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# JUDICIAL RESPONSES TO RELIGIOUS FREEDOMS A CASE ANALYSIS





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# Judicial Responses to Religious Freedom: A Case Analysis

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2015

This is an analytical report on the judicial responses to cases of Religious Freedom concerning religious minorities in Sri Lanka. This report was compiled with the assistance of the following:

**THE NATIONAL CHRISTIAN EVANGELICAL ALLIANCE OF SRI LANKA (NCEASL)**, formally the Evangelical Fellowship of Ceylon was founded in 1952. With a constituency of over 200 member churches and organisations, the NCEASL is the main representative body for over 200,000 Evangelical Christians in Sri Lanka.

The NCEASL works actively in three broad areas: Mission and Theology; Religious Liberty and Human Rights; and Relief and Development. The NCEASL is affiliated to the World Evangelical Alliance (WEA), a worldwide network of over 620 million Christians in 129 countries. The WEA also holds Special Consultative Status with the United Nations Economic and Social Council. The NCEASL is led by renowned social transformation, religious liberty and human rights activist Deshamanya Godfrey Yogarajah.

For over two decades, the Religious Liberty Commission (RLC) of the NCEASL has monitored and documented incidents of violence, intimidation and discrimination against Sri Lanka's Christian community. The aim of the Religious Liberty Commission, however, is to advance religious liberty for all Sri Lankans through advocacy and lobbying, research and documentation and training and education.

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# INTRODUCTION

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**THE PAST TWO DECADES** have witnessed increasing hostility towards religious minorities in Sri Lanka. According to the Pew Research Centre's Social Hostility Index, Sri Lanka scored 7.7 on a 10-point scale – a figure indicating that the country demonstrates 'very high' levels of social hostility on issues involving religion.<sup>1</sup> This hostility is evidenced by the increasing rate of violence and harassment perpetrated against religious minorities.

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In recent years, the growth of Sinhala Buddhist nationalism has resulted in the formation of militant groups positioning themselves as protectors of Sinhala Buddhism. This growing militancy has contributed to the intensification of attacks on places of minority religious worship, including churches, mosques and temples.<sup>2</sup> For example, the National Christian Evangelical Alliance (NCEASL) recorded 103 incidents against the Christian community in 2013.<sup>3</sup> These figures represent a 98% increase in incidents from 2012.<sup>4</sup> Further, the Secretariat for Muslims recorded 284 incidents of threats, attempted attacks, harassment, incitements and provocations directed at Muslims in 2013.<sup>5</sup>

Sri Lanka has a framework of legal protection that explicitly protects an individual's freedom of religion. When confronting challenges to religious freedom, courts are faced with an important choice. One the one hand, they can mediate tensions between different religious groups and strengthen institutional commitments to religious tolerance and co-existence. One the other,

they can acquiesce to idea that minority religions must give way to the dominant religion, thereby exacerbating tensions between religious groups. In this context, maintaining pluralism within Sri Lanka's constitutional democracy depends on the pursuit of the former approach.

This study examines a cross section of case law in order to assess how far Sri Lanka's judiciary has been willing to go to uphold the freedom of religion. The report is presented in three parts. The first part sets out the legal framework applicable to religious freedom in Sri Lanka. The second analyses how courts have interpreted and applied this legal framework in the context of three dimensions, namely (1) the right to adopt and hold a religious belief (2) the right to manifest a religious belief (3) the right to non-discrimination on the basis of religion. The final part classifies the analysed cases on perceptual maps to identify key trends in the judicial protection of the freedom of religion in Sri Lanka.

# LEGAL FRAMEWORK: SECURING THE FREEDOM OF RELIGION

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SRI LANKA is party to a number of international treaties that guarantee the freedom of religion and the right to non-discrimination on the grounds of religion. On the domestic front, there are a number of Constitutional provisions which are applicable to religious freedom in the country. These provisions are justiciable in the event there is an infringement.

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## INTERNATIONAL FRAMEWORK

Sri Lanka is party to a number of international treaties that guarantee the freedom of religion and the right to non-discrimination on the grounds of religion. For example, Article 18 of the Universal Declaration of Human Rights (UDHR) provides that ‘everyone has a right to freedom of thought, conscience and religion’.<sup>6</sup>

Further, Article 18 of the International Covenant on Civil and Political Rights (ICCPR) states that the freedom of religion ‘shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching’.<sup>7</sup> The ICCPR also mandates that restrictions to an individual’s freedom of religion may be ‘subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others’.<sup>8</sup>

Meanwhile, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) introduces a prohibition on ‘hate speech’. Article 4(a) of the Convention sets out four types of activities that broadly fall within the ambit of ‘hate speech’: (1) dissemination of ideas based on racial superiority; (2) dissemination of ideas based on racial hatred; (3) incitement to racial discrimination; and (4) incitement to acts of racially motivated violence.<sup>9</sup> While this provision does not directly deal with religious minorities (but applies in the

case of ethno-religious minorities), the ICCPR extends the principle to clearly cover religious minorities. Article 20(2) of the ICCPR stipulates: ‘Any advocacy of national, racial or *religious* hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’ (emphasis added).

Further, there are two UN General Assembly Declarations that deal with religious freedom that deserve mention. They are (1) The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [1992] and (2) The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief [1981]. The Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities gives States guidelines to ensure that minority religious communities are able to practice their religions free from any form of discrimination.<sup>10</sup>

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief outlines the rights that should be incorporated as part of the ‘freedom of thought, conscience and religion’.<sup>11</sup> According to Article 6 of the Declaration, these rights should include the right to (a) teach a religion or belief in places suitable for such purpose<sup>12</sup> (b) establish and maintain communications with individuals and communities in matters of religion and belief<sup>13</sup> (c) establish and maintain appropriate charitable or humanitarian institutions<sup>14</sup> and (d) establish and maintain places for religious worship.<sup>15</sup>



## DOMESTIC FRAMEWORK

### *Constitutional Protection*

The Constitutional provisions which are applicable to religious freedom in Sri Lanka are 10, 12 and 14(1)(e) of the Constitution. These provisions are justiciable (i.e. enforceable in a court of law) in the event there is an infringement or an imminent infringement of an individual's rights by executive or administrative action.<sup>16</sup>

Meanwhile, Article 9 of the Constitution provides that the state shall 'give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha *Sasana*, while assuring to all religions the rights granted by Article 10 and 14(e)'.<sup>17</sup> As discussed later in this study, this provision has been the subject of much of the Supreme Court's jurisprudence on religious freedom in Sri Lanka.

Article 10 provides that 'every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice'. Article 10 is an absolute right and is not subject to the restrictions enumerated in Article 15 of the Constitution.<sup>18</sup> The recognition of the freedom of religion as absolute was judicially recognised by the case of *Premalal Perera v. Weerasuriya*,<sup>19</sup> where the Supreme Court held:

Beliefs rooted in religion are protected. A religious belief need not be logical, acceptable, consistent, or comprehensible in order to be protected...the courts are not arbiters of scriptural interpretation and should not undertake to dissect religious beliefs.<sup>20</sup>

The Constitution, under Article 12, also provides for the protection from discrimination on the grounds of religion.<sup>21</sup> Article 12(2) provides: 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds'. Moreover, Article 12(3) states that 'no person...on the grounds of religion...shall be subject to any disability, liability, restriction, or condition with regard to...places of worship of his own religion'.<sup>22</sup>

Article 14(1)(e) of the Constitution states that 'every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching'. Unlike Article 10, the rights contained in Article 14(1)(e) can be restricted on the basis of:

National security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedom of others, or of meeting the just requirements of the general welfare of a democratic society.<sup>23</sup>

Additionally, the Constitution places certain obligations on the state to promote religious harmony. The Directive Principles of State Policy contained in Article 27(5)

provides that the 'state shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups...'. Further, Article 27(6) mandates that 'the State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation'.

Notwithstanding the fact that rights under Article 27 are not justiciable, the Supreme Court in *Bulankulama and Others v. Minister of Industrial Development and Others*<sup>24</sup> held that the Directive Principles of State Policy place an obligation on the state to ensure the progressive realisation of the relevant right. Applying this reasoning to religious freedom, it is reasonable to argue that the state has a positive obligation to create the necessary economic, political, and social environment to enable people of all religious faiths to practice their beliefs.

### *Offences relating to Religious Violence and Harassment*

The statutory law in Sri Lanka contains a number of provisions that set out offences relating to religious violence and harassment.

#### Penal Code

The Penal Code contains several provisions on offences relating to religion.<sup>25</sup> Section 290 states that whoever destroys, damages, or defiles any place of worship with the intent to insult the religion of any class of persons is guilty of an offence under this section.<sup>26</sup> Additionally, Article 291A states that whoever utters any word or sound, or makes a gesture in the hearing of a person with the intention of 'wounding the religious feelings'<sup>27</sup> of that person is guilty of committing an offence under this section.<sup>28</sup>

- Other relevant offences pertaining to religious violence under the Penal Code include:
- Section 290A: Acts in relation to places of worship with intent to insult the religion of any class
- Section 291: Disturbing a religious assembly
- Section 291B: Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs
- Section 292: Trespass in any place of worship or on any place of sepulchre

#### The Police Ordinance

The Police Ordinance criminalises the possession of dangerous weapons at public meetings and processions – which includes meetings and processions that are religious in nature.<sup>29</sup> Furthermore, Section 79(2) of the Ordinance makes it an offence to use 'threatening, abusive or insulting words or behaviour which is intended to

provoke a breach of the peace'.<sup>30</sup>

#### International Covenant on Civil and Political Rights Act (ICCPR)

Section 3(1) of the ICCPR Act states that 'no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.<sup>31</sup> The Act provides that the trial of any person accused of committing an offence under Section 3 should be taken up as matter of highest priority by the relevant High Court.<sup>32</sup>

#### Prevention of Terrorism Act (PTA)

Section 2(1)(h) of the PTA criminalises acts that cause violence, disharmony, ill will or hostility between different religious groups.<sup>33</sup>

Section 2(1)(h) of the PTA provides that:

Any person by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities of racial or religious groups...shall be guilty of an offence.<sup>34</sup>

A person found guilty under Section 2(1)(h) is liable, on conviction, to be imprisoned for a period of not less than five years, but not exceeding twenty years.<sup>35</sup>

#### ***Policy Framework***

Sri Lanka's policy framework demonstrates a clear commitment by the state to protecting the freedom of religion. In this context, three policy documents require mention:

- The National Action Plan for the Protection and Promotion of Human Rights 2011 - 2015 (NHRAP)
- Report by the Lessons Learnt and Reconciliation Commission (LLRC)
- Mandate of the Office of National Unity and Reconciliation

#### NHRAP

The NHRAP emerged from a voluntary pledge by Sri Lanka during its Universal Periodic Review (UPR) in 2008 to formulate a five-year plan to protect and promote human rights. The initial focal point agency tasked with formulating and implementing the plan was the Ministry of Disaster Management and Human Rights.

