LEGAL ENVIRONMENT FOR LOCAL GOVERNMENT IN SRI LANKA

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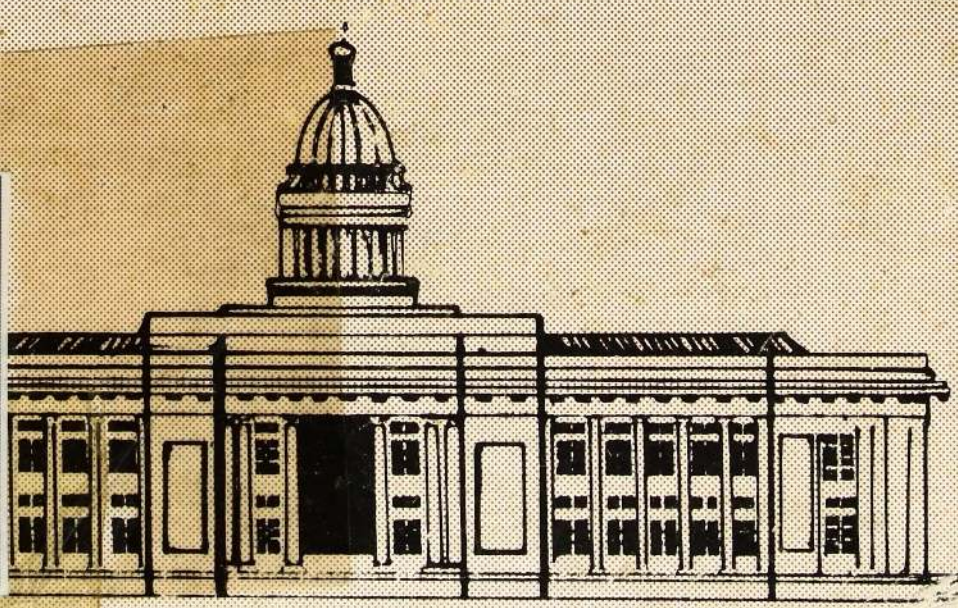
POSTGRADUATE INSTITUTE OF MANAGEM
University of Sri Jayewardenepura



LEGAL ENVIRONMENT FOR LOCAL GOVERNMENT IN SRI LANKA

Edited

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Dehiwala, Sri Lanka

Printed by Nelu's Offset Printers Pvt. Ltd.

Nugegoda, Sri Lanka

ISBN NO: 955-9054-07-4

Postgraduate Institute of Management,

73/21, Sri Saranankara Road

Dehiwala

Sri Lanka

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PREFACE

Sri Lanka is endowed with a well organised system of local government administration providing services to the public in terms of the powers, functions and duties vested in the local authorities by the main ordinances and a host of other subsidiary legislation. The local government institutions in our country were greatly influenced during the pre-Independence period and more specifically during the second half of British colonial rule (from 1865 to 1948) by local government developments and practices in the United Kingdom.

It is also evident that the British administrators were quite aware of the indigenous traditions of local administration coming down from the distant past of our country. Village level organisations like the gamsabha, which functioned under the village leaders, enjoyed powers to administer local services and also to perform judicial functions such as dealing with petty offences and reconciling disputes. Such long established features of local administration left a deep impression in the minds of the British rulers and influenced them in the task of evolving a system of local government to suit the colony.

The first experiments in representative government were introduced through our local government reforms. While the major towns like Colombo, Kandy and Galle were brought under the municipal administration from 1865 onwards with more powers vested in official members, our rural areas had the distinction of being declared "Village

Committees" for the purpose of local administration from the very beginning of British colonial rule.

The provision of civic amenities like sanitation, roads, water supply and a whole range of local government functions dealing with a variety of utility services became the responsibility of the local authorities, thus relieving the central government of the burden of providing such facilities and services.

Institutions such as Municipal Councils, Urban District Councils, Sanitary Boards and Village Committees were dominated by ex- officio members representing the interests of the colonial administration. There was consequently an agitation for representative local government whereby the local population could have a direct say in their affairs particularly since they paid rates and taxes to supplement the financial support received from the central government. "No taxation without representation" was the slogan echoed with the same fervour at the local level as it was uttered at the national level. The cumulative effect of this agitation was the grant of universal adult franchise in 1931 under the Donoughmore Reforms and the setting up of a separate Committee on Local Government under the State Council.

British thinking on local government reforms in the United Kingdom focused on strengthening the local bodies there with more power and authority to cater to the needs of the local community; and this thinking in turn, had a direct bearing on the laws introduced in Ceylon by the British rulers. A striking example of this influence is the Housing and Town Improvement Ordinance of 1915.

At the time Ceylon gained Independence in 1948, the institutional arrangements for attending to local government functions were implemented through several types of authorities -municipal councils for

major cities, urban councils for important towns, town councils for emerging townships and village councils for the rural areas.

A major change in this system occurred in July 1981 with the establishment of District Development Councils, which took over the functions of Town Councils and Village Councils under their purview with responsibility to organize on a district basis all development activities relating to 15 subjects coming under 11 line Ministries. A subsequent development was the establishment of Gramodaya Mandalayas on the basis of Grama Sevaka Divisions and Pradeshiya Sabhas at the level of the Assistant Government Agent's Divisions. Their purpose was to secure people's participation in administration and support the Development Councils in carrying out programmes of work for the accelerated development of the Districts, which included the services of a local nature hitherto undertaken by the Town Councils and the Village Councils. The passage of the Pradeshiya Sabha Act No. 15 of 1987 is a landmark in the development of local government in Sri Lanka: it paved the way for a new type of local authority to cover an area co-terminus with the area administered by an Assistant Government Agent. Such areas were later selected as the appriopriate viable unit at the Divisonal level to be the agency to attend to local government and development functions under the devolved system of administration that followed after the establishment of Provincial Councils.

Local government is now a subject devolved on the Provincial Councils with constitutional safe guards "to confer (on them) additional powers but not to take away their powers" The legal environment of local government in Sri Lanka is a subject of great importance and interest against the background of the many changes that local governent has undergone in the last decade.

The Postgraduate Institute of Management feels justifiably happy that it has been able to devote a good deal of attention to the study of this subject in its Diploma programmes and more particularly in seminars and workshops. "The Legal Environment for Local Government" formed the theme of a well attended one-day seminar held at the Institute on July 14, 1991, and this publication contains the valuable papers presented on the occasion by a distinguished panel of speakers on a subject that has not received the attention it deserves. The seminar papers have also been supplemented with a chapter on "Constitutional and Legal Aspects of Local Government in Sri Lanka" by the Editor in order to include an area relevant to the main theme of the Seminar. "Local authorities as legal entities" is a concept that needs to be understood by everybody, and this book, it is fervently hoped, will make such understanding possible.

I wish to acknowledge the inspiration, guidance and resource allocation received from Dr Gunapala Nanayakkara, Director, PIM, and the ready assistance given by my colleague Mr V. N. Sivaraja in organizing the Seminar.

The contributors to this publication are eminent authorities in their respective fields, and to all of them who made the Seminar a great success and this book a reality, I say "Thank you" again.

In the task of getting the papers at the Seminar published in this form, several people gave of their best: Mr Carlton Samarajiwa copy edited the manuscripts and read the proofs; Mrs Ranjani Wimaladasa typeset the pages; Messrs Shantha Eliwalatenna and Theshanthe Dhammike Palliyaguru showed their expertise as desktop publishers; and *Nelu's* did the printing.

July 1992

Dr H. A. P. Abeyawardana

ACCESS AND SERVICE IN LOCAL GOVERNMENT

Introductory Address

by

Dr Gunapala Nanayakkara

BPA (Vidyo), MPA(York), Ph.D (Carleton)

Director, Postgraduate Institute of Management

As you may be aware, Legal Environment of Provincial and Local Government in Sri Lanka is a basic component of the curriculum for the Postgraduate Diploma Programme in Provincial Administration and Government at our University. I am particularly thankful to Dr H. A. P. Abeyawardana and his colleague Mr V. N. Sivarajah for having conceptualized the framework of this seminar and working with the authorities on the subject in preparation for the session. I am very pleased to welcome Prof. G. L. Peiris, Vice-Chancellor of the University of Colombo, and thank him for having accepted our invitation to make the keynote address this morning. I warmly welcome Dr (Mrs) Shirani Bandaranayaka, Head of the Department of Law, University of Colombo, and Dr Susantha de Silva, Addl. Director General, Ministry of Health

and Women's Affairs. The other two speakers, Mr Gamini Epa, Auditor General, and Mr N. D. Dickson, Director General of UDA, are expected to arrive here a little later this morning. Let me welcome the officials of the various Ministries of the Central Government, specially Mr Asoka Gunawardena, Secretary, Provincial Councils, and Mrs Kamala Wickremasinghe, Secretary, State Ministry of Education. A special welcome to the Mayors of Nuwara Eliya and Ratnapura, and the Chairman, Urban Council, Matara who have travelled the distance to attend this seminar. I also welcome other invitees and administrators and students of our programmes who are present here today.

I believe that the presentations you are going to hear today would be original in their formulations and useful for a wider readership, and therefore, I thought that they could be published by the Institute.

While leaving the core of the subject matter of the Seminar to the invited speakers, let me say a few words about the relevance of the themes in our agenda for the students in our Diploma programmes. No study of the legal environment of Local Government could begin without recourse to the basic principles that justify the presence of Local Government institutions. This is because a prime motive of legal reform today is to preserve and develop the local bodies in order to give a better meaning to the principles of Local Government in practice.

Why Local Government? Under any form of government in a nation, Local Government will exist in whatever form that suits the national political considerations of the times. Thus, a totalitarian regime, eager to consolidate its hold of the centre of the community and propagate its values and programmes, may have a hierarchically or centrally controlled local unit. A highly egalitarian and democratic society, on the other hand, may envisage a multiplicity of small local government units where issues important for the community are deliberated on and solutions are

worked out by the local community concerned. The English system is probably an example of the latter. In Sri Lanka, in our own way and in our unique socio-political structure, we are evolving a set of institutions which shall uphold these democratic values.

There are two principles of Local Government which I would like to recall for your attention. One is about **access** that allows maximum possible or widespread participation of the community. It means the institutional capacity to utilize the strengths of the views of the community through direct involvement in local level planning, project implementation and other areas of decision making. The central reason here is that the capacity of government to promote access is in part an inverse function of the size of governing bodies. The local unit is small enough to allow the widest possible direct participation of the citizen.

The second principle is about **service**, and, in fact, it is related to the principle of access. The service principle suggests that Local Government has to achieve technical adequacy in due alignment with community needs and interests. "Government is besieged," echoed John Stuart Mill, "by so great and various an aggregate of duties that, if only on the principle of the division of labour, it is indispensable to share them between central and local authorities." Thus, it is clear that a stable and efficient government system would be the outcome of the vigorous and conscious application of the principles of access and service.

Thinking of the future roles of Provincial and Local Government Administrators who are participating in our Diploma programmes and present here today, I would like to raise two issues that are related to the two principles of access and service. One of them is the degree to which devolution and decentralization have taken place in our context. Many people talk about this issue because the political implications of the devolution of functions are many. There are, I believe, certain legal and

perhaps constitutional constraints impinging on effective devolution and decentralization. My purpose, of course, is not to discuss any of these, primarily because they are not within my ability. I am sure that Professor Peiris will touch upon them later on. However, I would like to look at the process of devolution from a bottom-up view. From a purely administrative point of view, one could see the problems of devolution and decentralization as problems of administrative inadequacies. These inadequacies are everywhere, in the province as well as at the centre; these are as much matters of numbers and qualities of administrators as organizational and procedural. One wonders if there is a dearth of power, statutory and otherwise, with regard to what administrators at the local level could do. I think that there is a dearth of people who are capable of defining and acquiring into their hands the kinds of powers that are already there in the Statutes. If these powers were fully understood, shared and exercised there would be a great deal of new activity and development at the local level. Our Diploma programme, therefore, will try to provide you with the understanding as well as the instruments that would make you feel strong and capable so that you can be ready at the receiving end of devolution and decentralization. I say this because weak administration at the provincial and local levels sparks off fears of inefficiency in relation to devolution.

With strong administration, for what purpose do we exercise the powers? A few days ago, I received a letter from the Janasaviya Commissioner which suggested that the Institute focused on the "reverse process" of examining local issues. What he meant by the reverse process was that we need to have bottom-up thinking, as opposed to top-down decision making, rigid bureaucracies, conventional ways of interpreting laws and so on. The need is to have open bureaucracies and open examination of laws and ways of doing. We have a long way to go to reach the people in order to obtain their true participation in local government

and design the services, taking into account the wishes and the energies of the people.

We know that His Excellency the President of the country has launched policies and programmes to reverse the thinking in the country, to re-orient the bureaucracies in order to have a focus on people. I think we also need to realise that this focus would be effective only if we reverse our attitudes. Our bureaucratic culture is such that whenever we enter an office or a bureau and occupy an office we tend to be governed by the thinking associated with the office. We wear a tie; we want to feel comfortable; we want to go in a car; and we go to the public. We go to the public, in a top-down process. We want somebody to open the door so that we can get down easily from the car; somebody to carry our bag. May be that our salaries are very low and hence we are status conscious. Where do we get the inspiration to define our jobs? Is it from the minor things attached to the office like air conditioning, the transport facilities available or the support system? Or, is it from the satisfaction that the people derive from our work?

We are not poor in terms of resources. Surely, we are not poor in terms of human resources. We are perhaps poor in our thinking. We are rather poor in our programmes and policies. There is poverty in the programmes and policies, so we have to bring richness to them. This is another challenge we face when we go to the Provincial level and the Local Authorities with our Diplomas. I know you are already working. But with the new Diplomas, I suppose there would be a new mandate. The first is to exercise the powers to the fullest. Then, work with the people.

Then only will the political masters be happy and be able to develop a team that works. These are some of the ideas I want to share with you, which may have some relevance to the subject of Legal Environment which we are going to examine today.

DEVOLUTION OF POWER :

THE CHANGING LEGAL FRAMEWORK

by

Professor G. L. Peiris

LL. B. (Hons) (Ceylon), Ph. D. (Oxon), Ph. D. (Sri Lanka)

Vice Chancellor and Professor of Law, University of Colombo

The topic that I have been asked to address you on today is the changing legal framework of devolution of power in Sri Lanka. I think the topic is of practical importance from several points of view, and it is indeed appropriate that we should be considering this subject in earnest this morning.

In his opening remarks, Dr Gunapala Nanayakkara, Director of the Postgraduate Institute of Management, made a significant observation. He said that the primary problem that we were concerned with in this area was the extent of devolution of power, decentralization, handing over from the centre to the periphery, and he pointed out that the existing legal structure might contain some constraints and inhibitions with regard to the effectiveness of that process. That is, I think, a very true

observation, and we need to examine the ways and means by which the legal structure needs to be modified in order to make possible the attainment of the policy objectives which he identified: the whole process of decentralization and devolution.

