern in which environmental degradation reduced income-generating capacity while simultaneously increasing household expenditure, leaving affected families with limited alternatives to continued borrowing

These findings demonstrate a clear causal relationship between environmental insecurity and financial vulnerability. Groundwater degradation contributes to livelihood erosion, which in turn compels subsistence borrowing, leading to debt accumulation and eventual default. Importantly, this process reflects structurally produced vulnerability rather than individual financial mismanagement. The experiences reported by interview participants suggest that indebtedness in environmentally fragile regions cannot be fully understood through conventional assumptions of borrower responsibility alone. Where debt arises from resource degradation and livelihood loss, treating default as a purely personal failure risks mischaracterizing the underlying nature of vulnerability.

This disconnects between lived socio-economic realities and the assumptions embedded within existing legal frameworks forms the basis of the critique developed in the following section. The current regulatory approach to microfinance remains insufficiently responsive to the environmental conditions that shape patterns of borrowing and indebtedness in post-war Northern Sri Lanka.

[14] Interview findings on household borrowing patterns and debt repayment practices, Jaffna District, April and May 2026.

6. Legal Analysis: The Microfinance and Credit Regulatory Authority Act No. 49 of 2025

The Microfinance and Credit Regulatory Authority Act No. 49 of 2025 represents a significant attempt by the Sri Lankan legislature to regulate the microfinance sector, particularly in response to widespread concerns about exploitative lending practices and over-indebtedness in vulnerable regions. The Act introduces important safeguards, including licensing requirements for lenders, regulatory oversight mechanisms, and provisions aimed at preventing abusive recovery practices.[15] However, despite these protections, the Act remains limited in its conceptualization of borrower vulnerability.

A close reading of the Act reveals that it largely treats loan default as a matter of individual financial behavior, focusing on regulating lender conduct rather than addressing the structural conditions that produce indebtedness. There is no explicit recognition of environmental factors such as groundwater degradation that directly undermine livelihood capacity and repayment ability. As demonstrated in the preceding sections, in regions such as Northern Sri Lanka, indebtedness is frequently driven not by entrepreneurial failure or financial irresponsibility, but by environmentally induced livelihood disruption.

Although Sri Lanka possesses certain legal and policy mechanisms aimed at addressing agricultural hardship and disaster-related economic vulnerability, these measures remain limited in scope. The Disaster Management Act No. 13 of 2005 provides a framework for disaster response and recovery, while successive governments have periodically introduced debt-relief schemes, loan moratoria, and compensation programmes for farmers affected by droughts, floods, and other natural disasters.[16]State

[15] Microfinance and Credit Regulatory Authority Act No 49 of 2025 (Sri Lanka).

[16] Disaster Management Act No. 13 of 2005 (Sri Lanka); Ministry of Agriculture, various drought-relief and agricultural assistance programmes;

banking institutions have also, on occasion, offered loan restructuring facilities to affected agricultural communities. However, these measures are generally reactive and event-specific, operating primarily in response to officially recognised disasters rather than addressing slow-onset environmental degradation.

This limitation is particularly significant in the Jaffna Peninsula, where groundwater degradation occurs gradually through salinization, over-extraction, and declining water quality. Unlike sudden disasters such as floods or cyclones, groundwater deterioration develops incrementally over extended periods, steadily eroding agricultural productivity and household income. Consequently, affected communities often fall outside conventional disaster-relief frameworks despite experiencing substantial livelihood losses. Existing relief mechanisms therefore fail to address the chronic and structural nature of environmentally induced indebtedness within the region.

This omission reflects a broader disconnect between legal frameworks and socio-economic realities. While the Act seeks to ensure fairness in lending practices, it does not incorporate mechanisms to account for environmentally driven financial distress, such as climate-sensitive debt restructuring or hardship provisions. In this respect, the law risks mischaracterising structurally produced vulnerability as individual default, thereby limiting its effectiveness in addressing the root causes of over-indebtedness.

From a broader normative perspective, this gap is inconsistent with emerging international standards, including the UN Guiding Principles on Business and Human Rights, which emphasize the responsibility of regulatory frameworks to account for context-specific vulnerabilities.[17]The absence of environmental

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state-sponsored loan restructuring and debt-relief measures introduced following climate-related disasters.

[17] United Nations, Guiding Principles on Business and Human Rights (2011)

considerations within the Act thus represents a critical blind spot, particularly in post-conflict regions where ecological fragility and economic precarity are deeply intertwined. Accordingly, while the Act marks an important step in formal regulation, it remains insufficiently responsive to the complex, environmentally mediated realities of indebtedness, necessitating a more integrated and context-sensitive legal approach.

7. The Public Trust Doctrine as a Governance Framework

The limitations identified in the existing microfinance regulatory framework necessitate a broader reconceptualization of state responsibility, particularly in relation to environmental resources that underpin livelihoods. One such framework is the Public Trust Doctrine, which posits that certain natural resources are held by the state in trust for the benefit of the public and must be protected for present and future generations.[18]Traditionally applied to resources such as rivers, forests, and coastal zones, the doctrine provides a normative basis for imposing affirmative obligations on the state to prevent ecological degradation.

In the context of Northern Sri Lanka, groundwater, particularly within the Jaffna Peninsula's fragile limestone aquifer system, meets the criteria of a public trust resource. It constitutes the primary, and in many areas the only, source of water for domestic use, agriculture, and livelihood sustainability. Despite this, existing legal frameworks do not explicitly recognize groundwater within a public trust paradigm, nor do they impose enforceable duties on the state to safeguard its long-term viability.

Sri Lanka's constitutional framework, particularly Directive Principles such as Article 27, supports an interpretation that prioritizes environmental protection and equitable resource

[18] . Public Trust Doctrine; see also Joseph L. Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) 68 Michigan Law Review 471.

distribution. [19]Drawing on comparative jurisprudence from India, where courts have expanded the Public Trust Doctrine to include broader ecological resources, a similar extension to groundwater is both legally plausible and normatively justified.[20]

Importantly, recognizing groundwater as a public trust resource has implications beyond environmental governance. Where state failure to protect such resources contributes to declining agricultural productivity, livelihood disruption, and increasing indebtedness, the resulting harms cannot be viewed merely as private economic losses. Rather, they reflect broader governance failures that undermine the ability of communities to access and benefit from essential natural resources upon which their survival depends.

The Public Trust Doctrine therefore provides a useful framework through which environmental degradation and socio-economic vulnerability may be understood as interconnected concerns. In the context of Northern Sri Lanka, groundwater degradation does not simply produce ecological harm; it directly affects household income, agricultural productivity, and access to livelihood opportunities. As demonstrated in the preceding sections, these pressures frequently compel vulnerable households to rely on microfinance borrowing as a survival strategy. Consequently, the failure to adequately protect groundwater resources may indirectly contribute to cycles of indebtedness and financial insecurity.

Furthermore, the doctrine reinforces the principle that the state bears a continuing responsibility to manage natural resources in a manner that promotes both intergenerational equity and substantive social justice. Applying this framework to groundwater governance would require state institutions to adopt proactive measures to prevent aquifer degradation, strengthen

[19] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 27

[20] M.C. Mehta v. Kamal Nath (1997) 1 SCC 388; M.I. Builders Pvt Ltd v. Radhey Shyam Sahu (1999) 6 SCC 464.

monitoring mechanisms, regulate unsustainable extraction practices, and integrate environmental considerations into policies affecting rural livelihoods. Such an approach would move beyond reactive debt regulation and address the underlying environmental conditions that contribute to hydro-indebtedness.

Accordingly, the Public Trust Doctrine offers a valuable legal and normative foundation for linking environmental governance with financial justice. By recognizing groundwater protection as a matter of public responsibility rather than merely private resource management, the doctrine provides a pathway towards a more integrated response to the challenges of groundwater degradation and rural indebtedness. The following section therefore outlines a series of legislative, regulatory, and governance reforms aimed at addressing these interconnected vulnerabilities.

8. Recommendations

The foregoing analysis demonstrates that hydro-indebtedness is not merely a financial issue but the product of interconnected environmental, economic, and regulatory failures. Addressing this challenge requires reforms that integrate environmental realities into microfinance regulation and groundwater governance.

8.1 Legislative Reform

The Microfinance and Credit Regulatory Authority Act No. 49 of 2025 should be amended to explicitly recognize environmental hardship as a structural cause of loan default. This could include the introduction of climate- or environment-sensitive hardship provisions, allowing borrowers affected by groundwater degradation to access debt restructuring or temporary repayment relief. Additionally, statutory guidelines should require lenders to assess environmental risk factors such as water scarcity and land degradation before issuing loans in ecologically vulnerable regions.

8.2 Regulatory and Institutional Reform

Greater coordination is needed between financial regulators and environmental authorities. The Microfinance Regulatory Authority should be required to consult with institutions such as the National Water Supply and Drainage Board and the Central Environmental Authority when assessing borrower distress in affected areas. Establishing a dedicated environmental debt relief mechanism, particularly for post-conflict regions, would further ensure that structurally vulnerable communities are not trapped in cycles of repayment failure.

8.3 Governance Reform

Finally, groundwater should be formally recognized within a Public Trust framework, either through judicial interpretation or legislative action. This would impose affirmative duties on the state to protect and sustainably manage aquifer systems. Integrating groundwater governance into post-war recovery policy would ensure that environmental rehabilitation and livelihood restoration are treated as interconnected obligations rather than separate policy domains

9. Conclusion

In post-war Northern Sri Lanka, groundwater is not merely an environmental resource but the foundation of livelihood, recovery, and survival. This article has demonstrated that its degradation driven by salinity intrusion, over-extraction, and ecological disruption produces far-reaching socio-economic consequences that extend beyond environmental harm. Through the concept of hydro-indebtedness, the paper has shown how groundwater insecurity translates into livelihood erosion, compels subsistence borrowing, and ultimately exposes vulnerable communities to cycles of debt and legal precarity. By integrating empirical insights from field interviews with doctrinal legal analysis, the study has highlighted a critical disconnect between lived realities and regulatory frameworks. The Microfinance and Credit Regulatory Authority Act No. 49 of 2025, while addressing exploitative lending practices, fails to recognize environmentally induced vulnerability as a structural driver of indebtedness. As a result, it risks reinforcing, rather than alleviating, conditions of economic marginalization.

The article has further argued that applying the Public Trust Doctrine to groundwater governance offers a pathway toward a more responsive legal framework, one that acknowledges state responsibility in safeguarding essential resources. Ultimately, addressing hydro-indebtedness requires rethinking the relationship between environmental governance and financial regulation. This is not only a local concern but a broader challenge for post-conflict and climate-vulnerable regions globally, where ecological fragility and financial vulnerability are increasingly intertwined.

CHILD RIGHTS IN POST WAR NORTHERN SRI LANKA: BRIDGING LAW AND LIVED REALITIES

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Abstract

The protection of children's rights in post conflict societies remains a pressing concern in international human rights law, traditional justice and child welfare studies. Scholars have widely debated the role of legal framework such as the United Nations convention on the rights of child while questioning their capacity to address the complex social, psychological and economic consequences of conflict. But existing scholarship on child rights in Sri Lanka has not adequately explored how these legal protections operate in the everyday lived realities of war affected children in post war in Sri Lanka. This gap in knowledge obscures persistent vulnerabilities relating to trauma, poverty, disrupted education and institutional neglect thereby limiting the understanding of children's actual experiences and needs. This paper address this gap by examining child rights in post war northern Sri Lanka through a specific context and interdisciplinary approach that goes beyond formal legal compliance to explore how law is experienced, used and limited in practice. The study use qualitative interviews with community members and stakeholders, observational insights of post war social environment and the government data on child welfare, education and social development. These are analyzed in addition to Sri Lanka's child protection laws and its responsibilities under the CRC. The paper argues Sri Lanka's child rights system is strong in theory but its implementation is narrow and focuses more on rules than the actual needs. It often ignores psychological harm and social or economic difficulties which make it less effective for children living in post conflict areas. This study highlights the gap between law and children's daily lives in Sri Lanka by combining legal analysis with real experiences. It offers ideas to reform local policies and debates on child protection in post conflict societies.

1. Introduction

The protection of children's right in post conflict societies remains a critical issue in contemporary human rights problem. Children who were affected by armed conflict often face long term consequences such as psychological trauma, displacement, poverty and disruption of education. In Sri Lanka the end of the civil war in 2009 marked the beginning of the transition from conflict to peace particularly in Northern Province. However the hostiles created the opportunity to reconstruction and development, it revealed deep rooted challenges in ensuring the effective protection of children's right.

Sri Lanka is a party to the United Nation Convention on the Rights of the Children [UNCRC][1] and has developed legal mechanisms to safeguard children including institutions such as National child protection authority[2]. These frameworks demonstrate a strong legal foundation to child protection. However, there remains a significant gap between the legal recognition of rights and their practice particularly in post war regions.

This paper argues that Sri Lanka's child rights framework is strong in theory but its implementation in post war northern Sri Lanka is limited and often fails to address the social, psychological and economic realities faced by the children. This study seeks to highlight the gaps between law and practice by examining both the legal framework and the lived experience of children. It further aims to contribute recommendations for child protection in post conflict societies.

2. Methodology

This study adopts a qualitative approach to examine the gap of the law and the lived realities. Primary data was collected through

[1] United Nations Convention on the Rights of the Child (1989).

[2] National Child Protection Authority Act No. 50 of 1998 (Sri Lanka

informal interviews conducted with selected individuals from the Jaffna community including persons familiar with child welfare issues. These interviews provided insight into the everyday experiences and challenges faced by children in the post conflict.

In addition observational insights of the social environment in Northern Sri Lanka were used to understand issues such as poverty, access to education and community support system. Secondary data was gathered through an analysis of national and international frameworks such as government statics, Sri Lanka's child protection laws and its obligation under United Nations convention on the rights of child. Institutional mechanisms such as the National Child Protection Authority also examined.

3. Legal framework on child protection

The protection of child right in Sri Lanka is shaped both national and international legal provisions. At internationally Sri Lanka is a party to the United Nations convention on right of child. The convention is crated based on key principles like nondiscrimination, best interest of child, right to life and development, right to express. These rights are protected the children and helped in their development. Several provision of the CRC is directly connected to post war context in Northern Province. For example Article 19 requires the state to protect children from all type of violence[3], Article 28 guarantees the right to education[4], while Article 39 emphasizes the responsibility of the state to promote physical and psychological recovery to the children who were affected by the armed conflict[5]. These gives the safeguards to the children

At the national level Sri Lanka has introduced many laws and institutions to protect children. The National child protection authority [NCPA] plays a major role on addressing the child abuse

[3] United Nations Convention on the Rights of the Child (1989), Article 19
[4] United Nations Convention on the Rights of the Child (1989), Article 28
[5] United Nations Convention on the Rights of the Child (1989), Article 39

and also ensuring child welfare[6]. Penal code of Sri Lanka criminalizes child abuse and exploitation.[7] Additionally the constitution of Sri Lanka article 12 grants equality before the law[8] and also article 11 ensures freedom from torture to all the Sri Lankan citizens[9]. Even though Sri Lanka's legal framework is strong itself but the implementation is week in practice.

4. Results and discussion

The end of the civil war in 2009 brought a sense of relief to Sri Lanka especially in the Northern Province. Many families in this region looked the war as not just a political problem but a part of their life. Particularly children grew up in an environment marked by fear, displacement and uncertainty and also witnessing violence at a very young age. After the war the government and the various organization took steps to rebuild the Northern Province. Schools were reopened, infrastructures were rebuilt and displacement were resettled. In premafacie these changes show the recovery. However, for many children the impact of the war did not simply disappear with the return of peace.

Even today many families in Northern Province continue to struggle with economic difficulties because of long term disruptions. Some children are raised in single parent household or by relatives which can affect their emotional and social development. Additionally, the psychological effect of the war such as trauma, anxiety and insecurity are still present. Access to support to mental and health care is still limited in some areas. As a result, children's needs are not fully addressed. Even though post war brought the development the social and emotional challenges faced by children still shaping their daily life.

[6] National Child Protection Authority Act No. 50 of 1998 (Sri Lanka

[7] Penal Code of Sri Lanka (as amended) in 1883

[8] Constitution of the Democratic Socialist Republic of Sri Lanka, Article 12.

[9] Constitution of the Democratic Socialist Republic of Sri Lanka, Article 11

5. Existing concern in Northern Province

One of the major concerns is mental health. Many children still carry the emotional impact of the war as well as stress from family problems and poverty. Feelings such as fear, anxiety and loneliness are still common to northern citizens.[10] Even they have the counselling or mental care services the access is limited in many areas. Because of this the children didn't receive the proper support to recover them in a healthy way.

Another issue is lack of parental care. Because of the war some children have lost one or both parents while others live with relatives or in unstable family situations. Without the proper care and guidance of the parents the children facing many difficulties. For instance, the children now severely addicted to the drugs, some of the children at their young age engaged with sexual works. These are some serious issues still existing in post war era.

Children with disabilities are in an even more vulnerable position. They often face additional barriers in accessing education, healthcare and social services. In some cases they are still struggle to bring their life peacefully because of their inability. The government's support and the awareness also lack. It can lead to exclusion and neglect.

Poverty continues to be a major challenge for many families in the Northern Province. Due to financial difficulties, parents may struggle to provide basic needs such as nutritious food, school supplies and healthcare. This directly affects children's growth and development.

Education in Sri Lanka is generally well developed with high literacy rates and free education. But this overall progress didn't reflect in post war era. During the war many school destroyed, displaced, and temporarily closed which led the interruption to education. Although the situation improved after the war in 2009

[10] UNICEF Sri Lanka, *Child Protection and Development Reports*

and schools were reopened but still problem is existing. [11]Compared to the national level children in northern region continue to face struggles like limited resources, fewer facilities and difficulties in catching up with lost years of education. It is a big noticeable gap in post war era.

6. Legal gaps

Although Sri Lanka has developed a strong legal framework to protect the children through UNCRC and the national laws still there is a clear gap between laws and implementations. For example, CRC requires protection from violence [article 19] children still exposed to harmful environment such as drug use. Article 39 emphasize psychological recovery, access to mental health services but they still limited. Education also protected by article 28 yet they facing difficulties due to past disruptions and lack resources. Even we have the NCPA, still the access of this kind of institution is lacked in rural areas and the awareness also lack. Overall laws focus on the formal rules rather than the real conditions of children. It crates the wide gap between law and practice.

7. Recommendations

To bridge the gap and practice several steps should be taken in Sri Lanka. One of the major attentions should be given to protect the mental health of children. Awareness programs and recovery session should be done to children frequently. The government should increase access to counselling services in rural areas. Government should allocate the trained professionals to conduct awareness programs in schools and communities to the children especially facing the trauma.

Secondly there should be stronger monitoring and implementations of existing child protections laws. The

[11] Oxford Business Group, *Sri Lanka Report: Widening the Net – Addressing educational disparity and improving access to tertiary education in Sri Lanka.* [2015]

institutions need to be more active at the community level. The accessibility of these institutions need to be flexible. It should create the trust to the people.

Next government should strengthen the economic system. Government should help to vulnerable persons. It should increase the opportunities to grow up their daily lives. Government should provide the financial assistance to the children. Social welfare of the affected students should be increased. Special attention should be given to the disable children. Finally, the helping services should easily reachable.

8. Conclusion

In conclusion although Sri Lanka has established a strong legal framework for protecting the children through international and national commitments the situations in post war era in Northern Province shows that these protections are not fully effective in practice. Children in this region continue to face challenges such as psychological trauma, poverty, lack parental care and limited access to education. These issues highlight a clear gap between the legal rights and lived realities. Therefore, it is important for Sri Lanka to focus not only the laws but also the proper implementation, community support and fulfil their real needs to overcome from the defects.

RETHINKING LEGAL PLURALISM THROUGH CUSTOMARY LAW: LESSONS FROM *THESAWALAMAI*

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Abstract

Thesawalamai is the customary law of Northen province in Sri Lanka, which is co-existed with other customary of laws in the country. The Thesawalamai on property, inheritance, and marriage reflect the lived reality of the people in light of the complexities of modern society, especially in the matter of family relations and the rights of the genders. Thesawalamai tradition of law, while giving legitimacy to the culture, gives rise to tensions with the equality provision in the constitution as well as to limitations placed on women's right to autonomy in the country. The research uses an interdisciplinary approach that mixes legal analysis, observations from sociology, and an element of anthropology. Legal observations investigate recognition under state law. Sociological/anthropological observations concentrate on experiences that people have with customary law in everyday life. This is because there is recognition of both difficulties that are experienced, for instance, in relation to equality between genders, conflict between custom law and state law, and additionally strong aspects like dispute resolution mechanisms that adapt to these customs for social acceptance. For an international relevance, this paper examines Thesawalamai in relation to other plural legal systems, such as "Hindu and Muslim Personal Laws in India," "Indigenous Customary Laws in Australia and Canada," and "Tribal Laws in Africa." These examples illustrate how in many parts of the world there is often conflict between custom and formally codified laws, as well as ways in which these conflicts must be resolved in order to maintain cultural freedom and promote equality and justice. This analysis of these examples shows that there is much to be gained from an understanding of Northern experience.

1. Introduction

Legal pluralism refers to a situation whereby more than one set of laws exists in the same society. It involves the co-existence of state laws along with other forms of laws such as customary laws and religious laws. The co-existence of different types of laws in a post-colonial society does not occur randomly, but it is structurally integrated into the system of the state and the society.

In Sri Lanka, personal laws such as *Kandyan law, Muslim law,* and *Thesawalamai* exist. *Thesawalamai* has a distinct position among the personal laws in Sri Lanka, being the customary law, which governs the Tamils in the Northern Province, mainly Jaffna. This customary law existed in the form of *Thesawalamai ordinance number 5 of 1869* and was established in a colonial setting during the time of Dutch rule.

Thesawalamai represents both cultural identity in terms of governance of family matters and conflicts with the present law due to gender discrimination issues. This paper asserts that *Thesawalamai* is a living legal system, and therefore it is possible for reforms to be done based on this fact.

2. Legal Pluralism in Sri Lanka

Legal pluralism in Sri Lanka can be identified by means of the coexistence of state laws, personal laws, and customary laws. There are three customary laws such as, *Thesawalamai law, Kandyan law* and *Muslim law* that interact in various spheres including family laws, inheritance laws, and property laws where a different legal tradition applies depending on one's community affiliation.

There are numerous instances when *Thesawalamai* comes into play in relation to the issues that concern the Northern Tamils and their properties. In such circumstances, courts often accept the use of *Thesawalamai* when it is appropriate while numerous cases are solved outside of court due to negotiations at a family level and community mediation. This fact implies that legal jurisdiction is performed both by state institutions and by society itself[1].

Thus, there exists a system of two parallel legal orders in Sri Lanka. First, there is a set of rights that individuals enjoy as per the constitution and that provide them with equal treatment and non-discrimination while another system of laws guides individuals and regulates family life and social interactions.

3. Thesawalamai as a Lived Legal System

Thesawalamai is not only a body of customs that governs customary laws but also a body of norms that govern the possession, inheritance, and status of Northern Tamils, thus constituting an instance of legal pluralism in Sri Lanka. This can be seen from the fact that the *Jaffna Matrimonial Rights and Inheritance Ordinance no 01 of 1911* recognize the existence of different types of properties that include Mudusam (ancestral property), urumai (inheritance that is not patrimonial), and Thediatheddam (property acquired during the marriage). These properties are identified in sections 15-19 of the Ordinance, reflecting the ongoing impact of *Thesawalamai* within the contemporary law system

In contradiction to the general assumption about *Thesawalamai* which discriminates women in regards to inheritance of the property, it should be taken into consideration that under the Ordinance the inheritance will be equally divided among all the children irrespective of their gender, as per section 22[2]. Therefore, no distinction based on gender can be seen in the law as it stands in relation to inheritance by children. Nonetheless, the operation of *Thesawalamai* cannot be explained solely in terms of its legal provisions. Instead, being an active custom, its effect is mediated through social practice.

[1] The Thesawalamai Ordinance No, _5 of 1869

[2] Jaffna Matrimonial and Inheritance Ordinance no 01 of 1911, section 22

One such practice concerns the role of dowry within Northern Tamil society. Section 33[3] requires children who have received property by way of dowry or marriage advancement to bring such property into collation when inheritance is distributed among heirs. Although this provision applies equally to all children, dowry is predominantly associated with daughters and is often socially regarded as representing a daughter's share of parental property. As a result, women who receive dowry may experience reduced access to family wealth when parental property is subsequently distributed. However, in this case, it should be noted that the contradiction is caused not by the exclusionary clause concerning women from the law but rather by the combination of social practice and the application of the law. Legal pluralism, therefore, becomes evident in this particular example, whereby certain social conventions might be considered influential despite neutral legal norms.

In this context, there are some serious questions concerning gender equality and the property regime provided by the Ordinance. According to Section 6[4], the property of the married woman will remain her separate property and she is entitled to protect it from the creditors of her husband. Thus, this section of the law provides some sort of protection for women. At the same time, Section 6 requires the married woman to seek the written consent of her husband in order to sell off her immovable property. Conversely, Section 7[5] allows men to manage their property and act without the consent of their wives. In *Sangarapillai v. Devaraja Mudaliyar*[6] the judgment reflects the patriarchal nature of traditional *Thesawalamai law*, as it recognized the husband's exclusive authority to manage and mortgage thediatheddam property while denying the wife an equal role in decisions concerning property to which she was equally entitled.