The NHRAP included a commitment to introduce administrative action to ensure freedom of religion in the school curricular.<sup>36</sup> The Ministry of Education was tasked with issuing the appropriate education circulars within three months of the plan being released.<sup>37</sup>

In addition to the above, the NHRAP committed to re-

move discriminatory practices in the workplace on the grounds of religion.<sup>38</sup> To this end, the Ministry of Justice was tasked with establishing an authority to deal with discrimination in the private sector within six months of the NHRAP being released.<sup>39</sup> Unfortunately, there is currently no focal agency for the implementation of the NHRAP; and in this context, there has been no reported progress on the implementation of the Plan.

#### LLRC

The LLRC, appointed in 2010, was mandated to inquire into and report on 'the institutional, administrative and legislative measures that were needed to be taken 'in order to...promote further national unity and reconciliation among all communities'.<sup>40</sup>

In this context, there are a number of recommendations made by the LLRC that deal exclusively with the question of inter-faith harmony and religious freedom. For example, the LLRC recommended that the government take strong deterrent action to prevent incidents of religious violence.<sup>41</sup> In July 2014, the government reported that the recommendation was fully implemented on account of prompt action being taken to respond to incidents of violence. However, the spate of attacks on religious minorities in 2014 suggests that the reported 'deterrent action' was largely ineffective.

The Commission also recommended the enactment of deterrent laws to deal with 'hate speech' relating to ethnicity, religion, and literature'.<sup>42</sup> To date, no progress has been reported on the enactment of laws on hate speech.

Further, the LLRC recommended that the government should ensure that people, community leaders and religious leaders are guaranteed the freedom to organise peaceful events and meetings without restriction.<sup>43</sup> However, according to INFORM Human Rights Documentation Centre, at least 84 violations of freedom of assembly and association occurred in 2014. This indicates that the above recommendation has not been fully implemented.<sup>44</sup>

Notwithstanding poor progress in the implementation of the LLRC's recommendations, the final report of the Commission remains an important framework document on religious tolerance and coexistence.

#### Office of National Unity and Reconciliation

In April 2015, the Cabinet of Ministers appointed a permanent Office dedicated to fostering national unity and reconciliation. The present Chairperson of the Office is former President Chandrika Bandaranaike Kumaratunga and the Board comprises persons from a variety of ethnic and religious backgrounds. The functioning of this new office is yet to be fully defined, as it is yet to officially launch and disseminate a programme of action. However, the mandate document approved by the Cabinet clearly contemplates the promotion of religious harmony and the prevention of religious violence.

# CASE ANALYSIS: FREEDOM OF RELIGION

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**NOTWITHSTANDING** the legal and policy frameworks discussed, the judicial response to escalating violence and harassment against minority religious communities has been both selective and conservative. This phenomenon has created significant ambiguity in the case law dealing with religious freedom and has often perpetuated underlying tensions between majority and minority religious communities.

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In an attempt to examine the judicial response to religious freedom in more detail, the next section of this study analyses a cross section of judgments reported between the years 2000 and 2015.<sup>45</sup>

A close examination of Article 10 and Article 14(1)(e) indicates that the constitutional protection of religious freedom revolves around three core rights. Namely:

- (1) The right to adopt and hold a religious belief
- (2) The right to manifest a religious belief
- (3) The right to non-discrimination on the basis of religion

The cases in this section will be discussed in terms of these core rights. At the outset, there are few reported cases that deal with the freedom of religion, particularly in Appellate Courts. This limited number of cases is largely due to judicial reluctance to deliver judgments on issues concerning religious rights.<sup>46</sup>

## THE RIGHT TO RELIGIOUS BELIEF

Article 10 of the Constitution clearly guarantees to every person the freedom of religion without restriction, 'including the freedom to have or to adopt a religion or belief of his choice'. Therefore, the freedom to adopt a religious belief of one's choice is protected under the Constitution.

Under Article 14(1)(e) an individual is granted the freedom to worship and practice a religion, in public or in private, either alone or in association with others. In order to meaningfully exercise this right, it is necessary that an individual is able to (a) Host prayer meetings at a private residence (b) Attend a place of worship without

obstruction, and (c) Preach at a place of worship without the fear of violence and intimidation.

In October 2008, the Ministry of Religious Affairs and Moral Upliftment issued a Circular stating that the Ministry's approval was required prior to the construction of new places of religious worship.<sup>47</sup> The Ministry instructed Provincial Councils and Divisional Secretaries to comply with this requirement before approving applications for the construction of places of worship.<sup>48</sup> The Circular exempts 'traditional religions' from submitting documentary evidence to prove their *bona-fide*. In view of the fact that there are no guidelines as to what constitutes a 'traditional religion', the Ministry and local government officials often made decisions to 'grant or deny permission based on their own understanding or biases'.<sup>49</sup> According to the Becket Fund for Religious Liberty, this Circular resulted in evangelical Christian churches being routinely denied permission to construct places of worship solely because they failed to get approval from the Ministry.<sup>50</sup>

Additionally, a Circular published in 2011 by the Ministry of Buddha Sasana and Religious Affairs extended the requirement to obtain Ministry approval for the construction of new places of worship in the 2008 Circular to existing places of religious worship.<sup>51</sup> The 2011 Circular mandated that prior to granting approval for construction on an existing place of worship, the Ministry was bound to take into consideration a wide range of factors, including the opinions of residents of the area.<sup>52</sup> This Circular was subsequently repealed in January 2012.

The legality of these Circulars is open to contestation. At the time the Circulars were issued, there was no spe-

cific law that permitted the issuance of circulars for the purpose of restricting an individual's right to worship under Article 14(1)(e). Moreover, Article 15(7) of the Constitution very specifically stipulates that rights under Article 14 can only be restricted by 'law', which 'includes regulations made under the law for the time being relating to public security'. The Circulars in question were not 'regulations' and were certainly not issued under the Public Security Ordinance, No. 25 of 1947 (PSO).<sup>53</sup> As such, it is arguable that the Minister lacked a legal basis to issue these Circulars.

The above Circulars, however, provided the space for members of the public and government officials to contest the legitimacy of places of minority religious worship. In fact, the Circulars occasionally led to violence or demolition orders.<sup>54</sup> The violence at the community level often involved Buddhist monks and local community groups either protesting against or causing damage to places of worship and members of the clergy.<sup>55</sup>

The perpetrators of such violence usually justified their acts on three bases. First, they argued that they were resisting the practice of 'allurement of 'innocent Buddhist villagers' to minority religions through financial inducements. Second, they argued that they were preventing a breach of the peace and consequent community tensions by halting the use of high volume musical instruments and the conduct of loud religious activity.<sup>56</sup> Third, they contended that they were responding to the unauthorised use of a particular building as a place of worship.<sup>57</sup>

### ***Judicial Responses from Lower Courts***

The judiciary's response in post-2000 cases of religious violence against minority groups does not appear to reflect judicial sensitivity to victims' rights. This lack of sensitivity indicates the reluctance of Magistrates to act as mediators when community tensions threaten to erode the right of religious worship.

A notable example of this judicial conservatism is seen in *State v. R.K. Rathnayake and others*,<sup>58</sup> which involved a group of 75-100 persons vandalising and setting fire to a house church in Kuliapitiya. The total damage was estimated at LKR 391,000. The Magistrate's Court initially recorded charges under Sections 140 (punishment for unlawful assembly), 419 (mischief by fire or explosive substance with intent to cause damage to the amount of one hundred rupees) and 290 (injuring or defiling a place of worship with intent to insult the religion of any class) of the Penal Code.<sup>59</sup> However, in the Court's final order, the charges were reduced to Section 434 (house-trespass) and 410 (committing mischief and thereby causing damage to the amount of fifty rupees) of the Penal Code and only seven persons were actually indicted.<sup>60</sup>

The Magistrate's commitment to protecting the right to religious worship may be called into question in this par-

ticular case. A particularly problematic omission on the part of the Magistrate Court was its reluctance to delve in the question of vandalism under Section 290 of the Penal Code. Moreover, it may be noted that the Court's conservative approach to dealing with perpetrators of religious violence establishes a dangerous precedent and invites future perpetrators to act with impunity.

A similar approach by the lower courts was seen in a case filed in the Magistrate's Court of Mawanalla.<sup>61</sup> The case involved a group of Christian worshippers being harassed by approximately 800 protesters outside their place of worship. Despite the disproportionate interference with the worshippers' religious rights, the Magistrate warned both parties not to disturb the peace. Once again, the Court's leniency towards the protestors indicates its reluctance to mediate community tensions in a manner that protects minority religious groups from harassment.<sup>62</sup>

Another illustration of the failure of the lower courts to uphold an individual's right to worship is seen in the case of *Panadura Police Commissioner v Thriangama Arachchige Sarath Chandala*.<sup>63</sup> In this case, the Magistrate's Court issued an interim order preventing a worshipper of the Calvary Church in Keselwatte from engaging in religious practices in public due to objections from members of the community. The community predominantly consisted of Buddhists. This order was affirmed on appeal by the Panadura High Court. The subsequent decision further reflects the judiciary's reluctance to mediate communal tensions that arise as a result of minority religious practices and majority sentiments opposing such practices.

A marginal departure from the conservative stance of lower courts was seen in *D.W. Sarath Lakshman v. A.A.D. Premawathie*.<sup>64</sup> This case involved an appeal to the Panadura Western Provincial High Court by an appellant who was prevented from conducting worship services in her home.<sup>65</sup> The Kesbewa Magistrate's Court had previously issued an order preventing the appellant from conducting services. The initial order was issued on the basis that the appellant had caused a breach of the peace.<sup>66</sup> On appeal, the High Court held that the Magistrate had issued the order without a proper examination of the facts. Interestingly, the Court relied on Article 10 and Article 14(1)(e) of the Constitution to arrive at the conclusion that a prayer meeting held with friends in a private residence could not amount to noise pollution or a disturbance of the peace under the law.<sup>67</sup>

Notwithstanding a legal and policy framework that guarantees the freedom of religion, it appears that the lower courts have seldom endeavoured to protect minorities from religious violence. As demonstrated above, judicial decision-making rarely deploys the language of 'freedom of religion' or 'freedom from religious violence' when resolving disputes that involve targeted violence

against minority places of worship.<sup>68</sup> The lower courts' failure to recognise the religious motivation behind the violence has certain serious connotations. Such failure serves to de-link the physical aspect of the violence from its actual motivations. Therefore, on the one hand, the courts have only been prepared to condemn physical violence; on the other, by virtue of their silence, they have tacitly condoned the intolerance of minority religious communities.

### ***Judicial Responses from Appellate Courts***

In certain instances, the appellate courts have demonstrated a willingness to safeguard the right to worship of individuals belonging to minority religions by reviewing executive or administrative determinations.

