



13TH INTERNATIONAL RESEARCH CONFERENCE

HOLISTIC APPROACH TO **NATIONAL GROWTH** AND **SECURITY**

15TH - 16TH OCTOBER 2020

Law

ABSTRACTS



General Sir John Kotelawala Defence University



13TH INTERNATIONAL RESEARCH CONFERENCE

HOLISTIC APPROACH TO NATIONAL GROWTH AND SECURITY

LAW

ABSTRACTS



General Sir John Kotelawala Defence University

Ratmalana, Sri Lanka

This book contains the abstracts of papers presented at the Basic and Applied Sciences Sessions of the 13th International Research Conference of General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka held on 15th and 16th of October 2020. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form, without prior permission of General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka.

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Message from the Hon. Minister of Education



It gives me immense pleasure to send this message on the occasion of the 13th International Research Conference of the General Sir John Kotelawala Defence University (KDU). I would like to congratulate the KDU for being able to conduct its International Research Conference in 2020, consecutively for the 13th time. It is not an easy task to organize such a momentous event particularly under many difficulties and challenges posed by the COVID 19 pandemic situation. It is gratifying to witness that KDU, the only Defence University in the country, has been able to transform a challenge into an opportunity, as it usually does.

The theme of the conference, namely the “Holistic Approach to National Growth and Security,” is very timely and of great significance for deliberation in expert panels of this conference. The nexus between National Growth and National Security is closely interwoven. The ‘development’ and ‘security’ of a country cannot be compartmentalized and discussed in isolation of each other. There is no security for a nation without economic and social progress, and likewise, economic and social progress cannot be achieved without stability and a secure environment. I hope various panels of this conference will be able to discuss many facets of national growth and security and their interconnectedness. These two areas have a direct bearing on the development of Sri Lanka, a country which succeeded in ending a 30-year long separatist war. In the context of the present need for robust development, it is absolutely necessary to engage in serious research which leads to discoveries as well as policy-oriented recommendations. Therefore, all academic establishments must provide a conducive space for their intellectuals to reach new frontiers in research. I am glad that KDU is setting an example for all other universities in Sri Lanka in this regard. I hope this year’s conference will produce significant research outcomes and I wish this conference all the success.

Hon. Professor GL Peiris,
Minister of Education

Message from the Secretary, Ministry of Defence



I am delighted to send the best wishes to the KDU on this significant occasion of the annual international research conference. I would also like to congratulate the Vice-Chancellor and the team for continuing the tradition of organizing this conference consecutively for the 13th time, despite the emerging contested health environment.

This year's conference theme: "Holistic Approach to National Growth and Security" focuses on the National Growth and National Security as core concepts, and it, further, suggests that 'development' and 'security' of a country should always go hand in hand. Therefore, this conference would undoubtedly become a vital forum to discuss an area of study which has a direct bearing on the development interests of our motherland.

I am glad that KDU, under our ministerial guidance, is setting an example for all other universities in Sri Lanka in progressing research in many academic fields. I hope this year's conference will produce a significant research outcome that the policy community of Sri Lanka could utilize to support the present development drive. Further, I would like to urge the conference organizers to see the possibility of distributing the conference outcome to all the relevant Ministries and Departments of the country so that these entities could link with the researchers and employ their valuable research outcomes for the benefit of the nation.

I wish that KDU IRC 2020 will enhance the wisdom of all the participants to serve Mother Lanka for a better tomorrow.

Major General (Retd) GDH Kamal Gunaratne

WWV RWP RSP USP ndc psc MPhil

Secretary - Ministry of Defence

Message from the Vice-Chancellor



The International Research Conference taking place for the 13th consecutive time is a landmark in terms of keeping continuity of events at KDU. This year's conference attracted a large number of paper submissions and it indicates the enthusiasm growing in the country on development and security research.

KDU, from its inception, was instrumental in handing down the core values of security to the development paradigm in Sri Lanka. This year's theme 'Holistic Approach to National Growth and Security' highlights the importance of maintaining a harmonious blend in security and development in all national projects.

I believe the efforts of security-based education aiming at strengthening national development should be more cooperative in the future and KDU has always facilitated any research efforts that strengthens the national security of our nation. We urge the academic community of Sri Lanka to join hands with us in all our future endeavours to support the nation especially through productive research in diverse disciplines.

The organizers of the KDU international research conference intend to set the tone to initiate more collaborative research at national and global levels. This research conference is an ideal platform to make connections. I hope that authors of KDU and various other local and international universities will take the opportunity to interact and develop friendly relationships, establish networks and to explore win-win situations. I wish all the very best for the presenters and hope you will enjoy every moment of this academic fusion taking place on two whole days.