[3] Ibid, section 33
[4] Ibid, section 6
[5] Ibid, section 7
[6] Sangarapillai v Devaraja Mudaliyar (1936) 38 NLR 1.

This distinction imposes a legal restriction on women's autonomy in managing property and reflects a gender-based difference in legal capacity.

The Ordinance also incorporates traditional notions of power within marriage. As per section 3[7], if the woman is subject to the laws of *Thesawalamai*, the woman will no longer be subjected to the *laws of Thesawalamai* once she marries another man who is not subject to *Thesawalamai*, but on the contrary if the woman is not a subject to *Thesawalamai,* she becomes a subject to the laws of *Thesawalamai* once her husband is subject to such laws. Hence the regime of the laws would depend on the husband rather than that of the wife. This reveals the patriarchy of family and raises doubts regarding the independent legal identity of the woman in the marriage.

The above-mentioned sections reveal the complex relationship between the traditional customary laws and the concept of equality enshrined in the constitution. Even though the existence of *Thesawalamai* serves important functions within the Northern Tamil society and plays an essential part in governing the family affairs of people belonging to this community, the problems surrounding *Thesawalamai* suggest that there are issues concerning the principles of equality and human rights of the concerned parties.

4. Comparative Perspectives on Customary Law

The various countries have employed different models with regard to the management of customary law within their respective constitutional systems. For instance, in South Africa, customary law is recognized, although it is subordinate to the supreme constitution, and customary norms have been reinterpreted by the courts to conform to the principles of equality and dignity[8]. At the

[7]Ibid, section 3
[8] Christa Rautenbach, Deep legal pluralism in south Africa; judicial accommodation of non-state law

same time, ensuring gender equality in Sri Lanka is difficult because of Article 16(1) of the Constitution. Although Article 12 guarantees equality before the law and equal protection of the law, Article 16(1) allows existing written and unwritten laws to continue even if they are inconsistent with fundamental rights. As a result, some discriminatory rules in personal and customary laws can still operate. This creates a challenge in achieving gender equality, especially under customary laws such as *Thesawalamai,* where certain rules may place women at a disadvantage.

In India, personal laws are followed by the religious communities even while the constitution is operational, leading to clashes between tradition and equality mainly in areas of marriage, family law, and inheritance[9]. conflict happens because many old customs treat people differently based on their gender, caste, or religion. For example, some customs say daughters cannot inherit family land, or that women cannot enter certain temples.

This directly breaks the Constitution's most important provisions:

- ✓ Article 14: Equal treatment for everyone.
- ✓ Article 15: No discrimination based on gender or caste.
- ✓ Article 21: The right to live with dignity and make your own life choices.

However, the Government and Courts Manage the Conflict. The legal system uses a "filter" process to fix these clashes without destroying local cultures completely.

- ✓ The Article 13 Filter: This rule says that if any custom breaks a Fundamental Right, that custom becomes illegal and useless. The Constitution always wins.

[9] Poppy Kemp, Legal pluralism in India - divisive and discriminatory

  - ✓ The "Essential Practice" Test: If a community claims a custom is part of their religion, the court checks if the religion can survive without it. If the custom is just an unhealthy habit (like instant divorce), the court cancels it.

- ✓ Justice and Fairness (Equity): In tribal areas, the Constitution tries to protect local culture. However, if a tribal custom leaves a woman poor or homeless, the courts will step in. They use basic rules of fairness to give her equal rights.

For example, In the *Ram Charan v. Sukhram*[10] case, the Supreme Court looked at an old tribal custom that stopped women from owning family land. The Court ruled that keeping women out just because they are women is unfair and breaks Article 14. They gave the tribal woman her equal share.

In short, India balances a deep respect for ancient cultural traditions with a commitment to modern human rights. While the Constitution protects the unique identity of its diverse communities, it does not allow customs to be used as tools for discrimination or unfair treatment

In Australia and Canada, customary laws of the indigenous people are recognized in cultural settings, but the state law prevails in the areas related to the rights of the indigenous population[11]. Thus, here again, we observe a dual recognition system where cultural identity is taken into account and regulated under the legal system of the nation.

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[10] Ram Charan v Sukhram Civil Appeal No 9537 of 2025 (SC, India, 17 July 2025) 2025 INSC 865.

[11] what is customary law, the recognition of customary law by the Australian government

In all these systems, the crucial issue that has to be resolved continues to be that of sustenance of cultural and legal pluralism along with equality.

From this analysis, it becomes evident that there is a need for an approach toward legal pluralism that will take into consideration the issues of culture while simultaneously making sure that the constitutional principle of equality is upheld. In the case of *Thesawalamai*, the solution would be to reinterpret certain customs such as dowry so that it does not completely take the place of inheritance.

Legal reforms can be made in the area of judicial interpretation of customary law in keeping with the principles of equality, as well as increasing awareness about women's property rights. It would enable *Thesawalamai* to develop within the constitutional framework instead of developing independent of it. This will amount to legal pluralism through an equality lens in which culture is not necessarily abolished but constantly reinterpreted.

Thesawalamai is thus more than a local customary legal tradition. Rather, *Thesawalamai* is part of a larger debate regarding legal pluralism within postcolonial communities. Its importance is in the illustration that customary law traditions interact with constitutional traditions and have impact upon the way in which laws affect people, especially women, in their lives and families.

Under this consideration, therefore, the experience of Northern Sri Lanka has a place in the wider debate over law and culture around the world. Law systems must constantly strike a balance between cultural acceptance and human rights principles.

5. Conclusion

The *Thesawalamai* is one important example of legal pluralism in Sri Lanka that regulates the important aspects of property, inheritance, and marriages in Northern Tamil society. Nonetheless, an understanding of the way *Thesawalamai* works highlights some forms of gender inequality in relation to matters of inheritance and property laws. This form of inequality may arise both from certain legal provisions and from social practices. Experience from other societies shows that it is possible to preserve customs while giving them new meanings in the context of the constitution. This paper suggests that such an approach to legal pluralism may be adopted.

In summary, the *Thesawalamai* must not be considered as a stagnant tradition but should rather be recognized as a flexible legal system that can be transformed in accordance with constitutional principles.

CROSS - BORDER FISHING IN THE PALK STRAIT: AN INTERNATIONAL MARITIME LAW PERSPECTIVE ON THE LIVELIHOODS OF NORTHERN SRI LANKAN FISHERMEN.

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Abstract

Cross-border fishing in the Palk Strait has developed into a persistent maritime, environmental, and livelihood challenge, particularly affecting the small-scale fishing communities of Northern Sri Lanka. Despite the clear maritime boundary established between India and Sri Lanka under Indo – Lanka Agreement, frequent incursions by mechanized fishing vessels into Sri Lankan waters continue to occur. The research paper analyses cross-border fishing through the framework of international maritime law, with particular reference to the United Nations Convention on the Law of the Sea (UNCLOS), while simultaneously situating the legal discussion within the socio-economic and ecological realities of the region. The abstract argues that cross-border fishing cannot be understood solely as a violation of territorial sovereignty. Instead, it is a multifaceted issue shaped by historical fishing practices, technological inequalities between artisanal and mechanized fishing sectors, overexploitation of marine resources, and the post-conflict dependence of Northern Sri Lankan communities on fisheries for survival. The operation of mechanized trawlers has caused significant ecological harm, including seabed destruction, depletion of fish stocks, and damage to traditional fishing gear. These consequences have directly undermined the livelihoods, food security, and social stability of Northern fishermen. From a legal perspective, the abstract finds that a rigid and state-centric application of international maritime law has been insufficient to address these challenges. Although UNCLOS recognizes coastal state rights over marine resources, its practical implementation often neglects livelihood protection, customary fishing practices, and ecological interdependence. Weak enforcement mechanisms and inadequate bilateral cooperation have further intensified tensions and reduced the *effectiveness of existing legal frameworks. The abstract concludes that resolving cross-border fishing disputes in the Palk Strait requires a cooperative, livelihood-sensitive, and sustainability-oriented approach. Strengthening bilateral legal mechanisms, regulating destructive fishing methods, promoting alternative livelihoods, and adopting ecosystem-based fisheries management are essential for ensuring justice, protecting marine resources, and achieving long-term regional stability.*

Keywords: *Cross-border fishing, Palk Strait, International maritime law, UNCLOS, Fishermen livelihoods.*

1. Introduction

The Palk Strait is a shallow sea with waters that border India and Sri Lanka, and has been a recurring cause of conflict through cross-border fishing.[1] With the cessation of the civil war in Sri Lanka, more and more incursions of Indian mechanized trawlers into Sri Lankan waters have affected the traditional fishing activities and heightened the conflict between the fishing communities.[2] Fishing in the Palk Strait has cross-border effects in the legal, environmental and socio-economic context.[3] The recurrent boundary conflicts underline poor enforcement of laws, whereas the devastating fishing techniques also lead to the erosion of ecosystems. The coastal population is socio-economically poor, has limited access to services and is in debt, and sea resources are dwindling to pose a further threat to livelihoods, and make small-

[1] Stephen J, 'Fishing for space: Socio-spatial relations of Indian trawl fishers in the Palk Bay, South Asia, in the context of trans-boundary fishing' (Doctoral dissertation, Universiteit van Amsterdam 2015).

[2] Kasim HM, 'Resources and livelihoods of the Palk Bay: information from India & Sri Lanka' (International Academic Workshop Resources Conservation and Alternate Livelihood Opportunities in Coastal Tamil Nadu (ReCAL'15), 2015).

[3] Amaralal K H M L, Abeykoon N and Ashoka Deepananda K H M, 'Indo-Sri Lanka Fishing Conflict in the Palk Bay and its Implications for Fisheries' (2021) 39(2) Journal of the Indian Society of Coastal Agricultural Research.

scale fishermen more vulnerable.[4] The continued intrusion of the waters despite the demarcated maritime boundaries still prevails in the Palk Strait due to socio-economic tensions and maritime criminality. Poor governance, effects of climate change and reliance on resources make enforcement challenging and require better risk-based ocean management and bilateral management structures.[5] The literature on cross-border fisheries and maritime challenges is currently divided into a series of studies addressing legal frameworks, livelihoods or environmental conditions. A clear gap in the literature is the lack of interdisciplinary research that puts together these aspects of understanding into one governance approach. This thesis is based on the fact that the Palk Strait problem is a multidimensional one and it cannot be solved in a vacuum, but rather by cooperative governing and sustainable and integrated approaches to the issue, including law, ecology and livelihoods.

2. Background of the study

The Palk Strait is a narrow and shallow sea between India and Sri Lanka that extends along the coast of Tamil Nadu and Northern Sri Lanka, and has rich marine biodiversity due to the low depth and productive seabed ecosystem. In the past, it served as a common fishery ground, and the small-scale, sustainable fishing by the traditional fishers on both sides used to take place.[6] These waters were formally divided by maritime boundary agreements

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[4] Salagrama V, 'A livelihood-based analysis of Palk Bay' (CMPA Technical Series 2014).

[5] Mazaris AD and Germond B, 'Bridging the gap between climate change and maritime security: towards a comprehensive framework for planning' (2018) 635 Science of the Total Environment 1076–1080.

[6] H M Kasim, 'Resources and Livelihoods of the Palk Bay: Information from India & Sri Lanka' (International Academic Workshop Resources Conservation and Alternate Livelihood Opportunities in Coastal Tamil Nadu (ReCAL'15), August 2015).

between India and Sri Lanka in the 1970s,[7] but they remain ecologically rich, especially on the Sri Lankan side, with coral reefs, seagrass beds and lagoon systems, which remain the focus of fishing activity. After the civil war in Sri Lanka, the Northern fisheries industry, particularly in Jaffna and its surrounding areas, began to recover, having been hindered for decades by limited access to it, with fishing being a major source of livelihood and economic input. Nevertheless, mechanised trawling, especially by Indian fishermen who have been fishing along the International Maritime Boundary Line, has increased pressure on marine resources due to the destructive bottom-trawling activities. These have affected the conventional fishing trends, competition for the resources, and led to continuous tensions in the region of the Palk Strait.[8]

3. Literature review

3.1. Cross-border fishing studies Research on fishing conflicts and maritime disputes

The transboundary fisheries management problems and the overlapping use of marine resources lead to cross-border fishing disputes. Palk Strait, an area of good fishing, with a long-standing history of shared practices has experienced frequent crossings of boundaries between Indian and Sri Lankan fishers. As the maritime boundaries have been established, these interactions have been transformed into conflict, escalated with mechanized trawling and greater fishing pressure. Available literature underlines the issue of governance, escalating tensions, and increasing political and economic importance of the conflict.[9]

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[7] U Das, 'Small States and the Politics of Maritime Boundaries in South Asia: Case Studies of India–Sri Lanka and India–Bangladesh Maritime Boundaries' (2026) Geopolitics 1.

[8] N Manoharan and M Deshpande, 'Fishing in the Troubled Waters: Fishermen Issue in India–Sri Lanka Relations' (2018) 74(1) India Quarterly

[9] K H M L Amaralal, N Abeykoon and K H M Ashoka Deepananda, 'Indo-Sri Lanka Fishing Conflict in the Palk Bay and its Implications for Fisheries' (2021) 39(2) Journal of the Indian Society of Coastal Agricultural Research.

3.2. Livelihood Studies Socio-economic conditions of Northern fishermen

Livelihood research brings into focus the exposure of fishing communities to the Palk Bay, which is influenced by poverty, lack of economic opportunity and income variability. The post war situation has made more reliance on fisheries, which has resulted in in-migration and strain on resources. The access and decision-making are affected by the socio-economic structure such as caste-based organization, which further endangers Northern Sri Lankan fishermen to economic insecurity and livelihood risks.[10]

3.3. Environmental Studies Impact of bottom trawling and overfishing

Environmental research highlights the harm to the environment by unsustainable fishing activities in the Palk Strait. The seabed destruction caused by bottom trawling is severe and has disrupted the marine habitats and biodiversity. Growing fishing pressure has also led to the loss of fish stocks, jeopardizing long-term sustainability and damaging the ecological balance that is necessary to the existence of the coastal fishing communities.[11]

3.4. Legal Studies Analysis of United Nations Convention on the Law of the Sea: Focus on sovereignty and maritime rights

Legal literature focuses on how the United Nations Convention on the Law of the Sea may be used to define maritime boundaries, rights and sovereignty of coastal states. Although it creates legal ownership over fisheries and territorial waters, its

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[10] V Salagrama, A Livelihood-Based Analysis of Palk Bay (CMPA Technical Series 1, 2014).

[11] A C Gnanapala, M F M Swarna, V P Gupta and S Khan, 'Marine Protected Areas and International Agreements for Sustainability: A Case Study of Gulf of Mannar' in The Blue Economy and Environmental Sustainability: Advancing Global Governance, Innovation, and Finance for a Resilient Future (Springer Nature Switzerland 2026) 97.

state centric method tends to ignore traditional and livelihood rights. Strict implementation of boundary agreements like the International Maritime Boundary Line has resulted in little appreciation of customary fisheries and escalated tensions between transboundary communities.[12]

3.5. Legal Studies Analysis of the Indo-Lanka Agreement Focus on Cross-Border Fishing Governance.

A key bilateral instrument that regulates fishing activities and repatriates' fishermen captured by each country from the other is the Indo Lanka Agreement on Fisheries Cooperation of 1974 which was amended in 1976. The Agreement acknowledges the historical rights of Indian fishermen of fishing grounds in the Palk strait and the Gulf of Mannar and aims to strike a balance between sovereign rights and humanitarian concerns. The Agreement, however, is criticised for its poor implementation in practice, for being bureaucratic and for lacking effective mechanisms for dispute resolution. This has led to incidents of arrest, detention of fishermen and confiscation of boats continue, impacting coastal livelihoods on both sides, thus affecting the human rights of coastal communities[13]

4. Methodology

This research paper is based on a qualitative doctrinal research method to investigate the issue of cross-border fishing in the Palk Strait. It is based on secondary data sources, such as international legal instruments, such as the United Nations Convention on the Law of the Sea, which stipulates maritime limits and rights of coastal states.[14] The government reports, including those of the

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[12] S D Kishwar and V Saraswat, 'Torn Between Territorialism and Tradition: A Case for Recognition of Rights of Tamil Transboundary Fishing Communities' (2025).

[13] Government of India & Government of Sri Lanka. (1976). Agreement on Fisheries Cooperation between India and Sri Lanka (Revised).

[14] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994).

Food and Agriculture Organization are informative on the management of fisheries and the sustainability of the resources.[15] The literature has presented critical insights into the fishing conflicts, livelihood, and environmental impacts. The case studies that are relevant such as the Palk Bay fishing dispute, demonstrate real-world difficulties of transboundary fisheries governance.[16] The research uses legal analysis, comparison and evaluation of India and Sri Lanka and critical analysis to identify the loopholes in the existing frameworks.[17]

5. Results and discussion

5.1. Nature of Cross-Border Fishing Frequency of incursions Role of mechanized trawlers

The cross-border fishing in the Palk Strait is a common and dynamic practice, and the incursion across the maritime boundary has been repeated and, in most cases, due to the availability of fish at a particular time of the year and the need to sustain livelihood.[18] The presence of mechanized trawlers and their high efficiency, coupled with the capability of working in deeper waters, which are contested, greatly exacerbates these movements, adding to the existing competition and tensions. Like the research in the South China Sea, fishers are not lawbreakers but adaptive actors, the practices of which may enable and undermine border security.[19] According to prior studies, fishing can be both a livelihood approach, an informal surveillance and a geopolitical flashpoint, depending on the context of state interpretation and enforcement.

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[15] Food and Agriculture Organization, The State of World Fisheries and Aquaculture 2022 (FAO 2022).
[16] S Bavinck, 'The Palk Bay Fisheries Conflict' (2015) Marine Policy.
[17] S Scholtens and M Bavinck, 'Transforming Conflicts in Fisheries: The Palk Bay Case' (2018) Maritime Studies.
[18] A M Song, 'Civilian at Sea: Understanding Fisheries' Entanglement with Maritime Border Security' (2023) 28(3) Geopolitics 1161.
[19] Ibid

5.2. Food insecurity is affected by livelihood effects of income loss damages fishing gear.

Cross-border fishing pressure and demand on common resources are key factors influencing livelihood effects in the Palk Strait. Frequent invasions and seasonal changes in fish supply cause fluctuating income trends, especially to small-scale fishers who rely on catch-of-the-day income. The loss of income is also increased when fishing grounds are destroyed by mechanized trawlers, and the volume and the market value are diminished. Other studies in the global fisheries past also point towards the increasing household vulnerability of people through export-oriented demand and depletion of resources, particularly in the developing coastal society.[20] Damages to nets and boats during trawling activities are an added economic burden in the Palk Strait situation, and augment the costs of equipment replacement and debt cycles. Food insecurity arises as a result of diminished catch limits on consumption and income, which strengthens reliance on fluctuating fish markets. Income tends to be a more important predictor of food access than fishing activity itself, as in the case of Lake Victoria studies, which indicates a greater economic vulnerability of fishing-dependent households.[21]

5.3. Environmental Impacts Seabed Destruction Fish stock depletion

The high intensity cross-border fishing and high use of bottom trawling are closely connected to the environmental effects in the Palk Strait. The constant crossings of the IMBL increase the disturbance of the seabed, when trawlers literally scratch the benthic habitats, thereby producing long-term effects of coral patches and nursery grounds. This is in line with other studies that have linked mechanized fishing with degradation of the habitat

[20] T McClanahan, EH Allison and JE Cinner, 'Managing Fisheries for Human and Food Security' (2015) 16(1) Fish and Fisheries 78.

[21] KJ Fiorella and others, 'Fishing for Food? Analyzing Links Between Fishing Livelihoods and Food Security Around Lake Victoria, Kenya' (2014) 6(6) Food Security 851.

and low marine productivity. Overfishing with the use of illegal and unregulated equipment only adds to the evident reduction of fish stocks, which is evidenced by decreasing catch rates over the years. Like studies show that long-term fishing and disruptive fishing practices, fishing down the food web, decrease species diversity and abundance. These stressors in the environment imply that ecosystem resilience and future sustainability of common fisheries resources will continue to decrease in this study area.[22]

5.4. Application of UNCLOS rights of coastal States enforcement issues by legal analysis.

The law that regulates cross-border fishing in the Palk Strait is largely informed by the United Nations Convention on the Law of the Sea (UNCLOS) that determines the sovereignty of the coastal states over the Exclusive Economic Zone (EEZ) and permits the regulation of the marine resources within the maritime boundaries.[23] Practically, India and Sri Lanka both claim to exercise their rights of a coastal state, however, enforcement is not consistent, given overlapping traditional fishing activities, and controversy in adherence to the IMBL regulations. Some earlier literature emphasizes the fact that transboundary fisheries is usually characterized by a lack of institutional fit, in which the ecological and fishing patterns are disproportional to the jurisdiction of the law and the resultant complexity in governing these fisheries.[24]

The Bilateral Agreement of the year 1974 - 1976 is an agreement for cooperation between India and Sri Lanka, but it has become

[22] S Sivaramanan, 'Potential Solutions to Environmental Conflict on Exploitation of Fish Stocks in Palk Strait among Fishermen of India and Sri Lanka' (2023) 28(1) Sri Lanka Journal of Aquatic Sciences.
[23] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994).
[24] J Scholtens and M Bavinck, 'Lessons for Legal Pluralism: Investigating the Challenges of Transboundary Fisheries Governance' (2014) 11 Current Opinion in Environmental Sustainability 10.

apparent that the agreements are not very effective as a deterrent from violations by the mechanized fishing fleet[25].

As in many other parts of the world, the enforcement of fisheries laws in the Palk Strait is beset by cross-border legal ambiguity, lack of compliance and the political sensitivity of cross-border fishing. Consequently, the application of the principles of UNCLOS is still difficult, and the practical management of the sea remains a gap between the law and the sea today[26].

5.4.1 Application of Indo Lanka Agreement.

5.4.1.1 Description of the Agreement.

Indo Sri Lanka Maritime Boundary Agreements of 1974 and 1976 demarcate the maritime boundary between India and Sri Lanka in Palk Strait and the Gulf of Mannar.

The contracts were made in the hopes of clarifying the extent of maritime zones under international law and in order to control fishing and other ocean uses in those zones. They are the main legal sources of determining the sovereign rights of both states over their respective maritime zones[27].

5.4.2 Legal Effect under the Vienna Convention on the Law of Treaties (VCLT)

The Agreements can be characterized as treaties under the Vienna Convention on the Law of Treaties (1969)[28]. All treaties in force

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[25] 25. B J Ryan, 'Zones and Routes: Securing a Western Indian Ocean' (2013) 9(2) Journal of the Indian Ocean Region 173.

[26] S N Polepalli, 'The Dispute Settlement Framework under the 1982 United Nations Convention on the Law of the Sea: Prospects for India' (2021) 59(1) Indian Journal of International Law 355.

[27] Agreement between Sri Lanka and India on the Boundary in Historic Waters between the Two Countries and Related Matters (signed 26 June 1974, entered into force 10 July 1974) 817 UNTS 45.

[28] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

are binding on the parties to them and must be performed by them in good faith (Article 26[29], "pacta sunt servanda"). Articles 27 and 31 also contain a rule that a state cannot rely on its internal law or give a meaning to the treaty different from its natural meaning and object and purpose[30]. As such, both countries have a legal obligation to honor the demarcated maritime boundary and not take any steps which would be contrary to this goal, such as fishing without authorization in the waters of the other country.

5.4.3 Weak Enforcement Measures

The Agreements, although binding, have been poorly enforced. The Agreements currently do not provide for a strong and independent enforcement mechanism, nor are there any regular bilateral consultations for its implementation[31].

Continued cross-border fishing is due to traditional and livelihood-based fishing by small-scale fishermen, lack of awareness, inadequate surveillance and lack of proportional penalties[32]. A combination of these and humanitarian and political concerns frequently means that captured fishermen and boats are discharged, reducing the impact of current measures[33].

5.5. The main challenges undermining law enforcement lack of bilateral cooperation disregarding traditional fishing rights.

Major issues in controlling cross border fishing in the Palk Strait are due to the lack of effective enforcement, bilateral collaboration and the lack of respect to traditional fishing rights. The practical

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[29] ibid art 26.

[30] ibid arts 27 and 31.

[31] V Suryanarayan, Conflict over Fisheries in the Palk Bay (Academic Foundation 2005) 121–124.

[32] M Arun Swamy, 'Cross-Border Fishing Issues in the Palk Bay: Legal and Policy Perspectives' (2019) 59 Indian Journal of International Law 218, 224–227.

[33] S Jayakumar and Dennis Rumley, India and the Indian Ocean: Renewing the Maritime Trade and Civilisational Linkages (Springer 2015) 189–192.

use of UNCLOS has been limited by the overlap in jurisdiction and inconsistent enforcement despite offering a legal framework of sovereignty and management of coastal states and resources.[34] Similar conclusions have been drawn in previous works, which emphasize the fact that transboundary fisheries are usually characterized by a lack of inter-state coordination and fragmented governance, especially in the cases of high livelihood reliance. The effects of IMBL regulations in the India-Sri Lanka situation are undermined by lack of surveillance and selective adherence to the regulations by mechanized fleets. Meanwhile, informal small-scale fisheries are often neglected when formal policy responses are applied, which generates conflicts between legal and historical access rights.[35] Such governance gaps, as observed in the comparative literature, undermine the efficacy of maritime agreements, and perpetuate cyclic conflict, proving that legal frameworks cannot be effective without effective cooperation and inclusive fisheries management.