For example, in the case of *The Church of the Foursquare Gospel in Sri Lanka and Rev. D.G.W. Jayalath v. Kelaniya Pradeshiya Sabha and others*<sup>69</sup> ('The Foursquare Church Case') the petitioners filed a writ of certiorari and prohibition against the Urban Development Authority (UDA) for the cancellation of a construction permit issued to the Petitioner by the Kelaniya Pradeshiya Sabha.<sup>70</sup> The cancellation was effected on the basis of Section 8J(1) of the Urban Development Authority Act No. 4 of 1982. The Act gave the UDA the power to cancel any 'development activity' if it did not conform to the nature of permission granted by the construction permit.<sup>71</sup>

The Court held that the cancellation of the permit by the UDA was ultra vires and issued a writ of certiorari ordering the Authority to reverse the cancellation of the construction permit.<sup>72</sup> The Court justified its order on the basis that the cancellation of the permit was based on an objection to the religious activities occurring within the premises and not on a specific violation of the Petitioner's construction permit.<sup>73</sup>

In the case of *De Silva v. Lankapura Pradeshiya Sabha*<sup>74</sup> ('*The Pradeshiya Sabha Case*'), the secretary of the Society for Upliftment and Conversation of Cultural, Economic and Social Standards (SUCCESS) filed for a writ of mandamus to be issued on the Lankapura Pradeshiya Sabha to compel the demolition of a church it claimed was unauthorised and illegal.<sup>75</sup> The petitioner argued that the failure to seek approval from the Lankapura Pradeshiya Sabha prior to the construction of the church contravened the requirements under the Housing and Town Improvement Ordinance No. 19 of 1915.<sup>76</sup>

The Court of Appeal held that the Ordinance only applied to the administrative limits of Municipal Councils, Urban Councils or Town Councils. As such, the Ordinance specifically excluded Village Councils, as they did not exist at the time the Ordinance was enacted.<sup>77</sup> Further, the Court pointed out that in 1987, Town Councils and Village Councils were amalgamated into Pradeshiya Sabha's under the Pradeshiya Sabha Act.<sup>78</sup> The Court concluded that since the Act stated that 'any reference

to a Town Council or a Village Council shall be deemed to be a reference to a Pradeshiya Sabha'<sup>79</sup> the provision:

Does not result in a situation wherein laws which were applicable in Town Councils...would apply in Village Councils...[T]o interpret the provision in this way would result in Village Councils being deemed to be Town Councils.<sup>80</sup>

The Court therefore dismissed the appeal on the basis that the church in question did not require construction approval from the Lankapura Pradeshiya Sabha under the Housing and Town Improvement Ordinance, as it was located in a former Village Council area.<sup>81</sup>

Notwithstanding the progressive outcomes in the cases discussed above, safeguarding the right to worship often operates as an incidental rather than a motivational factor in judicial decision-making. Much like with the judicial responses in the lower courts, this approach illustrates the reluctance of the Court to meaningfully frame violence against minority religions as being contrary to the enjoyment of religious freedom under Articles 10 and 14(1)(e).

### **THE RIGHT TO MANIFEST A RELIGION**

Article 14(1)(e) protects an individual's right to manifest his religion or belief 'either by himself or in association with others, and either in public or in private'. The ambit of protection available to minority religions under this provision has come under much judicial scrutiny in recent years.

The judiciary's response within this area has been varied. On the one hand, the judiciary has demonstrated a willingness to adopt an expansive reading of Article 9 to narrow the scope of minority religious organisations at the point of legal incorporation. This approach had the effect of limiting the choices available to an individual seeking to express her freedom to change religions.<sup>82</sup> On the other, the Supreme Court has been reluctant to permit the erosion of Article 10 through legislation aimed at curtailing the exercise of religious choice in its entirety.<sup>83</sup>

#### ***Incorporation Cases***

Since 2011, there have been three successful challenges in the Supreme Court to Private Members' Bills that sought to incorporate Christian organisations.<sup>84</sup> The three Bills were:

- The Christian Sahanaye Doratuwa Prayer Center Bill ('The Prayer Center Bill')
- The New Wine Harvest Ministries' Bill; and
- The Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka Bill ('The Menzigen Bill')

The Supreme Court's determinations concerned the

constitutionality of the objects sought to be achieved by these organisations.

In *Christian Sahanaye Doratuwa Prayer Center (Incorporation) S.C. Determination No. 2/2001*,<sup>85</sup> the Supreme Court held that the objects of the organisation, which included ‘to assist persons in various ways to enable them to obtain job opportunities’,<sup>86</sup> ‘to rehabilitate persons who are addicted to drugs or any other misconduct’,<sup>87</sup> and ‘to train persons in various industries to enable them to engage in self-employment’,<sup>88</sup> was incompatible with the petitioner’s rights under Article 10 of the Constitution.<sup>89</sup> The Supreme Court observed that combining commercial and economic activities with the practice and observance of religion would necessarily result in a distortion of the individual’s free exercise of thought and conscience under Article 10.<sup>90</sup> The Court justified this position on the basis that a non-Christian individual financially benefiting from the services provided by a Christian organisation would be allured to converting to Christianity on the basis of the benefit received.<sup>91</sup>

Similar arguments were made by the Supreme Court in *New Wine Harvest Ministries Incorporation S.C. Special Determination No. 2/2003*<sup>92</sup> where the Court held:

The process of uplifting the socio-economic conditions of the people in Sri Lanka, not restricted to persons who are of the same religious faith as that of the body sought to be incorporated, would necessarily result in an inconsistency with the free exercise of a person’s thought, conscience and religion as postulated in Article 10 of the Constitution.<sup>93</sup>

In this context, the Court argued that the freedom guaranteed to every citizen under Article 14(1)(e) of the Constitution (i.e. freedom to practice a religion and engage in worship and observance by himself or in association with others), is distinct from the freedom guaranteed under Article 14(1)(g) (i.e. freedom to engage in a lawful occupation, trade, business, or enterprise).<sup>94</sup> As such, the Court held that the freedoms guaranteed under Article 14(1)(e) and 14(1)(g) could not be availed together. The Supreme Court took the view that blurring the lines between these two distinct freedoms would lead to ‘predatory actors’ seeking to allure and convert vulnerable members of the public through the use of economic rewards; a consequence that demanded the Court’s protection under Article 10.<sup>95</sup>

This position was taken up notwithstanding evidence to suggest that numerous other religious groups with similar objectives were successfully incorporated at the time the determination was made.<sup>96</sup>

The Supreme Court’s determination in *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*<sup>97</sup> was grounded upon the preamble and Clauses 3 and 5 of the Menzingen Bill. The preamble of the Bill stated that the organisation would provide shelter to orphans,

children and the aged.<sup>98</sup> Clause 3 set out the objects of the organisation, one of which included ‘[spreading] the knowledge of the Catholic religion’.<sup>99</sup> Clause 5 sought to give authority to the incorporated body to hold and alienate property.<sup>100</sup>

The Supreme Court in *Menzingen*, whilst retaining the core arguments in the preceding cases, took the interpretational framework of an individual’s rights under Article 10 a step further. It used the state’s role to ‘protect and foster’ the *Buddha Sasana* to conclude that the Bill was inconsistent with Article 9 of the Constitution. The determination hinged on using Buddhism’s foremost place under Article 9 as a restriction on individuals of minority religions ‘propagating’ their faith to members outside their religious communities.<sup>101</sup>

The Supreme Court concluded that the Menzingen Bill was aimed at propagating Catholicism by:

Alluring persons of other religions by providing material and other benefits such as medical facilities, education to children, care for disadvantaged members of the community with the aim of conversion.<sup>102</sup>

In making its determination, the Supreme Court cited the Indian Supreme Court case of *Rev. Stainislaus v. State of Madhya Pradesh*,<sup>103</sup> to conclude that ‘there can be no such thing as a fundamental right to convert any person to one’s own religion’.<sup>104</sup> Further, the Court held that Article 14(1)(e) only granted an individual the right to manifest, worship, observe and practice that individual’s religion or teaching. Therefore, the Court held that the right to ‘propagate’ religion was intentionally excluded from Sri Lanka’s fundamental rights framework.<sup>105</sup> Against this backdrop, The Court unanimously held that to grant an individual the right to propagate Christianity, ‘by providing material and other benefits and thereby converting such recipients to the said religion, would affect the very existence of Buddhism’.<sup>106</sup>

In light of the emerging tensions between Article 14(1)(e) and Article 9, the Court’s reasoning requires further scrutiny.

First, the Court opted for a narrow interpretation of Article 14(1)(e) on the basis that it does not contain an explicit right to ‘propagate’ religion, unlike the Indian Constitution.<sup>107</sup> This position, however, does not take into account the features of main features of the Indian constitutional provisions on the right to propagate religion. The Indian Constitution ‘does not include a fundamental right to convert any person to one’s own religion’,<sup>108</sup> but is limited to ‘the right of the individual to spread her religion by an exposition of its tenets’.<sup>109</sup> Arguably, this reasoning does not contemplate a more restrictive approach than the Sri Lankan constitutional framework demands. Therefore, the idea of ‘propagation’, as used in the Indian context, can ostensibly be upheld under the Sri Lankan Constitution. This idea is wholly consistent with an individual’s right to manifest

her religion and her beliefs in public through practice or teaching as guaranteed by Article 14(1)(e).

The *Menzingen* decision relies heavily on the Indian Supreme Court case of *Rev. Stanislaus v. State of Madhya Pradesh*.<sup>110</sup> This decision was subsequently criticized by constitutional scholar, H.M. Seervai.<sup>111</sup> He argues that conversion is an intrinsic part of the Christian religion and therefore forms a legitimate part of the exercise of an individual's right to religion.<sup>112</sup> Therefore, if person A preaches to person B with a view to converting him, and B in the exercise of his free will adopts the religion of person A – both A and B are exercising two elements of the same democratic freedom.<sup>113</sup> This exercise of free will is distinct from a situation where A compels B to adopt a particular religion, which could be held as an unconstitutional interference with B's freedom of religion.

Second, the Court used two judgments from the European Court of Human Rights (ECtHR) to justify its position in *Menzingen*, namely, *Larissis and Others v. Greece*<sup>114</sup> and *Kokkinakis v. Greece*.<sup>115</sup> On a closer examination of these judgments, it is clear that the Supreme Court failed to give careful consideration to their applicability to the case at hand.