Major General Milinda Peiris

RWP RSP VSV USP ndc psc MPhil (Ind) PGDM

Vice Chancellor

General Sir John Kotelawala Defence University

Message from the Conference Chair



For the thirteenth consecutive year, General Sir John Kotelawala Defence University organizes its International Research Conference (KDU IRC 2020), and this year it is held on the theme 'Holistic Approach to National Growth and Security'. It is with great pleasure and honour, the organizing committee extends its greetings to all of you taking part in KDU IRC 2020. Holding the KDU IRC 2020, under the patronage of the Vice Chancellor, amidst many challenges encountered throughout the year, was a memorable experience for me, and I believe that the organizing committee was able to accomplish a very successful mission.

KDU IRC 2020 is a tremendous opportunity for researchers all over the world encompassing various disciplines such as Defence and Strategic Studies; Medicine; Engineering; Management, Social Sciences and Humanities; Law; Built Environment and Spatial Sciences; Allied Health Sciences; Basic and Applied Sciences and Computing to present their research to fellow scholars, professionals and students.

Interestingly, the theme of KDU IRC 2020 is dedicated to the national growth and security, and it reflects the prime concerns of contemporary Sri Lanka as a nation and researches based on a holistic approach towards the national growth and security would enhance the quality in all aspects in a timely manner. In this backdrop, the esteemed speakers of all plenary sessions and research presenters of all technical sessions will cater to the same objective.

Finally, I would like to extend my best wishes to all the authors, participants and the organizing committee of KDU IRC 2020, and I encourage all of you to enjoy the KDU hospitality during these two fruitful days.

Dr. L. Pradeep Kalansooriya

Dr-Eng, MSc, BSc, MIEEE, MCSSL
Conference Chair

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ORAL PRESENTATIONS

“Intellect Eclipsed”: An Analysis of the Unconscious Bias and its Impact on the Development of Intellectual Property Law

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The main objective of the research is to analyze the historical development of intellectual property law and its contemporary challenges in light of the feminist jurisprudential interpretations. The secondary objective is to examine the probable links between the areas in intellectual property law such as copyrights law, patent law and application of the relevant theoretical paradigms of feminist legal theory. The research methodology is based on the exploratory research design, adhering into the legal research methodology, which is mainly on library-based secondary data review. The outcome of this inter-disciplinary research is a policy paper to recognize the dynamics of historical discrimination in order to overcome the contemporary challenges in gendered areas of intellectual property law.

Keywords: *Intellectual Property Law, Copyrights Law, feminist legal theory*

Contracts Formed During Frustrations and *Force Majeure*: An Anti-Crisis Shield for Consumer Protection against Boilerplate and Limited Liability Clauses

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All productions and consumptions are outcomes of various contracts between producers, intermediates (whole-sellers, retailers, brokers, dealers, suppliers) and consumers. In a *force majeure* or frustrating situation, bargaining power and freedom of contract drastically get altered and curtailed for consumers compared to superior position of intermediaries due to rattle in economy. Such impediments provide ideal opportunity for the latter to include various exemptions and limited liability clauses in contracts, especially for standard form consumer contracts, thereby victimizing inferior consumers, leaving no choice other than consenting to such contracts. Primarily, this paper looks at the legal validity of application of *force majeure* and frustration principles on contracts formed during such impediments. Secondly, the study examines how consumer contractual rights are altered and curtailed by intermediaries through boilerplate and various limited liability clauses during *force majeure* and frustrations plus their legal implications. The study discusses and reflects the gaps and laps in domestic laws in such frustrated and *force majeure* situations compared to Polish and Singaporean laws. Research findings affirm the legal error in application of *force majeure* and frustration principles on contracts formed during impediments. Further, they highlight that domestic consumers encounter comparatively higher legal risk than Polish and Singaporean consumers on such scenarios and emphasise the vitality of strengthening legal framework for domestic consumer protection to remedy the same.

Keywords: *contract, frustration, force-majeure, boilerplate-clauses, limited-liability-clauses*

The Effectiveness of the Piercing of Corporate Veil under Sri Lankan Law: A Comparative Analysis with UK

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This research intends to discover and evaluate the adequacy of Sri Lankan statutory provisions and case laws regarding the corporate veil piercing doctrine compared to the UK jurisdiction. It also intends to find out the reforms and solutions to amend the Sri Lankan Companies Act and also to develop the law relating to this field. The research is especially focused on to find a solution to the current corporate issues in Sri Lanka. The research includes the historical evolution of the concept of separate legal personality and the veil piercing theory and their current application in UK and Sri Lankan jurisdictions. The research critically analyses the development of the case laws and the statutory provisions regarding the veil piercing in the above mentioned jurisdictions, based on the qualitative and traditional black letter methodology. After analysing all above aspects, the research finally concludes that the current statutory provisions in Sri Lanka regarding the veil piercing are adequate. However, there is still a lack of judicial interpretations regarding this doctrine and there is need to regulate some set of uniform rules to pierce the veil.