6. Recommendations

1. Strengthen implementation of bilateral agreements: Cooperation between India and Sri Lanka within the framework of the maritime boundaries that exist. Both States shall make operations more explicit and consult diplomatically on a regular basis.
2. Control or eliminate bottom trawling: Both States shall bring in severe regulations or progressive prohibition of

[34] R Strating, S Rao and S Yea, 'Human Rights at Sea: The Limits of Inter-State Cooperation in Addressing Forced Labour on Fishing Vessels' (2024) 159 Marine Policy 105934.
[35] V D Dahanayake, 'Sustainable Fishing Practices vs. Illegal Fishing' (2025).

the destructive trawling. Less seabed destruction and loss of fish stocks.

3. Establish collaborative fisheries management: Develop common monitoring and enforcement systems. Carry out organized sea patrols to curb unlawful intrusions.
4. Promote alternative livelihoods: Promote aquaculture, seaweed cultivation and coastal tourism. Less reliance on disputed fishing areas and enhance the security of revenues.
5. Implement fisheries management based on the ecosystem: Incorporate sustainability of the ecology into fisheries policy. Switch the emphasis on catch-based control to habitat protection.
6. Strengthen enforcement mechanisms under the Agreement: Employ satellite tracking and vessel monitoring systems (VMS). Use more severe punishment on the violation of illegal fishing and IMBL through collaborative measures between the States.

7. Conclusion

Cross border fishing in the Palk Strait is not only a matter of breach of maritime jurisdiction, but rather a multifaceted problem which is influenced by legal, environmental and socio-economic aspects. Although international maritime law offers a model of state sovereignty, this is not as effective without practical enforcement and care for customary fishing methods. The continuing use of devastating mechanized trawling has enhanced ecological degradation and compromised the livelihoods of fishermen in Northern Sri Lanka. The need to solve this problem involves a participatory and balanced strategy that incorporates both legal control and sustainable resource use and livelihood security. Bilateral cooperation, enforcement, and the encouragement of alternative livelihoods are needed to alleviate conflict, protect marine ecosystems, and provide long-term stability and justice to communities impacted by fishing.

PROTECTING THE "TREE OF LIFE": PALMYRAH CONSERVATION AND URBAN EXPANSION IN NORTHERN SRI LANKA.

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Abstract

The Palmyrah Palm (Borassus flabellifer), known as the "Tree of Life" (Katpaham), serves as the socio-economic and ecological backbone of Sri Lankan Northern Province. Beyond its industrial value, the palm plays a critical role in groundwater recharge and coastal protection in the Jaffna Peninsula. However, the post-war decade has ushered in an era of rapid urbanization and infrastructure development, driven by projects like the Greater Jaffna Development Plan that places this indigenous resource under unprecedented threat. This article provides a critical legal evaluation of the existing regulatory framework, primarily the Coconut Development Act and the Felling of Trees Act. The author argues that current legislation suffers from an "industrial-utilitarian bias", where the Palmyrah is merely treated as a commercial product to be used, rather than a natural resource to be protected. Through a comparative analysis of statutory provisions and administrative permit systems, the research identifies significant legal lacunae. This includes small fines that fail to stop large developers and the lack of mandatory Environmental Impact Assessment (EIA) for clearing ancient palm groves in urban expansion zones. Furthermore, the paper examines the jurisdictional friction between centralized bodies, such as the Urban Development Authority (UDA), and the provincial agricultural mandates under the 13th Amendment to the Constitution. Drawing upon the Public Trust Doctrine and the principle of intergenerational equity, as recognized in Sri Lankan jurisprudence, this paper proposes a transition toward a "Rights-Based Conservation" model. The study concludes by advocating for a dedicated Palmyrah Conservation Statute at the provincial level, the introduction of "Heritage Tree" status for old palms, and a legally mandated replanting ratio to balance the imperatives

of regional development with the non-negotiable need for ecological sustainability in the North.

Key Words: *Palmyrah Protection, Environmental Law, Northern Province, Public Trust Doctrine, Sri Lankan Jurisprudence.*

1. Introduction

In the north of Sri Lanka, the Palmyrah palm (*Borassus flabellifer*) is more than just a tree. It is the Katpaham, or "Tree of Life". Beyond its historical status as a source of 800 documented uses[1], the palm serves as the silent architect of the Jaffna Peninsula's fragile ecology. Because Jaffna has no rivers and relies entirely on groundwater trapped in limestone, these deep-rooted palms are what keep the water table alive and protect the coast from erosion.

However, today the *Borassus* is facing a new kind of threat, not from a storm, but from a set of outdated laws. The post-war decade has ushered in an era of rapid urbanization and infrastructure development, driven by projects like the Greater Jaffna Development Plan (GJDP)[2] that places this indigenous resource under unprecedented threat. This research article argues that an "Industrial Utilitarian Bias" cripples the current legal framework, specifically the *Coconut Development Act*[3] and the *Felling Trees Act*[4]. Those laws view the tree only as a commercial commodity rather than a public trust resource.

This article provides a critical legal evaluation of these administrative failures. It identifies a "statutory silence" regarding the impact of small-scale land clearing and highlights the

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[1] Daleena Samara, 'Treasure of the Island: The Resilient "Thal" that Graces the Dry Zones' (Explore Sri Lanka, December 2012) https://exploresrilanka.lk/treasure-of-the-island/ accessed 28 April 2026.
[2] Urban Development Authority, *Greater Jaffna Development Plan 2024–2034: Strategic Urban Framework* (Ministry of Urban Development and Housing 2024).
[3] *Coconut Development Act* No 46 of 1971 (as amended by Law No 24 of 1975) (SL).
[4] *Felling of Trees (Control) (Amendment) Act* No 1 of 2000 (SL).

jurisdictional friction between the centralized powers of the Urban Development Authority (UDA)[5] and the provincial mandates under the 13th Amendment[6]. Drawing upon the Public Trust Doctrine[7] and the principle of Intergenerational Equity, this paper proposes a shift toward a "Rights-based Conservation" model. By introducing dual penalty framework of punitive fines and restitutive replanting, the study advocates for a localized, statutory shield to ensure that the "Tree of Life" is not sacrificed at the altar of short-term urban expansion.

2. Literature Review

The existing body of literature about the *Borassus flabellifer* in Sri Lanka has largely been shaped by what this article describes as the 'Utilitarian School' of environmental resource management. Early studies, particularly the influential work of Rupasena and Chandrasiri (1995), approached the Palmyrah palm primarily as an economic commodity rather than as an integral component of a fragile ecological landscape.[8] Their analysis focused on the marketing, processing, and cottage industrial uses of Palmyrah products, including toddy, jiggery, fiber, and tuber flour. Thereby, evaluating the species almost exclusively through the lens of agricultural productivity and economic output.

Although these studies successfully demonstrated the palm's importance to the livelihoods of communities in Northern Sri Lanka, they were constrained by a significant conceptual limitation. By linking the preservation of the Palmyrah principally to its economic yield, they implicitly suggested that the tree's value depended on its ability to generate agricultural returns. Such a

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[5] Urban Development Authority Law, No. 41 of 1978 (SL).

[6] *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, 13th Amendment (1987), Ninth Schedule, List I.

[7] *Bulankulama v Secretary, Ministry of Industrial Development* (Eppawala Case) [2000] 3 Sri LR 243.

[8] L P Rupasena and Athula Chandrasiri, *Marketing of Palmyrah Based Products* (Research Study No 93, Hector Kobbekaduwa Agrarian Research and Training Institute, March 1995).

perspective leaves little room for protecting the species when the market value of its products is outweighed by the value of the land on which it grows. In effect, the Palmyrah becomes economically dispensable and vulnerable to legal neglect. This narrow utilitarian approach also created an important gap in the literature by overlooking the ways in which urban transformation reshapes the landscape and by failing to recognize the tree's non-market ecological functions and environmental services.

This narrow understanding of the Palmyrah did not remain confined to academic literature. It also influenced the development of Sri Lanka's environmental and commercial laws. When legislators sought to regulate the Palmyrah, they largely adopted a commodity-based approach that viewed the species primarily in terms of its economic value. This approach is particularly evident in the Coconut Development Act No. 46 of 1971, as amended by Law No. 24 of 1975.[9] By regulating *Borassus flabellifer* within a statutory framework originally designed for the commercial coconut sector, the law does not adequately recognise the species as an ecologically distinct component of the northern landscape.

Accordingly, concepts such as "orderly development" and "plantation management" under the Act are understood mainly in terms of productivity, competitiveness, and economic returns. This regulatory philosophy also appears to have influenced the Felling of Trees (Control) Act No. 1 of 2000.[10] Rather than recognizing ancient Palmyrah groves as irreplaceable ecological resources, these statutes tend to treat them as commercially valuable trees whose importance lies principally in their economic utility.

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[9] *Coconut Development Act* No 46 of 1971 (as amended by Law No 24 of 1975) (SL).
[10] *Felling of Trees (Control) (Amendment) Act* No 1 of 2000 (SL).

This legislative approach leaves little room for appreciating the broader environmental functions performed by the Palmyrah. The species contributes to the protection of the Miocene limestone aquifers, helps reduce coastal erosion, and acts as a climate-resilient biological barrier. Yet the existing permit and enforcement mechanisms do not adequately account for these ecological services. As a result, the removal of ancient palm groves is often treated as an ordinary regulatory issue rather than as a form of irreversible environmental harm. Consequently, when planning instruments such as the Urban Development Authority Law No. 41 of 1978[11] designate land along the A9 corridor for intensive commercial development, conservation concerns can be readily subordinated to development objectives.

This article identifies an important gap within Sri Lankan urban planning and environmental law scholarship, referred to here as the "Zoning versus Conservation" lacuna. Mainstream planning literature generally approaches zoning regulations and development plans as neutral instruments intended to improve infrastructure, facilitate economic activity, and promote commercial connectivity. Comparatively little attention has been paid to the possibility that these same planning mechanisms may contribute to environmental degradation.

Similarly, existing scholarship has not sufficiently examined how centralized zoning decisions can undermine the conservation objectives contained in the National Environmental Act (NEA). Once an area is classified for commercial or high-density mixed-use development, urban development priorities often take precedence over ecological considerations. The implications of this prioritization for fragile ecosystems have received limited scholarly attention, creating an important opportunity to examine

[11] *Urban Development Authority Law* No 41 of 1978 (Sri Lanka).

the relationship between land-use regulation and regional environmental decline.

To address these gaps, this article proposes a broader application of the Public Trust Doctrine (PTD) within Sri Lankan environmental jurisprudence. Although the doctrine is well established in Sri Lanka, its development has largely focused on cases involving major industrial projects. Since the Supreme Court's decision in *Bulankulama v Secretary, Ministry of Industrial Development* (2000) 3 Sri LR 243[12], commonly known as the *Eppawala Case*, the doctrine has mainly been invoked in disputes concerning activities such as phosphate mining, hydroelectric developments, and large-scale coastal reclamation projects.

This article argues that the Public Trust Doctrine should also be applied to address what may be described as "creeping ecological degradation". Unlike large industrial projects, the ribbon development taking place along the A9 transport corridor in the Jaffna Peninsula occurs gradually through the clearing of numerous small plots containing Palmyrah groves. Because each individual clearing is relatively limited in scale, it often falls below the thresholds necessary to trigger a mandatory Environmental Impact Assessment under the regulatory framework of the Central Environmental Authority.

However, the cumulative effects are significant. The gradual removal of hundreds of small palm groves can collectively cause irreversible damage to common environmental resources, particularly the Miocene limestone aquifers that underpin the water security of the entire peninsula. This process may be understood as a form of "death by a thousand cuts", whereby

[12] *Bulankulama v Secretary, Ministry of Industrial Development* (Eppawala Case) [2000] 3 Sri LR 243.

individually minor interventions produce serious long-term ecological consequences.

By demonstrating that the state's obligations under the Public Trust Doctrine extend not only to major industrial projects but also to cumulative and decentralized forms of environmental degradation, this article proposes a new legal framework for protecting natural infrastructure from the pressures of unregulated urban expansion.

3. Methodology

This research employs a qualitative doctrinal methodology, focusing on the systematic analysis of legal statutes, administrative regulations, and judicial precedents.

The core of the research involves a critical examination of primary legislative texts, most notably the *Coconut Development Act*[13] and the *Felling of Trees Act*[14]. It is legally significant to note that there is no standalone "Palmyrah Development Act"; instead, the Palmyrah Development Board (PDB) was established under a 1975 amendment to the Coconut Development Act. This research argues that this "legal nesting", where a unique perennial resource like the Palmyrah is treated as a subsidiary of the coconut industry is the very origin of the "Industrial-Utilitarian Bias" identified in this study. The objective is to identify statutory silence areas where the law fails to protect small-scale land clearing and the lack of mandatory Environmental Impact Assessments (EIA) for "Ribbon Development".

This methodology examines how the existing statutory framework tends to favor commercial exploitation over environmental

[13] *Coconut Development Act* No 46 of 1971 (as amended by Law No 24 of 1975) (SL).
[14] *Felling of Trees (Control) (Amendment) Act* No 1 of 2000 (SL).

conservation. By analysing the relationship between the relevant statutes, it demonstrates how the legal mandate of the Palmyrah Development Board (PDB) is closely tied to the broader commercial objectives of the coconut industry. As a result, the Board's administrative functions are largely confined to regulating industrial activities and promoting economic utilization, leaving it with limited powers to directly address the pressures created by expanding real estate development.

The final methodological component critically examines the jurisdictional boundaries of environmental governance in Sri Lanka. This approach involves mapping the centralized planning powers established under the Urban Development Authority (UDA) Law No. 41 of 1978 against the devolved powers granted to Provincial Councils under the Thirteenth Amendment to the Constitution.

In particular, the analysis focuses on the interaction between section 3 of the UDA Law, which empowers the central government to declare Development Areas[15], and Items 4 (Agriculture) and 18 (Land) of List I of the Provincial Council List contained in the Ninth Schedule to the Constitution.[16] Examining these areas of overlap reveals how centralized commercial planning can constrain the implementation of provincial environmental and land-management policies.

This spatial-legal analysis ultimately provides the foundation for the Rights-Based Conservation Model proposed in the final sections of this article.

[15] *Urban Development Authority Law* No 41 of 1978 (Sri Lanka), s 3.
[16] *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, 13th Amendment (1987), Ninth Schedule, List I.

4. The Ecological Mandate

The legal status of the *Borassus flabellifer* in the Northern Province must be re-evaluated, moving away from a purely property-based perspective toward one rooted in Ecological Jurisprudence. The Jaffna Peninsula lacks perennial rivers and depends almost entirely on vulnerable Miocene limestone aquifers for its freshwater supply.[17] Within this fragile hydro-geological setting, the Palmyrah palm forms an important component of the region's ecological infrastructure. Existing studies suggest that its extensive root systems contribute to groundwater recharge and assist in maintaining environmental stability within the peninsula.

Under the Public Trust Doctrine, as famously articulated by the Sri Lankan Supreme Court in the *Bulankulama v Ministry of Industrial Development case*[18], the state does not own natural resources but holds them in fiduciary trust for its citizens. When the UDA prioritizes built-up growth corridors over these ancient groves, it effectively facilitates a breach of this trust. The conservation of these permeable "bio shields" into impermeable "concrete ribbons" along the A9 highway does more than just remove trees; it serves the hydrological cycle of the region.

Finally, the climate resilience role of the Palmyrah palm, serving as a windbreaker and soil stabilizer, is another ecosystem service provided by the plant. These ecological services possess significant environmental value that is not adequately reflected in existing regulatory approaches. By focusing primarily on built-up development objectives, current planning frameworks risk undervaluing the non-market ecosystem services provided by the species. Accordingly, the protection of *Borassus flabellifer* is consistent with the environmental objectives reflected in Article

[17] C R Panabokke and A.P.G.R.L Perera, *Groundwater Resources of Sri Lanka* (Water Resources Board, January 2005).
[18] *Bulankulama v Secretary, Ministry of Industrial Development* (Eppawala Case) [2000] 3 Sri LR 243.

27(14) of the Constitution, which directs the State to protect and improve the environment for the benefit of the community.[19]

5. The Jurisdictional Friction

The continuing destruction of Palmyrah groves along the A9 transport corridor illustrates a significant jurisdictional conflict within Sri Lanka's devolved system of governance. The clearing of Palmyrah groves is not merely an environmental tragedy. It is a symptom of a jurisdictional crisis. Under the 13th Amendment, the governance of the Northern Province is divided into the "Reserved List" and the "Provincial List".[20] While "Agriculture" and "Land" are listed as Provincial subjects (List I)[21], the *Urban Development Authority (UDA) Act* grants the central government sweeping powers to declare any area a "Development Area."[22] Once the UDA designates the A9 corridor for "Built-up Growth" under the GJDP, provincial agricultural priorities are effectively side-lined. This centralised approach permits urban planning decisions to be made in Colombo that may not adequately account for the hydro-geological sensitivities of the Jaffna Peninsula.

Despite having the constitutional competency to legislate on regional agricultural matters, the Northern Provincial Council (NPC) has largely suffered from legislative inertia. The NPC has yet to exercise its power to pass a dedicated Provincial Palmyrah Conservation Statute. Such a statute could legally designate "Palmyrah-Rich Zones" as protected areas, creating an additional layer of environmental oversight over centrally approved development projects. By relying on national acts like the *Coconut Development Act*,[23] which, as argued, is industrial-utilitarian in

[19] *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, art 27(14).
[20] *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, 13th Amendment (1987), Ninth Schedule.
[21] *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, 13th Amendment (1987), Ninth Schedule, List I.
[22] *Urban Development Authority Law* No 41 of 1978 (Sri Lanka), s 3.
[23] *Coconut Development Act* No 46 of 1971 (as amended by Law No 24 of 1975) (SL).

nature, the province has failed to create a localized legal shield for its "Tree of Life."

From the perspective of devolution, spatial planning cannot be entirely separated from the land and resources it regulates. The palmyrah palm is not merely an agricultural commodity but a significant component of the region's ecological infrastructure. Consequently, planning decisions affecting land use and agricultural resources within the province should properly fall within provincial jurisdiction.

When the central government, through the UDA, zones environmentally sensitive palmyrah groves for high-density commercial development, it effectively displaces provincial agricultural and environmental priorities. Such an approach risks undermining the purpose of constitutional devolution by substituting locally responsive environmental protections with uniform development standards that may not adequately account for the ecological realities of the region.

One of the principal challenges facing provincial environmental governance arises from the interpretation of the Thirteenth Amendment that permits central legislation to prevail where it is enacted as a matter of national policy. The central government frequently relies on this principle to argue that infrastructure and development initiatives implemented under the UDA Law advance broader national economic objectives and therefore take precedence over provincial regulatory measures.

This article argues, however, that the environmental realities of the Jaffna Peninsula require a more localised constitutional approach grounded in both environmental necessity and human rights considerations. The peninsula possesses a unique geographical character, lacking perennial rivers and depending almost entirely on shallow Miocene limestone aquifers for its water supply. The extensive root systems of the Palmyrah palm play a vital role in this ecosystem by facilitating groundwater recharge and reducing the risk of salt-water intrusion into freshwater reserves.

The removal of ancient Palmyrah groves for commercial development therefore, poses risks that extend beyond ordinary questions of land use or agricultural policy. It directly threatens regional water security and raises broader concerns regarding the protection of fundamental human interests. Article 27(14) of the Constitution directs the State to protect and improve the environment for the benefit of the community.[24] When read alongside the constitutional recognition of the right to life, this provision supports a broader understanding of environmental protection as an essential condition for human well-being.

This friction is further compounded by the lack of horizontal coordination between the UDA and the PDB. The UDA approaches the landscape primarily from the perspective of infrastructure development, whereas the PDB is principally concerned with the economic utilisation of Palmyrah resources. Neither body appears to have an explicit statutory mandate to prioritise the in-situ conservation of Palmyrah ecosystems. Official records of the Palmyrah Development Board repeatedly identify indiscriminate felling and inadequate enforcement powers as major obstacles to conservation efforts. This institutional gap enables ribbon development to continue with limited oversight, as developers can exploit the disconnect between overlapping regulatory mandates to clear ancient groves.

From this perspective, the protection of Borassus flabellifer is not merely an issue of conserving an agricultural resource. Rather, it is closely connected to the preservation of regional water security and the protection of fundamental human interests. National development policies cannot be interpreted in a manner that permits the destruction of ecological conditions that are necessary

[24] Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 27(14).

to sustain human life. Accordingly, a strong constitutional argument can be made that the Northern Provincial Council possesses the authority to oppose or restrict development measures that threaten these vital environmental resources.

To translate these constitutional principles into practical policy, the Northern Provincial Council should enact a comprehensive Provincial Palmyrah Conservation Statute. Such legislation would utilise the province's powers over land use and environmental management to establish a framework specifically designed to protect the Palmyrah and the ecosystems it supports. Unlike the central Coconut Development Act, which approaches the Palmyrah largely from a commercial perspective, the proposed statute would prioritise environmental sustainability and regional water security.

The proposed framework would rest on two principal pillars.

(a) Designation of Palmyrah-Rich Eco-Zones

The Provincial Council would identify and map areas with significant concentrations of palmyrah palms, particularly those that play an important role in groundwater recharge and ecological stability. These areas would be designated as protected eco-zones. Within such zones, development activities and commercial expansion would be subject to stricter regulation, with decisions guided primarily by environmental considerations rather than the economic value of the land.

(b) Mandatory Provincial Environmental Clearance Certificate (PECC)

The statute would also establish a Provincial Environmental Clearance Certificate (PECC) system. Under this mechanism, any development proposal involving the removal of Palmyrah palms would require prior approval from the relevant provincial authorities before any construction or land-clearing activities could commence. This approval process would operate alongside, and independently of, the building approvals issued by central authorities under the UDA framework.

Importantly, the statute should provide that, within designated eco-zones, the refusal of a PECC prevents development from proceeding regardless of any approvals granted by central authorities. Such a mechanism would provide the province with a meaningful legal tool to protect environmentally sensitive areas and safeguard the natural infrastructure upon which the region's long-term ecological security depends.

6. Recommendations

The weaknesses of the existing regulatory framework stem largely from its limited enforcement mechanisms and inadequate penalties. The current system allows environmental harm to be treated as a relatively minor cost of development rather than as a serious legal wrong. To address these shortcomings, this article proposes a reform framework based on three measures: a dual-penalty enforcement mechanism, the introduction of a statutory Heritage Tree status for ancient palmyrah palms, and targeted amendments to environmental review procedures.

6.1 A Dual-Penalty Enforcement Mechanism

An effective enforcement regime should distinguish between punishment and ecological restoration. Accordingly, this article proposes a dual-track remedial framework comprising punitive financial penalties and mandatory restoration obligations.

First, the flat penalties presently available under the Felling of Trees Act should be replaced with fines that reflect the economic value of the proposed development. Rather than imposing nominal fixed penalties, the statute should permit fines calculated as a percentage of the total market value of the development project, with valuations verified by the Government Valuation

Department. Linking penalties to the commercial value of the development would ensure that unlawful clearing of Palmyrah groves attracts meaningful financial consequences.

Secondly, the payment of a fine should not extinguish the developer's environmental obligations. In addition to financial penalties, developers should be required to undertake restorative measures. This article proposes a mandatory replacement ratio of ten saplings for every mature *Borassus flabellifer* removed. To improve long-term survival rates, developers should also be required to contribute to a maintenance fund covering the care, monitoring, and protection of replanted palms over a specified period. Such a system would ensure that restoration becomes an integral component of environmental compliance rather than a purely symbolic exercise.

6.2 Introducing a Statutory Heritage Tree Status

This article further proposes the creation of a statutory "Heritage Tree" designation for palmyrah palms that exceed a specified age threshold, such as fifty years. Inspired by developments in eco-jurisprudence and principles underlying the Public Trust Doctrine, this designation would recognize that certain ancient trees possess environmental and cultural significance that extends beyond their commercial value.

Under this model, designated Heritage Trees would receive enhanced legal protection, and public interest litigants, local communities, or environmental organizations could be granted standing to seek judicial remedies where such trees are threatened. Courts would therefore be empowered to intervene before irreversible damage occurs and, where appropriate, require developments to be redesigned in a manner that accommodates and preserves existing trees. Such an approach encourages a shift from land-clearance models of development towards forms of environmentally integrated planning.

6.3 Addressing the Problem of Incremental Environmental Harm

The existing environmental review process also contains an important regulatory gap. Environmental Impact Assessments under the National Environmental Act are generally triggered by large-scale developments. Consequently, small commercial projects may proceed without environmental scrutiny, even where their cumulative effects are significant.

To address this issue, this article proposes a targeted amendment applicable to designated Palmyrah-Rich Eco-Zones. Within these areas, environmental review should be triggered not solely by the size of the land involved but also by the density of ecologically significant vegetation. The removal of a specified number of mature Palmyrah palms on a single site should automatically require an Initial Environmental Examination assessing, among other matters, the potential impacts on groundwater recharge and aquifer connectivity.

By lowering the threshold for environmental review in ecologically sensitive areas, this approach would reduce opportunities for piecemeal environmental degradation and ensure that seemingly minor developments are subjected to appropriate environmental scrutiny before they are permitted to proceed.