*Larissis* involved an application made by three airmen under Article 9 of the European Convention on Human Rights (ECHR). They claimed that their conviction under Greece's anti-proselytism laws violated their freedom of religion.<sup>116</sup> In its reasoning, the ECtHR afforded special weight to the hierarchical structure of the military that could 'make it difficult for a subordinate to rebuff the approaches of an individual of superior rank to withdraw from a conversation initiated by him'.<sup>117</sup> Therefore, in holding that the Greek authorities were in principle justified in their conviction of the officers, the Court held that:

What would in the civilian world be seen as an innocuous exchange of ideas, which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power.<sup>118</sup>

Applying the decision in *Larissis*, the Supreme Court in *Menzingen* chose to discard the distinction between the consequences of propagation in military and civilian life.<sup>119</sup> As such, the Court concluded that spreading beliefs in civilian relationships between teachers and students, and patients and nurses, could also amount to 'undue pressure' and constitute an 'abuse of power'.<sup>120</sup>

In the case of *Kokkinakis*, the ECtHR reviewed a decision by the Greek Courts to convict a Jehovah's Witness (the applicant) under its anti-proselytism laws for attempting to convert a member of the Greek Orthodox Church.<sup>121</sup> The ECtHR found that the Greek courts failed to apply the principle of proportionality to demonstrate that the applicant had tried to convert his neighbour using im-

proper means.<sup>122</sup> As a result, the ECtHR held that the applicant's conviction could not be 'justified in the circumstances of the case by a pressing social need' and as such was not 'proportionate to the legitimate aim pursued'.<sup>123</sup>

Therefore, in *Menzingen*, the Supreme Court's usage of *Kokkinakis* to justify the curtailment of an individual's right to propagate her religion—without the application of a proportionality test—is, in substance, contrary to the final outcome of the case.

It is also important to note that Article 9 cannot be read as granting Buddhism 'the foremost place' at the expense of the rights afforded to minority groups to practise their beliefs. The 'assurance' granted under Article 9 that the rights under Article 10 and Article 14(1)(e) will be protected is absolute. Therefore, the protection of Buddhism cannot in and of itself limit the scope of Article 14(1)(e). Therefore, a legitimate encroachment of Article 14(1)(e) on the grounds of protecting Buddhism would have to be ultimately assessed on whether it is necessary and proportionate under the law. Unfortunately, the Supreme Court in *Menzingen* neglected to conduct such an assessment.

Against this backdrop, on 21 October 2005, the United Nations Human Rights Committee observed that the Sri Lankan Supreme Court decision in *Menzingen* was inconsistent with the state's obligations under the ICCPR. It concluded:

The Supreme Court's determination of the Bill's unconstitutionality restricted the author's rights to freedom of religious practice and to freedom of expression...therefore there has been a breach of Article 18, paragraph 1, of the Covenant.<sup>124</sup>

On this basis, the Committee ordered Sri Lanka to 'provide an effective remedy in giving full recognition to the [victims'] rights under the Covenant'.<sup>125</sup> However, to date, no action has been taken to recognise the right of the 'Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka to incorporation.

### *Anti Conversion Legislation*

In August 2003, following the Supreme Court decision in *Menzingen*, the Minister for Justice, Law Reforms and National Integration, and Buddha Sasana, W.J.M. Lokubandara, announced:

This is a clear judgment. It has clearly said unethical conversions are illegal. This will give us the legal backing to stop this kind of activity carried out in the name of religion.<sup>126</sup>

This resulted in a government-led effort to introduce new laws that would curb instances of unethical conversion. In 2004, a Special Committee was established by Prime Minister Ranil Wickremesinghe to formulate anti-conversion laws.<sup>127</sup> Further, the Jathika Hela Uru-

maya (JHU) commenced drafting its own anti-conversion legislation.<sup>128</sup> The government's Bill titled 'Freedom of Religion'<sup>129</sup> and the JHU Bill titled 'Prohibition of Forcible Conversion of Religion'<sup>130</sup> were both broad in their scope. Both Bills were framed in terms of protecting the people of Sri Lanka's religious freedom by the prevention of 'unethical conversion'. Unethical conversion under the Bills was defined as:

- a. To directly or indirectly make, persuade or influence a person to renounce his religion, religious belief, religious persuasion or faith and to adopt another religion, religious belief, religious persuasion or faith which such person does not hold or belong to;
- b. To intrude on the religion, religious belief, religious persuasion or faith of such person, with the aim of undermining the religion, religious belief, religious persuasion or faith which such person does not hold or belong to

Either by use of any kind of allurement or promise of allurement, or inducement or promise of an inducement, or of moral support or promise of moral support, or of material assistance or promise of material assistance, or by fraudulent means or by coercion or by the use of force or by other means or by taking advantage of such person's inexperience, trust, need, low intellect, naivety or state of distress.<sup>131</sup>

Additionally, the JHU Bill defined 'allurement' to mean:

- Offer of any temptation in the form of –
- iii. Any gift or gratification whether in cash or kind;
  - iv. Grant of any material benefit, whether monetary or otherwise
  - v. Grant of employment or grant of promotion in employment<sup>132</sup>

Both the government and the JHU Bills stated that if a person were found guilty of an offence under the Act, that person would be liable to face punishment of imprisonment for a period not exceeding five years and a fine not exceeding 100,000 rupees.<sup>133</sup> The government's Bill also contained additional penalties for 'aggravated offences', which included a maximum prison term of seven years and a maximum fine of 500,000 in places where the offender held a position of trust over the victim (i.e. schools, hospitals, refugee camps).<sup>134</sup>

Following the tabling of the JHU Bill in Parliament, twenty-one petitions were filed in the Supreme Court seeking a determination that the Bill was inconsistent with various provisions of the Constitution. The petitions also prayed for a determination by the Court that the Bill needed to be passed by a special majority in Parliament as well as by the People in a referendum.<sup>135</sup> The Petitioners argued that an attempt to regulate the manifestation and practice of religion as guaranteed under Article 14(1)(e) would in effect negate Article 10, which

is absolute and unconditional in its scope.<sup>136</sup>

In responding to this argument, the Court held that the freedom of religion granted by Article 10 'postulates that the choice [of religion] stems from the free exercise of one's thought and conscience without any fetter which in anyway distorts one's choice'.<sup>137</sup> Further, it was concluded that there was no dispute that the right to freedom of religion includes the right to adopt or change religions.<sup>138</sup>

In the Court's opinion, the issue at hand was the constitutionality of conversion by the use of force, allurement or fraudulent means. Using Article 15(7) as a starting point, the Court argued that in order to be a lawful interference with Article 14(1)(e) the term 'allurement' in the Bill needed to be narrowed in its scope to explicitly include the words 'for the purpose of converting a person from one religion to another'.<sup>139</sup> The Court held that subject to the inclusion of the above, the JHU Bill was compliant with Articles 10 and 14(1)(e).<sup>140</sup> This position seems to depart from the Court's decision in the Incorporation Cases discussed above, where the Court was willing to *infer* an intent to unethically convert from organisations that offered economic benefits to non-Christians.

Moreover, in assessing the constitutionality of the JHU Bill, the Court restricted its argument to the essential ingredients of an unethical conversion.<sup>141</sup> As such, there was no discussion as to how restricting acts of conversion might place an unconstitutional fetter on an individual's freedom to manifest her religion. This balancing of interests is specifically contemplated under the international framework on the freedom of religion.<sup>142</sup>

In this context, Article 18 of the ICCPR sets out a framework for making a proportional interference with an individual's freedom to manifest her religion. Article 18(3) states that permissible restrictions are those that 'may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated'.<sup>143</sup> Therefore, since the Supreme Court concerned itself with debating the ethics of conversion rather than how a prohibition on conversion would constitute an interference with Article 14(1)(e), it could be argued that the Court's determination fell short of the standard of scrutiny required under international law—more specifically, Article 18(3) ICCPR.

Another clause of the JHU Bill that was scrutinised by the Court was the clause that mandated a person 'who adopts a religion from one religion to another...[to] send an intimation to that effect to the Divisional Secretary of the area in which such adoption took place'.<sup>144</sup> The Court held that this provision violated Article 10 of the Constitution as it 'would be a restraint on [the convert's] freedom of thought, conscience, and religion'.<sup>145</sup> Unfortunately, there was no detailed explanation of the



Court's reasoning. Yet, the Court's conclusion appeared to depart from its previous reasoning in the Incorporation Cases.

Pursuant to the Supreme Court's determination that the Anti-Conversion Bill violated Article 10, the JHU proposed a constitutional amendment titled 'The Nineteenth Amendment to the Constitution (Constitutional Amendment Bill)' which was presented in Parliament on 19 November 2004.<sup>146</sup> However, this Bill was also successfully challenged before the Supreme Court on the basis of its unconstitutionality.<sup>147</sup> The preamble of the Bill stated that 'the Buddha Sasana has faced the threat of decline' and that 'it is the duty of the Parliament to restore the patronage and protection historically enjoyed by Buddha Sasana'.<sup>148</sup> To this end, the Bill sought to amend Article 9 to make Buddhism 'the official religion of the Republic'.<sup>149</sup>

At its determination, the Court took a progressive stance on the individual's freedom of religion. Justice Tilakawardene observed:

The essence of being a secular state, as Sri Lanka is, is the recognition and preservation of different types of people, with diverse language and different belief, and placing them together so as to form a whole and united nation...freedom of conscience and religion means a notion of the centrality of individual conscience and individual judgment and the appropriateness of governmental intervention to compel or constrain manifestation.<sup>150</sup>

Further, in responding to the JHU's proposal to amend the Constitution to make Buddhism the state religion the Court held:

The theoretical content of the amendment remains a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture.<sup>151</sup>

This judgment represents a significant departure from the conservative stance of the judiciary *vis-à-vis* the manifestation of an individual's freedom of religion. Therefore, it is apparent that a legislative attempt to officially entrench Buddhism as the state religion is where the Supreme Court is willing to draw the line. This position has resulted in much ambiguity; as the state is required to give preference to the protection and promotion of Buddhism, yet remain fundamentally secular in its composition.

### THE RIGHT TO NON-DISCRIMINATION ON THE BASIS OF RELIGION

Article 12 protects individuals from discrimination on the grounds of religion. Further, Article 9 states that Buddhism shall be given the foremost place, whilst assuring that other religions are protected under Article 10 and Article 14(1)(e). However, in practice, Article 9 has

been used to cement Buddhism's foremost place in society at the expense of minority religious communities. Further, this Article has also been used to justify the selective use and interpretation of laws when prosecuting religious violence incited by members of the Buddhist clergy.

The selective use of the Prevention of Terrorism Act<sup>152</sup> (PTA) is one such example. In 2009, Tamil journalist J.S Tissainayagam was convicted under Section 2(1)(h) of the PTA for writing an article that stated: 'it is fairly obvious that the government is not going to offer [Tamil Civilians] any protection. In fact it is the state security forces that are the main perpetrators of the killings'.<sup>153</sup> It was held that by accusing a predominantly Sinhalese army of committing atrocities, Tissainayagam intended to incite acts of violence by Sinhalese readers against Tamils.<sup>154</sup> Further, Section 2(1)(h) of the PTA was used to arrest Azath Salley, who was a Muslim politician critical of government inaction on investigating increasing acts of violence against Muslims during the Aluthgama riots.<sup>155</sup>

By contrast, the government failed to apply the provisions of the PTA to indict the General Secretary of the *Bodu Bala Sena*, Galagoda Aththe Gnanasara Thero. This particular Buddhist monk publicly incited violence and promised 'the end of Muslims in Sri Lanka, should harm come to even a single Sinhalese person'.<sup>156</sup> His incitement led to the Aluthgama riots of June 2014, which saw the death of at least four people and the destruction of over a hundred Muslim homes and businesses. However, the provisions of the PTA, which clearly criminalises incitement of communal violence, were not applied in this case, and Gnanasara Thero was never indicted. In this context, the overarching application of Article 9, and the foremost place given to Buddhism appear to produce a chilling effect on both law enforcement and the judiciary. This Article arguably provides a form of immunity to Buddhist clergymen who may commit particular offenses directed at minority religions. Article 9 therefore promotes a discourse that legitimises the suppression of minority religions.