Keywords: *Company Law, separate legal personality, corporate veil, corporate veil piercing*

Legal Implications of COVID-19: *Force Majeure* and Contractual Obligations in International Sale of Goods

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The year 2020 has been challenging for businesses worldwide with COVID-19 leading to the disruption of the global economy. The unprecedented circumstances led by this pandemic, *inter alia*, raise concerns pertinent to the liability for failure to fulfil contractual obligations in international commercial contracts. The United Nations Convention on Contracts for the International Sale of Goods (CISG) performs a significant role in the spectrum of international sales. Article 79 of the CISG reflects the legal concept of *force majeure*, which provides a defence for non-performance of contractual obligations in certain enumerated circumstances beyond the parties' control. In this respect, the current research, through the doctrinal research methodology, reviews the application of *force majeure* to grant relief for non-performance of contractual obligations due to COVID-19, where a contract is governed by the CISG. The study concludes that COVID-19 is likely to be considered an impediment beyond the control of the parties under Article 79 of the CISG even though the likelihood of successful invocation of the article will vary depending on the circumstances of each case.

Keywords: *COVID-19, international trade, sale of goods, contractual obligations, force majeure*

Copyright Protection of Application Programme Interfaces: An Analysis of the Sri Lankan Position

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Application Program Interfaces (APIs) are ubiquitous in our digital experience as they are responsible for ensuring interoperability between software. However, the applicability of copyright law to APIs has become a point of significant contention. Last year the Supreme Court of the United States granted a writ of certiorari to review the U.S. Court of Appeals' rulings on whether such software interfaces attract copyright protection and whether the use of an existing software interface in creating a new program constitutes fair use. The questions raised in these legal proceedings have far ranging implications for the practices and business models of the software industry and any other businesses that rely on APIs for network effects. This paper provides an overview of the debate surrounding copyright protection of APIs and then analyses the Sri Lankan Intellectual Property Act, No. No. 36 of 2003 and case law relating to copyright law within the country to consider the position of APIs under the existing Sri Lankan intellectual property regime. The analysis reveals that there are several ambiguities and open questions under the Sri Lankan copyright regime which create uncertainty as to whether APIs attract copyright protection. Further, it is unclear as to the applicability of the defence of fair use to allow copying of APIs in limited circumstances in the event of copyright protection. This gives rise to the same questions of law raised in the Google vs. Oracle proceedings. As such, it is recommended that the Legislature intervenes and provides guidance to address the uncertainty created for the country's software industry and other businesses reliant on APIs.

Keywords: *API, copyright, software, interfaces, fair use*

Right of the Host State to Regulate the Environment and Investment Protection - A Changing Landscape

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The increase in investment flows is one of the newest challenges in the pursuit of sustainable development. Generally, investors establish their operations in countries that have less stringent environmental regulations to reap maximum benefits from the investment. It has been estimated that a 1% increase in foreign direct investment contributes to a 0.04% increase in environmental pollution. In response to this challenge, countries have revisited and re-framed their Bilateral Investment Treaties (BITs) in a manner to balance the host state's regulatory power concerning its commitments to protect the environment with investment protection. Accordingly, environment-related language has been used by different states within the BITs to preserve the regulatory power of the host state. Such language can be identified mainly in seven ways; i) referring to the environment in preambles of BITs, ii) reserving policy space for the regulation of environment in general, iii) reserving policy space for environmental regulation for the specific subject matter, iv) exceptional clause to indirect expropriation, v) non-lowering environmental standards to attract investments, vi) environmental matters and investor-state disputes and vii) general promotion of progress in environmental protection and cooperation. The effect of each way is different and therefore, this research purposes to explore the legal implications of each way by highlighting the most appropriate method to incorporate environmental concerns in the texture of BIT.

Keywords: *bilateral investment agreements, regulatory power, indirect expropriation, non-lowering standards, investor-state disputes*

The Failure of Guardians: Mount Lavinia Artificial Beach and Public Trust Doctrine

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Sri Lanka has been identified as one of the most visited tourist destinations due to environmental and archaeological backgrounds. The projects that have been carried out by the government for the purpose of restoring the environment should entertain the process which is prescribed by the procedural and substantive laws of the country. The applicable legal authorities for the Mount Lavinia artificial beach project are the Coast Conservation Act, No. 57 of 1981, the National Environmental Act, No. 47 of 1980 and the Constitution in 1978. Carrying out Environmental Impact Assessment (EIA) is the yardstick to assess the environmental impact of the project. The power of exercising the EIA is with the Director-General of the Department of Coast Conservation. The failure to carry out a prescribed process by the authorities violates the sovereignty of people resultant in the violation of public trust doctrine. This research will examine the relationship between the EIA and the public trust doctrine in relation to the Mount Lavinia artificial beach project and how the project has violated the public trust by not conducting an EIA. The research was carried out using the black letter research methodology.