7. Conclusion

The ecological significance of *Borassus flabellifer* extends far beyond its economic utility. The continued loss of ancient Palmyrah groves through unregulated ribbon development threatens environmental resources upon which future generations of the Jaffna Peninsula depend. The current "industrial-utilitarian" framework is no longer fit for purpose in an era of climate change variability.

Consistent with the principles underlying the Public Trust Doctrine, the State's responsibility extends beyond facilitating economic development and includes safeguarding environmental resources that are essential to long-term ecological security. By transitioning to a Rights-Based Conservation Model, Sri Lanka can prove that regional development and ecological sustainability are not mutually exclusive, but are two sides of the same sovereign duty. If the law fails to protect the *Katpaham*, it fails to protect the very future of the Jaffna Peninsula itself.

NORTHERN REGION TO INTERNATIONAL WATERS: ADMIRALTY JURISDICTION OVER FISHING VESSELS IN MARITIME BOUNDARY VIOLATIONS IN NORTHERN SRI LANKA

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Abstracts

Sri Lanka's Northern maritime region is a legally sensitive and strategically significant space in which the enforcement of fisheries law against foreign, predominantly Indian, fishing vessels frequently intersects with the exercise of admiralty jurisdiction and Sri Lanka's obligations under the law of the sea. The recurrent arrest and detention of foreign trawlers under the Fisheries and Aquatic Resources Act No. 2 of 1996 has generated sustained legal and diplomatic controversy, yet the point at which such enforcement action gives rise to, or is distinguishable from, the High Court's admiralty jurisdiction under the Admiralty Jurisdiction Act No. 40 of 1983 remains doctrinally unclear. Adopting a doctrinal and contextual methodology, this article examines the Admiralty Jurisdiction Act No. 40 of 1983, the Fisheries and Aquatic Resources Act No. 2 of 1996, and the relevant provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), alongside Sri Lankan case law and the jurisprudence of the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice. It argues that, while these two statutory regimes serve distinct purposes the Fisheries Act operating as a criminal enforcement mechanism before the Magistrate's Court, and the Admiralty Jurisdiction Act governing civil maritime claims before the High Court the absence of clear statutory delineation between them produces uncertainty regarding the legal basis for vessel arrest, detention, and adjudication. The article further argues that Sri Lankan enforcement practice raises questions regarding its consistency with the international standards of proportionality and prompt release established under UNCLOS and developed through ITLOS jurisprudence, and that the application of admiralty principles, particularly actions in rem, to small-scale subsistence fishing vessels may produce disproportionate hardship for individual fishermen. It concludes by calling for statutory clarification of the boundary between admiralty jurisdiction and fisheries enforcement, institutional reform to expedite maritime proceedings, closer alignment with international legal standards, and continued bilateral cooperation between Sri Lanka and India as necessary steps towards a more coherent, proportionate, and equitable framework for maritime enforcement in the Northern region.

1. Introduction

Sri Lanka's Northern maritime region represents one of the most legally complex and politically sensitive maritime spaces in South Asia. Situated in close proximity to India and shaped by historical fishing practices, post-conflict economic realities, and fragile marine ecosystems, this region has become a focal point of maritime law enforcement involving unauthorised foreign fishing vessels. The frequent arrest of foreign trawlers, predominantly of Indian origin, by Sri Lankan authorities has generated not only diplomatic tensions but also significant legal controversy regarding the scope and limits of admiralty jurisdiction. While Sri Lanka possesses a formal legal framework enabling maritime enforcement, the practical application of admiralty jurisdiction in the Northern context raises several doctrinal and procedural challenges. The intersection of domestic admiralty law, fisheries regulation, and international law of the sea creates a fragmented legal landscape. This fragmentation becomes particularly evident in enforcement actions involving vessel arrest, detention, and adjudication. This article undertakes a doctrinal and contextual analysis of admiralty jurisdiction governing the arrest and detention of illegal foreign fishing vessels operating within Sri

Lankan maritime zones. This article argues that although Sri Lanka possesses a legal framework for maritime enforcement, legal uncertainty remains regarding the point at which admiralty jurisdiction becomes applicable following enforcement action taken under fisheries legislation.

2. The Northern Maritime Region: Legal and Socio-Political Context

The Northern Province of Sri Lanka, particularly the waters surrounding Jaffna and the Palk Strait, has historically been shared by fishing communities from both Sri Lanka and India. Prior to the formal delimitation of maritime boundaries, fishermen from both sides operated with relative freedom, often crossing what later became internationally recognised borders. The Indo–Sri Lanka Maritime Boundary Agreements of 1974 and 1976 formally demarcated these waters, placing key fishing areas such as Kachchativu Island within Sri Lankan sovereignty[1]. However, these agreements did not fully resolve the socio-economic realities of fishing communities, particularly those dependent on traditional fishing grounds. In the post-war period, Northern Sri Lankan fishermen, who had been displaced during the civil conflict returned to find their fishing grounds depleted, partly due to intensive bottom trawling by Indian vessels. This has led to heightened enforcement by Sri Lankan authorities, resulting in frequent arrests of Indian fishermen and seizure of vessels. Sri Lankan judicial approaches to maritime enforcement have historically recognised the importance of balancing sovereign rights with fairness in enforcement. In, *M.V. Thermopylae Sierra& Scarlet Shipping Company Ltd. vs Marichem Marigases Ltd.* The Court of Appeal affirmed the significance of admiralty jurisdiction in securing maritime claims while emphasising procedural propriety

1 Agreement between India and Sri Lanka on the Boundary in Historic Waters (1974); Agreement on Maritime Boundary (1976).

in vessel arrest.[2]In addition to these socio-economic tensions, the Northern maritime region is characterised by a fragile ecological balance that has been affected by unsustainable fishing practices, including bottom trawling by unauthorised foreign trawlers. This ecological backdrop is significant primarily insofar as it shapes the legal questions at issue: The recurrent presence of foreign fishing vessels within Sri Lankan maritime zones gives rise, in the first instance, to enforcement action under the Fisheries and Aquatic Resources Act No. 2 of 1996. Admiralty jurisdiction is not automatically invoked by such enforcement but may subsequently arise where ownership, possession, mortgage, release of the vessel, or another recognised maritime claim falls within the jurisdiction of the High Court. The inadequacy of monitoring mechanisms, combined with the limited institutional capacity of enforcement authorities, contributes to repeated violations and creates uncertainty regarding the appropriate legal framework applicable at different stages of proceedings involving foreign fishing vessels Thus, the Northern maritime issue is not merely one of resource management, but fundamentally one of jurisdictional clarity: which court, under which statute, and on what legal basis, may properly order the arrest or detention of a vessel.

3. Admiralty Jurisdiction in Sri Lanka: Scope and Limitations

The Admiralty Jurisdiction Act No. 40 of 1983 establishes the jurisdiction of the High Court of Sri Lanka, exercising its admiralty jurisdiction, over civil maritime claims and provides for actions in rem against vessels, including their arrest as security for maritime claims.[3] Judicial interpretation of admiralty jurisdiction in Sri Lanka has been influenced by English admiralty principles. Sri Lankan courts have emphasised that the exercise of admiralty jurisdiction, particularly in relation to vessel arrest, must adhere to

[2] M.V. Thermopylae Sierra& Scarlet Shipping Company Ltd. vs Marichem Marigases Ltd. [CA REM/05/2013]

[3] Admiralty Jurisdiction Act No. 40 of 1983 (Sri Lanka).

principles of procedural fairness and legal propriety, consistent with broader maritime law principles. However, the Act is primarily oriented towards commercial maritime disputes such as carriage of goods, collisions, and salvage, and does not explicitly address fisheries-related enforcement. This creates a practical question regarding the distinction between vessel arrest under the Fisheries and Aquatic Resources Act as a criminal enforcement measure and vessel arrest under admiralty jurisdiction as security for a recognised maritime claim A further limitation lies in the absence of procedural specificity. The Act permits the arrest of a vessel as security for a recognised maritime claim brought within the High Court's admiralty jurisdiction, but it does not clearly prescribe detailed procedural safeguards governing the exercise of that power this lack of clarity permits discretionary enforcement practices, resulting in inconsistencies and uncertainty. The Fisheries and Aquatic Resources Act No. 2 of 1996, by contrast, establishes a wholly separate, expressly criminal enforcement regime falling within the jurisdiction of the Magistrate's Court.[4]Criminalises unauthorised and illegal fishing by foreign fishing craft within Sri Lankan waters as a statutory offence, and authorises enforcement officers to board, inspect, seize, and arrest offending vessels, with prosecutions for these offences falling to be heard before the Magistrate's Court rather than the High Court.[5] While these powers operate within a criminal law framework, the continued detention of a vessel does not, by itself, invoke admiralty jurisdiction. Admiralty jurisdiction becomes relevant only where a recognised maritime claim, such as ownership, possession, mortgage, or another maritime claim falling within the Admiralty Jurisdiction Act No. 40 of 1983, is brought before the High Court. Sri Lankan courts have emphasised proportionality in the exercise of state power. In *Sugathapala Mendis v Chandrika Bandaranaike Kumaratunga*, the Supreme Court underscored that executive action must be

[4] Fisheries and Aquatic Resources Act No. 2 of 1996 (Sri Lanka).

[5] *Sugathapala Mendis v Chandrika Bandaranaike Kumaratunga* [2008] SC

reasonable and proportionate. [6]This principle is particularly relevant in evaluating the legality of vessel detention. The Fisheries and Aquatic Resources Act No. 2 of 1996 governs criminal fisheries enforcement, while the Admiralty Jurisdiction Act No. 40 of 1983 governs civil maritime claims before the High Court. Proceedings concerning the same vessel may arise under both Acts at different stages; however, admiralty jurisdiction is invoked only where a recognised maritime claim exists before the High Court. It is important, at this point, to state the distinction between these two regimes clearly rather than allow it to remain implicit. The arrest of a fishing vessel under the Fisheries and Aquatic Resources Act is, in substance, a criminal enforcement mechanism: it is triggered by an alleged statutory offence, is carried out by enforcement officers acting under statutory powers of boarding, inspection, and seizure, and culminates in prosecution before the Magistrate's Court. Admiralty jurisdiction, by contrast, concerns civil maritime claims brought before the High Court, in which the arrest of a vessel functions not as punishment but as security for the satisfaction of a maritime claim pending adjudication. These are, therefore, distinct legal regimes, founded on different statutory bases, invoked before different courts, and serving different legal purposes. Although proceedings concerning the same vessel may arise under both Acts at different stages, each Act operates independently according to its own statutory purpose. Admiralty jurisdiction is exercised only where a recognised maritime claim falls within the jurisdiction of the High Court. This distinction preserves the separate operation of the two statutory regimes while recognising that the same vessel may become the subject of different legal proceedings at different stages.

[6] United Nations Convention on the Law of the Sea 1982.

4. International Law of the Sea and Enforcement Jurisdiction

Sri Lanka's maritime enforcement powers are governed by the United Nations Convention on the Law of the Sea 1982 (UNCLOS).[7]Under UNCLOS, Sri Lanka exercises sovereignty over its territorial sea and sovereign rights within its Exclusive Economic Zone (EEZ) for resource exploitation. The International Court of Justice in Fisheries Jurisdiction (*United Kingdom v Iceland*) recognised the legitimacy of coastal state regulation of fisheries resources.[8] However, such rights are subject to important limitations Article 73 of UNCLOS permits coastal states to arrest and detain foreign vessels engaged in illegal fishing but requires that penalties be proportionate and that vessels and crews be promptly released upon the posting of reasonable bond. These principles have been further elaborated in ITLOS jurisprudence. In M/V Saiga (No 2), the Tribunal emphasised that enforcement must comply with international legal standards.[9] In The Camouco and Monte Confurco cases, it reaffirmed that prolonged detention and excessive conditions violate the requirement of prompt release.[10]These decisions are directly relevant to the Northern Sri Lankan context, where enforcement practices have often resulted in extended detention of vessels.

5. Vessel Arrest in the Northern Context: Legal Challenges

The arrest of vessels in the Northern maritime region reveals significant legal challenges. Although vessel arrest exists in both fisheries enforcement and admiralty law, its legal purpose differs. Under the Fisheries and Aquatic Resources Act, vessel arrest forms part of criminal enforcement, whereas under admiralty

[7] *Fisheries Jurisdiction (United Kingdom v Iceland)* [1974] ICJ Rep 3
[8] UNCLOS, art 73.
[9] *M/V Saiga (No 2) (Saint Vincent v Guinea)* ITLOS Case No 2 (1999).
[10] *The Camouco Case (Panama v France)* ITLOS Case No 5 (2000); *Monte Confurco Case (Seychelles v France)* ITLOS Case No 6 (2000)

jurisdiction it serves as security for a recognised maritime claim before the High Court. In M/V Saiga (No 2), ITLOS emphasised that enforcement measures must remain within the bounds of necessity and reasonableness.[11]Similarly, in Arctic Sunrise Arbitration (*Netherlands v Russia*), it was held that unlawful detention of vessels may violate international obligations.[12]In the Northern Sri Lankan context, vessel arrest often serves not only a legal function but also a symbolic assertion of sovereignty. While such assertions may have political significance, they risk undermining the legitimacy of enforcement if not supported by clear legal standards and procedural safeguards. Moreover, the legal treatment of the vessel as an independent juridical entity in admiralty law raises further complexities in fisheries enforcement. While the concept of actions in rem allows for proceedings against the vessel itself, its application in cases involving small-scale fishing vessels and individual fishermen may produce inequitable outcomes. This is particularly relevant in the Northern Sri Lankan context, where many affected individuals are not commercial operators but subsistence fishermen. Accordingly, the application of admiralty principles must be carefully calibrated to avoid disproportionate hardship.

6. Procedural Deficiencies and Disproportionality

The prolonged detention of vessels remains a major concern. ITLOS jurisprudence, particularly in Camouco and Monte Confurco, demonstrates that excessive delay is inconsistent with international law.[13]Institutional limitations further aggravate this issue. The absence of specialised maritime courts and procedural inefficiencies contribute to delays, increasing hardship for affected fishermen. In Volga Case (*Russian Federation v Australia*), ITLOS examined proportionality in enforcement and emphasised that

[11] *M/V Saiga (No 2)* (n 10)

[12] *Arctic Sunrise Arbitration (Netherlands v Russia)* (2015) PCA.

[13] *Camouco* (n 11); *Monte Confurco* (n 11).

measures must not be excessive.[14] Additionally, the lack of clear administrative guidelines results in inconsistent enforcement practices, raising concerns regarding fairness and predictability. Another significant concern relates to the absence of clear timelines and procedural benchmarks for the resolution of vessel detention cases. Unlike certain jurisdictions where statutory provisions mandate expedited hearings in maritime matters, Sri Lanka lacks a structured procedural framework to ensure timely adjudication. This gap contributes to prolonged uncertainty and undermines confidence in the legal system. Addressing this issue requires not only legislative reform but also administrative improvements within the judicial process.

7. Disconnect Between Legal Framework and Practical Reality

The Northern Sri Lankan experience highlights a significant disconnect between legal norms and enforcement practices. While statutory frameworks provide authority, their application often fails to reflect the procedural and institutional realities of vessel arrest and detention on the ground. The ICJ in Fisheries Jurisdiction recognised the need to balance sovereign rights with equitable resource use.[15] This balance remains inadequately achieved in the Northern context. Additionally, the limited engagement with international best practices in fisheries governance further exacerbates this disconnect. Comparative experiences from other coastal states demonstrate the effectiveness of integrated regulatory approaches that combine enforcement with cooperative management strategies. The absence of such approaches in the Northern Sri Lankan context highlights the need for a more progressive and adaptive legal framework capable of responding to evolving maritime challenges.

[14] *Volga Case (Russian Federation v Australia)* ITLOS Case No 11 (2002).

[15] *Fisheries Jurisdiction* (n 8).

8. Towards a Coherent Legal Approach

A more coherent approach requires doctrinal clarification of the relationship between admiralty jurisdiction and fisheries enforcement. Domestic law must be aligned with UNCLOS obligations, particularly in relation to proportionality and prompt release. Institutional reforms, including specialised procedures for maritime disputes, are essential to improve efficiency and fairness. Furthermore, a clear statutory delineation between the High Court's admiralty jurisdiction and the Magistrate's Court's fisheries jurisdiction would reduce reliance on judicial

Improvisation and enhance procedural predictability. At the same time, continued bilateral cooperation between Sri Lanka and India remains important in addressing the Trans boundary nature of illegal fishing activities.

9. Conclusion

The arrest of unauthorised foreign fishing vessels in Northern Sri Lanka reflects the complex interaction between admiralty law, fisheries regulation, and international maritime law. While Sri Lanka has the authority to enforce its maritime rights, the current framework is characterised by conceptual ambiguity and procedural deficiencies. The integration of international legal principles, particularly those articulated by ITLOS, is essential to ensure lawful and proportionate enforcement. A balanced approach grounded in clarity, fairness, and cooperation remains necessary for effective maritime governance. In this regard, future legal reform should also consider the development of a specialised maritime enforcement framework that clearly delineates and coordinates the respective operation of admiralty jurisdiction and fisheries regulation while preserving their distinct statutory functions. Such a framework could provide clearer procedural guidelines, enhance judicial efficiency, and ensure compliance with international legal standards. Moreover, statutory clarification of the boundary between admiralty jurisdiction and fisheries enforcement, supported by expedited procedures within the existing court structure, would do more than diplomatic engagement alone to resolve the doctrinal uncertainty that currently characterises vessel arrest and detention in the Northern maritime region.

A NEW AVENUE FOR PURSUIT OF ENVIRONMENTAL JUSTICE THROUGH THE SUPREME COURT OF SRI LANKA; A CASE STUDY OF X-PRESS PEARL

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Abstract

Global pursuit of environmental justice is increasingly focused on the legal accountability of Northern corporations for ecological degradation in the global south. Jhon Bellamy Foster argues that current global economic order facilitates a "metabolic rift" where high northern demand drives a rapid depletion of southern resources.[1] Using the MV X-Press Pearl disaster[2] as a primary case study, this paper examines the metabolic rift created when high maritime demand drives rapid resource depletion and environmental risk in coastal states like Sri Lanka. While international frameworks often fail to address extraterritorial harms, this research analyzes the judgment given by the Supreme Court of Sri Lanka[3] as a transformative model for southern legal resistance. Specifically, it contrasts the fundamental rights approach[4] of Sri Lankan jurisprudence with the liability caps found in international maritime hubs like Singapore and London. Paper further argues for a shift toward

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[1] John Bellamy Foster, 'The Theory of Metabolic Rupture and Marx's Ecological Reading' (Project Rupture, 17 June 2021) https://www.projetoruptura.org/en/post/the-theory-of-metabolic-rupture-and-marx-s-ecological-reading accessed 14 January 2026.

[2] DLPB Pathirana, KAND Kuruppu and IPKG Nandasiri, 'Overview of Remediation Measures of X-Press Pearl Incident' (2024) 5(3) Journal of Research Technology & Engineering 173.

[3] Centre for Environmental Justice and Others v Marine Environment Protection Authority and Others (MV X-Press Pearl Marine Environmental Pollution Case) [2025] SC/FR 168/2021, SC/FR 176/2021, 184/2021, and 277/2021.

[4] Centre for Environmental Justice and Others v Marine Environment Protection Authority and Others (MV X-Press Pearl Marine Environmental Pollution Case) [2025] SC/FR 168/2021.

absolute extraterritorial liability through an analysis of the duty of care and the polluter pays principle. Overall, paper proposes that domestic Constitutional Law can serve as a critical tool for global south to hold domestic and transnational actors accountable for restructuring global environmental governance from the bottom to top.

Key words *- Metabolic rift, Environmental justice, X-Press pearl, absolute liability, Supreme Court of Sri Lanka*

1. Introduction

1.1 The Metabolic Rift

Metabolic rift refers to the systemic rupture in a balanced exchange between humanity and the natural environment.[5] This concept was originally identified by Karl Marx to describe how industrial capitalism disrupts essential ecological cycles.[6] In a natural state, humans extract resources from earth and return them as organic waste creating a sustainable loop. However, capitalist expansion breaks this cycle by concentrating populations in cities.[7] Because capitalism treats nature as an inexhaustible resource for profit. This results in a robbery of the land where soil nutrients are depleted in one location and dumped as pollution in another location. Ultimately, the theory suggests that environmental crises are not accidental side effects. Rather they are consequences of an economic system which prioritizes endless growth over biological limits of the planet.

1.2 The Metabolic Rift at the sea: A recent experience

MV X-Press Pearl disaster is a recent example for metabolic rift. Because it illustrates how global trade ruptures the natural cycles

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[5] Foster, J. B. (2000). Marx's Ecology: Materialism and Nature. Monthly Review Press.

[6] Marx, K. (1976). Capital: A Critique of Political Economy, Volume I. (B. Fowkes, Trans.). Penguin Books. (Original work published 1867).

[7] Foster, J. B. (1999). Marx's Theory of Metabolic Rift: Classical Foundations for Environmental Sociology. American Journal of Sociology, 105(2), 366-405.

of marine environment for economic gain. In a healthy marine metabolism,[8] the ocean's ecosystems function as a circular system that supports biodiversity and local livelihoods.

In the case of X - Press Pearl the ship carried hazardous goods for Northern markets but dumped nitric acid and 1680 metric tons of plastic nurdles into Sri Lanka's coast. These plastics will take 500 to 1000 years to decompose. This violates future generations' right to a clean environment for the sake of profit. From the perspective of this research, this event represents a robbery of global south resources as risk of transporting consumer goods for Northern demand are offloaded onto southern coastal states. The spill of billions of plastic pellets which may take up to 1000 years to decompose has created a physical barrier to natural recovery. The disaster was driven by a profit-oriented global order that treated the ocean as a sink for its hazardous wastes. This leads to the death of hundreds of sea turtles, dolphins and the long-term contamination of the local food chain through bioaccumulation. Also, for local fishing community, metabolic rift is not just a theory. It is a lived reality where their source of life and income was destroyed overnight. That leads them to be alienated from the environment once they depended on.

2. Legal gap: international shields vs. Northern demand & southern reality

The conflict between international maritime frameworks and domestic environmental justice can be illustrated by restrictive nature of the Convention on Limitation of Liability for Maritime Claims[9]. Under this treaty, a ship owner's financial responsibility is calculated based on the vessel's gross tonnage rather than the

[8] Guilherme Ferreira, 'The Theory of Metabolic Rupture and Marx's Ecological Reading' (Projeto Ruptura, 6 December 2021) http://projetoruptura.org/en/post/the-theory-of-metabolic-rupture-and-marx-s-ecological-reading accessed 1 May 2026.

[9] Convention on Limitation of Liability for Maritime Claims (adopted 19 November 1976, entered into force 1 December 1986) 1456 UNTS 221

actual scale of ecological destruction. For a vessel which is of the size of MV X-Press Pearl international caps would have limited liability to approximately USD 37 million. It's a figure that covers less than 1% of the estimated USD 6.4 billion of damages to Sri Lankan water. As shipping companies often seek to litigate in "Northern" maritime hubs like Singapore to benefit from these virtually unbreakable liability shields, this created a significant problem of jurisdiction. Sri Lanka's initial attempt to sue in Singapore was widely criticized as a legal error. Because it risked submitting to these international caps which prioritize global shipping stability over local restoration. However, the judgment of the Supreme Court of Sri Lanka[10] bypassed these limitations by framing the disaster as a violation of Fundamental Rights. By applying the polluter pays principle as a form of absolute liability, the Court ordered a landmark USD 1 billion payment, effectively asserting that domestic constitutional protections and the public trust doctrine supersede the restrictive commercial caps of international maritime law.

3. Case analysis

Facts of the case

MV X-Press Pearl was a Singapore flagged container ship newly operated by X-Press Feeders through ESO RO Pte. Ltd., and represented in Sri Lanka by its local agent, Sea Consortium Lanka (Pvt.) Ltd. In May 2021, vessel was engaged in a voyage that included transportation of a highly hazardous cargo. The included 81 containers of dangerous goods, 25 metric tons of nitric acid, significant quantities of methanol, caustic soda, lubricants and 400 containers of plastic nurdle. The disaster's beginning was found in a failure to adopt safety protocols at earlier stages of the voyage. A leak in a container of nitric acid was detected while the vessel was in the Arabian Sea. Ports of Hamad in Qatar and Hazira in

[10] Centre for Environmental Justice and Others v Marine Environment Protection Authority and Others SC/FR 168/2021 (SC, 24 July 2025)

India refused entry citing lack of facilities to handle the leakage. Then vessel voyaged toward Sri Lanka entering its territorial waters with knowledge and escalating risk. Conflagration began on May 20, 2021, as vessel anchored approximately 9.5 nautical miles from the Port of Colombo. After two weeks a massive firefighting operation involving Sri Lankan Forces. Finally, vessel sank, resting on the seabed, unleashing tons of pollutants that could permanently alter island's coastal ecology.[11] Even though the incident was taken place several years back, the costal ecology of Sri Lanka still been affected by the incident.[12]

Application of Article 12(1)[13]

SC FR 168/2021 found that, Sri Lanka's initial handling of the disaster, specifically attempting to file a lawsuit in Singapore could infringe the fundamental rights to equality. The Supreme Court ruled that the failures have violated constitutional protections. Further, Sri Lankan Supreme Court ruled that state officials have violated fundamental rights through mismanagement of MV X-Press Pearl disaster, specifically criticizing the Attorney General's decision to sue in Singapore rather than pursuing local action. The ruling held specific officials accountable for negligence. From the perspective of this research, this affirmed that global south nations have the right to utilize domestic laws to hold foreign polluters accountable for environmental damage.