The heightened judicial sensitivity towards ensuring that minority religious communities do not transgress boundaries of due process often creates the perception of religious persecution among these communities. Two notable cases in this regard include *Ven. Ellawala Medananda Thero and Others v Kannangara, District Secretary, Ampara and Others*<sup>157</sup> and *Ashik v Bandula and Others (Noise Pollution Case)*.<sup>158</sup>

In *Ven. Ellawala Medananda Thero and Others v Kannangara, District Secretary, Ampara and Others*<sup>159</sup> ('*Dheegavapi Case*'), members of the Buddhist clergy challenged a decision taken by a state authority to alienate sixty acres of land situated near the Dheegavapi Raja Maha Viharaya to 500 Muslim families. The challenge was on the basis that this alienation was discriminatory to the Sinhalese

and Tamil villagers in the area. Additionally, it was contended that due to the large extent of land sought to be alienated, Sinhalese Buddhist villagers would not be able to reside close to Dheegavapi Raja Maha Viharaya, a site of ancient religious significance. Further, the petitioners stated that the settlement of a large number of Muslims within close proximity to the Viharaya would bar the further expansion of Sinhalese Buddhist residents who were living in the area.

In ruling for the petitioners, the Supreme Court held that the alienation had been effected in bad faith, as the process of beneficiary selection was arbitrary and bereft of any legal authority.<sup>160</sup> The Court concluded that state land is held in trust for the public and may be alienated only as permitted by law.<sup>161</sup> Consequently, the Court held that the alienation had not been effected in accordance with the due process of the law. The Court took particular cognisance of the fact that beneficiaries were selected on the basis of a Circular issued by the Presidential Secretariat of rather than through the formal selection process mandated under the Land Development Ordinance, No. 19 of 1935.

Upon a closer examination of the ruling, the Court appears to be justified in its reasoning. However, it was unclear as to whether the Court would be willing to exercise a similar level of scrutiny where an individual from a minority religious community presented a similar case.<sup>162</sup>

In the *Noise Pollution Case*, a group of petitioners alleged that the issuance of a loudspeaker permit under Section 80 of the Police Ordinance to the trustees of the Jumma Mosque in Weligama violated their fundamental rights under Article 12(1).<sup>163</sup> The petitioners stated that the 'high pitched' call to prayer that was amplified by the mosque at 5am caused unnecessary hardship to residents in the neighbourhood.<sup>164</sup>

The Supreme Court held that unwanted noise could produce serious physical and physiological stress, constituting a form of atmospheric pollution.<sup>165</sup> It therefore concluded:

It has to be firmly borne in mind that Sri Lanka is a secular State. In terms of Article 3, sovereignty is in the people at common, devoid of any divisions based on perceptions of race, religion, language and the like...there could no exceptions to accommodate perceived religious propensities of one group or another.<sup>166</sup>

The Court went on to hold that all existing permits issued under Section 80(1) of the Police Ordinance would cease forthwith. Further, the Court stated that no permits would be issued for the amplification of noise between 10pm and 6am, unless it was for a certain specified event.<sup>167</sup>

It is arguable that the complete ban on permits between

10pm and 6am would disproportionately disadvantage the right to worship of Muslim religious communities. This is owing to the fact that the Islamic call to Morning Prayer in Sri Lanka occurs prior to 6am. Therefore, even though the language of secularism motivates the Court's reasoning, the eventual outcome appears to target the followers of the Islamic faith. The outcome of the case therefore raises important questions on how competing community interests ought to be resolved within a secular framework.

The Supreme Court has also examined the right to non-discrimination on the basis of religion in the context of school admissions. For example, in the case of *Ratnasiri B. Wimalawickrama et al v. The Principal of Richmond College* ('*School Admission Case*'),<sup>168</sup> the Court dealt with the question of student quotas on the basis of religion. The case concerned a group of Christian students who were denied admission to Richmond College on the basis that the places allocated for Christian students at the school had already been filled.<sup>169</sup> Counsel for the petitioners argued that at the time the students were refused admission, the percentage of Christian students admitted to Richmond College stood at 2%.<sup>170</sup> He argued that this was a significant departure from the composition of the school at the time it was originally vested in the state – where Christian students made up 9.2% of the student population.<sup>171</sup>

In interpreting a Circular issued by the Ministry of Education in 2004, the Court held:

It is mandatory that the total number of vacancies should be first allocated...to the different religions in the proportions that existed at the time of vesting of the schools.<sup>172</sup>

The Court accordingly held that maintaining the religious composition of schools at the time of vesting was integral to securing the right to education for the children of the petitioners.<sup>173</sup> Further, it was held that the students eligible to be admitted under the allotted religious quota formed a particular class of individuals under Article 12.<sup>174</sup> Therefore, the Court concluded that the arbitrary reduction in the number of eligible individuals in this class violated the students right to equal treatment under Article 12(1).<sup>175</sup> This decision was based on the fact that the children of the petitioners fell within the allotted Christian student quota of 9.2%.

Although this judgement was progressive, it is interesting to note that the final outcome of the case was framed in terms of the due process of the law. The Court's intervention focused on the students' right to equality guaranteed under Article 12(1) rather than on their right to non-discrimination guaranteed under Article 12(2). Consequently, this approach failed to frame the reduction of the Christian students' quota at Richmond College from 9.2% to 2% as a form of discrimination on the grounds of religion.

# EMERGING TRENDS ON JUDICIAL PROTECTION OF RELIGIOUS RIGHTS

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**PROVIDING QUANTITATIVE DATA** on the judiciary's record in protecting religious rights is difficult due to the small volume of reported cases dealing with religious rights. However, it is possible to map certain trends that emerge in terms of judicial decision-making in this subject area.

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The perceptual maps on the following pages reflect judicial decision-making patterns based on an analysis of the specific cases reviewed for the purposes of this study.

1. Map 1 presents cases from the lower courts
2. Map 2 presents cases from the appellate courts
3. Map 3 combines the data from (a) and (b) and maps cases from both lower and appellate courts.

The horizontal axis of each perceptual map represents the outcome of the court's decision, i.e. whether the decision restricted rights or advanced them. The sample cases were then mapped according to whether their judgments advanced or restricted religious freedom. For the purposes of mapping, a judgment that advances religious freedom is one where the Court pays close attention to the promotion, protection, and fulfilment of the individual's right to religion (i.e. the right to adopt and hold a religious belief, the right to manifest a religious belief, and the right to non-discrimination on the basis of religion).

The vertical axis represents the basis on which the court reached its decision, i.e. whether the decision was reached on procedural or substantive grounds. Thus the analysed cases were also classified according to whether the Court discussed religious freedom as being substantive to the final outcome of the case, or whether the judgment was merely framed in terms of following due process.

## JURISPRUDENTIAL DEVELOPMENTS

Map 2 illustrates how appellate courts have responded to the advancement of religious rights. The perceptual map indicates that in cases where religious rights are restricted, the courts often adopt a substantive approach to judicial decision-making. In other words, courts have been willing to delve into the substance of a case where the final outcome was to restrict religious freedom. For example, in the *Incorporation Cases* and in the *Noise Pollution Case*—where the judgments in question restricted religious freedom—the Supreme Court paid close attention to examining why the right to be free from religious interference was an integral to the guarantees under Article 10 and Article 14(1)(e).

By contrast, the appellate court judgments that advanced religious rights have focused on due process rather than on the substantive basis of protecting, promoting and fulfilling an individual's religious rights. In this context, the advancement of religious freedom becomes incidental rather than integral to judicial decision-making. For example, the Court of Appeal in cases such as the *Pradeshia Sabha Case* and the *Foursquare Church Case* based its decisions on a legalistic interpretation of a particular statute rather than on a proportional assessment of how the application of that statute had infringed on an individual's freedom of religion.

The courts' adoption of a legalistic approach when advancing religious rights has a threefold impact. First,



this approach fails to meaningfully contribute to the jurisprudence on promoting, protecting, and fulfilling an individual’s freedom of religion under Article 10 of the Constitution. Second, it fails to counterbalance the substantive conservatism of the judiciary in cases where religious rights are restricted. Third, the absence of a strong jurisprudential foundation surrounding an individual’s right to religion has a bearing on the lower court’s willingness to use the framework of religious rights to determine outcomes. This reluctance amongst lower courts is reflected in Map 1.

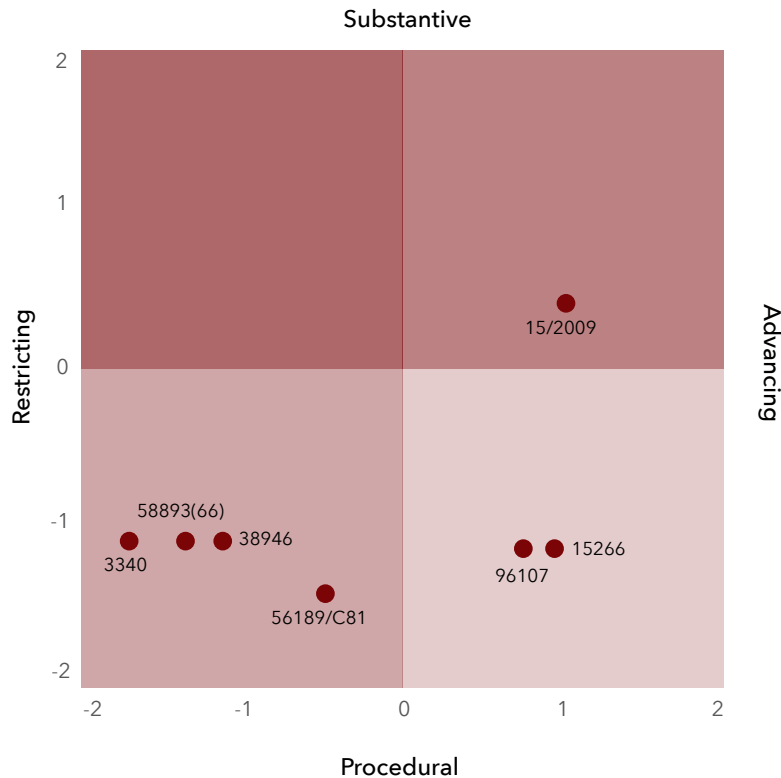
The above factors collectively result in a jurisprudential trend that defines ‘religious freedom’ as the right of the majority to be free from religious interference by minority religious communities. As far as minority religions are concerned, this trend defines rights under Article 10 and Article 14(1)(e) in negative terms. For the dominant religious group, the jurisprudence grants them a foremost place and advances their substantive rights. By contrast, for minority groups, this jurisprudence only serves to define the limits of their rights.