Let me begin by identifying the rationale of any form of Local Government. Local Government is participatory democracy. It encourages involvement on the part of ordinary people in the functions of Government and in the processes of decision making. As you know, the democratic ideal originated in ancient Athens with the City State. In the City State it was possible for the entire adult population to take part directly in the Government of Athens. It was not necessary for the population of Athens to elect their representatives because the numbers were small enough and the people concerned were sufficiently civic-minded. They participated directly in the Government of the City State. However, as human society became more complex with the progress of civilization, as numbers became unwieldy and as the functions of government proliferated to a very substantial extent, direct democracy ceased to be a viable form of government and it became necessary to identify other methods for democracy to be achieved; and representative government was the primary response to that challenge.

Representative democracy, if it functions at the centre alone, will not enable the true realization of democratic objectives, because requirements vary from province to province, from district to district, from town to town, and from village to village. There is some degree of diversity, multiplicity, plurality with regard to these. Therefore, the formulation of a policy at the centre alone will not enable the true purposes of democracy to be accomplished in practice. Local Government is, consequently, necessary to enable people at the

grass-root levels to have an impact on the decision making process. That is the pith and substance of the rationale of Local Government.

Another interesting observation that was made by Dr Gunapala Nanayakkara was with regard to the top-down process in decision making in our country. That is also very true: even today, when we talk of devolution, we consider what powers the centre can devolve to the periphery. The assumption is that all power is in the centre, and we are trying to decide what are the parameters within which a process of devolution can be meaningful and pragmatic.

But why don't we do it the other way round? After all, that is very much in keeping with the Eastern tradition of public administration. In this country we had the Gam Sabhas, the Rate Sabhas, and so on, and our people have always had a tradition of substantial involvement in the decision making process at the local level. It is not something alien to us. It is not uncongenial or unfamiliar. It is part and parcel of our inherent political culture, which has been handed down to us over several generations. Why don't we, therefore, ask ourselves what are the decisions that can effectively be made at the grass-roots level, at the village level?

There are matters, of course, which cannot be effectively dealt with at that level. For example, an irrigation scheme may serve several provinces. It will not be realistic to make decisions pertaining to it exclusively within the ambit of one Village Council. In these contexts we need to consider what are the types of decisions that we would like made at a slightly higher level, let us say, the Pradeshiya Sabhas. Now, even at that level there may be certain decisions that cannot be effectively made and implemented because there may be repercussions over a wider geographical area or in respect of a multiplicity of subjects which do not fall exclusively within the purview of any one Pradeshiya Sabha.

In that case you go to the next tier - the Provincial Council - and it is only in the last resort, in the final analysis, that you reach the national legislature, at the highest level. It is not the point of origin, but the point of culmination - not the first resort, but the last resort. What you are trying to encourage, then, is the making of decisions at the grassroot level, and then you hand over this responsibility upwards, from step to step, from level to level, until you reach the top most tier - namely, the level of national sovereignty. In the legislative sphere this would be the Parliament of Sri Lanka, in the executive sphere the President and in the judicial sphere the Supreme Court, but that is the highest level and you reach it only in exceptional situations where the local mechanisms are not adequate for the effective accomplishment of the purposes which are aimed at.

I would suggest that it is such a conceptual structure that is most in keeping with the true realization of the democratic objectives of our nation, and that anything else tends to be illusory and unreal and involves merely lip service to democratic mechanisms and ideologies. I would strongly commend to you the consideration and acceptance of such a philosophy which is a reversal of what we are accustomed to but which, I would suggest, is very much in keeping with the country's needs at the present time.

Dr Nanayakkara spoke of legal and constitutional constraints. In order to understand what these constraints are we need to distinguish clearly between two competing approaches to the legal environment of devolution. The two competing approaches derive, respectively, from the unitary constitutional tradition and from the federal constitutional tradition. There is a clear divergence between these two approaches. That is, I think, a point of some importance, and I hope you will bear with me if I endeavour to elaborate on that in some detail.

All forms of government - unitary, federal, quasi-federal - recognize the need for some form of devolution. Without it, as I told you, self-government in any true and substantial sense is not possible. However, there are important differences of nuance and emphasis, depending on whether one accepts the unitary philosophy or the federal philosophy.

The unitary philosophy, of course, means that all power is ultimately in the centre, and there is no devolution or decentralization as a matter of law. There may be, as a matter of practice and convenience, but not as a matter of mandatory legal necessity. I will explain to you what I mean by that. In a Unitary State, like the United Kingdom, there are Town Councils, Borough Councils , and there is the Greater London Council, and so on. All these have certain powers with regard to governing particular areas. But, the essential point is this. The Parliament of the United Kingdom at any time can interfere and diminish or enhance the extent of these powers. It can broaden, it can contract. That power possessed by the Parliament of the United Kingdom is untrammelled and unqualified ; it is unrestricted, as a matter of law.

The unitary structure is based on the concept of Parliamentary omnicompetence or sovereignty of Parliament. The powers of Parliament, at any rate in legal theory, are total; they are universal and all-embracing.

The federal constitutional structure is a very different matter. In this setting what is sovereign is not Parliament but the Constitution. The typical example of that model is, of course, the United States of America. It is also true of Canada, of Australia, Germany, India and so on. It is the constitutional instrument in these countries which regulates the division of power, between the centre and the periphery. The Constitution

declares what powers belong to the centre and what powers devolve on the provinces or the states, as the case may be.

In a federal situation that cannot be changed by Parliament, by having recourse to ordinary legislation. That is the feature of a federal form of Government. The powers of the legislature of Quebec or Prince Edward Island or New Brunswick in Canada, the powers of the legislatures of New South Wales, Queensland or Tasmania in Australia are defined by the Constitution and cannot be changed in the ordinary way by the Constitution and cannot be changed in the ordinary way by the Federal Parliament sitting, respectively, in Ottawa or in Canberra. These are the two systems.

In the unitary system you hand over all power to the Central Parliament and leave it to the Central Parliament and adjust things from time to time as and when circumstances require. That is an *ad hoc* process, the final value-judgment being made all the time by the national legislature. By contrast, the federal system requires that you take these things outside the competence of the national legislature, and you provide for these in a virtually immutable sense in the form of a Constitutional instrument, which therefore has a certain sanctity or validity which towers above ordinary legislation. You have, consequently, a hierarchy of legal norms. The Constitution is the apex norm, and ordinary legislation is way below that.

When we address ourselves to the legal environment of devolution we need to ask what is the pattern, what is the legal framework of the environment which is best suited to our country, situated as we are at the present time. In that regard there is a point which I would like to emphasize. When we reflect on problems of this nature, there are no solutions in the abstract. I have identified for you the essential attributes and characteristics of the unitary system, as contrasted with the federal

system. If you ask me which of these systems is preferable, my answer would be this: it all depends on the priorities and requirements of a particular society at a given time. It is very difficult, and quite unprofitable, to generalise. This is one of the points that Pandit Jawaharlal Nehru makes with great force in his celebrated work, **The Discovery of India.**

He states that the more experience he has had of government, in its practical form, the more reluctant he has been to commit himself to solutions as a panacea for all evils for any epoch or civilization in any type of society. These are very much matters of historical, contextual and social circumstances, and what is desirable will vary from situation to situation.

Before we proceed further, it is necessary to guard against the emotive connotations of federalism. Very often, particularly in our country at the present time, it is difficult to discuss the federal option in respect of the legal environment of devolution, without losing objectivity and detachment. This is because in our own minds, we tend to identify federalism with the division or dismemberment of our country. That is not so. The essence of federalism is the pursuit of some degree of unity in the midst of diversity. That is how federal states come into being. The situation is this. There are certain provincial loyalties, provincial priorities and attributes, which are considered important. Nevertheless, the people of the country feel that for certain limited purposes they would like to come together. Take Canada as an example. As we all know, Quebec is French-speaking, the majority in Quebec are Roman Catholics. Their culture is different. It is a culture that is very much French in inspiration. The rest of Canada is English-speaking, and the majority are Protestants. So there are cultural variations between the people of Quebec, on the one hand, and the rest of Canada, on the other

hand. The people of Quebec would like to preserve these differences and to foster, develop and nurture their own culture. But for certain limited purposes, like foreign policy, the preparation of the National Budget, and similar matters, they would like to come together and evolve a federal policy. That is the core of federalism. It is sharing of power. Indeed, if that kind of sharing were not possible, then Quebec would have ceased to be a part of Canada.

Federalism, then, is not always an incentive to disintegration of a country; it can be, on the contrary, the only viable mechanism for holding together a nation which is torn asunder by cultural, religious and ethnic differences. That is one of the essential points about federalism.

The second point that needs to be made is that federalism is not a constant model. You can have more of it or less of it. You can have a degree of it, which you consider appropriate for the needs of your own country. Federalism is a spectrum rather than a split. You can have more power kept at the centre or you can have more power devolved to the periphery. It is all a question of assessing what is required at the time in a particular country. If, for example, you compare and contrast the Constitution of Canada and the Constitution of Australia you will find that the centre in Ottawa is much stronger than the centre in Canberra. In other words, the Canadian Constitution provides for a much greater concentration of powers at the centre than does the Australian Constitution. This is achieved by a simple theoretical mechanism. In Canada, the Constitution sets out all the powers that belong to the provinces. Anything that is not mentioned there belongs to the centre. The whole residue belongs to the centre. The extent of these powers is very large. That is in Canada. In Australia it is done the other way round. The Constitution defines the powers that belong to the centre and anything that is not mentioned in that list is regarded as belonging to the

States. Consequently, in Australia the trend is in the opposite direction, and the greater volume of power operations to the States.

Now this is because in Canada, the feeling was that the centre must be powerful. The truth, then, is that federalism offers a range of options, a diversity of approaches, and which of those you choose at any particular time depends on your own evaluation of national priorities.

It is impossible to deal adequately with the legal environment of devolution without considering the Thirteenth Amendment to the Constitution of our own country which attracted a great deal of controversy. This was a sequel to the Accord between President J. R. Jayewardene of Sri lanka and Prime Minister Rajiv Gandhi of India. There were specific obligations which devolved on the two States in terms of the Accord. One of the obligations which Sri Lanka accepted was the enactment of legislation to secure the establishment of Provincial Councils - 9 Provincial Councils in the 9 Provinces of Sri Lanka.

Later the Provincial Councils of the North and the East were merged, and there were 8 Provincial Councils. This was sought to be done in order to fulfil provincial aspirations and to allay minority fears. The legislation that was necessary to give effect to this objective created the 9 Provincial Councils and devolved certain powers to the Provincial Councils, legislative powers, executive powers and judicial powers.

Legislative power was devolved in this manner. There were three different lists that were prepared as part and parcel of the Thirteenth Amendment. The three lists were the Provincial Council List, the Reserved List and the Concurrent List.

The Provincial Council List emumerated topics which would in future fall within the purview of the Provincial Councils. With regard to these

matters Parliament sitting in Sri Jayewardenepura would ordinarily not be competent to legislate. By contrast, responsibility for the topics contained in the Reserved List was retained by the Parliament of Sri Lanka.

The third list was called the Concurrent List. These are matters in respect of which responsibility was shared between the centre and the periphery. The Indian Constitution also contains this feature. Accordingly, as far as the legislative power was concerned, there emerged a division of powers. Some powers are retained by the national Parliament, other powers are handed over to the Provincial Councils, and yet other powers are to be jointly exercised by the centre and the provinces. With regard to Executive power, in each of the Provinces there was to be a Governor. Under the Governor is a Council, a Chief Minister for that Province and a Council of Ministers. They would have executive responsibilities. In the judicial sphere also there was some degree of devolution because there were going to be Provincial High Courts. In all three spheres, then, there was some degree of devolution and decentralization, the mechanisms for which were provided for in the Thirteenth Amendment to the Constitution of the Republic of Sri Lanka.

What was the issue which created such intractable difficulty in the Thirteenth Amendment case which, indeed, split the Supreme Court of our country right down the middle? As you know, the majority opinion sustained itself by only one vote.

Our Constitution contains certain features invested with a special sanctity. These are basic attributes which can only be changed by a special procedure involving a referendum. One of these features is that the Republic of Sri Lanka is a unitary State. That becomes, then, a fundamental feature of the organic entity which we describe as the Republic of Sri Lanka.

This particular of our constitution cannot be altered by a 2/3rd majority in Parliament alone. If it is to be altered validly, it has to be done in consequence of a referendum in which all the people of our country have the right to express their wish.

The provision relating to the Unitary State is one of the provisions which require, as a matter of legal necessity, the holding of a referendum and acceptance of the proposal by the majority of the people of our country. The Jayewardene-Gandhi Accord and the legislation emanating from that Accord were not submitted to the people at a referendum. Therefore, the question of law which the Supreme Court had to decide was whether the extent of devolution contemplated was compatible with the legal instruments that govern us. The legal instrument in this case was none other than the Constitution, and the question which the Supreme Court was required to decide was whether the envisaged degree of devolution was consistent with the paramount law. That is the matter in regard to which there was a strident dissent by Justice Raja Wanasundera, in which several other Justices of the Supreme Court concurred. The dissenting judges were strongly of the view that this degree of devolution eroded substantially the unitary concept, and that holding of a referendum was, therefore, mandatory.

There is one other point which I would like to make. We have to learn something from the Indian experience with regard to the Directive Principles of State Policy. The Constitution of India, apart from the substantive provisions, has a Chapter entitled "The Directive Principles of State Policy". This spells out the objectives in keeping with which the constitutional powers allocated to different organs are expected to be used. These are, at bottom, aspirations. But they are aspirations which condition the use of substantive powers. The Constitution of Sri Lanka contains similar directive principles. In the majority judgment in the

Thirteenth Amendment case, Justice Sharvanada declared that one of the governing directive principles is relevant in this area - namely, that focusing upon participatory values and involvement. You must do whatever is possible to enable people to express their views at the grassroots level, and to associate themselves with the business of government.

I think that is a crucial consideration. When the Presidential Youth Commission was holding sittings all over the country, from Jaffna to Matara, this is one of the points which kept recurring. These were complaints regarding a perception of alienation from the process of Government. If you have no way of making an impact on the governmental decision making process, if there is a feeling of exclusion all the time, then recourse to violence is probable. The vitality and vigour of participatory mechanisms at the base is very important, and that is the direction in which we should move in revamping the legal environment of devolution of political power in our country.

But that is subject to one caveat or reservation. The reservation is this. Recently I was discussing this problem with a German scholar. I asked him whether the German experience in respect of devolution could not be made use of directly in our country. He made the very interesting observation that, while this is quite true, yet, we must take into account a basic difference between Germany and Sri Lanka. In Germany, federalism is an inherent part of the political experience of the people. Except during a brief period under Hitler, Germany consistently had a federal or a quasi-federal form of government for a very long period of its history. The German people cannot conceive of public administration without taking for granted the existence of a federal structure. This is second nature to them. To us, federalism seems artificial. It is not part of our civic consciences.