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[11] Human Rights Commission of Sri Lanka, 'Report on the Matter of the X-Press Pearl Ship Disaster and its Legal Consequences' (August 2023) Complaint No HRC/HO/1692/23.

[12] Greenpeace, 'X-Press Pearl Disaster: Four Years Later, the Unseen Impact Still Remains' (Greenpeace South Asia, 8 May 2025) <https://www.greenpeace.org/southasia/story/1884/x-press-pearl-disaster-four-years-later-the-unseen-impact-still-remains/> accessed 24 June 2026

[13] Centre for Environmental Justice and Others v Marine Environment Protection Authority and Others SC/FR 168/2021 (SC, 24 July 2024).

Polluter Pays into Absolute Liability[14]

The most remarkable shift in maritime liability occurred through Court's reinterpretation of the polluter pays principal; those responsible for pollution must bear the costs of preventing, controlling, and remedying the damage they cause. Polluter pay is traditionally viewed as a soft-law guideline or a statutory mechanism for cost recovery. But 2025 judgment elevated polluter pay to a standard of absolute liability. Reasoning of the Court makes a sharp distinction between traditional strict liability which allows for limited defenses like acts of God or third-party interference and absolute liability. Drawing from Indian case law[15] court held that enterprises engaged in "inherently dangerous" or "hazardous" activities owe an "absolute and non-delegable duty" to the community.

The carriage of 25 tons of nitric acid and thousands of tons of high-risk cargo through sensitive ecological zones was categorized as an inherently dangerous activity. Consequently, ship owners, operators and agents were held liable for resulting the disaster regardless of their intent or the degree of care. Court explicitly stated that, mere lack of negligence is not a defense in such a matter.

The concept of a non-delegable duty ensures that, the ultimate responsibility for a hazardous operation remains with the enterprise that profits from it, preventing them from shifting liability to contractors or third parties. In this case, the liability of the X-Press Pearl Group was exacerbated by what the court identified as "intentional suppression and withholding of critical information". The bench found that the Master, the operator and the local agent had actively concealed ship's condition from port authorities to get permission. This deceit not only triggered the

[14] ibid

[15] MC Mehta v Union of India (1987) 1 SCC 395 (or AIR 1987 SC 1086)

disaster but also deprived the state of the critical response time which is necessary to avert a total conflagration.

4. Conclusion

From the perspective of this research, MV X-Press Pearl disaster is more than a local environmental tragedy. It's an illustration of metabolic rift in our global economy. This case proves that when the global North's high demand for consumer goods drives maritime trade, the ecological risks and resource robbery are unfairly offloaded into the global south. So far, international maritime frameworks have acted as shields by using rigid liability caps to protect profits while leaving coastal nations to bear the cost of billion-dollar catastrophes. However, above analyzed judgment by the Supreme Court of Sri Lanka marks a shift. By bypassing restrictive international treaties and framing the disaster as a violation of Fundamental Rights, the Supreme Court has provided a new blueprint for environmental justice. And also, conversion of the polluter pays principle into an absolute liability ensures that transnational corporations can no longer hide behind limited liability. As a whole this case demonstrates that domestic Constitutional Law is a powerful weapon for the global south. This ruling is not a mere seek of compensation for Sri Lanka. This empowers global south to stand on their own to restructure environmental governance from bottom to top.

WOMEN'S RIGHTS IN THE NORTH: BETWEEN TRADITION AND LEGAL REFORM

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Abstract

Women are a most sensitive group in any sector in any country. They are the most critical fact that deciding many things in every society. In Sri Lanka, they hold a huge responsibility towards their family and the whole society. This situation is further complicated in Northern Province of Sri Lanka. The women in northern area still face difficulties because of different reasons. Women rights in northern Sri Lanka exist in a complex space between long standing traditional practices and modern legal reforms. In all conflicts around the world, women are deeply affected. Sri Lanka's three decades of war was no exception. Although Sri Lankan law and international commitments such as CEDAW[1] guarantee equality and protection for women, many women in the north continue to face discrimination in daily lives. Reality supersedes beyond the all-legal barriers. High number of females headed households, economic marginalization, ongoing surveillance, and land rights, lack of livelihood opportunities, psychosocial issues, and domestic violence remains as barriers in the north society towards the woman. Cultural traditions, patriarchal family structures, customary laws and social stigma often limit women's ability to access justice and enjoy their rights. Using an interdisciplinary approach that combines law, sociology, and lived experiences, the article examines the gap between the legal reforms and the actual conditions faced by women in the north. It argues that legal reforms alone are insufficient to correct the right path and that meaningful improvement in women's rights requires social awareness, formal legal literacy and legal protections. This

[1] *Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.*

article compares with other jurisdictions in some countries to add best practical solutions for solving this huge gap.

Key words: *women rights, Northern Province, culture, Thesawalamai Law, legal reforms*

1. Introduction

Until women enjoy the same rights as men, their inequality is everyone's problem. Women in north Sri Lanka has taken a significant place among them. Culture and patriarchal structures have a strong impact on women's rights in northern region. In pre-war period, they were mainly discriminated by "Tradition. Usually, women stayed at home and took care of children, cooking and household work. Men were the main decision makers of their families. Women had limited opportunities to education and job opportunities compared to men. Women's rights in the northern region have changed over time, especially due to social tradition and legal development. After the war period, the situation of women was changed in many ways. They headed household works, but with the challenges of poverty, lack of jobs, social pressure and gender-based violence. Even though that happened like that, the traditional beliefs and social pressure continued from that period to today.

2. War and Patriarchal family structures

Sri Lanka's thirty years civil war is a crucial occasion that decide the women's status in Northern Province earlier. Women in the war areas have faced violence, sexual abuse, displacement and loss of family property. Because of the killing or disappearing of fathers, husbands, sons, the women had to control over all household works. "widow and women who live alone without male family members face low social standing and are often marginalized and excluded from society."[2] Some sources indicate

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[2] Women's Rights, *Studies Indicating the Prevalence of Gender-Based Violence in Sri Lanka 2002–2011* (2014)

that women from these household works often face problems relating to child bearing, child rearing, undertaking household chores and taking care of other family members. They are facing several problems like economic hardship, exclusion from inheritance, inability to claim property rights and lack of access to land. At the same time, they faced many problems such as sexual harassment, gossip and unwanted interference from others. According to Kumari Jayawardena and Thiruchandran[3], even though widows and displaced women felt some freedom after the war because they no longer had the restrictions of marriage, society still controlled them through patriarchy, gossips, rumours, teasing, harassment and violence.[4]

3. Customary laws

There is a special law that applicable only to the Tamils in North called *Thesawalamai law*. Section 6 of the Jaffna matrimonial rights and inheritance no 58,1947 ordinance states that women retain separate ownership of property acquired before or during marriage, but it also imposes that immovable property cannot be disposed of without the husband's written consent. The law discriminates against women. Women can own property, but not dispose of it as they wish. If they want to sell the land, they need their husband's consent. The *Thesawalamai law,* a customary legal system governing the Tamil population of Sri Lanka's Northern provinces, significantly affects gender equality, particularly in inheritance, property rights and family relations. Inheritance practices favouring male heirs lead to an unequal distribution of property and assets, undermining women's economic security and independence. This legal framework not only limits women's financial security but also restricts their rights in ownership, divorce, and child custody affecting their roles in family and

[3] Thiruchandran K, *War, Women and Displacement in Sri Lanka* (Social Scientists' Association 2008)

[4] *https://groundviews.org/2024/04/06/women-in-the-north-fight-against-a-patriarchal-society-for-*survival/

community decision making. This severally limits women's autonomy and control over their assets. Gender inequality extends beyond property matters into broader family dynamics in Northern Province.[5]

4. Cultural traditions and social stigma

In the northern province of Sri Lanka, women's rights are often restricted by traditional social and cultural norms that place them in subordinate roles to men. Tradition strongly influences marriage, family life and community expectations, often limiting women's freedom to make independent decisions. Traditional attitudes can also restrict women's mobility, discourage independent living, and create barriers to owning or controlling property. Widows and single women, especially in the post war context, often face social stigma, gossip, and unwanted interference in their personal lives.

"Generally, we consider the following group of women as FHHs – War widows, divorced women, if the husband is missing, if the husband is ill, disable and ill because of alcohol addiction. But, single women are not captured as FHHs. However, we have to include the single women also when targeting the FHHs for a project as the female is the one who earns for the family and provides security."

- KPI, Government Official, Jaffna[6]

While tradition helps preserve cultural values, it can also reinforce gender inequality and limit women's social, economic and personal freedoms.

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[5] Mathanaranjan P, *'The Impact of Colonialism on Women's Right to Land under the Thesawalamai Law'* (2025) 1 *Peradeniya Law Journal* 115.

[6] United Nations, *Mapping of Socio-Economic Support Services to Female Headed Households in the Northern Province of Sri Lanka* (United Nations, Sri Lanka 2015) https://www.lk.one.un.org

5. Contradiction between tradition and legal guarantee

Women rights in Sri Lanka are guaranteed by several legal provisions. Women's rights in Sri Lanka are protected by a range of constitutional, statutory, and policy measures. Article 12 of the Constitution guarantees equality before the law, equal protection of the law, and freedom from discrimination on grounds including sex. It further permits the State to adopt special measures for the advancement of women and other disadvantaged groups. In addition, the Directive Principles of State Policy require the State to promote equality of opportunity and eliminate discrimination based on sex. These constitutional provisions reflect Sri Lanka's commitment to gender equality and are reinforced by international obligations such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Women's Charter of 1993, the National Policy on Women, and various legislative reforms including the Prevention of Domestic Violence Act No. 34 of 2005 and amendments to the Penal Code concerning sexual offences and gender-based violence.

However, a significant contradiction exists between Article 12 and Article 16(1) of the Constitution. While Article 12 guarantees equality and non-discrimination, Article 16(1) preserves all existing written and unwritten laws notwithstanding any inconsistency with the fundamental rights provisions. As a result, certain personal and customary laws that may discriminate against women continue to remain legally valid and immune from constitutional challenge. This constitutional protection of pre-existing laws creates a gap between the formal guarantee of equality and the practical enjoyment of women's rights.

Therefore, the coexistence of Articles 12 and 16 represents one of the most significant legal obstacles to achieving substantive gender equality in Sri Lanka. While numerous laws and policies seek to empower women and eliminate discrimination, the continued constitutional protection of potentially discriminatory personal and customary laws undermines these efforts.

Meaningful legal reform requires addressing this contradiction to ensure that all laws comply with the constitutional guarantee of equality and Sri Lanka's international human rights obligations

6. Gender equality and the world

Sweden is often seen as a global leader in gender equality. The country has strong laws against domestic violence and sexual harassment and these laws are properly enforced. Sweden also promotes equality in family life by giving parental leave to both mothers and fathers. This helps reduce gender inequality at home and at work. Canada is known for its strong focus on gender equality, especially in the work place and politics. The law requires large companies to include women on their boards, which increases female representation in decision making. Canada provides strong legal protection for women through laws against gender -based violence and discrimination. The country also offers support systems such as shelters, legal aid and counselling services for victims of abuse. Canada pays special attention to protecting the rights of indigenous women, who have historically faced discrimination. New Zealand is a progressive country in terms of women's rights. It was one of the first countries in the world to give women the right to vote. Today, it continues to promote through fair workplace laws and strong policies against domestic violence.

Iceland is often ranked as the best country for gender equality. It has strict laws that require equal pay for men and women, and companies must prove that they follow these rules. If they fail, they can face penalties. Iceland also has a high number of women in political leadership which helps create policies that support women's rights. Rwanda is an important example from a developing country. After a period of conflict, Rwanda introduced laws to promote gender equality and empower women. Today it has one of the highest percentages of women in parliament in the world. Spain has taken strong action to protect women from gender-based violence. It has comprehensive laws that address domestic abuse and has created special courts to deal with such cases. The government also runs public awareness campaigns to educate people about women's rights.[7]

7. Recommendations

To improve women's rights and gender equality in north Sri Lanka, several legal, social and institutional reforms are needed. Constitutional protections should be strengthened by amending article 12(2) to clearly include gender as a ground of non-discrimination and removing article 16, which allows older discriminatory laws to continue. A strong gender equality law and the establishment of a National Commission on women can help guide reforms. Laws, such as the family background report requirement for female migrant workers, should be repealed, and personal laws must be updated to meet international equality standards. Violence against women should be addressed by improving the enforcement of the prevention of domestic violence act and introducing laws against online harassment and technology-based abuse. Women's political and economic empowerment can be strengthened by enforcing quotas for political representation, ensuring equal job opportunities, and recognizing unpaid care work through childcare work through childcare policies. In addition, gender sensitization training for law enforcement and public officials, better data collection on gender issues, and easier access to government services without unnecessary consent requirements are essential for creating a safer and more equal society for women.[8]

[7] https://www.amnesty.org/en/what-we-do/discrimination/womens-rights/

[8] Vega Leyton B, *Women's Human Rights: Issues of Implementation in Sri Lanka* (Orebro University 2006).

8. Conclusion

Women's rights in Northern Sri Lanka remain caught between the protection offered by modern legal frameworks and the restrictions imposed by traditional social practices. Although the constitution, statutory laws, and international commitments provide important safeguards for equality, many women in the north continue to experience discrimination in areas such as property rights, family decision making and social freedom. The impact of war has further increased women's responsibilities while exposing them to economic hardship and social vulnerability. *Thesawalamai law*, patriarchal traditions continue to limit women's autonomy despite legal reforms. Therefore, achieving true gender equality requires not only stronger legal reforms but also social transformation, awareness, and effective implementation of laws. A combination of legal protection, education, economic empowerment and community level change is essential to ensure that women in northern Sri Lanka can fully exercise their rights and live with dignity and equality.

ALUMNI ARTICLES

The Alumni Articles section celebrates the enduring connection between the Department of Law, University of Jaffna, and its distinguished graduates, alongside contributions from alumni of other institutions who have maintained a scholarly association with this publication. These pieces reflect the breadth of legal expertise and the lasting impact of legal education across generations.

PROTECTING IDENTITY IN THE AGE OF AI: THE NEED FOR A RIGHT OF PUBLICITY IN SRI LANKAN LAW

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Abstract

The protection of personal identity has been an issue long addressed, through the likes of intellectual property, privacy and defamation. This article argues that the existing legal avenues offer limited safeguards against the exploitation and unauthorised use of an individual's, persona, voice, and likeness. The identity-based harms remained inadequate especially in the purposes of commercial and representational mechanisms. In the context of Artificial Intelligence (AI), the limitations mentioned (but not limited to) have become increasingly visible, with an individual's identity being manipulated, replicated, and moreover monetized even without a direct involvement. With adopting a doctrinal legal research methodology, the article analyses statutes from the Sri Lankan legal system including the Intellectual Property Act No. 36 of 2003 (with amendments), the Personal Data Protection Act No. 09 of 202 along with the more recent Online Safety Act No. 09 of 2024, together with common law principles that are applicable. A limited comparative analysis of legal authorities such as the United States of America and India where a right of publicity has been recognised will be utilised to contextualise the findings. Both AI-related and non-AI-related scenarios will be examined to discover how identity is protected legally beyond the existing privacy and data-centric frameworks, in the absence of a unified right of publicity. Even though the Sri Lankan legal system provides protection for an individual, its

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fragmented nature could be considered leading to a doctrinal gap regarding an individual's identity, specifically when concerning commercial exploitation, accountability and control post-publication in the age of AI. With timely legislative reform and judicial development, the recognition of a broad Right of Publicity is thereby suggested in the article, to provide a proactive protection of individual identity in the fast-evolving age of AI mediated environments.

1. Introduction

A person's distinctive characteristics, including the name, voice and likeness, are extremely valuable. This also means that it could be prone to exploitation increasingly, in the contemporary context. However, a unified framework is lacking in Sri Lankan law, specifically protecting the technological manipulation and its unauthorised commercial use, and remains fragmented throughout multiple legal doctrines. The International Trademark Association has defined the Right of Publicity as *"an intellectual property right that protects against the misappropriation of a person's name, likeness, or other indicia of personal identity—such as nickname, pseudonym, voice, signature, likeness, or photograph—for commercial benefit."* [2]

With technological advancements especially in the age of artificial intelligence (AI), machine learning has enabled the creation of synthetic media, the cloning of voice, and deepfakes. This has allowed a significant usage of replicating and manipulating a person's identity without consent. This could also be referred to as personality. The commercialization of a person's likeness using AI-generated content has therefore led to unprecedented events, for example with their face and voice being used to endorse products and services that they have never intended to support. Manipulation of a persona hence leads to both reputational harm and commercial harm, exposing the inadequacy in existing legal frameworks.

[2] International Trademark Association, 'Right of Publicity' (9 June 2020) <https://www.inta.org/topics/right-of-publicity/> accessed 28 April 2026.

The right of publicity however could not be considered a new problem, as its fragmentation predates the period of AI. Even though legal instruments have been instilled to protect the commercial exploitation of celebrity identity, the laws provide limited resorts. Personal identity is not accommodated in Intellectual Property (IP) Law. Laws related to defamation require proof of falsity, while data as information is considered more than the public image when it comes to data protection. AI emerging stronger than ever thereby illustrates the deeper need for a remedy in Sri Lankan law.

While conceptualising personality as a unique legal interest, analysing protection mechanisms that already exist under the Intellectual Property Act No. 36 of 2003 alongside the Personal Data Protection Act No. 9 of 2022, the Online Safety Act No. 9 of 2024 and other common law legal principles, the need to recognise a "Right of Publicity" in Sri Lanka is examined in this article. Further expanding on to a comparative analysis taking examples from the United States and India, with doctrinal gaps, the article examines the role AI plays as a test to frameworks of personality and identity protection. The article on its concluding notes argues for reform, while stressing on establishing a distinct legal mechanism of the right of publicity.

2. Identity (Personality) as a Distinct Legal Interest

Something with value that is worthy of recognition has interests to be protected. Assets that are both tangible and intangible have been protected with both property law and IP law. A person's reputation, dignity and autonomy has been protected with privacy and defamation laws.

Personality, a person's identity, on the other hand is what recognises an individual, embodying unique multiple interests. In the contemporary context, identity becomes an economic interest, where one's persona is within the area of monetisation, apart from the interest of dignity and relational interest it plays. These differ from privacy, which is concerned about unnecessary access to private activities and personal information. When considering IP law, interests that are based on the personality lack the explicit statutory recognition when compared to trademarks and copyrights that are available.

To recognise identity as a distinct legal interest, the value it gives needs to be acknowledged, constituting an autonomous view that is commendable to be protected. An eye-opening case to be looked at is *Midler v Ford Co. (1988)* [3], where a backup singer in the troop of Bette Midler was hired by the Ford Motor Company (Ford) to sing for a commercial advertisement, requesting her to sound as much like Midler. Once the advertisement was on air, the imitation had fooled many people to believe it was Midler promoting Ford. The court held that there was indeed a misappropriation of Bette Midler's right of publicity, and that Ford, without her permission, had no right to use a voice that is distinctive to her. Here, Midler's voice which forms her personality and identity, was considered as a distinct legal interest.

3. Identity Protection Under the Sri Lankan Law

3.1 Intellectual Property Act No. 36 of 2003 (IPA) [4]

Trademarks, copyrights, and patents are protected by the IPA. Even though it could be argued that the law of trademark offers protection for identity, Section 6 of the IPA has defined the "works" that are protected. While a person's distinctive features could be trademarked, protection typically applies under commercial activities in the scheme of defined goods or services.

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[3] Michael J Hoisington, "The Right of Publicity: Celebrities Sue over Unauthorized Use" (*Higgs Fletcher & Mack*®, August 20, 2001) <https://higgslaw.com/celebrities-sue-over-unauthorized-use-of-identity/> accessed April 29, 2026.

[4] National Intellectual Property Office, 'Intellectual Property' (NIPO Sri Lanka) <https://www.nipo.gov.lk/web/index.php?option=com_content&view=article&id=13&Itemid=144&lang=en> accessed 29 April 2026.

A person's likeness that has not been trademarked will not be provided with protection, as for the law relating to trademark. Digital manipulation of personality for commercial purposes, for example as altering an image using AI to suggest a person's endorsement for a product or service, does not constitute infringement of trademark. Therefore, it could be assumed IP-related trademark law does rarely protect personal dignity and the economic interests attached to a personal identity.

Personality, or a personal identity, is not directly capable of copyright protection, as it does not become identified as a work of art. Even though photographs, or even paintings may have the ability to be protected with copyrights, the identity it depicts is questionable to be protected, especially with the possible AI alterations that could emerge. Therefore, the IPA hardly gives protection in the contemporary context.

3.2 Personal Data Protection Act No. 9 of 2022 (PDPA) [5]

As the name suggests itself, the PDPA revolves around the rights concerning the use of personal data along with its collection and processing, establishing a groundwork where consent and transparency has become requirements. Here, people possess the right to their personal data on all aspects, including its access, rectification, and erasure when necessary.

It could be assumed that the PDPA stands at a point in sync with information, rather than identity and the personality of a person. Depending on the data that has been processed, the manipulation that occurs on personal data, such as an image of the face, or even using a person's voice to create synthetic media is questionable, as the PDPA concerns more on the protection of informational privacy and data. It does not govern a right to control the commercial exploitation of a personality. Unless some part of personal data has been processed, it could be difficult for a person

[5] Data Protection Authority, 'Background' (DPA Sri Lanka) <https://www.dpa.gov.lk/Background.php> accessed 3 May 2026.

to rely on the PDPA to prevent the creation of deepfake content, especially when commercialisation could occur.

3.3 Online Safety Act (OSA) [6] and Defamation Law

Avenues such as misinformation, misrepresentation, harmful content and cybercrime in the contemporary context have been addressed in the OSA. For harms based on identity, both OSA and defamation laws provide limited recourse. Even though common people, rather the audiences, understand any piece of content as to be non-authentic, identity could be used for commercial gains without authorization. Economic interests in reputational harm with the violation of identity here is not directly touched upon, and this falls into a grey area which is not covered by the aforementioned statutes.

4. The Need to Address Existing Doctrinal Gaps

With regards to identity protection, notable gaps in the existing doctrine need to be analysed. Firstly, while the law relating to privacy protects the non-consensual disclosure of private information, the commercialisation of non-consensual commercial appropriation has not been mandated. If there is no false claim, a person's identity may be used to endorse a service or product, without consent. Especially with AI and the creation of deepfake content, consent becomes secondary.

A person's right to obtain economic value from their personality has not been recognised, creating a gap in economic interest. It is difficult to establish a legal doctrine that protects a person's interest when their identity is what generates value, whereas inventions have been protected by patents, and where creative works have been protected by copyrights. A personal identity possesses at least some economic value, and maybe worth millions.

[6] Online Safety Act, No. 9 of 2024 (Sri Lanka)

When considering the gap in post-publication, the law provides limited defences to prevent its multiplied use. Once a person's likeness, not limited to images or voice, has been published, laws related to privacy may not completely cover the scope to prevent re-publication of images, even those obtained lawfully. Therefore, a person's identity on an image may be trained on AI and manipulated and reproduced, even though it may be a lawfully published and obtained image.

An enforcement mechanism is what can ensure accountability, and when it lacks, the gap of accountability rises. The unclear mechanism with special regards to AI leads to difficulties in establishing quantifiable harm, causation or even liability.

To identify the gaps in the Sri Lankan context, the case of the Ai-generated song *"Heart on My Sleeve"* [7] is a classic example. An anonymous user had generated a song using AI-cloned voices of artists Drake and The Weeknd, gaining millions of streams and shares. The music track and lyrics were original compositions, thereby not leading to a copyright infringement under the IPA without remedies. Even under the PDPA, concerns regarding voice cloning have not been addressed, further preventing any remedies for commercial exploitation. Since the song does not contain false states, a claim could not be made through the OSA. This gap could be clearly seen with the *Digital Millennium Copyright Act (DMCA)* [8] in the United States, which helped to remove the song on platforms it had been posted on. If Drake and The Weeknd would have been artists from Sri Lanka, they would have had limited, to no legal recourse.

[7] 'AI Created a Song Mimicking the Work of Drake and the Weeknd. What Does That Mean for Copyright Law?' (Harvard Law School, 2 May 2023) <https://hls.harvard.edu/today/ai-created-a-song-mimicking-the-work-of-drake-and-the-weeknd-what-does-that-mean-for-copyright-law/> accessed 1 May 2026.

[8] US Copyright Office, 'The Digital Millennium Copyright Act' <https://www.copyright.gov/dmca/> accessed 1 May 2026.

5. Right of Publicity in the United States and India: Comparative Lens

The Right of Publicity has been recognised in the United States (US) primarily through common law principles, and state statutes. It has been instrumental in protection against the unauthorised commercial appropriation of identity, protecting the economic interests of one's identity. The case of *Haelan Laboratories Inc v Topps Chewing Gum Inc (1953)* [9] becomes the foundation for the idea that a person possesses a commercial value of their identity. Even though its scope varies, an actionable infringement of a personality has been recognised since.