Keywords: *environmental impact assessment, public guardianship, public trust doctrine*

How the Offence of Rape has been Overshadowed by Marriage and its Impact on National Growth of Sri Lanka: A Critical Analysis from Legal and Economic Perspectives

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Marital rape is no rape in Sri Lanka under Section 363(e) of the Penal Code. Apart from the slightest enlightenment furnished by the Prevention of Domestic Violence Act No. 34 of 2005, there are no significant legal provisions within the Sri Lankan legal framework with reference to marital rape. The main objective of this paper is to highlight the necessity of criminalizing marital rape in Sri Lanka rather than limiting it to a judicial separating mechanism followed by a judge's verdict which prevails at present. Apart from the legal perspective, the paper attempts to propose a better way to achieve this criminal reform through the address of marital rape from an economic viewpoint by emphasizing on how the externalities arising from the offence affect the national growth of Sri Lanka. In achieving this purpose, the doctrinal research methodology is employed. Comparative research methodology is used for analytical purposes. The findings of the research reveal that marital rape victims in Sri Lanka are addressed by judiciary solely on the grounds of domestic violence, which has no reference to marital rape as to be the justifiable defence in a legal proceeding. As a result, there would be a downgrade in national growth with the augmentation of private and social costs. With due respect to legal and economic perspectives, the author attempts to draw the diligence of the judiciary and the legal authorities to recognize a rapist as a rapist, irrespective of the bond shared with the victim.

Keywords: *marital rape, criminalization, national growth, social cost*

Establishing Rule of Law to Achieve Sustainable Development: The Pathway for National Growth in Sri Lanka

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Rule of Law is a fundamental constitutional principle that should be respected by all states. The importance of establishing Rule of Law to achieve sustainable development is highlighted in International Law. United Nations mechanisms have identified that establishing Rule of Law through the protection of human rights, eradication of poverty and equitable exploitation of resources would lead countries to achieve sustainable development. Thus, Rule of Law, while ensuring social and economic development, guarantees environmental protection through proper operation of law. The role of the government and its effective functioning is considered paramount within this scope and all citizens owe a duty to enjoy their rights without causing damage to the environment. In this manner, Rule of Law becomes the centre point for sustainable development and Sri Lanka should be concerned in establishing Rule of Law to facilitate the achievement of sustainable development goals by 2030. This paper discusses the importance of establishing Rule of Law to achieve sustainable development with emphasis on the role of judiciary and administrative institutions in enabling justice and proper enforcement of law. A library research has been conducted through the use of international conventions, judicial decisions, review reports and working papers with a view to analyse the global standing and recognize loopholes in the domestic legal regime concerning the concept. It is noted that Sri Lanka must develop a comprehensive framework with an effective monitoring procedure and responsible institutions to achieve sustainable development, which would lead its way to comply with international standards and ultimately to national growth.

Keywords: *Rule of Law, sustainable development, national growth*

Application of the Concept of Reparation in Transitional Justice in Sri Lanka

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This study discusses the application of the concept of reparation as an element of Transitional Justice (TJ) in the social transformation process, especially after fragile circumstances in society. The objective of this study is to analyse the application of reparation in TJ processes in Sri Lanka in the post-conflict context. The term reparation refers to the measures to satisfy victims, such as revealing the truth, holding perpetrators accountable, and ceasing ongoing violations. Sri Lanka recognizes the concept of reparation aiming at assistance of victims by way of providing material and symbolic support. This recognition empowers affected communities to claim their legal rights as equal citizens. The study, therefore, emphasizes the needs of a victim-centric approach and the need to restrict politically initiated administrative measures in the reparation process. Introduction of the Reparation Act, No. 34 of 2018 to establish the Reparations Office can be regarded as a significant move to synchronize the reparations process in Sri Lanka with international standards. However, inconsistency in the application of the concept of reparation through politically initiated administrative measures is still noticeable. This study is a library study based on secondary sources of domestic and international legal instruments, scholarly articles, and judicial decisions. The study elaborates International standards on the Concept of Transitional Justice (ICTJ) to find a gap in the Sri Lankan process of reparation in the light of victim-centric approach. The study emphasizes issues related to international standards and domestic applications within the concept of reparations. Finally, the study suggests that the reparation process in Sri Lanka should adopt the victim-centric approach, thereby making it possible to address individual cases equally and effectively rather than addressing grievances of specific communities.