### CONSTITUTIONAL DEVELOPMENTS

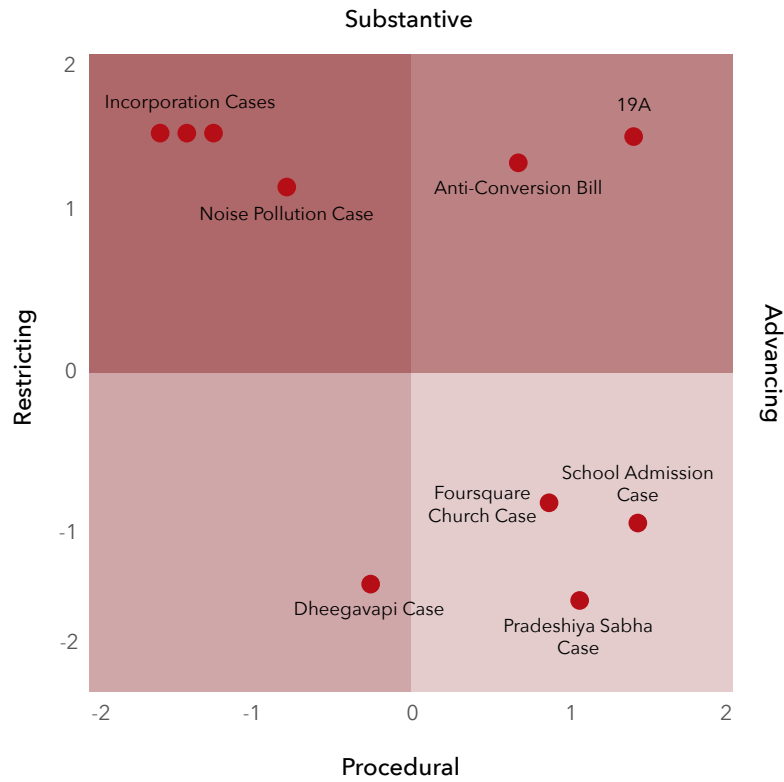
The Supreme Court’s tendency to adopt a procedural stance on cases that advance religious rights is not reflected in its determinations on the Anti-Conversion Bill and the 2004 19<sup>th</sup> Amendment. These outliers can be explained by the fact that the Court has taken a progressive stance when interpreting statutory instruments that overtly place limitations on Article 10 and Article 14(1)(e). In this context, the Court’s intervening point seems to be where there is a direct challenge to the constitutional status of the freedom of religion.

In the case of the Anti-Conversion Bill, the Court held that the offence of ‘allurement’ in the context of unethical conversion was too broadly defined. It observed that this definition caused a disproportionate interference with an individual’s rights under Article 10. This stance was consolidated further in the Supreme Court’s determination on the 19<sup>th</sup> Amendment, where the Court was prepared to determine that the Bill was unconstitutional on the basis that it violated an individual’s freedom of conscience.

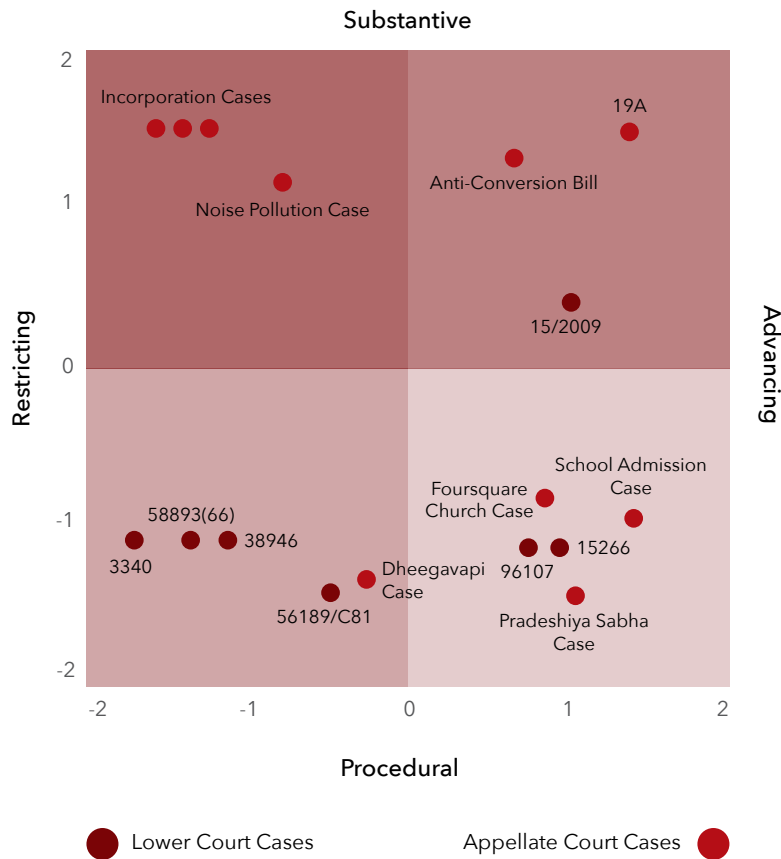
MAP 1: LOWER COURT CASES



**MAP 2: APPELLATE COURT CASES**



**MAP 1: LOWER & APPELLATE COURT CASES**



# CONCLUSION

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**THE SRI LANKAN CASE LAW** has displayed a conservative trend in terms of the protection and promotion of religious rights of minority religious communities. This trend may be attributed to at least three key factors.

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First, the Supreme Court has a tendency to use a procedural approach when determining outcomes that protect minority religious rights. This approach fails to substantively contribute to the expansion of jurisprudence on the state's role to promote, protect and fulfil an individual's freedom of religion. In contrast, the Court has adopted a substantive approach when dealing with cases that restrict religious rights—particularly of minority groups. These differing approaches have resulted in the prioritisation of Buddhism, and its protection from interferences by minority religions. This is a centrality that has gradually diminished the judiciary's protection of minority religions over time.

Second, the Supreme Court has been reluctant to apply a meaningful proportionality test when determining outcomes. This reluctance is visible even in the event the Court has been progressive in its constitutional protection of the freedom of religion. If applied correctly, a proportionality assessment enables the court to determine what constitutes a legitimate interference with an individual's freedom of religion. In this context, a proportionate interference is one that is (a) for a prescribed purpose (b) addresses a specific need and (c) necessary under the circumstances. Therefore, the fulfilment of all three limbs is essential if an interference is to be deemed proportional.

However, judicial decision-making within the context of Article 10 and Article 14(1)(e) has departed from this test. As such, assessments are made on the appropriate degree of interference – rather than whether the interference itself meets the threshold of the three-part pro-

portionality test. In this respect, the Supreme Court's determination on the Anti-Conversion Bill is illustrative. In this case, the Court concerned itself with the limits of unethical conversion, rather than how a prohibition on conversion would constitute an interference with Article 14(1)(e). This interpretational approach restricts the Court's ability to adequately safeguard an individual's religious rights from arbitrary interferences by the state.

Last, the lower courts have demonstrated a reluctance to mediate community level tensions in order to protect minority religious communities. Violence that is often religiously motivated is rarely acknowledged as such by the courts. This omission results in a trend that punishes offenders for criminal behaviour rather than for *religiously motivated* criminal behaviour; an outcome that has the potential to de-link the violence from the context in which it is perpetrated. This process of de-linking creates a framework where discrimination against minority religious communities becomes permissible, even though the violence perpetrated against them is not.

In conclusion, it is critical that the judiciary begins to confront its substantive conservatism with regard to the protection of minority religious groups. In this context, extending the application of legal frameworks surrounding religious rights beyond majoritarian interests is an essential starting point. This inclusive definition of the concept of 'religious freedom' will enable courts to safeguard the pluralism inherent Sri Lanka's constitutional democracy and strengthen institutional responses to religious discrimination.

# END NOTES

<sup>1</sup> Pew Research Center, Religious Hostilities Reach Six-Year High [2014], available at: <http://www.pewforum.org/files/2014/01/RestrictionsV-full-report.pdf> [accessed on 30 May 2015].

<sup>2</sup> Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena, and Gehan Gunatilleke, *The Judicial Mind: Responding to the Protection of Minority Rights* (2014), p.100.

<sup>3</sup> Infographic: Religious Violence in Post-War Sri Lanka [September 2014] available at: <http://groundviews.org/2014/09/16/infographic-religious-violence-in-post-war-sri-lanka/> [accessed on 30 May 2015].

<sup>5</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>6</sup> Article 18 UDHR.

<sup>7</sup> Article 18(1) ICCPR.

<sup>8</sup> Article 18(3) ICCPR.

<sup>9</sup> Also see CERD Committee, General Comment No. 15 of 23 March 1993.

<sup>10</sup> Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, available at: [http://www.ohchr.org/Documents/Issues/Minorities/Booklet\\_Minorities\\_English.pdf](http://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf) [accessed on 6 November 2015].

<sup>11</sup> Article 6 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief [1981].

<sup>12</sup> *Ibid.*, Article 6(e).

<sup>13</sup> *Ibid.*, Article 6(i).

<sup>14</sup> *Ibid.*, Article 6(b).

<sup>15</sup> *Ibid.*, Article 6(a).

<sup>16</sup> Under Article 126(2) of the Constitution, every person who alleges an infringement of her fundamental rights is entitled within one month thereof, to apply to the Supreme Court by way of petition seeking relief or redress in respect of such infringement.

<sup>17</sup> Article 9 Constitution of the Democratic Socialist Republic of Sri Lanka.

<sup>18</sup> *Sunila Abeysekera v Ariya Rubasinghe, Competent Authority and Others* [2000] 1 Sri. L.R 314.

<sup>19</sup> [1985] 2 Sri. L.R 177.

<sup>20</sup> *Ibid.*

<sup>21</sup> Article 12(2) Constitution of the Democratic Socialist Republic of Sri Lanka 1978.

<sup>22</sup> Article 12(3) Constitution of the Democratic Socialist Republic of Sri Lanka 1978.

<sup>23</sup> Article 15(7) Constitution of the Democratic Socialist Republic of Sri Lanka 1978.

<sup>24</sup> [2000] 3 Sri. L.R. 243.

<sup>25</sup> Penal Code No. 2 of 1883 Chapter XV – Offences Relating to Religion.

<sup>26</sup> Section 290 Penal Code No. 2 of 1883.

<sup>27</sup> Section 291A Penal Code No. 2 of 1883.

<sup>28</sup> *Ibid.*

<sup>29</sup> Police Ordinance No. 16 of 1865.

<sup>30</sup> Section 79(2) and Section 79(3) Police Ordinance No. 16 of 1865.

<sup>31</sup> Section 3(1) International Covenant on Civil and Political Rights Act No. 56 of 2007.