There are two aspects to the problem of devolution of power. One is the political and legal dimension: that is, how much power should be devolved and in what way, within what parameters. But I am not at all sure that this is the more important part of the problem. There is, to my mind, also a very crucial practical problem. When the Presidential Youth Commission was sitting in Jaffna, there was a great deal of discussion about how much more power was required. Several groups gave evidence that the powers which have been given are not sufficient, and that more power is needed in order to make the system work effectively. That was natural. However, when we spoke to the administrative officers of the Provincial Council, it was very clear that even the powers that had been devolved were not being used efficiently. That is nobody's fault. It is not a lapse of the officers because what they are operating is a totally new system with which they have had no familiarity at all up to now. There is no point of reference which they can invoke in this regard. The critical factor is this: while, of course, continuing the debate with regard to how much more power needs to be devolved, we must make certain that those powers which have in fact been devolved are used to the maximum advantage of the community as a whole. That is why seminars and workshops of this kind serve an urgent practical purpose. We are not in the realm of academic theory; we are on the ground. We are trying to accomplish something worthwhile and meaningful for the vast mass of our people. We need to impart this kind of expertise to officers on the ground to carry out the administrative functions of our Provincial Councils.

In that regard my own University, the University of Colombo, has agreed to work with the Ministry of Public Administration and the Ministry of Provincial Councils in designing and offering such a course for the administrative officers of Provincial Councils. It has been supported by the Canadian High Commission and we recently had in

Colombo, Professor Noel Leon, one of the recognized international authorities on that subject, taking part in several other programmes of Colombo University. So my plea to you is that, while giving our mind to the broader constitutional aspects of the problem, we must not lose sight of the practical necessity to enhance the skills, the aptitudes and expertise of the officers on the ground who carry out these vital administrative functions of provincial entities. Only then can we make the present system come alive; it will then be full of meaning and substance for the ordinary people of our country. Otherwise, there is the danger that it will remain a theoretical abstraction.

JUDICIAL REVIEW OF LOCAL GOVERNMENT IN SRI LANKA

by

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INTRODUCTION

An individual or a group of people who had been grieved by a local authority decision could look for the protection of law through a judicial remedy. A remedy sought by an individual would attempt to review judicially an *ultra vires* act or decision of a Local Government institution. The only actions the Local Government institutions can lawfully do are those, which are *intra vires* a properly construed statute. As the constructionists of the statute are the courts, they have the responsibility to prohibit certain local actions or provide redress to those who claim to have been affected by *ultra vires* decisions.[1] Discussing the judicial interpretation of the legal limits of policy discretion of local authorities,

1. Michael J Elliott, The Role of Law in Central - Local Relations, SSRC, 1981, p.31

Keith Davies points out that the *ultra vires* principle plays the main role in Local Government activities.[2] Accordingly, a citizen who is grieved by an *ultra vires* act of a local authority, could seek relief through judicial review which would enable the citizen to obtain redress by virtue of writs such as *Certiorari, Mandamus, Quo Warranto,* etc. With the introduction of high courts of the Provinces under the High court of the Provinces (special Provisions) Act No. 19 of 1990, the Govt. has made provision to obtain relief somewhat quicker than what it used to be. In order to acquire an under-standing of the judicial review of Local Government, it is necessary to examine, firstly, the legal status of local authorities and the role of the doctrine of *ultra vires.* Secondly, our attention would be focused on the different types of writs and their effectiveness. Finally, the procedure followed in obtaining relief through writs will be discussed with specific reference to the Provincial High Courts in Sri Lanka.

II The legal status of local authorities and the role of the doctrine of *ultra vires*

a) Legal status of local authorities

Local authorities of Sri Lanka are corporate bodies, with the common characteristic of corporations. Generally, the Municipal Councils,[3] Urban Councils [4] and Pradeshiya Sabhas [5] of Sri Lanka are corporations with perpetual succession and a common seal and they have power subject to their respective Ordinances or Act, to acquire, hold and sell property and to sue or to be sued. The legal status of local authorities as corporations has granted the opportunity of questioning any of the local authority decisions. According to Buxton:

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2 Keith Davies, Local Government Low, Butterworths, London, 1983, p.62.
3. Municipal Councils Ordinance, Section 34 (1)
4. Urban Councils Ordinance , Section 31
5. Pradeshiya Sabha Act, Section 2 (2)

"The feature of Local Government law which overshadows all others is that the local authority are allowed to do only what the law permits; whenever a Council wishes to take action or, more importantly, to spend money in the name of the local authority, it must be able to produce statutory justification for its action. Historically this limitations springs from the legal status of a local authority as a corporation." [6]

In Sri Lanka this limitation of power of Local Government institutions was recognized as early as in 1904. Layard, C.J., in *Carimjee Jafferjee and others vs The Municipal Council of Colombo*, was of the opinion that if a local authority has acted in excess of its powers, a grieved person has the right to the protection of the local courts by injunction or any other appropriate relief.[8] A statutory body cannot act outside the ambit of the statute which created it, and accordingly if a local authority acts dishonestly, corruptly with improper motives or if it acts outside the authority or power given by the statute which created the Council, an action will certainly lie against that specific action of the Local Government institution. On such occasion the courts may decide that the particular action is *ultra vires t*he statutory provisions of the respective Ordinance.

b) The doctrine of *ultra vires*

"Perhaps the most important principle," say Charles Cross and Bailey, "to be considered in relation to corporate status is the doctrine of *ultra vires*."[9]. Discussing its application to statutory corporations, Lord Watson in *Baroness Wenlock V River Dee* [10] was of the opinion that,

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6. R. Buxton, Local Government, Second Edition, Penguin Education , 1973, p.98.
7. Balasingham Reports, 1904, p.75
8. ibid., p.76.
9. Charles Cross and Stephen Bailey, Cross on Local Government Law, Sweet and Maxwell, 1986, p.3.
10. (1885) 10 A.C. 354

> *"Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly confessed or derived by reasonable implication from its provisions."* [11]

The applicability of the doctrine of *ultra vires* in England as well as in Sri Lanka dates from the nineteenth century. In England the doctrine has been prominently mentioned in *Colman V Eastern Countries Railway Company* [12] in 1840 and in *East Anglian Railway Company V Eastern Countries Railway Company* [13] in 1851. The English case law which was in confusion with regard to this principle was settled by the House of Lords decision in *Ashbury Railway Carriage and Iron Company V Riche*[14]. It was held in this case that when there is an Act of Parliament creating a corporation for a particular purpose and giving it powers for that purpose, what it does not expressly or impliedly authorize is to be taken to be prohibited. Furthermore, this jurisdiction was extended to local authorities. For instance, in *London County Council V Attorney General*[15] it was held that municipal corporations could not carry out objects not authorized by the Municipal Corporations Act 1882. the doctrine of *ultra vires* was applicable to consider the validity of an action taken by a local authority in Ceylon in 1882 [16]. Consequently, it is apparent that the doctrine of *ultra vires* has been applicable for a long period both in England and in Sri Lanka.

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11. ibid, p.362
12. 10 Beav 1.16, 16 L.J. Ch. 73
13. 11 CB 775, 21 L.3 , Ch. 23
14. (1875) 7 H.L. 653
15. (1902) A.C. 165
16. Gunawardena V Manikkunambi (1882) 5 S.C.C. 22

The principles according to which the courts are prepared to apply the doctrine of *ultra vires* and review the exercise of the administrative, judicial or legislative acts of an administrative agency may be classified into a number of categories. However, the two major areas of importance are substantial and procedural *ultra vires*.

As pointed out earlier, for a decision of a local authority to be *ultra vires* it has to be proved to have exceeded the express or implied statutory limits of the powers given to the administrative agency.[17] The qualifying requirements for judicial review in relation to the doctrine of *ultra vires* were clearly pointed out by Lord Diplock in the *GCHQ* case.[18] In Lord Diplock's words:

> *"..... the decision must have consequences which affect some person (or body of persons) other than the decision maker although it may affect him too. It must affect such other person either: (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communication to him of some rational grounds for withdrawing it on which he has been given opportunity to comment, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first opportunity of advancing reasons for contending that they should not be withdrawn."*[19]

If a local authority exceeds or abuses the legal limits of the substantial powers governing its functions, such act could fall under the category of

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17. Neil Hawke, An Introduction to Administrative Law, ESC Publishing Ltd. Oxford, 1989, p.163.
18. Ibid
19. Ibid

acts in the nature of substantial *ultra vires.* If on the other hand, the local authority had violated the prescribed procedure which it should have followed in the making of a particular order or decision, this would be treated as an instance when the council has stepped outside the given authority procedurally. An analysis of the applicability of this doctrine emphasizes that it ought to be reasonably, and not unreasonably, understood and applied, and that whatever may firstly be regarded as incidental to, or consequential upon those things which the legislature has authorized ought not to be held by judicial construction to be *ultra vires.*[20]

II Judicial Review: the writs

Through its power to review the legality of administrative action, court is able to ascertain whether a local authority has exceeded or abused the legal limits of powers, governing its functions.[21] When a decision of a local authority is *ultra vires*, it could be dealt with through a range of remedies.[22] On such an occasion the courts, in applying the supervisory jurisdiction which they have over certain acts of local authorities[23] may grant orders of *certiorari, mandamus,* prohibitions and *quo warranto* and may issue injunctions in relation to acts or proposed acts which are *ultra vires* or otherwise contrary to law.[24] Thus, it could be argued that the prerogative writs are playing a significant role in connection with the doctrine of *ultra vires* as orders are the method by which the courts could decide whether the local authority has acted *ultra vires* the statutory provisions or not. According to Michael Elliott:

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20. Loard Selborne in Attorney General V Great Eastern Railway, (1880) 5 .A.C. 473, at p. 478.
21. Neil Howke, op.cit, p. 163
22. Ibid
23. Cross, op.cit, p. 180
24. Ibid

"Local Government is granted powers by statute. It may only perform those functions that the statutes sanction. The arbiters of competing views on the meaning of the Statute are the courts and the prerogative writs are the method by which they decide whether local authority has acted ultra vires its statutory power or not."[25]

In Sri Lanka, according to the Courts Ordinance of 1889, the courts have the power to grant and issue mandates in the nature of writs of *certiorari, mandamus*, prohibition, injunction and *quo warranto,*[26] and these writs have been issued by the courts against local authority decisions. Mostly these writs have been used either to quash the decision of local authorities or to question the validity of an election or an appointment of a councillor. Comparatively, an examination of the application of these writs specify that the percentage of the application of writs of *mandamus* and quo warranto to question the validity of local authority decisions is higher than the application of the writs of prohibition, *certiorari and injunction. The writ of mandamus* has been issued to restore persons to their office,[27] to get their names inserted in qualifying lists,[28] to hold fresh elections to Urban Council divisions,[29] or to hold special meetings of the council in terms of section 39 (2) of the Town Councils Ordinance.[30] There are instances where *mandamus* has been issued against the Chairman of an Urban Council who, by an improper exercise of the discretion vested in him, ruled a motion out of

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25. Michael Elliott, op.cit, pp 64-65
26. Courts Ordinance, Section 46.
27. Wijesinghe V The Mayor of the Colombo Municipal Council (1948) 50 N.L.R. 87
28. Albert Peiris V. Gunaratne (1946) 47 N.L.R. 49
29. In the matter of an application for a writ of mandamus on the G.A. Western Province to hold a fresh election for Division I, Kalubowila East of the Dehiwala - Mt. Lavinia Urban Council, (1945) 46 N.L.R.237.
30. Seenivasagam V. Kiripamoorthy (1954) 56 N.L.R. 450, Samaraweera V.Balasuriya (1955) 58 N.L.R. 118

order.[31] Earlier the writ has been issued to order village councils to renew licences for trading[32] and to direct the chairman to entertain an application for the issue of a licence. [33] This has extended even up to the extent of authorizing local authorities to pay money which is due to the Local Government Service Commission.[34] On the other hand the writ of *quo warranto* has been issued mostly to question the validity of local authority elections. There are instances where the judiciary has nullified the appointment of the Chairman [35] and members [36] of local authorities, and also has set aside the election to a ward of a local authority. [37] In fact the courts have even interfered with the rights of the member of a local authority to sit and vote at meetings. [38] However writs of *certiorari* and prohibition have been used very rarely to question the validity of actions taken by local authorities. On the other hand, the courts have issued injunctions against local authorities. In *Gnamuttu V Chairman, Urban Council, Bandarawela*,[39] the Supreme Court issued an injunction against the council restraining it from interfering with or disconnecting the petitioner's water supply. In Jayawardena V The Urban Council, Ja Ela [40] an injunction was issued to restrain the local authority from selling the plaintiff's property in lieu of unpaid taxes and rates.

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31. Wijesinghe V. Chairman Panadura Urban Council (1959) 64 N.L.R. 180.
32. Noordeen V. Chairman Godapitiya Village Council (1943) 44 N.L.R. 294.
33. Abdul Majeed V.J.B. Rajapaksa (1953) 54 N.L.R. 55
34. L.G.S.C.V. Urban Council, Panadura (1952) 55 N.L.R. 429
35. Manika V. Punchihewa (1938) 39 N.L.R. 412
36. Piyadasa V. Gunasinghe (1941) 43 N.L.R. 36, Gunasekera V. Wijesinghe (1963) 65 N.L.R. 303
37. Piyadasa V. de Silva (1951) 53 N.L.R. 46, Fernando V. Gunasekera (1946) 47 N.L.R. 512
38. Fonseka V. Sellathurai (1951) 54 N.L.R. 486, Podi Singho V. A. E.Gunasinghe (1948) 49 N.L.R. 300.
39. (1942) 43 N.C.R. 366
40. (1976) 79 (1) N.L.R. 130

III Writ jurisdiction and the court structure under the Provincial Council System.

The Constitution of the Democratic Socialist Republic of Sri Lanka has granted power to the Court of Appeal, to issue, according to law, orders in the nature of writs of *certiorari,* prohibition, *procedendo, mandamus* and *quo warranto.* [41] For this purpose, the Court of Appeal has the full power and authority to inspect and examine the records of any court of First Instance or Tribunal or other institution. [42]

With the introduction of Provincial Councils in Sri Lanka this procedure has changed and the Provincial High Courts are empowered to issue orders in the nature of writs.

Sri Lanka's Provincial Councils were established in 1988, under the Thirteenth Amendment to the Constitution and the Provincial Councils Act, No. 42 of 1987. The Thirteenth Amendment to the Constitution provides for the establishment of a Provincial Council for each province. [43] A Governor appointed by the President of the Republic holds office during the pleasure of the President, as the Chief Protocol of the Province. [44] A Board of Ministers consisting of the Chief Minister and not more than four other Ministers will assist the Governor of a Province on the exercises of his functions.[45]

The Thirteenth Amendment to the Constitution made provision for the establishment of Provincial High Courts in Sri Lanka. [46] The High Courts are empowered to issue orders in the nature of writs of *certiorari,*

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41. Article 140 of the 1978 Constitution
42. Ibid
43. Article 154 A of the 13th Amendment to the Constitution
44. Ibid, Article 154 B (2)
45. Ibid, Article 154 F (1)
46. Ibid, Article 154 p

prohibition, *procedendo, mandamus* and *quo warranto.* [47] According to the Thirteenth Amendment:

"Every such High Court shall have jurisdiction to issue according to law. a) Orders in the nature of Habeas Corpus in respect of persons illegally detained within the province; and b) Orders in the nature of writs of *certiorari,* prohibition, *procedendo, mandamus* and *quo warronto* against any person exercising within the province any power under,

i. any law, or

ii. any statute made by the Provincial Council established for that Province. [48]

The High Court of the Provinces (Special Provisions) Act. No. 19 of 1990 made provision regarding the procedure to be followed in and the right of appeal to and from the High Court. Accordingly, Provincial High Courts have the writ jurisdiction under Article 154 (P) 4 of the Constitution and an appeal to the Court of Appeal may be made under Section 9 (b) of the High court of the Provinces (Special Provisions) Act, No. 9 of 1990. When an appeal or an application is filed in the Court of Appeal and in the High Court and the hearing of such application by the High Court has not commenced, the Court of Appeal may proceed to determine such appeal or application or if the Court of Appeal considers that it is expedient to do so it will direct the appeal or the application to the High Court of the Provinces. [49]

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47. Ibid, Article 154 p (4)
48. Ibid, Article, 154 p (4) a and b
49. High Court of the Provinces (Special Provisions) Act., No. 19 of 1990.