Keywords: *transitional justice, reparation, victim-centric approach*

Work-From-Home – The Legal Status of Sri Lanka

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Work-From-Home (WFH) is not a novel concept theoretically. However, the practical application of WFH did not impact on many types of employment in the world until the COVID-19 situation. During WFH, the contract of employment still exists between the employer and the employee, subject to few modifications. The place of work is different from usual employment and still the employer has the control over the employee's service. However, it is pertinent to identify the legal framework with regard to WFH, specifically in Sri Lanka due to many reasons. During the last few months, it was observed that manipulation of labour, deduction of salaries, layoffs and unlawful termination occurred, which have not been addressed through solid legal protection. WFH is also such initiation that was operated during COVID-19 situation without much expressed legal basis or guidelines. Therefore, the problem addressed in this research paper is whether the legal status of Sri Lanka with regard to Work-From-Home condition is adequate enough to protect the interests of both the employer and employee. Methodology predominantly followed in the research was the black letter approach. However, the socio-legal approach was also followed through observation and the conduct of semi-structured interviews. Moreover, international standards on WFH were taken as a prototype to recommend a proper legal mechanism for the WFH condition. Analysis revealed that both the private and public sectors lack proper legal guidelines in terms of WFH condition. Moreover, the types of employment which cannot be functioned through WFH should also be considered and provided with relief to protect the interests of both parties to the employment relationship. On the other hand, the implementation of management and control during WFH, working hours, contacting hours and facilities should be considered when formulating legal guidelines to WFH. Finally, a proper legal guideline for both private and public sector in Sri Lanka was recommended in the research in order to protect all the parties in the employment relationship which is a much needed gap that requires to be filled.

Keywords- *Work From Home, employment relationship, protection of labour interests, legal guideline for Work From Home*

A Critique of Available Remedies for Industrial Disputes Arising out of COVID-19: A Comparative Analysis

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The recent pandemic due to COVID-19 has affected the whole world at large. Aside from the obvious health issues arising from COVID-19, there is also another less obvious issue; unemployment. Sri Lanka initiated curfews on 20th March 2020, a week after the first confirmed patient was discovered. This was followed by almost two months of continuous curfews, with the announcement of businesses partially re-opening close to mid-May. This clearly amounts to almost two entire months that businesses in Sri Lanka were not allowed to operate, except those deemed essential commodities. This has resulted in a vast array of Industrial Disputes. A key example would be workers being laid off in many businesses, simply because there is no revenue to pay salaries. This work is a doctrinal/ library research of a qualitative nature, and shall consider the just and equitable remedying of Industrial Disputes arising out of COVID-19, as an unforeseeable circumstance. Therefore, the goals of this work are, firstly; to verify whether the ADR methods award more just and equitable reliefs rather than general courts, secondly; to discover whether the ADR methods are the sole alternative to address the aforementioned issue. An important question to answer in this context is whether the ADR methods prescribed by the Industrial Disputes Act No. 43 of 1950, namely Labour Tribunals (“LT”), Industrial Courts (“IC”) and Arbitration continue to fulfil the aforesaid purpose arising from unforeseeable circumstances. The authors firmly believe that the yield of this work will be instrumental for responsible policy-making authorities to better discern the best legal approach to remedy labour disputes arising out of similar unforeseen circumstances in future.

Keywords- *contract of employment, unforeseeable circumstances, industrial disputes, COVID-19, emergency regulations*

Employment Security of Probationary Workers in Sri Lanka: A Comparative Legal Analysis

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Employment security is one of the most important factors in terms of the contract of employment, which helps to create an efficient and satisfactory working environment. Probationary employment is a position which indicates uncertain nature of job status in the labour relations. Although the main objective of the probationary period is to assess the employee's suitability for the continuation of employment, some employers misuse probationary employment and terminate the services of probationers in mala fide. The underlying question is whether the employer has sole discretion to terminate a probationary employee without assessing him adequately or without giving proper reasons. In the Sri Lankan context, there is no proper legislative guidance to regulate probationary employment and therefore, a series of cases provide different interpretations with regard to the employer's discretion on deciding whether the employee's conduct is satisfactory or not. In contrast, the South African legal framework envisages clear statutory measures to safeguard the employment security of the probationary employees against the malafide acts of employers. The South African Labour Relations Act in 1995 contains specific provisions relating to the duration of probationary period and dismissal of probationary employees. Therefore, this research aims to comparatively analyse the Sri Lankan and South African jurisdictions and suggest possible recommendations for Sri Lankan Labour Law with regard to the employment security of probationary employees. Qualitative research method has been utilized to achieve the aforementioned research objective.