<sup>32</sup> *Ibid.*

<sup>33</sup> Section 2(h) Prevention of Terrorism Act No. 48 of 1979.

<sup>34</sup> 2(1)(h) Prevention of Terrorism Act No. 48 of 1979. The Prevention of Terrorism Act was enacted in 1979 as a temporary measure during the early stages of the war. The Act gives the executive sweeping powers that are not subject to parliamentary oversight. Since its inception, the Act has been regularly used to stifle dissent and suppress the rights of detainees.

<sup>35</sup> *Ibid.*

<sup>36</sup> Government of Sri Lanka, The National Action Plan for the Protection and Promotion. of Human Rights – 2011-2016, item 11.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.* , item 16.

<sup>39</sup> *Ibid.*

<sup>40</sup> Report of the Lessons Learnt and Reconciliation Commission [2010], available at: <http://www.llrcaction.gov.lk/en/about/history-background.html> [accessed on 30 May 2015].

<sup>41</sup> *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (November 2011) ('LLRC Report') para.9.267.

<sup>42</sup> Government of Sri Lanka, *National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Thematic Area* (July 2014).

<sup>43</sup> LLRC Report, *op. cit.* para. 9.118.

<sup>44</sup> INFORM Human Rights Documentation Centre, *Freedoms of Assembly and Association in Sri Lanka* [September 2014] available at <https://ihrdc.files.wordpress.com/2014/08/freedom-of-assembly-association-in-sri-lanka-inform-20sep2014.pdf> [accessed on 30 May 2015].

<sup>45</sup> The study analysed all reported judgements between 2000 and 2015 under Article 10, Article 12 and Article 14(1) (e) dealing with the freedom of religion. Further, the study analysed a cross section of judgements and orders from the lower and appellate courts on the freedom of religion selected by the National Christian Evangelical Alliance.

<sup>46</sup> Phone Interview with Attorney-at-Law, Lakshan Dias dated 10 August 2015.

<sup>47</sup> Ministry of Religious Affairs and Moral Upliftment internal circular dated 16.10.2008.

<sup>48</sup> *Ibid.*

<sup>49</sup> Becket Fund for Religious Liberty, United Nations Human Rights Council Universal Periodic Review: Sri Lanka [8 February 2008] available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/BFRL\\_LKA\\_UPR\\_S2\\_2008\\_BecketFundforReligiousLiberty\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/BFRL_LKA_UPR_S2_2008_BecketFundforReligiousLiberty_uprsubmission.pdf) [accessed on 30 May 2015].

<sup>50</sup> *Ibid.*

<sup>51</sup> Ministry of Buddha Sasana and Religious Affairs, Circular dated 02.10.2011.

<sup>52</sup> *Ibid.*

<sup>53</sup> The courts have interpreted this provision to specifically refer to emergency regulations issued under the PSO and not under any other law. See Supreme Court judgment in *Thavaneethan v. Dayananda Dissanayake, Commissioner of Elections and Others* [2003] 1 Sri L.R. 74, at 98.



<sup>54</sup> Case No. 96107; *K.B.N.P Rupasinghe and others v K.C.G.A. Perera and others*, Case No. 56189/C81 [2004]; *State v A. Wilson and others*, Case No.78265; *D.W Sarath Lakshman v. A.A.D. Premawathie*, Case No.3340 [2012].

<sup>55</sup> *Ibid.*

<sup>56</sup> *The Church of the Foursquare Gospel in Sri Lanka and Rev. D.G.W. Jayalath v Kelaniya Pradeshiya Sabha and others* CA Writ Application 781/2008.

<sup>57</sup> Case No. 80438 [2013]; Case No. 3340 [2005].

<sup>58</sup> Case No. 96107 [2004].

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Case No. 56189/C/81 [2011].

<sup>62</sup> *Ibid.*

<sup>63</sup> Case No. 38946 [2004].

<sup>64</sup> *D.W. Sarath Lakshman v. A.A.D. Premawathie*, Case No. 15/2009 [2012].

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Jebavalai Thomas v Rajani Kankan and Others*, Case No. 58893 [2013].

<sup>69</sup> CA Writ Application 781/2008 [2009].

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> SC Appeal 10/2009 [2014].

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> See *Christian Sahanaye Doratuwa Prayer Centre (Incorporation)*, S.C. Determination No. 2/2001; *New Wine Harvest Ministries Incorporation*, S.C. Special Determination No. 2/2003; *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>83</sup> *Prohibition of Forcible Conversion*, S.C Determination No. 4/2004.

<sup>84</sup> *Christian Sahanaye Doratuwa Prayer Centre (Incorporation)*, S.C. Determination No. 2/2001; *New Wine Harvest Ministries Incorporation*, S.C. Special Determination No. 2/2003; *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>85</sup> *Christian Sahanaye Doratuwa Prayer Centre (Incorporation)*, S.C. Determination No. 2/2001.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *New Wine Harvest Ministries Incorporation*, S.C. Special Determination No. 2/2003.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> 1977 SCR (2) 611.

<sup>104</sup> *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> H. M. Seervai, *Constitutional Law of India* (1978), at p.1287.

<sup>109</sup> *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>110</sup> *Ibid.*

<sup>111</sup> H. M. Seervai, *op. cit.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> [1998] Application No. 140/1996/759/958-960.

<sup>115</sup> [1993] Application No. 14307/88.

<sup>116</sup> *Larissis and Others v. Greece* [1998] Application No. 140/1996/759/958-960.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)*, S.C. Special Determination No. 19/2003.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Kokkinakis v Greece* [1993] Application No. 14307/88.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Views of the Human Rights Committee under art. 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights*, 85<sup>th</sup> Session, concerning Communication No. 1249/2004, CCPR/C/85/D/1249/2004 (Oct. 31, 2005).

<sup>125</sup> *Ibid.*

<sup>126</sup> Chandani Kirinde, 'No fundamental right to spread a religion: SC', *The Sunday Times*, 10 August 2003, at: <http://sundaytimes.lk/030810/index.html> [accessed on 30 May 2015].

<sup>127</sup> Alexandra Owens, 'Using Legislation to Protect Against Unethical Conversions in Sri Lanka', [2007] 12 *Journal of Law and Religion* 323- 325.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Freedom of Religion Bill* [hereinafter *Government Bill*], Preamble. Published in the Gazette on 27 June 2005.

<sup>130</sup> *Prohibition of Forcible Conversion of Religion Bill* [hereinafter *JHU Bill*]. Published in the Gazette on 31 May 2004 and presented before Parliament by the Venerable Dr. Omalpe Sobhitha Thero on 21 July 2004.

<sup>131</sup> Section 2(1) *Government Bill*.

<sup>132</sup> Section 8(a) *JHU Bill*.

<sup>133</sup> Section 4(a) *JHU Bill*; Section 7(1) *Government Bill*.

<sup>134</sup> Section 7(2) *Government Bill*.

<sup>135</sup> Alexandra Owens, *op. cit.*, 323; *Prohibition of Forcible Conversion*, S.C Determination No. 4/2004.

<sup>136</sup> *Prohibition of Forcible Conversion*, S.C Determination No. 4/2004.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> Alexandra Owens, *op. cit.*, 323.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Prohibition of Forcible Conversion*, S.C Determination No. 4/2004.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Nineteenth Amendment to the Constitution*, S.C. Determination No. 32/2004.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Prevention of Terrorism Act No. 30 of 1981.

<sup>153</sup> Law & Society Trust (LST), Briefing Note on Tissainayagam Case: 17 September 2009 - Case of J.S. Tissainayagam, available at: [www.lawandsocietytrust.org/web/images/PDF/briefing%20note.doc](http://www.lawandsocietytrust.org/web/images/PDF/briefing%20note.doc) [accessed on 30 May 2015]

<sup>154</sup> The Judicial Mind, *op. cit.* p 243.

<sup>155</sup> *Ibid.* p 263.

<sup>156</sup> INFORM, Repression of Dissent in Sri Lanka [June 2014], p 3.

<sup>157</sup> [2009] (1) Sri.L.R 54.

<sup>158</sup> [2007] (1) Sri. L.R. 191.

<sup>159</sup> Deeghavapi, *op. cit.*

<sup>160</sup> This was due to the fact that the alienation occurred in terms of Circular IR25 issued by the Secretariat of the then President. As such, the Court held that it was not issued in terms of any applicable law.

<sup>161</sup> The Judicial Mind, *op. cit.* p 87.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ashik v. Bandula and Others* [2007] (1) Sri. L.R. 191.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> SC/FR No. 614/2004; SC/FR No. 614/2004; SC/FR No. 615/2004 and SC/FR No. 616/2004.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*


<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

# ANNEX 1



**ආගමික කටයුතු හා සදාචාර වර්ධන අමාත්‍යාංශය**  
**මහ අලුවෙහි, ඉලුක්ක රෝහල් මාර්ගයේ**  
**MINISTRY OF RELIGIOUS AFFAIRS AND MORAL UPLIFTMENT**

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මගේ අංකය } My No. } <b>පා/1/පා.ක./ඉදිකිරීම්/2008</b>	ඔබේ අංකය } Your No. }	දිනය } Date } <b>2008. 10. 16</b>
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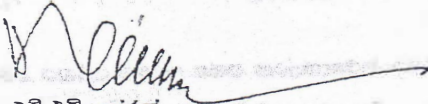
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**20 OCT 2008**  
 1157

**පොලියුමේන් භූමි**  
**ශ්‍රී ලංකා පොලියුමේන් දෙපාර්තමේන්තුව**  
**කොළඹ**

**නව ආගමික ස්ථාන ඉදිකිරීම**

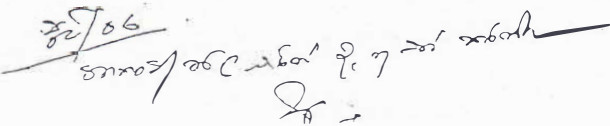
විධිමත් අනුමැතියකින් තොරව නව ආගමික ස්ථාන ඉදිකිරීම හේතුවෙන් පැනවැස්සිය හැකි හැදිලිකාරී තත්වයන් වලට පත්වී සිටින ප්‍රාදේශීය ලේකම්වරුන් සහ පළාත් පාලන ආයතන ප්‍රධානීන් අමතන ලද 2008.09. 10 සහ 2008. 10.15 දිනැති ලිපි දෙකක පිටපත් මේ සමඟ එවමි.

මෙම උපදෙස් ක්‍රියාත්මක කිරීම සඳහා අවශ්‍ය සහාය ලබාදීමට පියවර ගන්නා ලෙස ඔබගේ නිලධාරීන් දැනුවත් කරන මෙන් ඉල්ලා සිටිමි.