A significant case is *White v. Samsung Electronics America, Inc. (1992)* [10]. Here, a robot, looking similar to show hostess Vanna White was featured on a television program. Even though her name was never mentioned, it was questioned whether a "reasonable person" would identify the robot as the celebrity regardless whether it was a direct reproduction. The courts indeed held that the celebrity had a claim to the right of publicity, as the general public recognises similarities. This could be cited in cases specific to AI-deepfakes, where content could look identical, even if it isn't reproduced.

The right to publicity in India has been recognised through similar cases, with an extension to Article 21 of its Constitution. A person's identity has been prone to protection against commercial exploitation by the Indian Courts. The recent case of *Abhishek Bachchan v. The Bollywood Tee Shop & Ors. (2025)* [11] led to the Delhi High Court in giving extensive injunctions to protect Bachchan from AI deepfakes and unauthorised merchandise that includes his personality both online, and offline. The case of *Asha Bhosle v.*

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[9] *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

[10] *White v. Samsung Electronics America, Inc.*, 989 F.2d 733 (9th Cir. 1992).

[11] *Abhishek Bachchan v The Bollywood Tee Shop & Ors*, [2025] SCC OnLine Del 5944 (Delhi HC)

Mayk Inc. & Ors. (2025) [12] further shows how this issue is not limited to one geographical space. Here, a lawsuit was filed by the renowned singer Asha Bhosle, against two companies based in the US that work on AI. The claim was that the parties had modified the voice of Bhosle to create illicit voice models replicating her style of singing and techniques used in her voice. Bhosle was provided protection from AI-manipulation of her voice by the courts.

Both legal systems have recognised the need to protect a person's economic interest extending to the likeness, voice and other distinct characteristics, providing a space of unity in laws addressing harms based on identity across both AI mediated contexts, as well as traditional situations.

6. AI as the tipping point for identity protection

AI-mediated violations on personal identity have not just created, but highlighted this gap in Sri Lanka's identity protection. Synthetic media has enabled every person to create content depicting a person, with both audio and video which could seem to be realistic. If the AI-generated content contains defamatory substances, or it involves personal data processing, and if it infringes copyrights, then maybe the IPA or the PDPA may be of use. However, no legal mechanism prevents the distribution as well as the creation of synthetic media that is non-defamatory.

AI-generated media trained on real images and voices has further enabled to significantly create endorsements, synthetic performances, and even marketing content. These flow between the grey waters of privacy and intellectual property. The case of *Scarlett Johansson v. OpenAI (2024)* [13] shows how OpenAI used a

[12] *Asha Bhosle v. Mayk Inc. & Ors*, [2025] SCC OnLine Bom 3485 (Bombay HC).
[13] Scarlett Johansson Case – Citation from Georgetown University, Chandan Djajapranata, 'OpenAI V. Scarlett Johansson? Law Professor Answers Legal Questions on AI-Generated Content' (Georgetown University, 4 June 2024)

voice that sounds very close to Johansson after she had declined to offer her voice. Only after legal action did the voice feature be taken down. Johansson made the sentiments that "*In a time when we are all grappling with deepfakes and the protection of our own likeness, our own work, our own identities, I believe these are questions that deserve absolute clarity. I look forward to resolution in the form of transparency and the passage of appropriate legislation to help ensure that individual rights are protected.*" [14]

7. The need for a Right of Publicity in Sri Lanka

Novel gaps that keep emerging, especially in the age of AI, has led to the requirement to explicitly recognise a Right of Publicity in Sri Lankan law. It is suggested either in the way of judicial development, or in the path of statutory reform.

Extending existing legal doctrines related to privacy, by integrating the aspect of commercial appropriation in a person's identity could be judicially achieved. Common law principles could be used to develop to not only provide protection against personal data, but to settle a comprehensive grounding on intellectual property providing protection against the unauthorised use of identity commercially. This would lead to a general development of law through case law, as it was observed in states such as India.

A statutory pathway would mean there would be a separate act on the Right of Publicity. It would help to define boundaries for example as to what encompass as distinctive characteristics of personality, and properly establish mechanisms for commercial use. Remedies could also be clearly defined, with the necessary monetary damages and relieves, while specifically addressing the

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<https://www.georgetown.edu/news/ask-a-professor-openai-v-scarlett-johansson/> accessed 2 May 2026.

[14] Elias J, 'Scarlett Johansson Says OpenAI Ripped Off Her Voice After She Told the Company Not to Use It in Software' CNBC (20 May 2024) <https://www.cnbc.com/2024/05/20/scarlett-johansson-says-openai-ripped-off-her-voice-.html> accessed 3 May 2026.

context of AI. The IPA could also be amended to fit and incorporate the right of publicity.

Publicity rights will not prevent freedom of speech. One could ask whether a new law as such would create a frenzy especially by celebrities. But a justification would be that India has had the statues for decades without much chaos, and has in fact utilised appropriately, while leading the convictions through reasonability tests. The alternative is no protection at all, which could be worse.

While protecting the identity, recognising an exclusive right of publicity would not lead to a weakening of existing legal mechanisms related to privacy and intellectual property, but rather would expand and cover the gaps with an independent level of protection that is enforceable. In the age of AI, such recognition is crucial, and mandatory.

8. Concluding Remarks

In present, the Sri Lankan legal system does not explicitly recognise a person's identity (the personality) as an independent legal interest. While the article demonstrates existing protection mechanisms, its inadequacy and fragmented nature has been highlighted. In the context of AI, these gaps become particularly critical, as identity could be exploited with replication and manipulation, without a direct legal safeguard.

Using a comparative analysis undertaking examples from the United States and India, it could be noted that the right of publicity has in fact been recognised, and has proven to be effective in both the traditional context and the contemporary context. It further is an example on how the right of publicity coexists with laws relating to intellectual property, personal data protection, and privacy.

The reforms that have been suggested are necessary, specifically in light of the recent advancements of AI, while also noting examples that pre-dates AI and it is safe to say that AI did not create the gap, but definitely accelerated its outcome. The gap is simply not theoretical, as the situation affects not just celebrities but ordinary people at large. It gives a compelling rationale to recognise a distinct law to protect a person's identity, which has the potential to be monetised. Recognising the Right of Publicity exclusively would provide clarity in the area as a fundamental legal interest, benefiting the general public at large, ensuring a fix to a gap in Sri Lankan law, as it can no longer remain indifferent from the world at large.

BEYOND ADMISSIBILITY: REFORMING THE PROCEDURAL FRAMEWORK FOR FORENSIC DNA EVIDENCE IN SRI LANKA'S CRIMINAL JUSTICE SYSTEM.

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Abstract

The use of forensic evidence, particularly DNA evidence, has become an essential component of modern criminal investigations. In Sri Lanka, forensic DNA evidence is legally admissible in criminal proceedings; however, its effective utilization remains limited due to significant procedural, institutional, and technical shortcomings. This research explores, despite the admissibility of DNA evidence under the Evidence Ordinance, how the procedural implications undermine the credibility of the DNA evidence in criminal justice system. The study identifies some gaps such as inadequate forensic infrastructure, lack of standardized procedures for DNA collection and analysis, limited scientific expertise among legal professionals and investigators, and the absence of a comprehensive legal framework governing forensic evidence and a national DNA database. Adopting a doctrinal and desk-based research methodology, this study analyses existing statutes, judicial decisions, and comparative legal frameworks, upon forensic science principles. The findings reveal that while courts accept DNA evidence, procedural weaknesses, particularly in chain of custody, laboratory accreditation, expert testimony, and judicial evaluation, significantly undermine its evidentiary value. Furthermore, the absence of a national DNA database and clear privacy safeguards complicate the inefficiencies in criminal investigations. The study recommends comprehensive legal and procedural reforms, including the enactment of specialized legislation on forensic DNA evidence, and establishment of a National DNA database with strong privacy protections, development of standardized forensic protocols, enhancement of forensic infrastructure, and targeted training for judicial officers and law enforcement officers. As a conclusion, strengthening the procedural framework for forensic DNA evidence is essential to ensure reliability, protect due process, and

enhance the overall effectiveness of Sri Lanka's criminal justice system.
Keywords: Forensic DNA evidence, National DNA database, Criminal Justice System, chain of custody, expert testimony.

1. Introduction

Forensic DNA evidence has become an essential component of modern criminal investigations. In Sri Lanka, forensic DNA evidence is legally admissible in criminal proceedings, yet its effective utilization remains limited due to significant procedural, institutional, and technical shortcomings.[1] This research explores, notwithstanding the admissibility of DNA evidence under the Evidence Ordinance, how the procedural implications surrounding the collection, handling, analysis, interpretation, and presentation of DNA evidence undermine its credibility within the criminal justice system.[2] The study identifies gaps that include inadequate forensic infrastructure, lack of standardized procedures for DNA collection and analysis, limited scientific expertise among legal professionals and investigators, and the absence of a comprehensive legal framework governing forensic evidence and a national DNA database.[3] Using a doctrinal and desk-based research methodology, this paper analyses existing statutes, relevant judicial decisions, and comparative legal frameworks in light of forensic science principles. The findings indicate that although courts accept DNA evidence, procedural weaknesses particularly relating to chain of custody, laboratory accreditation, the quality of expert testimony, and judicial evaluation significantly undermine its evidentiary value.[4]

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[1] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.
[2] ibid
[3] ibid
[4] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations'

Furthermore, the absence of a national DNA database and clear privacy safeguards complicates investigative inefficiencies while raising due process concerns.[5] The paper recommends comprehensive legal and procedural reforms, including enactment of specialized legislation on forensic DNA evidence, establishment of a National DNA database with strong privacy protections, development of standardized forensic protocols, enhancement of forensic infrastructure, and targeted training for judicial officers and law enforcement officers. In conclusion, strengthening the procedural framework for forensic DNA evidence is essential to ensure reliability, protect due process, and enhance the overall effectiveness of Sri Lanka's criminal justice system.

The increasing reliance on DNA profiling in criminal matters has been driven by its powerful capacity to identify individuals and link them to specific evidentiary material. DNA evidence may play an important role in establishing facts such as the presence of an accused at a crime scene, involvement in violent or sexual offences, or connection to biological traces.[6] Yet DNA evidence does not operate as a self-authenticating form of truth. Instead, its probative value depends on how reliably the underlying biological material is collected, preserved, transferred, examined, and presented.[7] Scientific accuracy alone is not sufficient if procedural controls are missing. The legal system must therefore ensure that DNA evidence is not merely admissible but also procedurally

(KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017)

[5] ibid

[6] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations' (KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017

[7] ibid

capable of withstanding scrutiny and supporting fact-finding in a manner consistent with fairness and due process.[8]

The central focus of this study is the tension between admissibility and credibility. In many legal systems, scientific evidence may be admitted under general rules of relevance or through expert opinion doctrines.[9] Under the Evidence Ordinance[10], forensic evidence including DNA evidence can be introduced in criminal proceedings, and courts may consider it as relevant and helpful for judicial determination.[11] However, admissibility does not guarantee reliability. If procedural weaknesses exist at any stage of the DNA evidence lifecycle, the evidence's integrity may be compromised.[12] Consequently, courts may face difficulties in determining whether the DNA results accurately reflect the biological source collected from the crime scene and whether the analytical process produced dependable findings.[13] In these circumstances, the evidentiary value of DNA evidence may be

[8] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.

[9] ibid

[10] Section 45 of the Evidence Ordinance No.14 of 1895.

[11] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.

[12] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations' (KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017

[13] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.

reduced, and the risk of either wrongful conviction or unjust acquittal may increase.[14]

To understand how procedural implications undermine DNA evidence credibility, it is necessary to examine DNA evidence as an evidentiary chain rather than as a single scientific test.[15] The chain begins at the crime scene and continues through evidence collection, labelling, packaging, transfer, storage, laboratory analysis, result interpretation, reporting, disclosure, and ultimately courtroom evaluation.[16] Each stage may introduce risks: contamination, degradation, and misidentification, errors in transfer documentation, incomplete laboratory quality control, interpretive misunderstanding, or inadequate explanation to the court.[17] Where such risks materialize, DNA evidence becomes vulnerable to legal challenges. Even where a laboratory performs analysis correctly, flaws in collection or chain of custody can make the laboratory result legally uncertain because the court cannot confidently link the tested sample to the alleged source.[18]

A key challenge identified by this research concerns inadequate forensic infrastructure.[19] Forensic DNA evidence depends on facilities and operational capacity capable of supporting consistent evidence handling.[20] Infrastructure includes not only laboratory equipment but also properly equipped crime scene units, appropriate packaging materials, evidence storage systems,

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[14] Ibid.

[15] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[16] ibid

[17] ibid

[18] ibid

[19] Brilliant Forensic Investigation (BFI), 'Forensic Services Sri Lanka' (BFI) https://forensicexpertinvestigation.com/forensic-services-sri-lanka/ accessed 11 June 2026.

[20] ibid

validated lab workflows, and sufficient staffing levels.[21] Where infrastructure is limited, procedural safeguards may be weakened. Samples may be processed under time pressure; storage conditions may be inconsistent; documentation may be incomplete; or evidence may undergo repeated handling without adequate protective measures.[22] These limitations can produce conditions in which biological traces degrade or become contaminated. Once contamination or degradation occurs, DNA evidence may no longer represent the original evidentiary source with reliable certainty.[23] While the laboratory can sometimes detect some forms of contamination through quality controls, not all procedural failures are detectable after the fact, especially when initial collection and transfer controls are weak.[24]

Closely linked to infrastructure is the lack of standardized procedures for DNA collection and analysis. Standardization is fundamental because it reduces variation in how evidence is handled across investigators, police stations, and laboratories.[25] Without nationally enforced protocols, evidence collection practices may differ between units, samples may be packaged differently, and transfer documentation may not follow uniform standards. Variability can lead to uneven quality and complicate later evaluation. For example, inconsistent swabbing techniques may affect the quantity and quality of extracted DNA; inconsistent labelling may create identity uncertainties; and inadequate negative controls or documentation in the laboratory may reduce transparency regarding contamination risk.[26] When these

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[21] ibid
[22] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations' (KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017)
[23] ibid
[24] ibid
[25] ibid
[26] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025)

procedural steps lack standardisation, defence counsel and the court may be unable to evaluate whether the sample handling and analytical workflow met scientifically defensible standards.[27]

The most prominent procedural vulnerability is chain of custody.[28] Chain of custody refers to the documented and verifiable continuity of evidence from collection through every transfer to the laboratory and subsequently to court.[29] It ensures that the sample analysed is the same sample originally collected and that its integrity has been maintained. Chain of custody becomes a central issue in legal disputes because it is the foundation for linking DNA results to case facts.[30] Where the chain of custody is incomplete such as when there are gaps in transfer logs, missing signatures, unclear timestamps, or uncertainty regarding storage locations the reliability of the evidence is legally weakened.[31] Such weaknesses can create a reasonable doubt not necessarily about the laboratory technique but about the integrity and identity of the evidentiary material.[32]

For example, if evidence is collected from a crime scene but later transferred to a laboratory without properly sealed packaging, documented handling, or clear identification, the court may be

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https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[27] ibid

[28] Laxmi Kushwaha, 'A Simple Guide for Chain of Custody in Forensic DNA Testing' (DNA Forensics, 25 February 2026) https://www.dnaforensics.in/a-simple-guide-for-chain-of-custody-in-forensic-dna-testing/ accessed 10 June 2026.

[29] Sri Lanka Campaign for Peace and Justice, *Concept Paper Towards a National DNA Bank for Sri Lanka's Disappeared* (February 2026) https://srilankacampaign.org/wp-content/uploads/2026/02/DNA-Bank-Concept-Paper-External.pdf accessed 10 June 2026.

[30] Laxmi Kushwaha, 'A Simple Guide for Chain of Custody in Forensic DNA Testing' (DNA Forensics, 25 February 2026) https://www.dnaforensics.in/a-simple-guide-for-chain-of-custody-in-forensic-dna-testing/ accessed 10 June 2026.

[31] ibid

[32] ibid

unable to exclude the possibility that the sample was contaminated or substituted.[33] Even if laboratory testing yields a DNA profile, the defense may argue that the profile may not correspond to the crime-scene sample. Courts typically do not have independent scientific means to reconstruct what happened during each transfer and handling event. Consequently, procedural documentation becomes the mechanism through which courts evaluate evidentiary trustworthiness. Where that documentation is deficient, credibility declines.[34]

The research also highlights laboratory accreditation and quality assurance limitations. Laboratory competence is not solely about having a functioning laboratory; it involves adherence to validated methods, ongoing quality control measures, and external proficiency testing, and documented quality management systems.[35] Accreditation frameworks commonly require compliance with standards that ensure reliability and traceability of processes.[36] If laboratories do not operate under formal accreditation or if accreditation does not cover all relevant methods, it becomes harder for courts to assess whether the methods are validated and whether the results reflect consistent laboratory performance. In such contexts, expert testimony may be challenged as insufficiently transparent or insufficiently tied to validate protocols.[37] The credibility of DNA evidence may

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[33] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[34] ibid

[35] United Nations Development Programme (UNDP), 'Internationally Acclaimed Expert on DNA Analysis Collaborates with Government Analyst Department to Improve Effective Response to Victims of SGBV' (28 May 2025) https://www.undp.org/srilanka/press-releases/internationally-acclaimed-expert-dna-analysis-collaborates-government-analyst-department-improve-effective-response-victims accessed 10 June 2026.

[36] ibid

[37] ibid

therefore depend on how convincingly the laboratory demonstrates quality systems and methodological validation.[38]

In addition to accreditation, laboratory reporting practices also matters.[39] DNA evidence credibility depends on clear, complete reporting of methods used, controls employed, interpretations reached, and limitations acknowledged.[40] If reports omit important information such as which extraction method was used, whether appropriate controls were included, how mixtures were interpreted, or how uncertainty was assessed, the court and defense may be unable to evaluate the reliability of conclusions. Procedural transparency is crucial because scientific evidence often involves reasoning. If interpretation is presented as predictable while the underlying analysis involves uncertainty, evidentiary value may be overstated.[41]

Expert testimony is another critical procedural factor.[42] Scientific evidence enters courtroom reasoning through expert witnesses who explain methods and interpret results for judges and juries. DNA evidence frequently depends on probabilistic interpretation, statistical significance, and understanding of mixture patterns.[43] If experts lack sufficient scientific training, if their testimony is not aligned with laboratory documentation, or if they cannot explain analytical limitations clearly, the court's ability to evaluate DNA credibility is impaired.[44] The research identifies limited scientific

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[38] ibid

[39] **Organisation for Economic Co-operation and Development (OECD),** 'Good Laboratory Practice and Compliance Monitoring' (OECD) https://www.oecd.org/en/topics/sub-issues/testing-of-chemicals/good-laboratory-practice-and-compliance-monitoring.html accessed 11 June 2026

[40] ibid

[41] ibid

[42] Section 45 of Evidence Ordinance 1895.

[43] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[44] ibid

expertise among legal professionals and investigators. This limitation may influence expert handling as well as the ability of prosecutors and defense counsel to interrogate DNA evidence properly.

Even where experts are competent, lack of standardized disclosure and procedural preparation can lead to weak testimony. If experts are not provided with complete case information, or if laboratory notes and supporting records are not available, testimony may rely on generalized explanations rather than case-specific reasoning.

Judicial evaluation also plays a decisive role. Judges must decide not only whether DNA evidence is relevant but also whether it is reliable enough to support conclusions. Judicial evaluation requires some capacity to assess scientific uncertainty and procedural compliance. Through cases such as the Kotakethana Double Murder Case[45]**,** the Seya Sadewmi Murder Case[46], the Royal Park Murder Case[47], the Sarath Ambepitiya Murder Case[48]**,** and the Hokandara Mass Murder Case[49], courts have demonstrated a growing willingness to rely on scientific evidence while ensuring that it satisfies the standards of relevance, authenticity, and reliability required under the law. In these cases, judges carefully evaluated expert testimony, laboratory reports, and the chain of custody of biological samples before admitting

[45] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[46] Attorney General v Saman Jayalath HC/344/2015, decided on 15th March 2016. Available from: High Court of Negombo (Unreported).

[47] *Case* No. HC 2722/2005

[48] Case No. 2365/2005 refers to the highly publicized **Ambepitiya murder case**

[49] Sajeewa alias Ukkuwa and others v The Attorney-General SC (2004) 2 SLR 263

DNA evidence.[50] The courts also recognized the probative value of DNA profiling in both identifying perpetrators and excluding innocent suspects, as notably seen in the Seya Sadewmi case. By scrutinizing the collection, preservation, and analysis of forensic samples, the judiciary acts as a safeguard against wrongful convictions while promoting the use of modern forensic science in the administration of justice.[51] These decisions illustrate the judiciary's evolving role in balancing scientific advancements with the fundamental principles of fairness, due process, and proof beyond a reasonable doubt in Sri Lankan criminal law.[52]

If courts lack clear guidance on evaluating scientific evidence among decision-makers remains limited, they may over-rely on DNA results despite procedural weaknesses. Both outcomes can undermine fairness and the search for truth.[53]

Judicial assessment of DNA evidence credibility depends on understanding the legal significance of procedural defects. For example, a minor documentation gap may not necessarily mean contamination occurred, but it can still affect confidence in evidence identity.[54] Similarly, a laboratory deviation may undermine reliability more seriously if it relates to quality controls or interpretive assumptions. Courts therefore need a structured approach for weighing scientific evidence. Where procedural rules

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[50] Ravindra Fernando, *'A National DNA Database for Sri Lanka'* (2010) 1(1) *Sri Lanka Journal of Forensic Medicine, Science & Law* 10–14, DOI: 10.4038/sljfmsl.v1i1.2710.

[51] ibid

[52] Commission to Investigate Allegations of Bribery or Corruption v Indiketiya Hewage Kusumdasa Mahanama and Piyadasa Dissanayake (SC TAB 1A/2020 and SC TAB 1B/2020)

[53] Ravindra Fernando, *'A National DNA Database for Sri Lanka'* (2010) 1(1) *Sri Lanka Journal of Forensic Medicine, Science & Law* 10–14, DOI: 10.4038/sljfmsl.v1i1.2710.

[54] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

are unclear or absent, judicial decision-making may become inconsistent across cases.[55] Inconsistency can be harmful because it reduces predictability and undermines confidence in the justice system's treatment of scientific evidence.

The research further identifies the absence of a comprehensive legal framework governing forensic evidence and DNA testing. A specialized framework would address the unique reliability requirements of forensic science.[56] Without such a framework, procedures may be governed by practice rather than law. Practice may be inconsistent, non-binding, and vulnerable to gaps in training, resource limitations, and institutional turnover. Specialized legislation could provide enforceable rules for chain of custody documentation, laboratory accreditation requirements, mandatory quality assurance, disclosure duties, expert qualification standards, and evidentiary evaluation criteria.[57] It could also define procedures for challenges, exclusions, and handling of contaminated or degraded samples. Without these elements, the system remains susceptible to procedural failures that affect evidentiary credibility.[58]

In this context, the absence of a national DNA database with clear governance is also significant.[59] A national DNA database can support investigative efficiency by enabling matches across cases and supporting the identification of serial offenders. However, without a database, investigations may lose the advantages of

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[55] ibid

[56] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.

[57] ibid

[58] ibid

[59] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations' (KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017

cross-case comparison. This limitation may lead to delayed identification or lack of corroborative linkage.[60] Furthermore, the absence of a legal framework for DNA data governance complicates future policy development. While implementing a database can raise privacy and human rights concerns, these concerns require proactive legal safeguards.[61] The research highlights the need for privacy safeguards because DNA information is uniquely identifying and sensitive.[62] Without clear rules, introduction of a database could risk unlawful retention or misuse. Therefore, the absence of a database is not only an investigative inefficiency but also indicates a governance gap that must be addressed carefully if data basing is pursued.[63]

The study's findings reveal that courts accept DNA evidence, but procedural weaknesses significantly undermine its evidentiary value.[64] The implication is that admissibility does not guarantee evidentiary reliability. Where procedural safeguards are inadequate, DNA evidence may still be admitted, but the court's confidence may be compromised, and the evidence's weight may be reduced or contested.[65] Procedural failures therefore become central to judicial outcomes and may affect the fairness of trial

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[60] ibid

[61] National Institute of Justice, 'Evaluation of Swab Materials in Forensic DNA Testing: A Systematic Review' (5 August 2025) https://nij.ojp.gov/topics/articles/evaluation-swab-materials-forensic-dna-testing-systematic-review accessed 10 June 2026.

[62] DLA Piper, *'Data protection laws in Sri Lanka'* (DLA Piper Data Protection Laws of the World) https://www.dlapiperdataprotection.com/?c=LK&t=law accessed 11 June 2026.

[63] NCD Arambawela, PPNV Kumara, CP Waduge and A Manamperi, 'National Forensic DNA Database Management System for Criminal Investigations' (KDU International Research Conference 2017, General Sir John Kotelawala Defence University, 2017

[64] U.A.T. Udayanganie, *The Importance of DNA Evidence in the Field of Criminal Law in Sri Lanka* (Department of Public and International Law, University of Colombo 2011) https://cmb.ac.lk/wp-content/uploads/THE-IMPORTANCE-OF-DNA-EVIDENCE-IN-THE-FIELD-OF-CRIMINAL-LAW-IN-SRI-LANKA.pdf accessed 1 March 2026.