CONCLUSION: THE INADEQUACIES AND WEAKNESSES IN THE PROCESS OF JUDICIAL REVIEW

An analysis of the case law on prerogative writs issued in connection with local authority decisions emphasizes the inadequacies and weaknesses in the process of judicial review in Sri Lanka. A significant feature is that on most occasions applications have been dismissed owing to the petitioners applying for the incorrect remedy by way of a writ. Common law remedies applicable for securing judicial review in Sri Lanka have caused numerous anomalies and inconveniences especially due to a dual system of remedies, the prerogative orders and the declaration and the injunction. This procedure has created numerous problems and this dilemma faced by the litigant has hindered progress and development in the judicial review of local government in Sri Lanka. The procedural complexities have also resulted in a dearth of cases with regard to local government in Sri Lanka.

With regard to the Administrative Law remedies, Michael Elliott stated:

> *"Administrative Law remedies exist not so much as a method whereby the centre controls the local but more significantly as a way in which local inhabitants can process grievances against their own authorities."* [50]

However, the role of the courts could not be limited only for settling the grievances of inhabitants. While settling the disputes between the inhabitants and the local authorities, the court could scrutinize the policies of the Central Government in relation to local authorities. By means of this procedure the judiciary could become the intermediary

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50. Michael J. Elliott, op. cit, p. 66

which could be significantly important to minimize the control of the Central Government over local authorities as well as to see that the local authorities act reasonably towards the local inhabitants. However, according to the Sri Lankan experience the dearth of cases has acted asone of the obstacles for the judiciary, restricting the opportunities for the courts to scrutinize and control Central Government policies towards local authorities. Hence, a reform in the process of judicial review in Sri Lanka is essential.

During the past few years in most Commonwealth countries, efforts have been made to reform the process of judicial review. For example, as a leading authority pointed out,

> *"A number of notable reforms to the procedural and remedial aspects of the law of judicial review of administrative action had already been introduced over the last few years in several common-law commonwealth jurisdictions."* [51]

Moreover, the reforms in England have introduced a single proceeding in which any one or more of the principal common law remedies, including damages could be sought.[52] The different approaches in Administrative Law before and after the reform clearly emphasize that the reforms have eased the procedure, providing more opportunities for a litigant to fight his case. Lord Denning M.R., in *O'Relilly V Mackman*, vividly describes the situation

> *"At one time there was a black-out of any development of Administrative Law. The curtains were drawn across to prevent the light coming in. The remedy of certiorari was hedged about with all sorts of technical limitations. It did not give a remedy when inferior tribunals*

51. S.A.de Smith, Judicial Review of Administrative Action Fourth Edition, by J.M. Evans, London, Stevens and sons Ltd., 1980,p.565.
52. Ibid, p 566

went wrong, but only when they went outside their jurisdiction altogether ... whilst the darkness still prevailed we let in some light by means of a declaration .... In 1977 the black-out was lifted. It was done by R.S.C. order 53. The curtains were drawn back. The light was let in. Our Administrative Law became well organized and comprehensive. It enabled the High court to review the decisions of all inferior courts and tribunals and to quash them when they went wrong. And what is more, it enabled the High court to award damages and grant declarations. No longer is it necessary to bring an ordinary action to obtain damages of declarations. It can all be done by judicial review. This new remedy (by judicial review) has made the old remedy (by action at law) superfluous." [53]

Since 1982 in England, Section 31 of the Supreme Court Act of 1981 is applicable in this respect, and it could be said that this has strengthened the applicability of this procedure. Consequently, according to Lord Denning, M.R.:

"But now we have witnessed a break-through in our public law. It is done by Section 31 of the Supreme Court Act of 1981, which came into force on January 1, 1982. This is to my mind of much higher force than R.S.C. order 53. That order came into force in 1977, but it had to be construed in a limited sense because it could not affect the substance of the law .... Rules of court can only affect procedure, whereas an Act of Parliament comes in like a lion. It can affect both procedure and substance alike." [54]

Under Section 31 of the Supreme Court Act of 1981:

1. An application to the High Court for one or more of the following form of relief; namely-

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53. O'Reilly V. Mackman (C.A.) (1983) 2 A. C. 237, at pp. 253- 254.
54. Ibid, p 255

(a) an order of *mandamus,* prohibition or *certiorari;*

(b) a declaration or injunction under sub-section 2; or

(c) an injunction under section 30 restraining a person not entitled to do so from action in an office to which that section applies shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.[55]

Under this new procedure, leave to apply for the order is required. According to the Supreme Court Act:

> *"No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."* [56]

This new procedure enables a litigant to apply for more than one of the remedies at one and the same time, inevitably saving him the problem of having applied for the improper remedy. A litigant is thereby protected from losing his case due to procedural technicalities as he has got leave of a high court to start the proceedings. Thereby the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action is also removed.

As Lord Diplock (of the House of Lords) pointed out, this new procedure provided the respondent decision making statutory tribunal or public authority against which the remedy of *certiorari* was sought, with protection against claims which it was not in the public interest for courts of justice to entertain.[57]

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55. Supreme Court Act, 1981, section 31.
56. Ibid., section 31 (3)
57. O'Reilly V. Mackman (1983) 2 A.C. (H.L) 237.

It is apparent that these new reforms are highly appropriate as a solution for the problems in the process of judicial review in Sri Lanka. The recent trend in most Commonwealth jurisdictions has been to review the Administrative Law remedies and there cannot be any hindrance in reforming the present process of judicial review in Sri Lanka in accordance with the English Supreme Court Act of 1981. This reform, along with the Provincial High Court System, no doubt would enable a speedy and an efficient way of obtaining redress through writs in Sri Lanka.

URBAN PLANNING IN SRI LANKA

by

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Physical planning in Sri Lanka dates back to the first century A.D. (Anuradhapura Period) although present physical planning legislation originated with the Housing and Town Improvement Ordinance of 1915. It is, therefore, necessary to consider the physical planning concepts as revealed through archaeological research before discussing the current physical planning legislation.

HISTORICAL BACKGROUND

According to a research study carried out recently regarding the concepts of town planning and architecture that existed during ancient times, there had been a well conceived physical plan for the Capital City

of Anuradhapura. This physical plan was based on economic, social, physical and environmental factors.

ANCIENT PERIOD

According to the Mahawamsa, the City of Anuradhapura was founded by Vijaya and his followers. The evolution of City Development has followed the stages outlined below, and illustrated in Figure (1).

Stage I: Establishment of Small Agricultural Communities on the Two Banks of Malvatu Oya.

The early settlers dammed the valleys and streams and stored the water that flowed into subsequently tilled and prepared for cultivation. It was around this agricultural land that the settlers built their huts and lived as communities.

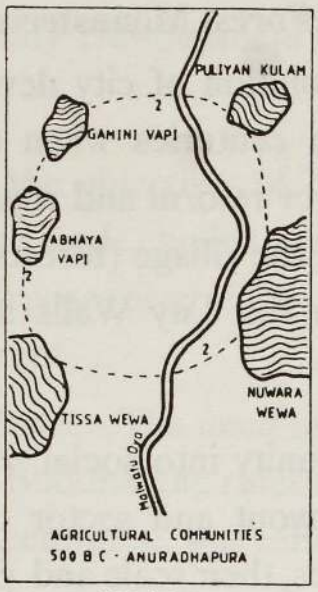
Stage II: Growth of the City Centre

Shops and the chieftain's office were located in the City Centre. The centre was enclosed and fortified in order to protect it from enemies. The walled city excluded the agricultural area and was confined only to (about .75 km) square.

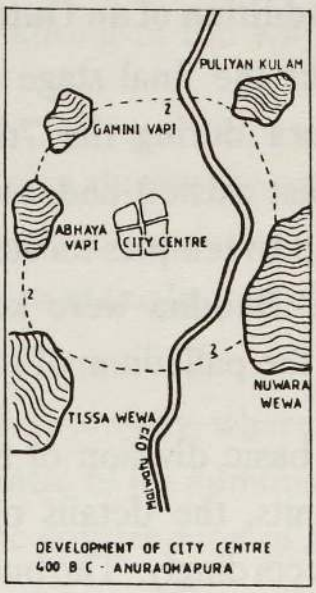
Stage III: Development of Monasteries

This stage of city development started with the introduction of Buddhism to Sri Lanka in the 3rd century B.C. Royal patronage was extended to Buddhism, and high ground which was not utilized for agriculture or city development was allocated for the construction of temples and dwellings for monks. The code of conduct for Buddhist clergy (Vinaya) decreed that a monastery should ideally be situated about 500 "dunus" or bow lengths from a village or town. Therefore, monasteries were located as a ring between the city walls on the one hand

STAGES IN THE EVOLUTION OF THE CITY OF ANURADHAPURA



STAGE I



STAGE II

STAGE III

STAGE IV

Figure 1

and the agricultural communities with its reservoirs and fields on the other.

Stage IV: Addition of an Outer Ring of Forest Monasteries

This marks the final stage of the evolution of city development in Anuradhapura during the 7th and 8th centuries when the form of Buddhism that existed underwent a major reform and royal patronage was extended to temples located outside the village (forests). Only the relics of the Buddha were kept within the City Walls as they were regarded as the palladium of sovereignty.

With the basic division of the community into social, religious and economic units, the details of street layout and sector development continued accordingly. The building types, their scale and proportion in each group were all controlled by strict conventions. The city wall gates and street lines were designed in accordance with the rules of Mansara and Maymatiya. (Mansara and Maymatiya are two ancient treatises on town planning and architecture). The archaeological monuments and ruins confirm the high level of town planning which existed during the period.

Several factors contributed to the success of Town Planning and City Development during the period . The ultimate ownership of land was vested with the State during this period. Land was gifted by the King in acknowledgment of services rendered by the people. The King could also commmand the labour of the subject population. In other words, the King had command over the total physical and manpower resources of the country to be utilized for the economic, social, cultural and spiritual development of its population.

On account of foreign invasions beginning with the Chola conquest in the 1st century A.D. and the subsequent shifting of the Kingdom to

Polonnaruwa and to the South-West, the social and economic order which existed started declining and the growth of City Development also suffered considerably. There was a breakdown in the continuity of the process of City Development with the shifting of the Kingdom to the South-West.

Although the objectives of Town Planning during the ancient period have not been made explicit in any written record, a desire to achieve the following purposes are reflected in the form of the lay out of the city and its development.

a) Defence - The need to protect the core city, where the relics of the Buddha, the ruler and the centre of his administration were concentrated, was reflected in the construction of a city wall.

b) The segregation of administrative, business, religious and agricultural functions is reflected in the city layout.

c) The grandeur of the city is reflected in the scale and layout of buildings and the quality of architecture.

d) The promotion of peace, quietness and amity is reflected in the large open spaces and parks particularly on the fringe of the city in proximity to religious monasteries.

Sri Lanka came under the domination of three Western powers, namely, the Portuguese, Dutch and the British from 1505. As the main interest of the Portuguese and the Dutch was trade, their contribution to City Planning and Development is not very significant although the Dutch contribution to the traditional architecture is very much in evidence.

MODERN PERIOD

The development of present town planning principles and practices could be traced back to the period of British domination which started in 1802. Ceylon being a part of the Colonial Empire, the techniques and

principles of town planning as well as the statutory measures to deal with problems of town development which were first introduced and tested in the UK came to be introduced here too. The two main legislative enactments thus brought into existence - the Housing and Town Improvement Ordinance of 1915 and the Town and Country Planning Ordinance of 1946 - have a far reaching impact on physical planning and urban development in Sri Lanka.

THE HOUSING AND TOWN IMPROVEMENT ORDINANCE

This legislation came into operation in 1915 to deal with the existing problems of insanitary conditions and urban overcrowding as well as to prevent such conditions in the future. Similar legislation was introduced in the UK to deal with the environmental degradation of cities and the large scale influx of population to industrial cities resulting in slums.

As the economic system of the industrial countries during this time was based on free enterprise, there was minimum state interference and control. Most of the legal provisions were enabling legislation for the local authorities, industrialists, and NGOs to get together to improve the physical condition of urban areas.

The remedial measures provided in the Housing and Town Improvement Ordinance consist of a series of improvement schemes. The Minister also had the power to appoint a Board of Improvement Commissioners to prepare and implement such improvement schemes. They could be implemented either by the Board of Improvement Commissioners independently or with the participation of the local authorities . There is also provision for such schemes to be undertaken by the promoters (private individuals) together with the local authorities or independently. There is provision for the involvement of private land

owners in providing for common amenities without the direct intervention of the Government or the local authority.

Although this Ordinance provides for carrying out urban improvement schemes, it has been utilized only to a very limited extent. Thanks to the interest shown by some Local Authorities in the 1950s and 1960s, the Town and Country Planning Department was able to prepare schemes particularly concerned with slum and shanty improvements in several urban areas.

The main objectives of this Ordinance was the promotion of health, safety, and amenities in urban areas. The Housing and Town Improvements Ordinance is based on the need to introduce sanitary and environmental standards in urban areas and to improve the quality of the housing stock.

The objectives set out in the Ordinance are to be realized in two ways:

a) By exercising development control in accordance with a set of building regulations which are set out in the schedule to the Ordinance. These regulations are concerned with controlling the height, light, ventilation, set backs, and accessibility.

b) By providing for the introduction of several types of town improvement schemes for urban areas - e.g. zoning schemes, slum clearance scheme and street lines schemes. The objective of these improvement schemes is basically to improve the environmental quality of urban areas.

The Ordinance provides powers to the respective local authorities to exercise authority under the Ordinance.

Until the introduction of the Urban Development Authority Law in 1978 and the subsequent declaration of urban areas under the Urban

Development Authority Law, this Ordinance was the main legal instrument which regulated the physical planning and development of urban areas in Sri Lanka.

TOWN & COUNTRY PLANNING ORDINANCE NO. 16 OF 1946

The Town and Country Planning Ordinance which came into effect in 1946 was mainly concerned with the "orderly and planned development of towns, preservation of places of historical and architectural interest, and areas of scenic beauty". Preparation of a town development scheme for an Urban Area is taken up only after a directive is issued by the Minister of Local Government under Section 21 of the Ordinance. There is also provision for the preparation of Regional Planning Schemes, Detailed Planning Schemes and Outline Planning Schemes.

The local authorities are the planning and executive authorities of planning schemes under this Ordinance. However, as their capacity in terms of manpower and other resources was limited, only a very few planning schemes have been prepared and implemented. The provisions of this Ordinance have been used mainly for the preservation and planning of sacred areas.