  
 එච්.එම්. හේරත්  
 ලේකම්  
 ආගමික කටයුතු හා සදාචාර වර්ධන අමාත්‍යාංශය

පිටපත්  
 ජනාධිපති ලේකම්, ජනාධිපති ලේකම් කාර්යාලය  
 ඩොර්ට් කටයුතු කොමසාරිස් ජනරාල්  
 අධ්‍යක්ෂ, හින්දු ආගමික හා සංස්කෘතික කටයුතු දෙපාර්තමේන්තුව  
 අධ්‍යක්ෂ, ක්‍රිස්තියානි කටයුතු දෙපාර්තමේන්තුව  
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 ප්‍රාදේශීය ලේකම්, .....

ගරු නගරාධිපති භූමි, ..... මහ නගර සභාව / නගර සභාව  
 ගරු සභාපති භූමි, ..... ප්‍රාදේශීය සභාව

  
 20/10/08

# ANNEX 2

H 036149 - 10,000 (2010/10) P මි. ලංකා රජයේ මුද්‍රණ අදායතනවේදය


පොලිස් 33  
Police 33  
(N° S & E.) 8772

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ශ්‍රී ලංකා පොලිසි  
SRI LANKA POLICE

දුරකථන පිටපත් පොත  
TELEPHONE REGISTER

7 From Person	8 To Person	9 No.	10				
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බුද්ධශාසනා හා ආගමික කටයුතු අමාත්‍යාංශය  
புத்தசாஸனம் மற்றும் மத அலுவலகங்கள் அமைச்சு  
MINISTRY OF BUDDHASASANA & RELIGIOUS AFFAIRS

අංකය / No. : BSRA/BRA/03/Con./Gen./2011      දිනය / Date : 2011.09.02

ප්‍රාදේශීය ලේකම්,  
ප්‍රාදේශීය ලේකම් කාර්යාලය,

නව ආගමික ස්ථාන ඉදිකිරීම්

ඒකාබද්ධ ස්ථාන ඉදිකිරීම් සම්බන්ධයෙන් බිබි බඩා පොලී කර ඇති අංක සා1/ආක/ඉදිකිරීම්/2008 හා 2008.09.10 හා 2008.10.16 දිනැති ලිපි සහ පොලිස්පතිතුමා විසින් නිකුත් කර ඇති අංක B.3/227/2008 හා 2009.04.07 දිනැති නියෝගය ගතපරිදි ඔබගේ අවධානය යොමු කරමි.

02. ඒ අනුව ඕනෑම ආගමික ස්ථානයක් ඉදිකිරීම සඳහා මෙම අමාත්‍යාංශයේ අනුමැතිය 'ආගම 01' ආකෘති පත්‍රය මගින් ලබා ගත යුතු වේ. එම අනුමැතිය ලබා දීම සඳහා ප්‍රදේශයේ ප්‍රාදේශීය ලේකම්වරයා සහ ප්‍රාදේශීය සභාවේ හරු සභාපතිතුමාගේ නිවැරදිත්වය හා නිර්දේශය එම ආකෘති පත්‍රය මගින් ලබාදන්නා අතර, එහිදී එම ප්‍රදේශය තුළ පවත්නා සාමාජික, හම්බියා සහ ආගමික සංවිධාන ආරක්ෂා වී වැඩිදියුණු වීම ප්‍රවෘත්තියක් ලා සලකමින්, ප්‍රදේශයේ පවත්නා ආගමික ස්ථාන වල සහ ජනතාවගේ අදහස් මතපෙරිදි විශේෂ සැලකිල්ලක් යොමු කරනු ලැබේ. එබැවින් අමාත්‍යාංශයේ විධිමත් අනුමැතියකින් තොරව ඉදිකරනු ලබන සහ පවත්වාගෙන යනු ලබන ඕනෑම ආගමික ස්ථානයක් හෝ එවැනි ආගමික සංස්ථාවකින් ප්‍රතික්ෂේපයක් ආගම සුවිධානව පවත්වාගෙන යනු ලබන ඕනෑම කටයුත්තක් නිති විරෝධී වන අතර, එවැනි අනවසර ඉදිකිරීම් ගෞරව කටයුතු සේනාවන් ප්‍රදේශයේ ජනතාව හේදකින්ක විමසී නිරන්තරයෙන් සිදු වේ.

03. වර්තමානයේ අධිකරණ ප්‍රධාන සභාවේ පවත්වාගෙන යනු ලබන ආගමික ස්ථාන සම්බන්ධ ගැටළු බොහෝ ප්‍රමාණයක් ලැබෙමින් පවතින බැවින් සහ ඒ හේතුවෙන් ප්‍රදේශයේ ජනතාව අතර එමඟින් පැවති සාමාජික විනාශය සහ ආගමික සංවිධානය බිඳ වැටී නැවුම්කාරී සහ ගැටළුකාරී විනාශයන් එම ප්‍රදේශ තුළ නිර්මාණය වෙමින් පවතින බැවින් මෙම සඳහා සුදුසු විධිමත් වැඩපිළිපවිලක් සකස් කර ක්‍රියාත්මක



# ANNEX 3



72  
3

බුද්ධශාසන හා ආගමික කටයුතු අමාත්‍යාංශය  
புத்தராமரணம் மற்றும் மத அலுவலகங்கள் அமைச்சு  
MINISTRY OF BUDDHASASANA & RELIGIOUS AFFAIRS

අංකය නි.න. No.	BSRA/BRA/03/Con./Gen./2011	ඔබේ අංකය உமது இல. Your No.	දිනය திகதி Date.	2012.01.04
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සියලුම මහ නගර සභා හරු තනතුරුධාරීන්ගේ,  
සියලුම නගරසභා/ ප්‍රාදේශීය සභා හරු සභාපතින්ගේ,  
සියලුම දිස්ත්‍රික් මල්කමුණු සහ ප්‍රාදේශීය ලේකම්වරු,

නව ආගමික ස්ථාන ඉදි කිරීම හෝ අනවසර ආගමික ස්ථාන විධිමත්ව පවත්වාගෙන යාම

ඉහත කරුණු සම්බන්ධයෙන් මෙම අමාත්‍යාංශයේ ජ්‍යෙෂ්ඨ සහකාර මල්කමුණු (අධ්‍යක්ෂක කටයුතු) තමන් නිකුත් කර ඇති අංක BSRA/BRA/03/Con./Gen./2011 හා 2011.09.02 දින දරණ ලිපිය මෙයින් අවලංගු කරමි.

තව ආගමික ස්ථාන ඉදි කිරීම හෝ අනවසර ආගමික ස්ථාන විධිමත්ව පවත්වාගෙන යාම සම්බන්ධයෙන් සිටි වෙන ජ්‍යෙෂ්ඨ කර ඇති අංක හා 1/ආ.ක./ඉදිකිරීම්/2008 හා 2008.09.10 සහ 2008.10.16 දිනැති ඒකලේඛ කවදුරටත් එසේම පත්‍රාවේනස්ව බලපවත්වන බැව් කරුණුමෙන් දන්වමි.

මේ සම්බන්ධයෙන් ඔබ දක්වන සහයෝගය ඉතා අගය කොට සලකමි.

එච්.පී.කැමිසන් සේරත්

ලේකම්,

බුද්ධශාසන හා ආගමික කටයුතු අමාත්‍යාංශය

පිටපත් :-

- |   |                                |
|---|--------------------------------|
| 1. ජ්‍යෙෂ්ඨවරයාගේ,  | - නිරු. දැ. ගැ. ස. සහ ද. ක. ස. |
| 2. අධ්‍යක්ෂක කටයුතු සහකාරවරයාට                                  | - එම-                          |
| 3. අධ්‍යක්ෂ, පිහිටි ආගමික හා සංස්කෘතික කටයුතු දෙපාර්තමේන්තුව.   | - එම-                          |
| 4. අධ්‍යක්ෂ, ක්‍රිස්තියානි ආගමික කටයුතු දෙපාර්තමේන්තුව.         | - එම-                          |
| 5. අධ්‍යක්ෂ, මුස්ලිම් ආගමික හා සංස්කෘතික කටයුතු දෙපාර්තමේන්තුව. | - එම-                          |
| 6. ලේකම්, 2600 ශ්‍රී සමබුද්ධත්ව ජයන්ති ජනා. මධ්‍යම. කමිටුව      | - එම-                          |

# ANNEX 4

## PLACEMENT OF CASES ON THE PERCEPTUAL MAP

### **Substantive – Restricting**

- The *Incorporation Cases* and the *Noise Pollution Case* were classified as being ‘Substantive-Restricting’.
- The SC Determination on the *Incorporation Cases* is more restrictive than the *Noise Pollution Case* because it prevented the religious organisations from functioning in its entirety. The determination on the *Noise Pollution Case* only instituted the ban on loudspeakers at certain times of the day.
- The SC Determination on the *Incorporation Cases* is more substantive than in the *Noise Pollution Case*. This is because the Court in the *Noise Pollution Case* dealt with both religious freedom and atmospheric pollution. In contrast, the Court focused on the substance of religious freedom alone when deciding the *Incorporation Cases*.

### **Substantive – Advancing**

- The SC Determination on the *Anti-Conversion Bill* and the *19A* were both classified as ‘Substantive-Advancing’.
- The SC Determination on the *Anti-Conversion Bill* was less advancing than the *19A*. The Court, in the *Anti-Conversion Bill Determination*, held that subject to narrowing the scope of ‘allurement’ – the Bill would be constitutional. Therefore, the Court did not assess the Bill’s adverse impact on the freedom of religion on minority religious communities to the same extent that it did in the *19A* determination.
- Lower Court: 15/2009: this lower court case utilised Article 10 and Article 14(1)(e) to justify why a private prayer meeting with friends could not amount to a disturbance of the peace. Thus, using the substance of the freedom of religion in determining its eventual outcome.

### **Procedural – Restricting**

- 33340, 588893(66), 38946 and 56189/C/81 were classified as being ‘Procedural Restricting’
- 3340, 588893(66) and 38946 were more restricting than 56189/C/81 because they resulted in an order that penalised worshippers without a proper assessment on how this would impact their religious freedom. On the other hand, in 56189/C/81 the Magistrate warned both parties not to disturb the peace. Therefore - although the substance of the order failed to take into account the freedom of religion of the worshippers - the final order did not criminalise their activities.

### **Procedural – Advancing**

- The *School Admission Case*, the *Four Square Church Case*, the *Pradeshya Sabha Case* and the *Deeghavapi Case* were classified as being ‘Procedural-Advancing’
- The *School Admission Case* was the most advancing as it guaranteed the applicant’s right to a religious education in the same manner as was originally envisioned when the school was vested in the state.
- The *Pradeshya Sabha Case* was the most procedural as its outcome rested solely on the interpretation of a legal instrument and its permissive limits (without reference to the applicant’s freedom of religion)
- The *Foursquare Church Case* was more substantive than the *School Admission’s Case* as the Court briefly considered the petitioners right to worship as an ancillary factor.
- The *Deeghavapi* judgement was the least advancing as the Court did not specifically deal with the petitioner’s right to religion – but focused more on the land rights of displaced Muslim families during the time of the Tsunami.