Keywords: *employment security, probationary employees, contract of employment*

Impact of Covid-19 to the National Economy of Sri Lanka: A Comparative Analysis with the United Kingdom on Employees' Rights

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Impact of Covid-19 on labour rights and national economy has become a prominent issue at present. Therefore, this research aims at finding out whether there are sufficient laws to secure labour rights in such unforeseeable situations. The effect of the lock down in the country due to the pandemic has caused demand shock, supply shock and financial shock synchronously bringing adverse effects on the national economy. The objectives of this research are to identify the impact of Covid-19 on the national economy and labour rights selected for this purpose; whether the Sri Lankan labour laws are sufficient to address such issues or not, and to propose necessary amendments to the existing legal regime to fill the gaps. The methodology of this research is a combination of black-letter methodology and comparative research methodology. This research would employ a qualitative analysis of primary data including the 1978 Constitution of Sri Lanka, the Industrial Disputes Act, No. 43 of 1950, Wages Boards Ordinance No.27 of 1941, Termination of Employment of Workmen Act, No.45 of 1971, Employees' Provident Fund Act, No.15 of 1958, Employees' Trust Fund Act, No.46 of 1980 and the Gratuity Act, No.12 of 1983. Secondary data includes journal and web articles. Finally, the research concludes with a view that the existing industrial laws are insufficient to address unforeseeable situations, where it is resultant in making impacts on national economy and national growth.

Keywords: *COVID-19, national economy, Sri Lanka*

National Security and Freedom of Expression in Sri Lanka: Friends or Foes

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Freedom of expression is a corner-post of democracy. Article 19 (2) of the International Covenant on Civil and Political Rights provides the international norm. Second Republican Constitution of Sri Lanka guarantees the same in Article 14 (1) (a). It is subjected to derogation in the interest of national security as accepted nationally and internationally. Sri Lanka has encountered three bouts of organized violence which endangered national security. This essay examines whether restriction of freedom of expression in the interest of national security in Sri Lanka were within international standards. Article 15 (7) of the Constitution, Public Security Ordinance (PSO), Prevention of Terrorism Act and Proscribing of LTTE Act provide limitations on freedom of expression in the interest of national security. Emergency regulations (ER) proclaimed by the President as per PSO have been employed predominantly to restrict the same. Such restriction has mostly been censorship exercised by presidentially appointed bodies. Sri Lankan Judiciary is not empowered to consider validity of ERs unless a citizen petitions about an infringement of his fundamental rights by the same. Judiciary has usually been deferential of administrative actions performed under ERs. Necessity and proportionality are two internationally recognized requirements for limiting freedom of expression in the interest of national security. Supreme Court recognized the requirement of necessity in Joseph Perera case though this precedent was not followed in later cases. It is concluded that circumscribing freedom of expression in the interest of national security was not within the international framework essentially. Employment of such restrictions has furthered national insecurities.

Keywords: *freedom of expression, national security, emergency regulations*

Regulating Food Advertisement in Sri Lanka and Curbing Childhood Obesity: The Way Forward

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Advertising and marketing of unhealthy foods and beverages to children has affected the dietary preferences and food choices of children. Both foreign and local studies have also proved a positive relationship between times spent on TV advertisements with the junk food habit which leads to the obesity of children. In this context, this paper will discuss the legal frameworks at international level and in Sri Lanka and the different practices adopted by other countries and will suggest recommendations for a better legal framework for Sri Lanka. Even though this study is multidimensional by nature, it only focuses on understanding the legal framework of Sri Lanka on this issue. This legal research is based on legal material and has utilized the qualitative methodology of data analysis for research findings. International conventions, WHO guidelines, journal articles and books have been used as sources and research conducted by other researches have been used as secondary data. Finally, it can be concluded that Sri Lankan legal system has taken effort to address this problem. However, there are many lacunas that can be identified at implementation level.

Keywords: *right to safe food, childhood obesity, advertising regulations*

Definitional and Interpretational Approach towards Economic Development on the Word 'Income' under Current Laws of Income Tax: A Comparison of Sri Lanka and India

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This research looks at the vital role of income tax as a major income of the country and its impact on economic development, through the lens of interpretation. Hence, the primary aim of this paper is to set out the conceptual framework within the parameters of its definitions. The paper advances the argument that Sri Lanka should establish an inclusive taxpayer-friendly approach definition to effectively address many issues relating to income tax law.