The Town and Country Planning Ordinance also has a role to play in relation to physical planning decisions at the national level. A consultative body known as the Central Planning Commission has been created, consisting of the Secretary to the Ministry of Local Government as the Chairman, the Commissioner of Labour, the Director of Industries, the Director of Commerce, the Director of Town and Country Planning and three members nominated by the Minister of Local Government, to advise the Minister on matters relating to physical planning and also to formulate a physical planning policy for the country.

The most important outcome of this Ordinance is the creation of the Department of Town and Country Planning as a technical agency consisting of town planners, architects and engineers to provide technical services for the preparation of Town Planning Schemes.

Planning schemes for sacred areas are undertaken under the provisions of the Town and Country Planning Ordinance. The Department of Town & Country Planning is vested with this responsibility. Anuradhapura, Kataragama, Kelaniya and Mahiyangana are among the sacred city schemes.

These sacred area planning schemes involve designation of the sacred area and the removal of all buildings which are not related to religious activities in a planned "new town" located in close proximity to the religious places. The Government provides funds for the implementation of these sacred areas and new town schemes which involve the acquisition of land, construction of infrastructure, landscaping, provision of public amenities, relocation of buildings, lease of land within the new town, etc. Although it has been proved that the construction of such new towns can be economically productive in the long term and most of the cost can be recovered by land sales or leases, the Town and Country Planning Ordinance does not provide for such market operations.

URBAN DEVELOPMENT AUTHORITY LAW NO. 41 of 1978

Both the Town and Country Planning Ordinance and the Housing and Town Improvement Ordinance were found inadequate to deal with the physical planning problems of the Urban Areas of Sri Lanka for several reasons. Primarily, the local authorities which are the Planning and Implementation Authorities under both these Ordinances have very limited capacity in terms of manpower and economic resources to prepare and implement development plans. There were also problems

in regard to the acquisition of land. They were also unable to carry out planning in a satisfactory manner owing to the predominance of political considerations.

Another drawback of the Housing and Town Improvement Ordinance and the Town and Country Planning Ordinance was that the local authorities who are the planning and executive authorities under these Ordinances were unable to control or regulate development carried out by the Central Government Agencies. The Interpretations Ordinance exempts Central Government Agencies from local authority directives. This was a major obstacle in the effective implementation of planning controls as most of the important development activities in urban areas were carried out by the Central Government agencies.

The Urban Development Authority Law was brought into operation in October 1978, "to promote integrated planning of economic, social and physical development and its implementation in the Urban Areas of Sri Lanka."[1] The amendment to the Urban Development Authority Law introduced in 1982 made it mandatory for the Urban Development Authority to prepare development plans for all areas declared under Section 3 of the Urban Development Authority Law and also authorised it to carry out physical development control in such areas with penal provisions to deal with unauthorised constructions.

Since the introduction of this Law, all urban areas (except those coming under the Greater Colombo Economic Commission) and areas which fall within one km. of the coastline around the country have been brought under the Urban Development Authority Law.[2]

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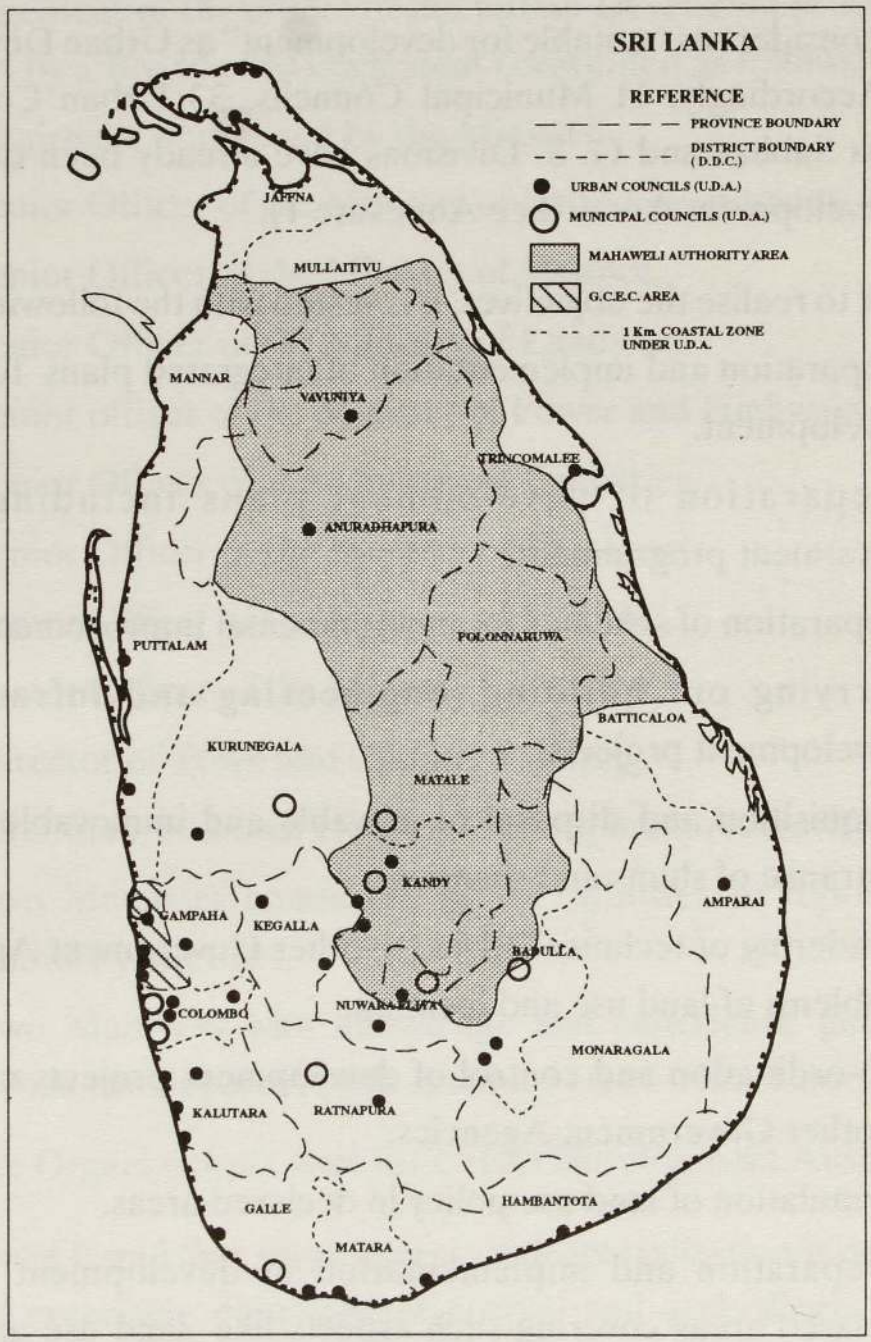
1 Preamble to the Urban Development Authority Law No. 41 of 1978, Colombo.

2 See MAP 1

AREAS WHICH FALL WITHIN THE JURISDICTION OF DIFFERENT PLANNING AUTHORITIES



MAP 1

The Urban Development Authority Law is the most recent development in regard to physical and land-use planning in Sri Lanka.

The Minister can declare under Section 3 (1) of the Law any area, which he considers as "suitable for development" as Urban Development Areas. Accordingly, 11 Municipal Councils, 33 Urban Councils, 35 Pradeshiya Sabhas and G. S. Divisions have already been declared as Urban Development Areas (See Annexure 1).

In order to realise the objectives, it is vested with the following powers:

a) Preparation and implementation of integrated plans for physical development.

b) Preparation of development plans including capital investment programmes.

c) Preparation of schemes for environmental improvement.

d) Carrying out building, engineering and infrastructure Development projects.

e) Acquisition and disposal of movable and immovable property, clearance of slums and shanties.

f) Rendering of technical advice to other Government Agencies on problems of land use and location.

g) Co-ordination and control of development projects carried out by other Government Agencies.

h) Formulation of land use policy in declared areas.

i) Preparation and implementation of development plans for declared areas covering such aspects like land use and density zoning, street line set backs, height of buildings, open spaces, control of environmental pollution, parking, landscaping, etc.

j) Exercising of development control to ensure conformity to development plans and planning regulations. (vide section 8 and 8A).

The management of the affairs of the Urban Development Authority is carried out by a Board of Management constituted as follows:-

1. Chairman, nominated by the Minister.
2. Senior Officer of the Ministry of Local Government.
3. Senior Officer of the Ministry of Finance.
4. Senior Officer of the Ministry of Lands.
5. Senior officer of the Ministry of Power and Highways.
6. Senior Officer of the Ministry of Industries.
7. Senior Officer of the Ministry of Transport.
8. Senior Officer of the Ministry of Health.
9. Senior Officer of the Ministry Education.
10. Director of Town and Country Planning.
11. Chairman, National Housing Development Authority.
12. Two Members nominated by the Minister to represent local authority interests.
13. Two Members with knowledge and experience pertaining to urban development (vide section 4 (i) of UDA Law.).

(Please see Organization Chart for Urban Development Authority.)

It has been found that some degree of decentralization is necessary in respect of exercising development control and accordingly, Heads of Local Authorities have been delegated powers to carry out development control. In order to facilitate preparation and implementation of

development plans, the UDA has established Planning Offices in more important local authority areas.

The Urban Development Authority has introduced a new set of Development Regulations in areas under its jurisdiction replacing the provisions of the Housing and Town Improvement Ordinance which are inadequate to deal with development control problems of highly urbanised areas such as Colombo.

OVERVIEW OF PRESENT SYSTEM OF PLANNING REGULATION AND CONTROL

The previous section indicated the important legislative enactments which were introduced from time to time to bring about planned development and regulation of physical land use in Sri Lanka. The successive legislative enactments did not attempt to completely supersede or replace the earlier statutes, but gradually introduced the new law to Urban Areas Under Section 23(1) of the UDA Law it would be necessary for the Minister to make a declaration to repeal any planning scheme, which is already in operation under the provisions of the Town and Country Planning Ordinance or any other enactment, within an area declared Under Section 3 of the UDA Law.

PRADESHIYA SABHAS

The changes that have been introduced since 1978 in regard to the organisation of Provincial and Local Administration in Sri Lanka which brought about a reclassification of the Urban Areas of the country also had an indirect impact on the administrative legislation.

The Pradeshiya Sabhas replaced Village Councils and Town Councils. The large number of Village Councils and Town Councils which existed previously were amalgamated to form Pradeshiya Sabhas.

The areas which fall within the planning and regulatory control of the Mahaweli Development Authority, Greater Colombo Economic Commission and the Urban Development Authority are shown in Map (1). It could be seen that about 95% of the Urban Areas of the country (Municipal Councils and the Urban Councils) fall within the jurisdiction of the Urban Development Authority.

PLANNING CONTROLS OPERATIVE IN THE G.C.E.C. AREA

Since the creation of the GCEC, directives have been issued by the Minister under Section 21 of the Ordinance for the preparation of planning schemes for the Urban Areas coming within the Commission.

Accordingly these areas have come within the interim development control of the Commission, giving powers to the Commission to carry out development control within the area to ensure that the development that takes place will be in accordance with the proposed planning schemes for the areas concerned. The exercise of powers under the Town and Country Planning Ordinance by the Greater Colombo Economic Commission has helped to overcome some of the problems that had to be experienced when the local authorities carried out the implementation of the Ordinance such as lack of technical personnel, delays in carrying out technical work etc.

COAST CONSERVATION ACT

In regard to the control of land use, mention also should be made of the Coast Conservation Act of 1981, which provides control of man-made activities within the coastal zone. The Ministry of Fisheries, which administers this Law, is expected to prepare a Coastal Zone Management Plan to regulate development within the zone. The zone consists of 300 metres inland and 3 km to the sea.

The Coast Conservation Department has introduced a Coastal Zone Management Plan for this area.

ROLE OF PLANNING IN RELATION TO REGULATORY SYSTEM

Planning at Local Level

a) Adoption of a Development Plan

Section 8A of the UDA Act provides for the preparation of development plans for all declared Urban Areas, by the UDA. A development plan could encompass a wide range of objectives under the UDA Law. The main elements of a Development Plan which can be prepared for an Urban Area under the UDA Law can be summarised as follows:

i) A land use zoning plan for the urban area.

ii) A public works programme covering investment on infrastructure, public utilities and housing for a period of 10 to 15 years.

iii) A programme of Action Projects for short term implementation.

The procedure for the preparation of Urban Development Plans could be summarised as per diagram in Figure 4.

PLANNING PROCESS

The law requires that before a plan is finally sanctioned by the Minister, it should have been referred to the local authority concerned and its observations obtained. However, it was found that the formal consultation of the local authority after the finalisation of the plan will not be satisfactory and consultations are held more often from the commencement of the preparation of a development plan until it is finalised.

The proposals of a Development Plan prepared by the Urban Development Authority are based on a series of physical, demographic and socio-economic studies carried out by the Authority. The analysis of existing land uses and densities, capacities of the infrastructure system, studies on population growth and distribution, projection of future population of the area such as income levels, employment, shopping habits, commuting patterns are some of the basic studies carried out for the preparation of Urban Development Plans for Local Authority Areas. Field studies are confined mainly to land use surveys and socio-economic surveys, while existing data available in Census Reports, consumer finance surveys of the Central Bank and information collected from other Government Departments and Corporations are made use of in the preparation of Development Plans.

Detailed Surveys may be carried out in respect of the preparation of "Action Projects" for small sections of Urban Areas for Urban Re-development, Slum and Shanty Rehabilitation etc.

As indicated in Section 3 (3) of the Urban Development Authority Act, the purpose of a Development Plan shall be to "develop every development area for the better physical and economic utilization ofsuch areas". The orderly physical development of the Urban Area, promotion of its functional efficiency and environmental quality are also important complementary objectives.

While the land use plan and infrastructure development proposals are based on a long-term perspective covering a period of about 20 years, the action projects are for immediate implementation to deal with urgent problems. There are also instances where the short-term action projects and long-term development are interconnected. For example, Echelon Square and Pettah Market are based on a long-term perspective of development for the areas concerned and to make optimal use of the

URBAN DEVELOPMENT AUTHORITY	LOCAL AUTHORITIES GOVT. AGENCIES
1. SURVEY (Socio-economic, Land use etc.)	INFORMATION
2. IDENTIFICATION OF PROBLEMS & POTENTIALS	
3. FORMULATION GOALS & OBJECTIVES	CONSULTATION
4. IDENTIFICATION OF ALTERNATIVE STRATEGIES	
5. CHOICE OF A STRATEGY CONSULTATION	CONSULTATION
6. DETAILING OF STRATEGY	CONSULTATION
• Land use zoning plan	
• Public investment programme	
• Programme of action project	
7. SUB MISSION OF PLAN FOR APPROVAL OF HON. MINISTER	
8. ADOPTION OF PLANS	
9. MONITORING OFIMPLEMENTATION	IMPLEMENTATION

economic potential of the areas with functional efficiency of the Urban System. The implementation of this Action Project brings the revenue necessary to finance the long-term development of infrastructure e.g. construction and improvement of the road systems, water supply, sewerage, electricity and environmental improvement. The Peliyagoda Integrated Urban Development Project is also a similar project which envisages the relocation of major industries, warehousing, container yards, etc. to an area outside the congested parts of Colombo. The sale of sites to developers provides the funds necessary to introduce long-term improvements to the area such as roads, drainage, social amenities, etc.