[65] ibid

processes.[66] From a due process perspective, an accused should not be convicted based on scientific evidence whose integrity cannot be adequately demonstrated in a legally reliable manner. Simultaneously, procedural reform should aim to strengthen the reliability of DNA evidence so that it can be used effectively and responsibly when it is scientifically sound.[67]

Recommendations therefore must address procedural vulnerabilities rather than only scientific capacity. First, there is a need for comprehensive legal and procedural reform. Specialized legislation on forensic DNA evidence should be enacted to establish enforceable standards for collection, handling, analysis, reporting, disclosure, and courtroom presentation.[68] Such legislation should explicitly require documentation and chain of custody controls and should define the legal consequences of material procedural failures. It should also establish criteria for laboratory accreditation and quality assurance and should define expert qualification and testimony standards. Second, standardized forensic protocols should be developed at a national level for DNA collection and analysis. These protocols should be mandatory and include training and compliance monitoring.[69] Third, forensic infrastructure must be strengthened to ensure reliable sample handling and adequate laboratory capacity. This includes resources for crime scene collection, evidence storage, laboratory equipment, and staffing.[70]

Fourth, targeted training should be conducted for judges, prosecutors, investigators, and forensic experts. Training should

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[66] ibid

[67] ibid

[68] ibid

[69] Sri Lanka Campaign for Peace and Justice, *Concept Paper Towards a National DNA Bank for Sri Lanka's Disappeared* (February 2026) https://srilankacampaign.org/wp-content/uploads/2026/02/DNA-Bank-Concept-Paper-External.pdf accessed 10 June 2026.

[70] Brilliant Forensic Investigation (BFI), 'Forensic Services Sri Lanka' (BFI) https://forensicexpertinvestigation.com/forensic-services-sri-lanka/ accessed 11 June 2026.

cover how to evaluate scientific evidence, how to interpret expert testimony appropriately, how to understand uncertainty and probabilistic reasoning, and how to ensure robust disclosure practices.[71] Prosecutors and investigators should be trained not only in collection and documentation, but also in anticipating defense challenges relating to chain of custody and laboratory procedures.[72]

Fifth, a National DNA database should be established only with robust privacy protections and explicit legal governance.[73] The framework should define lawful purposes, inclusion criteria, retention periods, access controls, oversight mechanisms, and safeguards against unauthorized use. The database should be integrated with procedural rules so that investigation benefits do not come at the expense of due process. Finally, continuous quality improvement mechanisms should be built into the system. This includes proficiency testing, external audits where possible, and mechanisms for reporting and addressing procedural failures.[74]

In conclusion, the credibility of DNA evidence in Sri Lanka is not determined solely by scientific capability or legal admissibility. Rather, DNA evidence credibility depends on procedural integrity and legal reliability. Chain of custody vulnerabilities, laboratory accreditation limitations, weaknesses in expert testimony, and challenges in judicial evaluation collectively undermine evidentiary value. The absence of a national DNA database and privacy safeguards further complicate investigations and governance. Therefore, strengthening the procedural framework for forensic DNA evidence through specialized legislation, standardized protocols, enhanced infrastructure, targeted training, and

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[71] ibid

[72] ibid

[73] Ravindra Fernando, *'A National DNA Database for Sri Lanka'* (2010) 1(1) *Sri Lanka Journal of Forensic Medicine, Science & Law* 10–14, DOI: 10.4038/sljfmsl.v1i1.2710.

[74] ibid

responsible data basing is essential to ensure reliability, protect due process, and enhance the overall effectiveness of Sri Lanka's criminal justice system.

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PATENT PROTECTION FOR AI-RELATED INVENTIONS: STRIKING A LEGAL BALANCE BETWEEN AI INNOVATION AND PATENT PROTECTION IN SRI LANKA

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Abstract

Sri Lanka's Intellectual Property Act, No. 36 of 2003, establishes a patent framework based on human inventorship, novelty, inventive step, industrial applicability, and sufficient disclosure. However, the emergence of Artificial Intelligence ("AI") in innovation has exposed structural tension within this framework, particularly where inventive outputs are generated autonomously or semi-autonomously by AI systems. By adopting a qualitative, interdisciplinary methodology at the intersection of AI and patent law, this paper analyses statutory provisions, judicial interpretations, and best practices from the United States and the United Kingdom. The central argument advanced is that rigid exclusion of AI-generated inventions from patent protection may push inventors toward trade secrecy, limiting transparency, knowledge-sharing, and technological diffusion. The paper proposes a dual-path interim approach of recognizing AI programmers or operators as inventors where inventive input exists, while providing robust trade secret protection for outputs where attribution is unclear. Recent global developments, exemplified by the DABUS judgment, demonstrate a consistent judicial stance that AI alone cannot meet statutory inventorship requirements, and attempts to substitute AI owners or operators as inventors are insufficient unless independent human inventive contribution is demonstrated. The research argues that granting patents for AI-assisted or AI-generated inventions incentivizes the development and disclosure of inventive AI, thereby fostering technological progress. Conversely, denying protection risks misappropriation by uninvolved parties and encourages reliance on trade secrets, reducing transparency and limiting knowledge-sharing across the innovation ecosystem. The paper concludes that Sri Lanka should adopt a *proactive yet cautious approach, by recommending interim legal and policy measures, including recognizing AI programmers or developers as inventors, revisiting the analysis of non-obviousness, and explicitly addressing AI-related disclosure and examination issues through a sui generis mechanism to complement the existing patent system until an internationally harmonized framework is achieved.*

Keywords: *Artificial Intelligence, AI-generated inventions, Intellectual Property Act, No. 36 of 2003, Inventorship, Patentability*

1. Introduction

Sri Lanka's Intellectual Property Act No. 36 of 2003 ("IP Act") is built on traditional patent principles such as human inventorship, novelty, inventive step, industrial applicability, and disclosure. However, the rise of Artificial Intelligence (AI) challenges this framework, particularly where inventions are generated autonomously or with minimal human input. At present, there is no statutory provision or judicial precedent in Sri Lanka that explicitly recognises an AI system as an inventor or permits the grant of patents for inventions autonomously generated by AI.

Thaler's DABUS[1] decisions in the United States and United Kingdom show that courts consistently reject AI as an inventor unless there is an independent human inventive contribution. Key questions include: Can AI systems be recognised as inventors? Are AI-generated inventions patentable subject matter? Can such inventions satisfy the requirements of novelty, inventive step, and disclosure? Who owns AI-generated inventions, particularly when

[1] World Intellectual Property Organization, *Artificial Intelligence (AI) and Inventorship* (Standing Committee on the

Law of Patents, Thirty-Fifth Session, Geneva, 16–20 October 2023) SCP/35/7, 30; World Intellectual Property

Organization, *Getting the Innovation Ecosystem Ready for AI: An IP Policy Toolkit* (WIPO 2024) 24

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AI technology attains the capability to invent autonomously? How do AI-generated inventions fit within the current Intellectual Property ("IP") framework? These questions have significant implications for existing patent law and policy, economic development through investment, and the future international legal framework.

The patent applications involving Stephen Thaler's DABUS system[2] illustrate both the ambiguity surrounding inventorship and the consequences of inadequate patent drafting. Decisions across jurisdictions, including Australia, the United Kingdom, and the United States, consistently affirm that inventorship must be attributed to a human and cannot be assigned to a machine.

The World Intellectual Property Organization[3] identifies four key categories of AI-related inventions:

1. AI models – Innovations in core AI technology itself (e.g., new algorithms or models).
2. AI-assisted inventions – Human-created inventions where AI is used as a tool (e.g., AI helping identify a protein-binding site leading to a new drug).
3. AI-based inventions – Inventions that incorporate AI as an essential component (e.g., AI-enhanced microscopes or translation devices).
4. AI-generated inventions – Hypothetical or emerging inventions created autonomously by AI without

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[2] World Intellectual Property Organization, *Artificial Intelligence (AI) and Inventorship* (Standing Committee on the Law of Patents, Thirty-Fifth Session, Geneva, 16–20 October 2023) SCP/35/7, 30; World Intellectual Property Organization, *Getting the Innovation Ecosystem Ready for AI: An IP Policy Toolkit* (WIPO 2024) 24 https://doi.org/10.34667/tind.48978

[3] WIPO (n 24) 12.

meaningful human input, with the DABUS system by Stephen Thaler as the main example.

2. Human Inventorship Requirement: Human v. AI personhood challenges

Granting patents to AI-generated inventions presents a number of legal challenges that stem fundamentally from the fact that the current patent system was designed to protect human inventors by securing their exclusive rights, thereby promoting the progress of science and technology.

3. Patentability Criteria

The patentability criteria under the IP Act include novelty,[4] inventive step/non-obviousness,[5] and industrial applicability.[6] The current legal framework does not provide guidance on how AI-generated inventions that involve an output (e.g., a new compound, algorithm, or machine configuration) can meet these criteria.

4. Novelty requirement

An invention is considered new if it is not anticipated by prior art,[7] which includes everything that has been disclosed to the public anywhere in the world before the filing date, as well as the content of unpublished patent applications that are published subsequently.[8] Prior art searches are conducted via patent databases such as PATENTSCOPE,[9] ESPACENET,[10] USPTO

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[4] IP Act, s 64.
[5] ibid, s 65.
[6] ibid, s 63.
[7] ibid, s 64.
[8] ibid.
[9] World Intellectual Property Organization, 'PATENTSCOPE' https://patentscope.wipo.int/ accessed 13 May 2025.
[10] European Patent Office, 'Espacenet – Patent Search' https://worldwide.espacenet.com/ accessed 13 May 2025.

database[11] or non-patent literature.[12] As AI gains access to an ever-increasing body of information, derived from different sources, thereby broadening the scope of potential prior art, assessing the novelty of an invention may become increasingly challenging.

5. Inventive Step

Patentability requires that the invention involve an inventive step or be non-obvious. The standard applied for assessing non-obviousness is whether, having regard to the prior art relevant to the patent application claiming the invention, the invention would be obvious to a person skilled in the relevant art to which the invention belongs.[13] An invention involves an inventive step, which is assessed from the viewpoint of a "person having ordinary skill in the art" (PHOSITA), a hypothetical human with ordinary knowledge and skill in the relevant field.[14]

The question is whether the traditional approach applied by a single person skilled in the art and uninvolved with AI technology is suitable for assessing the obviousness standard for AI-generated inventions in Sri Lanka. In such cases, the benchmark should be the machine's capability standard, rather than that of a PHOSITA. In the context of AI inventions, the current framework raises the following challenging questions rather than answers:[15]

The following questions arise in reconsidering the applicable standard:

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[11] United States Patent and Trademark Office, 'Patent Public Search' https://www.uspto.gov/patents/search/patent-public-search accessed 13 May 2025.

[12] Google Patents https://patents.google.com/ accessed 13 May 2025.

[13] WIPO (n 32).

[14] IP Act, s 65.

[15] H Bosher et al, *WIPO Impact of Artificial Intelligence on IP Policy: Response from Brunel University London, Law School & Centre for Artificial Intelligence* (World Intellectual Property Organization, 2020) https://www.wipo.int/documents/d/frontier-technologies/docs-en-artificial-intelligence-call-for-comments-org_brunel.pdf accessed 19 June 2025.

1. What constitutes the relevant "art" for assessment? Should it be confined to the technological field of the resulting product or service generated through the AI application?

2. Should the traditional standard of the person skilled in the art be retained where inventions are autonomously generated by AI, or should it be reconsidered in favour of an AI-based benchmark, such as an algorithm trained on domain-specific data?

3. What are the implications of substituting the human benchmark with AI in determining the scope and content of the prior art base?

4. Should AI-generated outputs themselves be recognised as part of the prior art?

Sri Lanka has so far failed to address these new challenges that may arise with AI-generated inventions.

6. Disclosure requirement

All inventions, whether AI-generated or not, must be disclosed in a manner sufficiently clear and complete for the invention to be evaluated and carried out,[16] including the best mode known to the applicant, so that a PHOSITA can reproduce the invention without undue effort.[17] When AI systems autonomously operate in ways that are unexplainable by a human developer, the current framework does not provide any guidelines to answer the following questions:[18]

AI-assisted and AI-generated inventions raise key challenges for the patent disclosure requirement, particularly:

[16] WIPO (n 72).
[17] IP Act, s 71(3).
[18] WIPO (n 72) 6–7.

1. Whether disclosing the initial version of a machine-learning model is sufficient when it changes over time.
2. Whether a deposit system for algorithms (like for microorganisms) is needed.
3. Whether the data used to train AI must be disclosed or adequately described.
4. Whether human expertise in selecting data and training the model should be included in the disclosure.

7. Disclosure Challenges under Section 71 of the IP Act

AI-generated inventions create significant difficulties under the Intellectual Property Act No. 36 of 2003, particularly section 71:

- Inventor identification (s.71 (2)) – Requires naming a human inventor, which is problematic when inventions are autonomously generated by AI; failure or misidentification may lead to rejection.
- Sufficiency and enablement (s.71 (3)) – Applicants must disclose the invention clearly so a skilled person can reproduce it; inadequate disclosure of AI involvement risks non-compliance.
- Best mode and transparency – Difficulty in explaining the AI-driven inventive process, especially where it is opaque or evolving.

Failure to properly identify the inventor or fully disclose AI's role may result in rejection of the patent application.

8. Ownership rights attribution-related challenges

In *Thaler v. Comptroller-General of Patents*,[19] the issue was whether Thaler was entitled to apply for and obtain patents for inventions generated by DABUS by virtue of being its owner. The court held that, since an AI system does not meet the qualification of an inventor, it cannot transfer patent filing rights related to the invention. The law does not confer the right to obtain a patent "for any new product or process created or generated autonomously by a machine, such as DABUS, let alone on a person."[20]

9. Modernise Examination Guidelines for AI-based inventions

The interim measures by way of guidelines to strengthen disclosure requirements in AI-related patents without changing the current patent law are likely to facilitate AI-related inventions. The following administrative patent guidelines are suggested to be issued by the NIPO, like the UK patent examination guidelines.[21]

1. An AI invention is patent-eligible if it makes a technical contribution to the existing art.
2. An AI invention makes a technical contribution when it:
    - performs a technical process outside the computer;
    - solves a technical problem either outside the computer or within the computer itself; or
    - Introduces a technically new way of operating a computer.

[19] *Thaler v. Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49, [2023] 12 WLUK 257 [79] see https://doi.org/10.1007/s40319-024-01446-8.
[20] *ibid.*
[21] UKIPO Guidelines (n 57).

3. An AI invention is excluded from patent protection if it lacks a technical contribution, particularly where it:
    - concerns only excluded subject matter;
    - merely processes or manipulates information/data; or
    - Is simply an improved computer program for a conventional computer.
4. These principles apply equally to both applied AI, core AI, and AI training processes.
5. AI hardware and software implementations are assessed alike, focusing on the substance of the technical task performed, not the form of implementation.
6. Training datasets may be patent-protected when used within an invention making a technical contribution, but datasets defined only.
7. The sufficiency of disclosure of an AI invention or a data set is assessed in the same way as any other invention. The relevant legal principles for assessing sufficiency are set out in *Eli Lilly v. Human Genome Sciences*. [22]

10. TRIPS Flexibility and Exceptions as Exclusive Rights

While the TRIPS Agreement does not expressly mention AI-generated inventions, **Article 27(1)** lays down a general, technology-neutral framework that can logically be read to encompass them. Article 27(1) mandates that patents *"shall be*

[22] *Eli Lilly v. Human Genome Sciences* [2008] EWHC 1903 (Pat).

available for any inventions, whether products or processes, in all fields of technology.'[23]

It is argued that the phrase *"all fields of technology"* in Article 27(1) is deliberately broad and capable of accommodating future technological domains, including AI, especially since the TRIPS drafters intentionally avoided limiting patentability to any specific technology. In short, the scope of protection can evolve with technological change that includes AI-generated inventions. However, they meet the criteria of **novelty, inventive step, and industrial applicability**, within this technology-neutral standard, even if the *source* of the inventive concept is unconventional.

Article 27(1) further provides that patents must be available *"without discrimination as to the place of invention [or] the field of technology" and therefore, any exclusion of* AI-generated inventions may breach the Article 27(1) non-discrimination obligation and undermine the Agreement's innovation-promoting objectives.

a. Research and non-commercial use exception

The patent owner's exclusive rights in the IP Act do not relate to scientific research activities. It is proposed to extend this exception to both research and non-commercial use, in universities and research institutions, which directly apply to **AI developers** and researchers for R&D. This exception is likely to allow AI developers and researchers to use the patented technologies to test AI models for non-commercial scientific research and experimental purposes in universities and research institutions without infringing the patent rights.

b. Private and non-commercial-experimental use exception

The **private and non-commercial use exception** will also allow individuals to use a patented invention **for personal or non-**

[23] Professor Sanath Sameera Wijesinghe, Head of the Department of Legal Studies, Open University of Sri Lanka, Written interview (Appendix III) (conducted August 2025).

commercial experimental purposes without infringing patent rights. This will also allow researchers or students experimenting with a patented AI algorithm at home or in a university lab, only for non-commercial purposes.

Alternatively, it also recommends a sui generis model[24] ('of **its own kind')**, which is a stand-alone system that can protect AI-generated inventions outside the IP system (e.g., the **EU's database rights)** for the protection of AI-generated inventions that do not fall within the existing patent system. A sui generis system could recognize and incentivize investment in data and information systems, without requiring elements of human creativity or innovation.[25] This approach avoids the central objection to granting AI ownership rights, namely, the absence of human intellectual contribution.[26]

Significantly, the sui generis model avoids legal barriers inherent in the traditional patent framework, such as the requirements of human inventorship, novelty, inventive step, and non-obviousness. It offers the flexibility to establish its own criteria for ownership, such as recognizing the AI developer, facilitator, or investor, and to define the scope of rights and obligations, limitations, duration of protection, and applicable exceptions, which may not be accommodated under conventional patent regimes.

A contractual arrangement between AI developers and users or between AI developers and patent holders also offers an alternative protection mechanism outside the formal patent

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[24] *The Impact of Advancements in Artificial Intelligence on the Current Patent System* (City Law Tutors, 21 June 2024) https://citylawtutors.co.uk/law-journal/the-impact-of-advancements-in-artificial-intelligence-on-the-current-patent-system accessed 15 April 2025.

[25] D M Karunaratna, Former Director General of the National Intellectual Property Office of Sri Lanka, *Written interview* (Appendix II, conducted August 2025).

[26] B Müller, 'Recent Case Law from Germany Concerning the Database Right' (2007) 2 *CL* 60–67.

system and without requiring legislative intervention. Such arrangements can effectively safeguard the economic interests of patent owners and protect AI-related investments, as the use of patented information or technology would be governed by mutually agreed financial terms.

11. Conclusion

As demonstrated, granting patents for AI-generated inventions presents complex legal and policy challenges that go to the heart of fundamental patent law principles discussed in this paper. In Sri Lanka, the lack of a clear legal and policy framework, especially regarding inventorship, ownership, patentability, examination, and disclosure, along with limited institutional capacity at NIPO, has hindered the effective use of AI technologies and the protection of stakeholders' rights.

It was demonstrated that without rushing into drastic legislative reforms, interim legal and policy measures should be implemented to address the legal uncertainties surrounding AI-generated inventions in Sri Lanka, until international efforts, such as those led by WIPO, result in a more harmonized global approach. It recommends implementing legal measures to clarify inventorship, ownership, patentable subject matter, patentability criteria, and disclosure standards, enabling AI developers to benefit from AI technologies without compromising the existing patent principles until a global international framework is established.

It further recommends adopting international approaches and best practices of the USA, UK, and Australia, including relevant judicial interpretations, while adjusting the inventive step standard, exceptions, procedural, institutional, and administrative reforms, without requiring major legislative changes, pending a global consensus.

As legal and policy measures, it recommended recognising the AI programmer, facilitator, or developer as the inventor while treating AI systems as tools; clarifying the novelty and inventive step standards from the perspective of the person having ordinary skill in the art (PHOSITA); utilising TRIPS Flexibilities; and exploring a sui generis legal regime outside the traditional patent system.

This dissertation concludes that implementing interim legal and policy measures can effectively address the unique challenges posed by AI-generated inventions while safeguarding both AI-driven innovations and the rights of patent holders.

It is submitted that Sri Lanka should adopt a cautious but proactive reform strategy, including:

- Recognising human contributors behind AI
- Reassessing the non-obviousness standard in light of AI
- Introducing a sui generis framework to address AI-specific patent issue

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THE PRACTICAL APPLICATION OF REGULATORY REQUIREMENTS PERTAINING TO INDEPENDENT DIRECTORS IN PUBLIC LISTED COMPANIES IN SRI LANKA

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Abstract

Independent Directors play a crucial role in ensuring transparency, accountability, and fair decision-making in Public Listed Companies (PLCs) in Sri Lanka, where corporate governance is shaped by frameworks such as the Companies Act, CSE Listing Rules, SEC Regulations, and Banking Directions. Despite these regulatory requirements, questions remain regarding whether Independent Directors are able to perform their oversight functions effectively in practice. This article examines the role of Independent Directors, evaluates the Sri Lankan legal and regulatory framework, identifies practical challenges that undermine genuine independence, and compares Sri Lanka's approach with developments in the United Kingdom and Canada. The article argues that formal compliance alone is insufficient where major shareholders dominate board appointments and information flows. It concludes that reforms aimed at strengthening appointment processes, enhancing minority shareholder participation, clarifying qualification standards, and improving enforcement mechanisms are necessary to ensure that Independent Directors function as effective guardians of corporate governance rather than symbolic board members.

Keywords: *Independent Directors, Corporate Governance, Public Listed Companies, Sri Lanka, Regulatory Framework.*

1. Introduction

'The role and responsibility of an Independent Director in a public company are more serious and demanding than ever before.'[1]

Corporate governance has become a critical concern for regulators, investors, and businesses worldwide. High-profile corporate failures have demonstrated that weak oversight mechanisms can result in significant financial losses and erosion of public confidence. Within this governance framework, Independent Directors are expected to provide objective oversight, monitor management conduct, and protect the interests of shareholders and other stakeholders.

In Sri Lanka, the importance of Independent Directors is particularly significant because many PLCs have concentrated ownership structures. Major shareholders often possess substantial voting power, enabling them to influence board composition and strategic decision-making. Consequently, Independent Directors are expected to serve as a counterbalance to shareholder dominance and managerial influence. Acting as impartial business advisors and watchdogs, they contribute to maintaining corporate integrity.[2]Although Sri Lanka has adopted extensive governance requirements through the Companies Act No. 7 of 2007, the CSE Listing Rules[3], SEC Regulations[4], the

[1] Dinesh Weerakkody, 'Myth about so-called independent directors in PLCs' *Daily FT* (13 July 2023) <https://www.ft.lk/dinesh-weerakkody/Myth-about-so-called-independent-directors-in-PLCs/5-773739 > accessed 2 July 2025.

[2] R M Fernando, 'How Effective Are Independent Directors in Sri Lanka?' *The Sunday Times* (Colombo, 12 July 2015) < https://www.sundaytimes.lk/150712/business-times/how-effective-are-independent-directors-in-sri-lanka-156153.html > accessed 15 May 2025.

[3] Colombo Stock Exchange, *Listing Rules* (Section 9: Corporate Governance) <https://www.cse.lk/pages/listing-rules/listing-rules.component.html > accessed 2 July 2025.

[4] Securities and Exchange Commission of Sri Lanka, *Rules and Regulations* (Corporate Governance) <https://www.sec.gov.lk/si/category/rule-regulations/?lang=en > accessed 2 July 2025.

Code of Best Practice on Corporate Governance[5], and Banking Act Directions, concerns remain regarding the practical effectiveness of Independent Directors. This article examines whether the current framework adequately protects director independence and proposes reforms aimed at strengthening corporate governance outcomes.

2. The Role and Importance of Independent Directors

Independent Director is a person who has no affiliation to any of the shareholders of the company and is capable of evaluating all company-related matters in a fully independent and transparent manner.[6]Further, it refers to individuals who have no material connection to the company and are not connected to it in any way other than serving on the board. In the decision-making processes specially of the PLC with hundreds of small shareholders, this requirement assists independent directors in avoiding conflicts of interest and in maintaining objectivity.[7]

The Board of Directors will appoint the Independent Directors, which at times need to be approved by the regulator as to his (or her) fitness and propriety. Thereafter, at the first AGM after such appointment, the name of the director would be put forward for acceptance (or approval) by the shareholders. If the name is not accepted by a majority, he or she would lose the directorship. An Independent Director, does not represent any major shareholders, particularly those holding a significant portion of shares, because

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[5] Securities and Exchange Commission of Sri Lanka and Institute of Chartered Accountants of Sri Lanka, *Code of Best Practice on Corporate Governance 2013* <https://www.casrilanka.com/casl/images/stories/content/members/corporate_governance_code_2013.pdf > accessed 2 July 2025.

[6] In-person interview with Nihal Jayawardene PC, *(*HNB Main Branch, Colombo, 7 July 2025)

[7] Gihan De Silva, 'Strengthen Role of Genuine Independent Directors in Quoted Companies ', *Daily FT* (5 February 2025) < https://www.ft.lk/columns/Strengthen-role-of-genuine-Independent-Directors-in-quoted-companies/4-772663 .> accessed 3 August 2025

such affiliations could influence the director's impartiality. Even the act of being appointed by a major shareholder introduces a degree of influence that disqualifies the director from being truly "independent."[8]

A precise legal definition of an Independent Director is absent in most regulations as such a definition is impractical to codify because various factors can impede a director's independence, and these factors often differ from company to company.