Keywords: *income, conceptual framework, interpretational spheres*

Conceptualizing Local Governance in the Context of Citizen Participation: Towards a Participatory Approach of Local Government Institutions in Sri Lanka

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This paper provides a conceptual basis for institutionalizing citizen participation in the local government system under existing constitutional structure. To achieve this objective, the study employs the assumption that effective mechanism of decentralization accommodates more spaces for citizens to engage in the process of decision making and as a result, participatory democracy could be institutionalized. In the discussion, two sub-questions need to be addressed as to how decentralization facilitates the promotion of citizen participation and why citizen participation is significant in the context of local government. Answering these questions, this paper seeks to advance the argument that due to weaknesses in the existing representative democratic system, the necessities of local communities have not been represented, and therefore there is a requisite for an alternative mechanism through which entire local communities can participate and represent their needs. The bottom-up approach of decentralization facilitates the creation of such a mechanism. Accordingly, the paper seeks to provide an overview, scope and applicability of the concepts of participatory democracy and decentralization by reviewing their definitions and critically assessing both their conceptual coherence and utility as realistic and as policy tools. The study also seeks to analyze these concepts to assess the extent to which such practices are being implemented; and the problems and challenges faced during their implementation. This analysis facilitates to understand how, and under what conditions, citizen participation and decentralized governance can contribute to the more inclusive local governance system. In particular, this conceptualization will assist in the evaluation and understanding of the patterns of decentralization and citizen participation in local governance in Sri Lanka. After discussing these issues from a theoretical perspective, the author examines a complex relationship between development, decentralization and citizen participation in democratic local governance, with specific reference to Sri Lanka. The study employs a qualitative method and uses secondary sources such as journal articles, working papers and legislation.

Keywords: *participatory democracy, local government institutions, decentralization*

POSTER PRESENTATIONS



Way towards Re-Introducing Criminal Defamation in Digital Diplomacy Affecting National Security: A Comparative Analysis with India

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This research aims at finding out the possibility of re-introducing the statutory right of criminal defamation in Sri Lanka regarding digital diplomacy (cyber diplomacy) affecting national security. The objectives of this research involve identifying whether defamatory statements which affect the national security in digital diplomacy could be covered by reintroducing criminal defamation laws with necessary amendments to the existing legal regime to fill the gaps in the current system of law. The methodology of this research is a combination of black-letter approach and comparative research methodology. Moreover, this research would employ a qualitative analysis of primary sources including Constitutional provisions, Penal Code provisions, the Computer Crimes Act and judicial decisions, and secondary sources of journal articles, books and the internet. Additionally, this research will discuss the Indian legal regime relating to the said subject area to highlight the differences between the Sri Lankan and Indian legal regimes. Finally, the study concludes providing effective recommendations to the said issue.

Keywords: *defamation, digital diplomacy, national security*

Punishments under the Quarantine and Prevention of Disease Ordinance in Sri Lanka: Adequate to Fight a Pandemic?

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Society needs more laws to protect the people from COVID-19. Recently, there is an increasing number of people who violate quarantine laws in Sri Lanka, due to insufficient punishments that come under the Quarantine and Prevention Disease Ordinance No.03 of 1897. In this situation, the national security fails to punish people because the legislature has not given sufficient attention to this matter. In this research it is expected to understand how the current legislature has supported in punishing the general public who violated quarantine laws in the current context of Sri Lanka. Further, it is expected in this research to address the research problem of whether the prevention measures should help national growth and the security through the provisions of punishments under quarantine and if prevention of disease ordinance in Sri Lanka is sufficient and at an expected level. This research is mainly based on both primary and secondary sources. By analysing these sources, the research defines the issues with regard to the ordinance and recommendations, and the conclusion will provide solutions for punishments regarding the quarantine laws. So it will be better to re-enact quarantine laws which should be suitable for the present and future time period in Sri Lanka.

Keywords: *pandemic epidemic laws, national growth and security, quarantine and prevention of disease ordinance.*

Effectiveness of Foreign Portfolio Investment with regard to Multinational Corporations in the Long Run

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This study aims at exploring the application of Portfolio Investments in situations where Foreign Direct Investment (FDI), although stable, does not seem to be compatible with the conduct of Multinational corporations within a country. The research mainly focuses on the possibility to use portfolio investment by multinational corporations in the long run when direct investment is chosen to be withdrawn. Further in the research, it is expected to discuss various benefits and ascertain the effectiveness of Portfolio Investment by including examples from developing countries, while investigating the position of Portfolio Investment by state parties and multinational corporations, when difficulties arise on FDI in the long run. Secondary data will be gathered using the black letter method. FDI and Portfolio Investment are two different types under International Investment Law. FDI is covered by Customary International Law whereas Portfolio is not. While FDI tends to be more stable, Portfolio measures up to it by having benefits with regards to income, liquidity, etc. Relevant situations of Malaysia and India are comparatively analyzed. Positive and negative aspects of both types of investments are being analyzed. It is conclusive to find that Portfolio Investment is useful to mitigate concerned issues that arise when difficulties are found with FDI and therefore, it is recommended that developing countries to make use of Portfolio Investment in a more liberal manner to take advantage of its benefits for the further development of the country's economy.