The following Government Agencies are normally consulted in addition to the local authorities concerned in the preparation and adoption of Urban Development Plans.

1. Government Agent of the Administrative District concerned, particularly in the case of preparation of Development Plan for District Capitals.
2. Provincial Local Government Department - *Regional Commissioner of Local Government .*
3. Water Supply and Drainage Board - *Regional Engineers*
4. Department of Education - *Regional Director of Education*
5. Department of Health - *District Medical Officer*
6. Department of Industries - *Industrial Development Board*
7. Electricity Board - *District Engineers*
8. Department of Telecommunications - *District Engineers*

9. Low-Lying Areas Reclamation and Development Corporations - *District Engineers*

10. Department of Police - *Superintendent of Police*

11. National Housing Development Authority - *District Engineers*

In addition to the above, if any provision or proposal of a Development Plan is related to the work of any other Government Agency, it will be consulted before the proposal is incorporated into the Development Plan.

The dichotomy between economic planning and land use planning has not been effectively solved for any scale of planning in Sri Lanka although attempts have been made from time to time to improve the situation. At the local level, the development plan is mainly a land use plan, although in the projection of future land uses changes of economic parameters and location specific investment decisions affecting the development of the area are taken into account through consultation with the relevant sectors. However, there is no integrated decision making. The development plans, of course, may be geared to the promotion of economic objectives such as employment generation through the establishment of industry and commerce, or by the improvement of the infrastructure base of a locality, and re-development of environmentally depressed and under-developed areas. Action projects and public works programmes formulated under a Development Plan could act as a catalyst for the promotion of economic development despite its lack of integration with economic development policies at the national level.

In the case of areas falling within the Greater Colombo Economic Commission, where the Town and Country Planning Ordinance and the Housing and Town Improvement Ordinance operate, the planning schemes prepared are related to the promotion of economic

development in Investment Promotion Zones. The choice of locations for living, commercial development, service industries, open spaces and infrastructure development proposals are ancillary to the main objective of promoting economic development.

Section 8H (1) of the UDA Amendment Act No. 4 of 1982 provides for modification of the Development Plan. "The UDA may at any time after a development plan has come into operation, in a development area or part thereof, with the approval of the Minister, amend, revise or modify the development plan in so far as it relates to any particular part or parts of the development area, where such modification is considered expedient having regard to the amenities and services set out in the Development Plan.

No person or Government Agency shall carry out any development in an area, declared under the UDA Law, except on a permit issued by the Authority or on its behalf by a Local Authority. Such a permit shall be issued only if the proposed development is in conformity with the provisions of a "Development Plan" approved for the area, or in cases where such a Development Plan has not yet been prepared, the development is in conformity with proposals for the future development of the area.

PLANNING AT REGIONAL LEVEL

Economic planning had been traditionally a central function while physical planning is a local authority function. The Ministry of Policy Planning and Implementation had been preparing Economic Plans based on the sectoral performance of the economy with no consideration being given to the locational aspects of investment, although it is an important determinant of the success of projects. Furthermore, the availability of

resources too varies between different geographical areas of a country and so is the incidence of socio-economic problems.

Therefore, the need to look at different geographical areas of a country as separate regions for development has become a feature in development planning. The decentralisation of political power to regions or provinces also has resulted in looking at regional problems and potential in greater detail.

The Thirteenth Amendment to the Constitution provides powers to the Provincial Councils to prepare Regional Structure Plans for their areas which could set guidelines for the detailed physical plans for local authorities. Although the physical planning powers of the Urban Local Authorities have not been withdrawn or curtailed by the Constitutional Reforms they are required to carry out their planning within the guidelines set by the Regional Structure Plan.

This provides a good opportunity for integrating regional planning with local planning carried out by Urban Local Authorities. This will provide the advantage of making full use of the regional infrastructure and economic development projects for promoting urban development.

DECENTRALISATION OF PLANNING AND DEVELOPMENT CONTROL

The Planning and Development Control Powers exercised by the UDA had to be decentralised in order to provide more opportunities for local level participation in decision making and also to avoid delays in decision making. This was brought about without legislative changes by the delegation of powers to the local authorities and by setting up machinery for rational decision making.

While powers have been delegated to the Head of the Local Authority to take decisions, he is expected to consult Planning Committee in all important planning matters. Planning Committeees are headed by the Head of the Local Authority and consist of the Technical Officer of the Council, Secretary of the Council, Planning Officer appointed by the UDA and any such officers whom the Chairman thinks are necessay for the Planning Committee.

In order to make decentralisation of planning more effective, the UDA introduced a "Planning Manual" to guide decision making in regard to the development of projects and plans for local authority areas. The procedure set out in the Manual helps the local authorities in the co-ordination of development plans with allocation of resources so that implementation could be ensured.

A series of Seminars was held in 1990 to present this Planning Manual to Local Authorities and Provincial Councils and it is expected that it will be a useful instrument in guiding plan preparation and implementation by Local Authorities.

GOVERNMENT REGULATIONS OF LAND USE & DEVELOPMENT REGULATIONS AT NATIONAL LEVEL

(a) Source and Scope of Regulatory Power

In Sri Lanka there are a large number of legislative enactments to control and regulate physical development.

They are as follows:

1. Crown Land Ordinance
2. Thoroughfare Ordinance (Ch. 522)
3. River Valleys Development Board Act (Ch.586)
4. Nuisance Ordinance (Ch. 562)

5. Urban Development Authority Act (41 of 1978)
6. National Housing Development Authority Act (Ch. 337)
7. Mines and Minerals Law (Ch. 340)
8. Soil Conservation Act (Ch. 279)
9. Fauna and Flora Protection Ordinance (Ch. 567)
10. Water Hyacinth Ordinance (Ch. 277)
11. Plant Protection Ordinance (Ch. 276)
12. Forest Ordinance (Ch. 283)
13. Felling of Trees (Control) Ordinance (Ch. 284)
14. Fisheries Ordinance (Ch. 240)
15. Chank Fisheries Act (Ch. 242)
16. Pearl Fisheries Act (Ch. 243)
17. Penal Code (See 171) (Ch. 25)
18. Housing and Town Improvement Ordinance (Ch. 600)
19. Town and Country Planning Ordinance (Ch. 605)
20. Tourist Development Act (Ch. 225)
21. Irrigation Ordinance (Ch. 285)
22. National Planning Council Act (Ch. 315)
23. Fertilisers Act (Ch. 281)
24. Ayurveda Act (Ch. 116)
25. Ceylon Tourist Board Act (Ch. 224)
26. Ceylon Electricity Board Act (Ch. 538)
27. Atomic Energy Authority Act (Ch. 223)
28. Mahaweli Development Board Act (Ch. 587)
30. Coconut Development Act (Ch. 260)
31. Coast Conservation Act

32. Sri Lanka Fruit Board (Ch. 196)
33. Agricultural Productivity Law
34. National Water Supply & Drainage Board (Ch. 541)
35. Maritime Zones Law (Ch. 7)
36. Low-Lying Areas Reclamation and Development Corporation
37. Central Environmental Authority (Ch. 554)
38. Greater Colombo Economic Commission (Ch 227)

Some of these enactments provide for the issue of permits or licences for the regulation and control of land and other resources. There are also penal provisions to enforce compliance with the Law.

REGULATIONS AT LOCAL LEVEL

SOURCE AND SCOPE OF REGULATORY POWER

The power to regulate development at local level is derived under Section 8 of the UDA (Amendment) Act. No. 4 of 1982, which stipulates that "notwithstanding any other law, no Government Agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority and in terms and conditions of a permit issued on that behalf by the Authority".

In areas which have not been declared under the Urban Development Authority but fall within the GCEC, where the Housing and Town Improvement Ordinance operate, the relevant statutes provide powers for development control in the authorities concerned. "No person shall erect any building within the limits administered by a local authority, except in accordance with plans, drawings and specifications approved in writing by the Chairman."

In the case of the GCEC Area, the power exercised by the Chairman of the Local Authority under Section 5 of the Housing and Town Improvement Ordinance is exercised by a person authorised by the Commission.

The Town and Country Planning Ordinance contains the following section giving power to the Executive Authority to approve development.

"No person shall, on or after the date on which any planning scheme comes into operation, for any area:

(a) Erect, re-erect, alter or repair any structure in or upon any land in that area.

(b) Lay out, construct, widen, extend or close or attempt to lay out, any road, in or upon any land in that area, except under the Authority of a permit issued by the Executive Authority," Executive Authority in respect of the GCEC Area is a person authorised by the Commission.

There are no Government Departments directly involved in carrying out development control except the Department of Highways, which has power regarding the definition of street lines of main highways. Consultations may be held with Government Agencies such as the Land Reclamation and Development Corporation in regard to the utilisation of low-lying areas for development.

Controls are exercised in terms of zoning of land uses, and densities (Floor Area Ratio), height of buildings, set backs from streets, side and rear boundaries, minimum light and ventilation, requirements for parking and circulation of vehicles, internal dimensions of habitable rooms, fire safety provisions, etc.

Controls are also exercised in regard to subdivision of land in order to ensure that accessibility to individual premises is adequate, provision for open space is adequately provided and the lay out of roads and building blocks has been satisfactorily done.

When a development plan is approved by the Authority, a permit is issued which contains the conditions to which the development should comply.

LIMITS TO GOVERNMENT REGULATIONS

GENERAL PROCEDURAL REQUIREMENTS REGARDING VALIDITY OF REGULATIONS

All the regulations are subordinate legislations. They are formulated by a subordinate agency under powers delegated to it by the legislature under an Act of Parliament, in pursuance of the exercise of powers vested with the Agency.

The rules, regulations and by-laws which are formulated by an agency of the Government under the provision of an enabling Act of Parliament has to be examined by the Attorney-General to ensure that they are within the scope of delegated power, conferred upon the Authority by the enabling Act and also in conformity with the common law and other legal principles. After the Attorney-General's approval of the draft the Minister sanctions the regulations. Then these have to be gazetted and subsequently ratified by Parliament in order to give legal effect.

The following chart indicates the relevant sections which refer to the regulations.

The Urban Development Authority Law stipulates the following procedure for giving effect to regulations framed under Section 21.

Section 21:

"(i) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Law.

(ii) Every regulation made by the Minister shall be published in the gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(iii) Every regulation, as soon as convenient after publication in the gazette, shall be brought before the National State Assembly for approval. Any regulation which is not so approved shall be

NAME OF ACT	RELEVANT SECTION	NATURE OF DELEGATED LEGISLATION
1. Housing and Town Improvement Ordinance	Sec. 28	By-law
2. Municipal Councilsordinance	Sec. 267	By-law
3. Urban Councils Ordinance	Sec. 153	By-law
4. Town Councils Ordinance	Sec. 24	By-law
5. Greater Colombo Commision	Sec. 21	Regulations
6. Urban Development Authority Law	Sec. 21 & 27	Regulations and Rules
7. Housing and Town Improvement Ordinance	Schedule	Rules

deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(iv) Notification of the date on which any regulation made for by the Minister so deemed to be rescinded shall be published in the gazette."[1]

REFERENCES

01. Silva, Roland, **Leasing of Town Planning in Ancient Sri Lanka**, The Journal of Ceylon Institution of Architects, Vol. I, No. I, December, 1972.

02. Town & Country Planning Ordinance (Ch 605)

03. Urban Development Authority Law (Ch 602)

04. Housing and Town Improvement Ordinance (Cap. 600),

05. Coast Conservation Act No. 57 of 1981

06. Greater Colombo Economic Commission, (Ch 277)

07. Provincial Councils Act No. 42 of 1987.

Annexure 1

List of Local Bodies Gazetted As Areas Suitable For Development As Urban Development Areas Under Section 3 Of U D A Law No. 41 OF 1978

Municipal Councils

1) Colombo Municipal Council
2) Dehiwala-Mt. Lavania Municipal Council
3) Batticaloa Municipal Council
4) Kandy Municipal Council
5) Badulla Municipal Council
6) Galle Municipal Council
7) Jaffna Municipal Council
8) Kurunegala Municipal Council
9) Matale Municipal Council
10) Nuwara Eliya Municipal Council
11) Ratnapura Municipal Council

Urban Councils

1) Anuradhapura Urban Council
2) Ampara urban Council
3) Gampaha Urban Council
4) Hambantota Urban Council
5) Kegalle Urban Council
6) Kalutara Urban Council
7) Matara Urban Council
8) Puttalam Urban Council
9) Trincomalee Urban Council
10) Vavuniya Urban Council
11) Moratuwa Urban Council
12) Kolonnawa Urban Council
13) Kotte Urban Council
14) Beruwala Urban Council
15) Chilaw Urban Council
16) Balangoda Urban Council
17) Wattegama Urban Council
18) Gampola Urban Council
19) Ambalangoda Urban Council
20) Tangalle Urban Council
21) Nawalapitiya Urban Council
22) Panadura Urban Council
23) Horana Urban Council
24) Kadugannawa Urban Council
25) Hatton Dick-oya Urban Council
26) Talawakele-Lindulla Urban Council
27) Weligama Urban Council
28) Point Pedro Urban Council
29) Haputale Urban Council
30) Minuwangoda Urban Council
31) Valvettiturai Urban Council
32) Avissawella Urban Council
33) Chavakachcheri Urban Council
34) Kuliyapitiya Urban Council

PRADESHIYA SABAHA AND PREDESHIYA SABAHA SUB-OFFICE AREAS

1) Kotikawatte
2) Mulleriyawa
3) Battaramulla
4) Maharagama
5) Homagama
6) Piliyandala
7) Mullaitivu
8) Mannar
9) Moneragala
10) Polonnaruwa
11) Hikkaduwa
12) Kaduwela
13) Athurugiriya
14) Mampe-Kesbewa
15) Kotte-Galkissa
16) Mawanella
17) Maho
18) China Bay out side Trincomalee UC
19) Chappenburgh out side Trincomalee
20) Kankasnthurai
21) Thotagamuwa Thiranagamuwa Narigama
22) Muthur
23) A coastal zone within the limit of 1 km landsward from the mean high water line of the sea
24) Hingurakgoda
25) Embilipitiya
26) Wellawaya
27) Kataragama
28) Sella Kataragama
29) Tissamaharamaya
30) Buttala
31) Matugama
32) Anamaduwa
33) Dodangoda
34) Dankotuwa
35) Mahiyanganaya
36) Hasalaka

GRAMA SEVA NILADAHARI DIVISIONS

1) Grama Seva Niladhari Division No. 246 - Kendaliyaddepaluwa in A.G.A's division of Mahara in Gampaha District

2) Grama Seva Niladahari Division 821B - Bultahsinhala South in the AGA's Division of Bulathsinhala in the Kalutara District forming the New Town of Athura.

3) Grama Seva Niladhari Division 824 - Wegama in the AGA's Division of Bulathsinhala in the Kalutara District forming a part of the proposed New Town of Athura.