When one considers the role and the key responsibilities of directors, the foundation is established in Section 187 of the Companies Act, No. 07 of 2007.This provision mandates that a director must always act in what he bona fide believes to be in the best interests of the company.[9] The entire framework of directors' duties originates from this core obligation. In this context, a critical question arises: Can a director appointed by a major shareholder always ignore the interests of that shareholder when such interests conflict with the best interests of the company? It is this very concern that has shaped the conceptual basis for appointing Independent Directors. [10]Independent Directors undertake a range of interlinked responsibilities that are both theoretical and practical in nature. Derived from agency theory and the theory of board function differentiation, the key responsibilities of Independent Directors include:[11], exercising objective and unbiased judgment on corporate affairs without external influence, avoiding conflicts of interest, particularly with management or controlling shareholders, acting as a bridge between the allocation and ownership of company resources, and

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[8] In-person interview with Nihal Jayawardene PC, *(*HNB Main Branch, Colombo, 7 July 2025)

[9] Companies Act, No 07 of 2007, Section 187

[10] Virtual interview with Nihal Jayawardene PC, (3 August 2025)

[11] Junmeng Chang, 'The Role of Independent Directors in Ensuring Good Corporate Governance' (2023) 12(1) *Frontiers in Business, Economics and Management* 7< https://doi.org/10.54097/fbem.v12i1.13618 > accessed 3 August 2025

between majority and minority shareholders, ensuring that corporate decisions align with investor interests, thereby reducing potential managerial abuses[12],supervising and monitoring executive actions to uphold accountability, enhancing transparency and governance across board proceedings and corporate disclosures, mitigating moral hazard and adverse selection, serving as a safeguard against poor decision-making, contributing to the structural integrity of the board as a product of its functional evolution, playing a decisive role in resolving conflicts of interest that may arise between the management and the shareholders.[13], strengthening shareholder confidence by preserving the objectivity and integrity of board oversight.

The Companies Act, particularly Sections 188, 189, and 190, complements this framework by setting out duties that enhance accountability: Section 188 prevents directors from acting contrary to the Companies Act or the company's articles.[14] Section 189 imposes a duty of care, requiring directors to avoid recklessness and to act with reasonable skill.[15] Section 190 permits reliance on professional advice or internal information, but only if the director acts in good faith, makes proper inquiries, and has no reason to believe the reliance is unwarranted.[16]Although any of these provisions do not stipulate specific restrictions or limitations, they would have established a way as to how the implementation can be done. Accordingly, Independent Directors are expected to uphold these statutory obligations with greater vigilance. Their position requires them to serve not only as board members but also as guardians of corporate governance, ensuring

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[12] Clark CR, 'Vote Buying and Corporate Law' (1979) 29 *Case W Res L Rev* 776, 779–83 and Dinga AK, 'Ownership Structure and Firm Performance in the UK: Evidence from the Agency Perspective' (University of Durham Working Paper 2009) 65–66.

[13] R.E.G. Pearson, A. Jeffries, *British Company Law*, (Shanghai Translation and Publishing Company Press 1984) 110-115.

[14] Companies Act, No 07 of 2007, Section 188

[15] ibid, Section 189

[16] ibid, Section 190

that decision-making remains aligned with legal, ethical, and fiduciary standards.

Independent Directors strengthen corporate governance structures and contribute significantly to the company's long-term value creation and public trust. Over the past decade, corporate governance[17] has become a key consideration for investors globally, particularly in light of high-profile scandals like Enron and WorldCom. Research from institutions such as Harvard and the University of Pennsylvania confirms that companies with strong governance, especially robust shareholder protections, consistently outperform those with weaker frameworks. [18]This underscores why investors prefer companies committed to best governance practices. In markets like Sri Lanka, fostering such standards is crucial, especially as the country seeks greater foreign investment. Strong corporate governance, upheld in part by independent directors, directly translates to improved investor confidence and better access to finance.[19]

While the presence of independent directors is beneficial across all types of companies, their role becomes particularly critical in PLCs. A PLC is one that offers its shares to the general public through a stock exchange, thereby attracting a diverse and

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[17] **Corporate governance** refers to the set of rules, practices, and processes that direct and control a company. It ensures that companies are accountable to their stakeholders, including shareholders, employees, customers, and the community
'Corporate Governance: Definition, Principles, Models, and Examples' *Investopedia*
<https://www.investopedia.com/terms/c/corporategovernance.asp>accessed 4 August 2025.

[18] Shabiya Ali Ahlam, 'How Important Is the Role of an Independent Director?' *Daily FT* (4 August 2014) <https://www.ft.lk/in-depth/how-important-is-the-role-of-an-independent-director/48-332212 > accessed 4 August 2025.

[19] Shabiya Ali Ahlam, 'How Important Is the Role of an Independent Director?' *Daily FT* (4 August 2014) <https://www.ft.lk/in-depth/how-important-is-the-role-of-an-independent-director/48-332212 > accessed 4 August 2025.

dispersed base of shareholders. Due to this wide shareholder composition, ensuring unbiased oversight becomes vital, making independent directors indispensable for protecting minority interests and preventing dominance by controlling shareholders. In the context of PLCs, where major shareholders often hold more than 50% of equity, as commonly seen in Sri Lanka, the importance of independent directors is amplified. Their role helps balance the boardroom power structure, ensures transparent decision-making, and upholds fiduciary responsibility.[20]

Independent Directors also contribute to investor confidence. Investors are more likely to invest in companies where governance structures provide assurance that decisions are made in the interests of the company rather than for the benefit of a small group of insiders. Consequently, strong board independence contributes not only to company performance but also to broader economic development and capital market credibility.

3. Sri Lanka's Regulatory Framework

3.1 The Companies Act, No. 07 of 2007

The Companies Act, No. 07 of 2007, does not specifically define "Independent Directors." Nevertheless, Independent Directors fall within the broader category of "directors" under the Act. Therefore, the general provisions relating to qualifications, appointment, removal, prohibitions, and retirement apply to them as well. The Act requires a minimum of two directors for public companies.[21]

Directors must meet basic qualifications and avoid disqualifications such as being under 18, insolvent, of unsound

[20] Gihan De Silva, 'Strengthen Role of Genuine Independent Directors in Quoted Companies ', *Daily FT* (5 February 2025) < https://www.ft.lk/columns/Strengthen-role-of-genuine-Independent-Directors-in-quoted-companies/4-772663 .> accessed 3 August 2025
[21] Companies Act, No. 07 of 2007, Section 201

mind, not a natural person, or otherwise restricted by law.[22] Appointment requires written consent and confirmation of eligibility.[23] All subsequent directors shall be appointed by ordinary resolution.[24] Directors, including Independent Directors, can be removed by an ordinary resolution of shareholders, subject to the company's articles.[25] Directors vacate office if they resign, are removed, become disqualified[26], die, reach the age of 70[27] (unless extended by shareholder resolution[28]), or as otherwise provided in the company's articles.[29] Persons prohibited from managing companies include those insolvent, of unsound mind, convicted of certain offences[30], or persistently non-compliant, with courts able to prohibit management roles for up to ten years.[31] Appointment defects or lack of qualification do not invalidate a director's acts.[32]Accordingly, although the Act does not single out Independent Directors, its provisions apply equally to them. While the Companies Act provides the general legal framework applicable to all directors, including Independent Directors, PLCs are also subject to additional subsidiary governance regulations that set out specific criteria and responsibilities for Independent Directors.

3.2 Corporate Governance Listing Rules – CSE

CSE Listing Rules impose comprehensive corporate governance requirements on listed entities to ensure transparency, accountability, and the protection of investor interests. These provisions apply to all entities listed on the Main Market Segment

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[22] ibid, Section 202
[23] ibid, Section 203
[24] Companies Act, No. 07 of 2007, Section 204(2)
[25] ibid, Section 206
[26] ibid, Section 202
[27] ibid, Section 210
[28] ibid, Section 211
[29] ibid, Section 207
[30] ibid, Section 213
[31] ibid, Section 214
[32] ibid, Section 209

or with listed debt securities,[33] and to entities listed on the Empower Board[34]. These rules, which must be complied with continuously, also apply either directly or indirectly to Independent Directors of PLCs. Entities must publish an annual statement confirming the extent of compliance with these rules[35], non-compliance attracts enforcement actions and penalties.[36] Section 9.1.4 introduces amendments to the independence criteria, effective from 1 March 2025.[37]

One of the central governance provisions for Independent Directors is set out in section 9.8.2, which mandates that the Board of a listed entity must include at least two Independent Directors or such number equivalent to one-third of the total Board, whichever is higher. Any deviation from this ratio must be rectified within ninety days.[38] The criteria for determining independence are detailed in section 9.8.3, which outlines circumstances in which a director will not be considered independent, including recent employment with the entity, material business relationships, close family ties to directors or CEOs, significant shareholding, long board tenure (aggregate of nine years), cross-directorships creating conflicts of interest, interlocking business relationships that compromise objectivity and being above the age of seventy without specific shareholder approval under the stipulated conditions.[39] Similar but slightly modified criteria apply to companies listed on the Empower Board, including a shorter two-year look-back period for prior employment or business relationships.[40]

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[33] Corporate Governance Rules, Colombo Stock Exchange Listing Rules, s 9.1.1.
[34] ibid, s 9.1.2.
[35] Corporate Governance Rules, Colombo Stock Exchange Listing Rules, s 9.1.3.
[36] ibid, s 9.15, s 9.18
[37] ibid, s 9.1.4.
[38] ibid, s 9.8.2.
[39] ibid, s 9.8.3.
[40] ibid, s 9.19.4.

The rules also introduce the concept of the SID under section 9.6.3, applicable where the roles of Chairperson and CEO are combined, where the Chairperson is an Executive Director, or where they are close family members or related parties.[41] The SID must be an Independent Director and has specific duties, such as chairing meetings of non-executive directors without the Chairperson present, providing feedback to the Board, and disclosing the effectiveness of their role annually. This reinforces the independence function by ensuring a counterbalance in board leadership and oversight, particularly in situations of potential conflicts of interest. To ensure fitness and propriety, section 9.7 requires that all directors and the CEO continuously meet the "Fit and Proper" assessment criteria covering honesty, integrity, reputation, competence, capability, and financial soundness.[42] The rules mandate annual declarations from directors and the CEO confirming compliance with these criteria, with disclosures in the annual report.[43] This requirement is integral to maintaining the credibility and effectiveness of Independent Directors, whose role depends on their perceived impartiality and professional competence.

Non-compliance with Independent Director Requirements can trigger enforcement actions under section 9.18, which range from market announcements of non-compliance, transfer of securities to the Watch List, restrictions on share transactions by directors and connected persons, to eventual suspension and delisting if breaches remain unrectified.[44] Financial penalties are also stipulated, such as those in section 9.15 for breaches of Board committee composition rules, which may apply if Independent Director Requirements are not met in committees like the Nominations and Governance Committee (section 9.11.4).[45]

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[41] ibid, s 9.6.3.
[42] Corporate Governance Rules, Colombo Stock Exchange Listing Rules, s 9.7.3.
[43] ibid, s 9.7.4.
[44] ibid, s 9.18.
[45] ibid, s 9.15.

These enforcement mechanisms underscore that compliance with Independent Director Provisions is not merely a best practice, but a binding legal obligation for all listed entities.

3.3 SEC Regulations

Provisions on Independent Directors, are administered by the CSE but issued under the regulatory authority of the SEC.As the apex regulator of the capital market, the SEC not only approves and revises these governance rules but also issues directives, circulars, and guidelines, grants approvals for listings and securities issuances, and enforces compliance. This integrated framework ensures that the independence criteria for directors' form part of a broader statutory mandate to maintain market integrity. Further, the SEC, in collaboration with CA Sri Lanka, has published the Code of Best Practice on Corporate Governance (2023), which complements the Listing Rules by promoting governance principles that go beyond minimum legal requirements.

3.4 BA Directions No. 05 of 2024 on Corporate Governance for Licensed Banks

The CBSL has issued BA Directions No. 05 of 2024 to enhance corporate governance in Licensed Banks, aiming to promote responsible and accountable management, safeguard the safety and soundness of individual banks, and strengthen the stability of the overall banking sector and financial system.[46]

Under BA Directions, Section 2.5 requires that at least half of the total board of a licensed bank be Independent Non-Executive Directors, with compliance mandatory by 1 January 2027.[47] In line with Section 2.2, the board must consist of no fewer than seven and no more than thirteen directors, with its size proportionate to

[46] Central Bank of Sri Lanka, *Banking Act Directions No 05 of 2024 on Corporate Governance for Licensed Banks* (2024).
[47] ibid, s. 2.5

the bank's scale, diversity, and operational complexity.[48] The Directions set out detailed disqualification criteria for which non-executive director shall not be considered independent, in Section 2.5(b), including significant shareholdings (over 1%), recent business transactions with the bank exceeding 10% of regulatory capital, recent employment or material business relationships, close family ties to key officers or major shareholders, representing specific stakeholders, certain inter-company relationships with other board members, and recent roles as consultants or auditors to the bank.[49] All key board committees, including the Audit Committee[50], Human Resources and Remuneration Committee[51], Nomination and Governance Committee[52], Integrated Risk Management Committee[53], and Related Party Transactions Review Committee[54], must be chaired by an Independent Director. Independent directors must also be expressly identified in all corporate communications. These provisions aim to ensure board objectivity, minimize conflicts of interest, and reinforce governance standards specific to the banking sector, while aligning closely with the independence requirements under the CSE Listing Rules.

3.5 Banking Act Directions No. 01 of 2025 on Addendum to the Banking Act Directions No. 05 of 2024 on Corporate Governance for Licensed Banks

The CBSL requires that directors representing shareholders who have acquired voting shares in contravention of Section 12(1C) of the Banking Act or related approvals must abstain from participating in or voting on the appointment of independent

[48] ibid, s. 2.2
[49] ibid, s. 2.5 (b)
[50] ibid, s. 6.2 (a)
[51] ibid, s. 6.3 (a)
[52] ibid, s. 6.4 (a)
[53] ibid, s. 6.5 (a)
[54] ibid, s. 6.6 (a)

directors, with immediate effect.[55] This amendment strengthens the integrity of the appointment process by preventing conflicted parties from influencing the selection of independent board members.

4. Practical Challenges Facing Independent Directors

In practice, Independent Directors in PLCs encounter a number of challenges arising from board composition, shareholder influence, and regulatory expectations. Basically, there are Executive Directors and Non-Executive Directors. NEDs comprise of Independent Directors and Non-Independent Directors. NIDs are usually directors nominated by shareholders, which can sometimes create situations where the independence of the board is tested. The regulators expect that there is no discriminatory treatment to any stakeholder of the company, including its customers. These measures have been imposed to discourage powerful shareholders from getting together and taking oppressive action against any minority shareholders or any other stakeholders, including consumers. This is why the regulatory authorities are favorably looking at Independent Directors as a safeguard against such risks. Banking Companies are prohibited from giving any favorable facilities to related parties of such companies, yet ensuring compliance can itself be a challenge. Regulators usually prefer having Independent Directors as opposed to NEDs, but in reality, these directors often have to work hard to ensure that decisions are made solely in the best interest of the company. The idea of preference being given to Independent Directors is to ensure that this is done without having any interest outside those of the Company's being pursued by directors who have a preferential interest in another body corporate.

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[55] Central Bank of Sri Lanka, *Banking Act Directions No. 01 of 2025 on Addendum to the Banking Act Directions No. 05 of 2024 on Corporate Governance for Licensed Banks*

In Banking Companies, the majority of the directors should be Independent Directors, and any Statutory Sub Committee of the Board should only be chaired by an Independent Director. In the PLCs that are not banking companies, the Nominations and Governance Committee also has to be chaired by an Independent Director. These requirements, while intended to strengthen governance, can also become a challenge for Independent Directors, as they add to the weight of responsibility and require them to consistently uphold their independence in the face of potential pressures from other board members or influential shareholders. Meeting quorum requirements, which must comprise a minimum number of Independent Directors, can also present practical difficulties. All these regulatory measures are intended to secure independence in the decision-making process and to avoid conflicts of interest, but in practice, maintaining that independence of the Independent Directors can be an ongoing and complex challenge.[56]Conclusively, independent directors face practical challenges such as overseeing executive management, navigating complex governance practices, and overcoming resistance to their independent perspectives. If these challenges are not effectively overcome, the effectiveness of independent directors and overall corporate governance may be compromised.

5. Comparative Analysis of International Practices.

5.1 United Kingdom

The United Kingdom places considerable emphasis on director independence through the Companies Act 2006[57], the UK Listing Rules[58], and the UK Corporate Governance Code[59] and The Disclosure and Transparency Rules (DTR) and the Market Abuse

[56] Virtual interview with Nihal Jayawardene PC, (11 August 2025)
[57] Companies Act 2006
[58] UK Listing Rules
[59] UK Corporate Governance Code

Regulation (MAR).[60]A notable feature of the UK framework is the statutory duty requiring directors to exercise independent judgment.[61] The UK framework provides positive insights for strengthening corporate governance in PLCs through robust mechanisms for independent directors. Unlike Sri Lanka and Canada, the Companies Act 2006 explicitly incorporates a statutory duty requiring directors to exercise independent judgment, making independence a legal obligation rather than merely a best practice. Coupled with the UK Corporate Governance Code and UK Listing Rules, these provisions ensure that independent directors maintain impartiality, safeguard shareholder interests, and enhance board accountability, offering a distinct and effective model for promoting director independence in publicly listed companies.

5.2 Canada

In Canada, the corporate governance framework for PLCs, including rules applicable to Independent Directors, is shaped by a combination of corporate laws, securities laws, and stock exchange rules. The Canada Business Corporations Act (CBCA)[62] and parallel provincial or territorial statutes establish the baseline legal framework, while securities laws and CSA rules[63] impose further governance and disclosure obligations. Additionally, the TSX and TSX Venture Exchange[64] supplement these rules through their listing requirements. Collectively, these instruments ensure accountability, board independence, and investor protection, forming a multi-layered regulatory regime comparable in many respects to the U.S. Sarbanes-Oxley Act.[65]

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[60] The Disclosure and Transparency Rules (DTR) and the Market Abuse Regulation (MAR)
[61] Companies Act 2006, Section 173
[62] Canada Business Corporations Act, RSC 1985, c C-44.
[63] Canadian Securities Administrators (CSA) Rules
[64] Stock Exchange Rules
[65] US Sarbanes-Oxley Act

A distinctive feature of Canada's governance landscape is the strong role of institutional investors and shareholder activist groups in promoting director independence. Organizations such as the CCGG, the Institute of Corporate Directors, the Canadian Institute of Chartered Accountants, and ISS issue detailed guidelines encouraging boards to adopt high-performance standards, including genuine independence of directors. Large pension funds, such as the Ontario Teachers' Pension Plan and Canada Pension Plan Investment Board, also publish proxy voting guidelines, often opposing the election of directors who fail independence tests. This activism complements statutory and regulatory frameworks, making the independence of directors both a legal and practical necessity in Canadian boardrooms.[66]

While the CBCA[67] itself is not as prescriptive or complex as the UK Companies Act 2006 regarding independent directors, Canada has developed a multi-layered governance framework through CSA rules and stock exchange requirements that effectively govern the role of independent directors in PLCs. These separate instruments ensure that independent directors are held accountable, participate meaningfully in board oversight, and maintain investor confidence, demonstrating a functional model of independence without embedding all requirements directly in the Companies Act.

5.3 Lessons from International Corporate Failures

Important lessons can also be drawn from major corporate failures such as Enron and WorldCom in the USA. These scandals demonstrated that the mere presence of Independent Directors is

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[66] Sean Farrell, Robert McDermott and Stephen Rigby, 'Corporate Governance: Board Structures and Directors' Duties in 39 Jurisdictions Worldwide' (Getting the Deal Through 2007, Canada, McMillan Binch Mendelsohn LLP).< https://mcmillan.ca/fr/wp-content/uploads/sites/7/2020/06/CorpGovCanada_2007.pdf >accessed 19 September 2025.

[67] Canada Business Corporations Act

insufficient if directors fail to challenge management effectively. Formal independence without active oversight provides little protection against governance failures. These scandals created enormous public pressure for legislative reforms, resulting in the US SOX of 2002.[68] SOX increased criminal penalties for executives involved in fraud, required the use of external auditors, and mandated more transparent asset disclosures, aiming to prevent similar corporate collapses. However, the law did not prevent even larger accounting frauds revealed later, such as Bernard Madoff's $64 billion Ponzi scheme during the 2008 financial crisis. The WorldCom case, like Enron, underscored the critical importance of truly independent directors in challenging management, ensuring ethical conduct, and safeguarding shareholder interests.[69]

6. Recommendations

6.1 Primary Recommendation

Aligning Regulatory Frameworks with Practical Application

Closer coordination is required between regulatory agencies and the governance frameworks they implement, such as the SEC Regulations, CSE Listing Rules, and Banking Governance Directions. Agencies like the SEC, CBSL, and the Insurance Board should focus on ensuring that these frameworks are practically workable and that strict compliance does not impose unnecessary burdens on companies. Governance rules must achieve their objectives of strengthening independence and accountability, but agencies should also assess whether rigid application is meaningful in every case, as the realities may differ from company to company and sector to sector.In Sri Lanka, agencies such as the SEC, CBSL, and the Insurance Board already

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[68] US Sarbanes-Oxley Act

[69] Adam J Berger, 'WorldCom Scandal' (Research Starters, EBSCO Knowledge Advantage, 2022) <https://www.ebsco.com/research-starters/business-and-management/worldcom-scandal > accessed 15 September 2025.

have the authority to regulate corporate governance matters, and there is no need to create new institutions for this purpose. The existing frameworks governing Independent Directors, including SEC regulations, CSE Listing Rules, and Banking Governance Directions, should be overseen by these agencies with closer attention to their practical applicability, ensuring that compliance requirements meaningfully strengthen governance rather than becoming a burden. For example, under the Banking Governance Regulations, the Chairperson of a bank must be an Independent Director by the 31st of December 2027. [70]At present, every statutory sub-committee of a bank's board must also be chaired by an Independent Director, with independent directors forming both the majority and the quorum. These measures reflect the regulators' intention to ensure that directors act in the best interests of the company and that independence is not only achieved in law but also visibly demonstrated in practice.The Companies Act should not be amended to include provisions on Independent Directors, as this would undermine its principle-based and streamlined structure. Governance matters relating to Independent Directors are better addressed through sector-specific regulations by bodies such as the SEC and CBSL, which are better equipped to adapt standards and address practical implementation challenges. Regulatory agencies should take a more hands-on role in supervising the real-world application of governance frameworks, balancing enforcement with flexibility to ensure that Independent Directors can operate effectively without over-regulation stifling company performance.

6.2. Secondary Recommendations

Independent Directors should proactively broaden the board's risk oversight to include intangible risks such as reputation, employee well-being, and public perception, while using their independent perspective to challenge assumptions, assess

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[70] ibid

underlying risks, and identify future opportunities.[71] Companies should assess independence using practical criteria, including social and professional relationships, rather than relying solely on age or tenure, and provide meaningful incentives to encourage independent directors' long-term contribution and impartiality. [72]Board independence and effectiveness require active engagement with management and direct oversight to build a genuine understanding of the business, beyond merely complying with governance codes. Boards should move beyond checklist compliance and embrace proactive governance and self-regulation to enhance corporate value and manage emerging risks. Boardrooms should encourage independent directors to challenge decisions and express dissent freely, with integrity taking precedence over position. Professional bodies like the ICA of SL and regulators should provide targeted training to strengthen independent directors' understanding of their evolving roles and responsibilities.

7. Conclusion

Independent Directors are particularly crucial in PLCs, where they serve as a key mechanism to ensure accountability, protect minority shareholders, and maintain public confidence in corporate governance. This article has shown that while the legal and regulatory frameworks, including the Companies Act, CSE Listing Rules, SEC Regulations, Codes of Best Practice, and Banking Directions, provide a foundation for their independence, practical challenges and gaps remain in translating formal compliance into genuine, effective oversight. Comparative analysis with the UK and Canada highlights that regulatory structures alone are insufficient. The UK's emphasis on statutory duties and the binding force of the Corporate Governance Code,

[71] Dinesh Weerakkody, 'Myth about so-called independent directors in PLCs' *FT Online* (Colombo, 17 March 2023) <https://www.ft.lk/dinesh-weerakkody/Myth-about-so-called-independent-directors-in-PLCs/5-773739> accessed 18 September 2025.

[72] ibid

alongside Canada's multi-layered framework of securities laws, stock exchange rules, and active shareholder engagement, underscores that independence must be both legally mandated and culturally reinforced through ethical oversight and transparency.

In Sri Lanka, strengthening the independence of directors requires not only adherence to regulatory frameworks but also the cultivation of a board culture that prioritizes objective decision-making and ethical responsibility. Independence of Independent Directors must not only be ensured but must manifestly appear to be achieved. They must truly act free from influence, whether from major shareholders, management, or other interests. Their independence must be visible and obvious so that shareholders, regulators, and the public can have confidence in their decisions. Justice must not only be done, but must be seen to be done.

Ultimately, fostering genuine independence in boards as well in Independent Directors is not merely a regulatory exercise, it is a fundamental step toward robust corporate governance, investor confidence, and the sustainable growth of Sri Lanka's corporate sector.

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