Keywords: *direct, portfolio, investment, multinational*

Proportionality as a Separate Ground of Judicial Review: A Myth or Reality in United Kingdom and Sri Lanka

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Administrative Law (AL), is the law which deals with the administration and regulation of authorized agencies in the executive branch of the government. Under Judicial Review (JR), the court exercises its inherent power to determine whether the actions taken by the Administrative Authorities (AAs) are lawful or unlawful and toward suitable remedy. The Doctrine of Ultra Vires is considered to be the central principle of AL. However, with developments in relation to current changing patterns in the field of AL, courts have identified other grounds of JR such as Unreasonableness, Irrationality, Proportionality, Legitimate Expectation and Public Trust Doctrine in order to challenge the decisions of the AAs. Nevertheless, some argue that these identifications unnecessarily expand the boundaries of JR. Especially with regard to Unreasonableness and Proportionality, some scholars argue that these two grounds are identical, and identification of proportionality as a separate ground is an unnecessary expansion of the boundaries of JR. On the other hand, some argue that these grounds have their unique features and proportionality which provide better protection in safeguarding individual rights. Therefore, in the present context the problem is whether the application of proportionality in order to challenge the decisions of the AAs is a myth or reality. In this regard, this paper will provide a comparative analysis about position of unreasonableness, irrationality and proportionality in United Kingdom (UK) and Sri Lanka (SL) to identify whether the application of proportionality in above jurisdictions is a myth or reality. Also, this paper will discuss the importance of identifying new grounds of JR while emphasizing the significance of proportionality as a ground which does not expand the boundaries of JR. In carrying out the research, author uses both primary and secondary sources which include statutes, case laws, books, journal articles, websites and internet articles.

Keywords: *Administrative Law, judicial review, unreasonableness, proportionality*

Abuses against Juvenile Offenders as National Security Threats; Rehabilitation and Reintegration of Juvenile Offenders in Sri Lanka

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Not every child or youth is fortunate enough to have a childhood they would like to remember. A handful of youngsters tend to end up in prison, as juvenile offenders. All too often, the concern offered by the government for children does not extend to those juvenile offenders, who are yet vulnerable children when caught up in the wrong side of law despite the fact that they are also a portion of this society and the future of the country. Abuses against juvenile offenders, who are perceived to be threats to the national security of the country, seem to be a phenomenon in the global context. Therefore, this remains as a hidden layer in Sri Lanka with less concern. Hence, it is of vital importance to every human being in society to establish a stable foundation that could raise juvenile offenders as productive adults with a guarantee of a brighter future. It is true that, the deliberation drawn towards juvenile offenders and juvenile justice in Sri Lanka by the government and society has been increased to a considerably higher level due to the initiatives taken in the view of reintegrating juvenile offenders into society through rehabilitation, making punishments more effective. However with the rise of the rate of juvenile offenders and abuses towards them in the recent years, it may be precisely pointed out that existing policies and laws are not sufficient enough to reflect a proper solution for the protection of juvenile justice leading to the question, how a considerable concern with efficacy could be devised in the country regarding this issue. Therefore, this study intends to critically analyse the prevailing legal framework and to assess the institutional initiatives relating to juvenile offenders, failures in the existing system and to provide necessary legislative and institutional approaches for rehabilitation in order to properly reintegrate juvenile offenders for the enhancement of juvenile justice through the protection of juvenile offenders as a solution for the issue of effectively punishing juvenile offenders and preventing abuses against them that have become far more complex and sensitive in its entirety, whilst striking a balance between juvenile justice and protecting national security. The objective of this study will be achieved by the utilization of both qualitative and quantitative research methods that involves a broad assessment of current legal instruments, their gaps and their adequacy to a relevant extent.

Keywords: *juvenile offenders, juvenile justice, rehabilitation*

Need of Legal Recognition for Distance Working in Post-Covid19 Sri Lanka: An Empirical Approach

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The COVID-19 pandemic immensely affected the employer-employee relationships within the industrial sector leading to drastic issues with regard to labour relations providing room for distance working concept. Though the Home Work Convention, 1996 functions as an international legislation which regulates distant workers, it is pertinent that Sri Lanka has not signed and ratified the convention due to existing controversies such as the absence of a proper procedure of claiming compensation, occupational safety and health for distant workers, mechanism of evaluating the exact hours of work and issues for instance with regard to salaries, social security and gratuity, job security and social problems faced by women employees. Therefore, the entire research focuses on the need of an effective legal and regulatory framework which safeguards the rights of distant workers recommending to enact a separate legislation which ensures the rights of distant workers while strengthening its regulatory framework in advance.

Keywords: *legal and regulatory framework, distant-working concept, Home Work Convention*

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