4) Part of Grama Seva Niladhari Divisions 99 -Dodamgella, 100-Bibile 100A -Kuruwambe, and 101A Bonagonne in the AGA's Division of Bibile in the Moneragala District forming the New Town of Bible.

5) Part of Grama Seva Niladari Divisions of 186A -Mihenwala Pallegama, 187 -Kotikapola, 187A Mawathagama and 188 Arampola in the AGA's Division of Mawathagama, forming the New Town of Mawathagama

6) G S Division No. 599/B Kavantissapura (Ranakeliya North in the Asst. Govt. Agents Division of Tissamaharamaya

7) All that area of land situated in the village of Indigolla, Weediyawatte, Kehelwathugoda, Galthotamulla Yakkala, Henpitamulla, Miriswatta, Kadhamulla, Bandarawatta, falling within parts of G.S. Division of Mayipala-goda (230) Yakkala (231) Henarathgoda (232) Bandiyamulla (234) and Gampaha Aluthgama (225/227).

8) G.S. Division No. 5 Ragama

PUBLIC HEALTH SERVICES AND ENVIRONMENT PROTECTION

by

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1. Introduction

In Sri Lanka Public Health Services are provided mainly through the Ministry of Health and the Local Authorities. The latter include Municipal Councils, Urban Councils and Pradeshiya Sabhas which have Health Units that provide public health services to their communities. Public Health Services of the Ministry of Health is a subject under the Deputy Director General of Public Health Services. With the devolution of powers to the Provincial Councils by the Thirteenth Amendment to the Constitution, Public Health Services have been fully devolved to the provinces and include among others the subjects of environmental health, food and food sanitation as appearing in List I in the Provincial Council List under Health of the Ninth Schedule of the Constitution. Every

Provincial Council may, subject to the provision of the Constitution, make Statutes applicable to the province for which it is established with respect to any matter set out in List 1 of the Ninth Schedule.

Public Health Services of the Ministry of Health also known by the name of Community Health Services are centred around the Medical Officer of Health (MOH) who is appointed to each of the Pradeshiya areas or AGA's divisions to be in charge of a Health Unit. He has a well demarcated area corresponding to the AGA's division covering a population of approximately 60,000 to 100,000. Municipality Health Units work independently of the Ministry of Health. Each such Health Unit caters to over 100,000 people, functioning under a MOH. The Provincial Council system has enabled these Health Units to come under one administration as their staff would belong to the Provincial Public Service Commission. This would encourage better co-ordination of work between the Local Authority and the Ministry of Health at Central and Provincial levels.

The MOH has an office with a team of Public Health Inspectors, (1 per 10,000 population) and Public Health Midwife (1 per 3000 to 5000 population). There are several supervising public health officers, namely Supervising Public Health Inspectors, Supervising Public Health Nurses and Supervising Public Health Midwives to assist the MOH.

2. Historical Background

Environmental intervention to protect and improve human health has a long history dating back to the 18th century. Certain environmental control activities have formed the core of organized public health, and much of the world's health legislation is concerned with them. For many years, environmental health has been a legal responsibility of national and

state health authorities, but the work of controlling environmental factors affecting health has long been shared with other agencies and agents.

A step in the development of public health services was the enactment of the Public Health and Suppression of Nuisances Ordinance. Boards of Health were appointed for every Province. Rules were framed by these Boards to safeguard public health. Its by-laws published in 1862 were the first to have been issued by a local authority in Sri Lanka. These provided for inspection of public or private premises with a view to detecting cases of infectious disease, enforcing abatement of nuisances, ensuring sanitation of public and private places, and instituting legal proceedings against those who violated these by-laws. The Municipal Councils Ordinance No. 17 of 1865 gave the Councils public health responsibilities such as conservancy, disposal of night soil, housing, prevention of overcrowding, construction of bathing places, public lavatories and sewers, and control of bread, meat and fish supplies.

With the creation of the Municipalities of Colombo, Kandy and Galle in 1867, Boards of Health ceased to exercise their functions. They were taken over in 1876 by the newly established Local Boards of Health and Improvement. In 1882, a new organisation of local administration was created to administer small towns. A group of small towns was brought under a Sanitary Board. In 1828, there were 19 such Boards administering 110 towns. In response to a movement towards improvement of sanitary conditions in towns, villages and estates, a Sanitary Department was created in 1912 under a Senior Sanitary Officer.

Subsequently Medical Officers of Health were appointed to look after the health of large districts. Their functions included investigations and control of infectious diseases and epidemics, bazaar sanitation and sanitation of estates, rural and urban areas.

The establishment of a Health Unit system in 1926 was a major advance in public health in Sri Lanka. The first Health Unit was established at Kalutara in July, 1926. It later undertook the training of public health staff and was elevated to the status of a national training centre under the name of the National Institute of Health Sciences, in 1979.

3. Environmental Impact on Health

Environment means the physical factors of the surroundings of human beings including land, soil, water, atmosphere, climate, sound, odours, tastes, and animals and plants. Changes in the environment have a major impact on the health of the people.

The Constitution of Sri Lanka stresses the need for environmental protection and management. Article 27 stipulates that "the State shall protect, preserve and improve the environment for the benefit of the community".

The National Environment Act No. 47 of 1980 reflected the government's recognition of the need for a set of comprehensive environmental laws. This Act created the Central Environmental Authority (CEA) in 1981 as a policy formulating and coordinating body. The Act was amended in 1988 to provide regulatory powers to the CEA.

Factors in the physical environment that affect health include water supply, domestic and community sanitation, standing water, vector populations, pollution from industrial and domestic wastes, working conditions, housing quality and availability, use of chemicals, food and food safety, radiation, noise and the extent of such healthy natural features as open spaces. The impact on health also varies with socio-economic conditions. Urbanization can itself be considered to be a key variable in the health equation. It outstrips the natural absorptive

capacity of the city's ecosystem. Adverse health effects can increase where controls are lacking or unreliable.

The increasing inadequacy of the financial and administrative resources of cities to meet the need for proper water supplies and sanitation, make suitable employment and housing available, manage waste, impose environmental controls, and provide health and social services have a major impact on health.

4. Cause of Disease

Communicable diseases flourish where the environment fails to provide barriers against pathogens, and the risks are increased by overcrowding, the importation of pathogens to which people are not resistant, and increases in vector populations resulting from rapidly changing settlement patterns and the disrupting of ecological relationships. Environmental conditions that favour the spread of communicable disease are as follows:

- Lack of an adequate and safe water supply is associated with typhoid fever, cholera, hepatitis, gastrointestinal diseases and a number of parasitic diseases.

- Insanitary disposal of excreta is a mojor cause of infections such as diarrhoea, gastrointestinal infections, cholera and parasitic diseases.

- Inadequate disposal of solid wastes is a major factor in the spread of gastrointestinal and parasitic diseases and leptospirosis, primarily as a result of the proliferation of insect and rodent vectors.

- The absence of, or inefficient, drainage of surface waters as a result of flooding, waste water accumulation in broken drains, damaged cesspits, small collections of water in containers and receptacles such as tyres, tins, etc. also encourage vector breeding and cause increase of vector borne diseases like filariasis and dengue.

- Inadequate personal and domestic hygiene and poor food safety practices increase the incidence of gastrointestinal and diarrhoeal diseases and malnutrition.

- Structurally inadequate housing contributes to the incidence of tuberculosis, pneumonia, influenza, bronchitis, diarrhoea and measles, and lack of space fosters the spread of infections.

- Exposure to toxic substances with the increased use of chemicals, contamination of food, soil, water and air, effects on the nervous system of lead from vehicle emission, and carbon monoxide from congested traffic are well recognised health hazards causing disease.

5. Structure of Public Health Service

A major structural reorientation programme of public health services was under way where a three-tier model called the Primary Health Care Complex to service a population of 60,000 was planned. This model could fit into an AGAs division where the three levels can be described as follows:

Level I

Gramodaya Health Centre with a clinic and residential facilities for the Public Health Midwife (1 per 3000 population.)

Level 2

Sub divisional Health Centre in charge of a Registered Medical Officer consisting of a central dispensary and a public health service unit (1 per 10,000 population.)

Level 3

Divisional Health Centre (1 per 60,000 population) under a Medical Officer of Health. (It includes both the Health Unit for preventive and promotive health functions and a 60-bed hospital for curative care). It functions as a referral unit to a population of 60,000 from Levels 1 & 2.

The Medical Officers of Health attend to the preventive and promotive functions while the hospital medical officer attends to the curative care of patients. Functions under environmental health are carried out at these three levels under the supervision of the Medical Officer of Health.

6. Functions of the Public Health Service

The responsibility for maintaining good health standards fall on the Health Unit of the area manned by the Medical Officer of Health (MOH). One of his main functions is the control of the transmission of infectious diseases by proper control of the environmental factors that have an impact on environmental health. The MOH uses his team of Public Health Inspectors (PHIs) to perform this function. Public Health Inspectors were first known as Sanitary Inspectors and were first recruited to the Sanitary Branch of the Medical Department in 1913. Sanitary Inspectors played a major role in the control activities carried out during the devastating malaria epidemic of 1934/35. Their designation was changed to Public Health Inspector in 1954.

Public Health Inspectors (PHIs) play a key role in the maintenance of a healthy environment. With the devolution of powers with regard to public health to the provinces, all PHIs of local authorities come under the Provincial Public Service and will work under the direct supervision of the Medical Officer of Health of the area, subject to the administrative control of the Head of the local authority. The range of activities undertaken by the PHI depicts the public health services that are available for the promotive and preventive health care of the population. Activities that have to be undertaken by the public health staff to maintain a healthy environment are described below.

6.1 Control of Communicable Diseases

The Quarantine and Prevention of Diseases Ordinance of 1897 and its subsequent amendments provide the necessary legislation for the implementation of disease surveillance systems. Surveillance is defined as a regular and systematic collection of data on disease incidence for the purpose of taking appropriate action. According to this Ordinance, every practitioner treating a case of Notifiable Disease should notify such cases to the Medical Officer of Health of the area where the patient resides. The Notifiable Diseases are listed below.

LIST OF NOTIFIABLE DISEASES

	Abbreviations
CHOLERA	Chol.
PLAGUE	Pg.
YELLOW FEVER	Y.F.
ACQUIRED IMMUNE DEFICIENCY SYNDROME(AIDS)	AIDS
ACUTE ANTERIOR POLIOMYELITIS	Polio

DIPHTHERIA	Dip.
DYSENTERY	Dys.
ENTERIC FEVER	E.F.
ENCEPHALITIS	Enc.
FOOD POISONING	F.P.
HUMAN RABIES	H.R.
LEPTOSPIROSIS	Lep.
MALARIA	Mal.
MEASLES	Mea.
SIMPLE CONTINUED FEVER OF OVER SEVEN DAYS' DURATION	S.C.F.
TETANUS	Tet.
TUBERCULOSIS	T.B.
TYPHUS FEVER	T.F.
VIRAL HEPATITIS	V.H.
WHOOPING COUGH	wpg.

The following steps are taken by the Health Services to prevent the spread of communicable diseases.

a. Isolation and treatment of patients

b. Surveillance - supervision and follow-up of contacts

c. Immunization of population at risk

d. Disinfection of clothes and bedding

e. Environmental Sanitation - disinfection of suspected water sources, sanitary disposal of excreta and personal hygiene.

f. Control of vectors and parasites carrying disease

g. Detection of carriers by taking samples of blood, stools, etc for testing.

h. Control of food - supply and preparation, examination of food handlers.

The MOH would send a PHI to investigate cases of communicable disease and keep contacts under surveillance. Appropriate action would be taken to prevent the further spread of disease. The PHI would also help in tracing contacts of leprosy, tuberculosis and sexually transmitted diseases, and in tracing treatment defaulters. He would visit medical institutions in his area and ascertain the communicable diseases treated at these institutions and take appropriate action. In addition, he would inspect houses regularly and advise on the requirements of sanitary latrines, water supply, refuse disposal, light and ventilation and maintenance of a home garden, and ensure that improvements are carried out.

6.2 Housing

The Housing and Town Improvement Ordinance provides for the improvement of sanitary standards in housing with a set of building regulations.

PHIs would help in the implementation of this Ordinance by reporting on building applications, carrying out inspections of new buildings under construction, and making recommendations on the issue of Certificates of Conformity for completed buildings. He would take action on unauthorised buildings. The PHI would get latrines constructed and recommend financial assistance, where appropriate, under the Aided Scheme of Latrine Construction.

Since 1959, the Department of Health Services provides a financial subsidy to assist poor householders in the construction of latrines. The amount paid has increased over the years from Rs. 25 at the inception to Rs. 700 in 1988. (Rs. 350 is paid if a permanent superstructure is not constructed.)

6.3 Supply of Safe Water

The PHI advises on the maintenance of public water supplies and ensures proper disinfection. He would send water samples for bacteriological and chemical analysis.

All surface water and most shallow well water and spring water require purification to render them safe for drinking and domestic use. Apart from boiling water before use to destroy all pathogens, there are other methods of purification, namely storage, filtration and disinfection using chlorine.

The need for regular water quality monitoring of public water supply schemes has been identified as a priority activity by the National Health Council. In addition to water quality monitoring now undertaken by the agencies responsible for operating these schemes, the Ministry of Health has been assigned the responsibility of undertaking independent water quality monitoring in public water supply schemes. The monitoring activities involve testing for residual-free chlorine levels in public water supply schemes that are chlorinated. PHIs should ensure that all agencies responsible for operating public water supply schemes chlorinate their water supplies.

All MOHs are supplied with a Lovibond Comparator and supply of DPD No. I tablets to test for residual free chlorine in water supply schemes in their areas.

Bacteriological testing of water supplies is performed by the Medical Research Institute regularly on selected public water supply schemes. PHIs send water samples for bacteriological analysis from suspected sources.

6.4 Refuse Disposal

The PHI would supervise the scavenging services of local authorities and ensure collection and proper disposal of refuse. He would advise and educate the public on proper methods of storage of refuse prior to collection by local authorities. He would advise the local authorities on proper solid waste disposal.

6.5 Vector Control

Fly and mosquito control activities and assisting in Anti-malaria and Anti-filariasis campaigns in control of vector mosquitoes as well as anti rat work are undertaken by the PHI.

6.6 Rabies Control

The rabies control programme is responsible for the prevention and control of human rabies, achieved though vaccination of dogs, elimination of stray dogs and educating the community on protection against rabies. The PHI supervises the vaccination of dogs and assists the local authorities in the eradication of stray dogs programmes.

6.7 Food Safety

Medical Officers of Health (MOHs), Food and Drugs Inspectors (F & D.Is) and Public Health Inspectors (PHIs) are designated Authorised Officers under the Food Act and assist the local authorities in the

implementation of the Act by inspecting food establishments, sampling foods and conducting prosecutions. They also advise the trade on technical matters and are responsible for consumer education.

PHIs carry out surveys of all food handling establishments in the area, and regularly inspect food handling establishments and advise on improving their sanitary conditions. In addition, the PHI passes animals for slaughter when called upon to do so by the supervising officer and ensures proper sanitation of slaughter houses. He also inspects fairs, markets and festivals and ensures maintenance of proper sanitation. He is responsible for creating consumer awareness through consumer education and promoting consumer participation and advising the trade on technical matters connected with food safety.

6.8 Sanitation of Medical Institutions

Medical institutions have to be kept clean in order to avoid crossinfection of other patients as well as the spread of infection to the community. The PHI would supervise the sanitation of medical institutions and submit reports to the Medical Officer in charge of the institution regularly, who would take corrective action and maintain his institution according to accepted health standards and hygiene.

6.9 School Health Work

The PHI would ensure that school children are kept under proper environmental conditions. He would inspect the schools in his area annually and advise the Heads of Schools regarding cleanliness of buildings and surroundings, toilets, refuse disposal and water supply. He should also advise regarding the ventilation of classrooms and possible health hazards. Tuck shops and vendors near schools would be

supervised closely by the PHI. He carries out a school health survey according to departmental instructions and formulates a programme of work. PHIs are now also trained to carry out school medical inspections and immunization.

6.10 Occupational Health

Occupational Health is one of the important components of Environmental Health. It includes the following areas of activities.

a) The identification and control of occupational hazards.

b) Counselling and health education of workers and management.

c) Surveillance of sanitary, catering and welfare facilities.

d) Environmental control measures within and outside the workplace.

e) Inspection of factories.

f) Estate health activities.

The PHI inspects all factories and work-sites in his area and identifies any health hazards and advises on remedial measures. He inspects all estates in his area and advises on environmental sanitation and the control of communicable diseases.

Particular attention should be paid to residential quarters and their surroundings, to the water supply, excreta disposal facilities, refuse disposal and waste water drainage.

Many estates have now employed Plantation Family Welfare Supervisors (PFWSs) who are responsible for the welfare of families resident in plantations. Environmental sanitation is one of their chief responsibilities. PHIs would liaise with these officers and advise them on any remedial measures that are considered appropriate.

6.11 Environmental Sanitation during Disasters

Health Workers should be prepared to act in the face of disasters such as floods, landslides, blasts etc. Environmental health is disturbed by these disasters which can cause damage to water supply and sewerage plants, accumulation of debris with resulting breeding of insects and rodents, human and animal carcasses, fire and electrocution hazards and above all injured and displaced people.

Sanitary measures that have to be taken include the construction of temporary shelters with measures for the proper disposal of excreta, and providing safe water for minimum requirements of drinking, cooking and basic cleanliness. Disinfection of water supplies with chlorine that include chlorination of all wells, proper storage and disposal of solid waste, food sanitation, vector control and health education are some of the other measures that have to be taken by the public health staff of the area.

6.12 Health Education

Health Education is an integral part of every public health programme. Its aim is to make the people realise and recognise that individuals are responsible for their own health and that proper and positive health practices lead to a state of good health. Health Education is also aimed at raising awareness among the people thereby stimulating them to accept positive practices and utilise services that help them to achieve a state of good health. The PHI should plan and implement a programme of health education in his area and ensure community participation in all health activities.

7. Public Health and Responsibilities of Local Authorities

In Sri Lanka there are a number of Public Health Statutes in which there are provisions for the protection of the environment. The local authorities, namely Municipal Councils, Urban Councils and Pradeshiya Sabhas, would be the administrative authority for the purpose of promoting and securing public health within their areas and are vested with all powers as stated in their Acts and Ordinances under powers and duties as to Public Health, the Nuisances Ordinance, the Housing and Town Improvement Ordinance and any other written law for the time being in force in that behalf.

The local authority constituted for each administrative area shall be charged with the regulation, control and administration of all matters relating to public health, public utility services and public thoroughfares and generally with the protection and promotion of the comfort, convenience and welfare of the people and all amenities within such area.

The Local Authority shall, in the exercise, discharge and performance of the powers, duties and functions vested in, assigned to or imposed on it by or under the Act in matters relating to public health, act in consultation with the Medical Officer of Health within its limits. It shall be the duty of the Medical Officer of Health to advise the local authority in all such matters and to supervise and direct the carrying out in that area of measures relating to public health. (PS. 78.)

Increased mosquito densities are not only a menace but cause a danger in that the disease carrying mosquitoes also appear in large numbers amongst them. There are mosquitoes that cause malaria, filariasis, Japanese encephalitis, dengue and dengue haemorrhagic fever. This group of diseases is related to the breeding of disease carrying mosquitoes in small collections of water and to poor drainage.

Drainage construction is an effective mosquito control measure. It is cheaper than the application of insecticides and does not have to be repeated regularly, in many cases. It costs less than a year's supply of insecticide. Unlike insecticides, it can have no detrimental effect on the environment; on the contrary, it constitutes an environmental improvement. Moreover, the danger of mosquitoes developing resistance, as they have been known to do to insecticides, does not apply. In the local authority Acts, the subject of drainage and other related subjects under public health are dealt with as follows:

7.1 Drainage

The local authority may from time to time cause to be made, altered or extended such public, main or other drains, sewers and water courses as may appear to be necessary for the effectual draining of any area within the local authority area. If necessary, the local authority may carry them through, for a street, or any cellar or vault which is under any of the streets, and after reasonable notice in writing in that behalf, into, through, or under any closed or other lands whatsoever, doing as little damage as may be and making full compensation for any damage done. (MC 97).

No person shall discharge or cause or suffer to be discharged, without the sanction of the Council, any sullage, foul liquids, or faecal matter into any drain or other place which is not suitable or place in such a manner as to cause a nuisance: or wilfully discharge or cause to be discharged any rain water into any drain which is intended to carry foul water. (MC 117-1).

Every person who fills up or otherwise obstructs or interferes with the free flow in any public drain or watercourse (whether the same be within any private premises or not) shall be guilty of an offence and shall be

liable, on conviction, to a fine not exceeding Rs. 500 and in case of a continuing offence to an additional fine not exceeding Rs. 100 for each day during which the offence is continued after a conviction thereof. (MC 102).

7.2 Latrines

Improper latrines or defaecation on the ground for want of proper latrines cause contamination of surface water producing a host of gastro intestinal infections that lead to diarrhoea and worm infections. Availability of a proper latrine is considered as an important public health requirement and regulations are framed under Local Authority Acts.

It shall be the duty of a Local Authority

a) to take effective measures to secure that adequate and proper latrine accommodation is provided for all houses, buildings and lands within such area.

b) to provide such public latrine accommodation as is necessary at all places of public resort within its limits, and

c) to ensure that all latrine accommodation both public, private and within its limits is maintained in proper order and condition.

All latrines and cesspits within the limits of any Pradeshiya Sabha or local authority shall be under the survey and control of the local authority and shall be altered, repaired, or kept in proper order or any latrine may be converted to a water sealed latrine, as the Pradeshiya Sabha or local authority may require, at the cost and charges of the respective owners of the houses, buildings or lands to which the latrines belong, or for the use of which they are constructed or maintained. (PS 89-1)

If any person within the limits of any Pradeshiya Sabha or local authority

a) constructs any latrine or cesspit contrary to the directions of the Pradeshiya Sabha or local authority contrary to the provision of the Act or any by-law made thereunder, or

b) continues the use of any latrine or cesspit which has been ordered by the Pradeshiya Sabha or local authority to be removed or closed, such person shall be guilty of an offence punishable with a fine not exceeding Rs. 500 (PS 90)

7.3 Conservancy and Scavenging

It shall be the duty of the Pradeshiya Sabha or local authority to take all necessary measures within its limits

a) for properly sweeping and cleaning the streets, including the footpaths, and for collecting and removing all street refuse

b) for securing the due removal at proper periods of all house refuse, and the due cleaning and emptying at proper periods of all latrines and cesspits, and

c) for the proper disposal of all street refuse, house refuse and night-soil.

Every Pradeshiya Sabha or local authority shall from time to time provide places convenient for the proper disposal of all street refuse, house refuse, night soil, or similar matter removed in accordance with the provisions of the Act and for keeping all vehicles, animals, implements, and other things required for that purpose or any of the other purposes of the Act and shall take all such measures and precautions as may be necessary to ensure that no such refuse, night-soil or similar matter

removed in accordance with the provisions of the Act is disposed in such a way as to cause a nuisance. (PS 93)

7.4 Insanitary Buildings

It shall be the duty of the Pradeshiya Sabha or local authority to cause to be made from time to time an inspection of every part within the limits of the Pradeshiya Sabha with a view to ensuring that the houses or buildings within its limits are kept in such sanitary condition as is required by the provision of this Act or any other enactment, and to undertake all necessary measures to enforce such provisions within that area. (PS 96)

7.5 Nuisances

It shall be the duty of the Pradeshiya Sabha to cause to be made from time to time an inspection of its area with a view to ascertaining what nuisance exists calling for abatement under the powers conferred by this Act or any other anactment, and to the enforcement of the provisions of this Act or such other enactment in order to abate such nuisances. (PS 100)

Where within the limits of any Pradeshiya Sabha any private tank or low marshy ground or any waste stagnant water, situated on any private land appears to the Pradeshiya Sabha or local authority to be injurious to health or to be offensive to the neighborhood, the Pradeshiya Sabha shall by notice in writing require the owner of that land to cleanse or fill up such tank or marshy ground or to drain off or remove such waste or stagnant water. (PS 101)

No place within the limits of any Pradeshiya Sabha or local authority other than a place provided by the Pradeshiya Sabha shall be used as a slaughter house, unless a licence for the use thereof as a slaughter house

has been obtained from the Chairman of the Pradeshiya Sabha or local authority who is empowered to grant such licence as may seem necessary. (PS 102)

7.6 Subject of By-Laws

The powers of any Pradeshiya Sabha or local authority to make by-laws, shall, without prejudice to the generality of the powers thereby conferred, include the power to make by-laws for or in respect of all or any of the following purposes relevant to environmental protection.

Public Health and Amenities, including:

a) drainage,

b) conservancy and scavenging and the charging of fees therefor,

c) the inspection, regulation, maintenance and cleaning of drains, privies, cesspits, ashpits and sanitary conveniences and appliances,

d) the regulation and management of public sanitary conveniences,

e) the regulation, supervision, inspection and control of lodging houses and tenement buildings,

f) the abatement of nuisances including the regulation and control of the operation of gramophones, loudspeakers, amplifiers and other instruments automatically or mechanically producing or reproducing sound,

g) the seizure, forfeiture, removal and destruction of unwholesome articles of food or drink, and the prevention of the sale or exposure for sale thereof,

h) the regulation, supervision, inspection and control of bakeries,eating houses, hotels and restaurants and tea and coffee boutiques,

i) the regulation, supervision, inspection and control of dairies and the sale of milk.

j) the sale of provisions including the inspection, regulation and control of shops and places (other than markets) used for the sale of meat, poultry, fish, fruit, vegetables, or other perishable articles of food for human consumption, and the licensing of shops and places used for the sale of fresh meat, fresh fish, or live animals,

k) the regulation, supervision, inspection and control of trades deemed to be offensive or dangerous by the Pradeshiya Sabha,

l) the regulation of the dimensions and use of kraals in public lakes, rivers, lagoons, and estauries for soaking coir husks, and the charging of fees for the use of such kraals.

m) the regulation, supervision, inspection, control and licensing of breweries and aerated water manufactories,

n) the compelling of owners and occupiers within the limits of the Pradeshiya Sabha to keep their lands free of undergrowth and rubbish, and their dwelling compounds in a clean and sanitary condition,

o) the prevention of malaria and the destruction of mosquitoes and disease-bearing insects,

p) the draining, cleaning, covering, or filling up of ponds, pools, open ditches, sewers, drains and places containing or used for the collection of any drainage filth, water, matter, or thing of an offensive nature or likely to be prejudicial to health,

q) the cleansing, purifying, ventilating, and disinfecting of houses, dwellings, and places of assembly or workshop by the owners or occupiers and persons having the care or control thereof,

r) the prevention or mitigation of epidemic, endemic or contagious diseases, and the speedy interment of the dead during the prevalence of such disease,

s) washing and bathing, including the establishment, maintenance, and regulation of public bathing places and places for washing animals and clothes,

t) the regulation and control of industrial waste,

u) the preservation of public health and the suppression of nuisances. (PS 126)

8. Acts and Ordinances

8.1 The Housing and Town Improvement Ordinance 1915 - Cap 268

This Ordinance is meant to regulate and promote developments in MC, UC and built up areas declared under the Ordinance. No buildings can be erected or altered without the approval of the Chairman of the local authority.

No building can be occupied by construction without obtaining a certificate of conformity. The public health concern in a building is mainly on its height, size and ventilation of inhabited rooms, open air spaces at the side and interior of buildings, open spaces at the rear of buildings and road access. Under section 64 of the Ordinance, the local authority is empowered to demolish the buildings that are unfit for human occupation. They are also empowered to get a closing order from the Magistrate (Section 77)

8.2 Town and Country Planning Ordinance No. 16 of 1946

The objective of this Ordinance is to ensure the orderly or planned development of towns. The local authorities have planned and executed new town schemes but provisions of the Ordinance have often been used for planning of sacred areas.

8.3 Urban Development Authority Law No. 41 of 1978

It was found that the two Ordinances described above were insufficient to cater to the urban area development as some of the planning and implementation activities in urban areas are performed by central agencies. Those activities include the preparation of schemes for environmental improvement, development of environmental standards and control of population.

8.4 The Nuisance Ordinance No. 15 of 1862

The Nuisance Ordinance provides for better preservation of public health and the suppression of nuisances. The first Nuisances Ordinance came into effect as far back as 1862 and was revised in 1939 and 1946.

The following offences were included in the Ordinance as those liable to a fine not exceeding Rs. 50/-:

1) House, building or land kept in a filthy or unwholesome state or overgrown with rank and noisome vegetation.

2) Having foul or offensive drains, ditches, gutters, cesspools, latrines.

3) Keeping an accumulation of dung, offal, filth, refuse or other noxious or offensive matter for more than 24 hours, otherwise than in a proper receptacle.

4) Allowing a house, building or wall to be in a ruinous state or in any way dangerous to the inhabitants or to the neighbouring buildings or to the occupiers thereof or to passengers.

5) Allowing waste or stagnant water to remain in any place within the premises or allowing contents of any privy or cesspit to overflow or soak therefrom.

6) Throwing, putting, casting or causing to enter any stream, tank, reservoir, well, cistern, conduit or aqueduct, any dead animal or any dirt, rubbish, filth or other noisome or offensive matter or thing, any unwholesome or offensive liquid, matter or thing causing such water to be fouled or corrupted.

7) Exposing for sale unwholesome meat, poultry, fish, fruit or vegetable which is unfit for human consumtion.

9) Selling noxious articles unfit for use as food or drink for man.

10) Keeping a manufactory or place of business from which offensive or unwholesome smells arise, without a licence for that purpose.

11) Keeping or depositing any coconut husks, coir or any other substance in such a manner as to be a nuisance to or injurious to the health of any person.

12) Throwing or putting or permitting his servants to throw or put any earth, dirt, ashes, filth, refuse from any garden, kitchen or stable or any broken glass or earthenware, or other rubbish, on any street, road, or public place or passage or into any sewer or drain.

The local authority may make laws in respect of

a) removal of rubbish in the house and dumping on the road side,

b) draining or covering of filthy ponds, drains, open ditches,

c) disinfecting houses,

d) prevent contagious diseases and speedy interment of the dead,

e) all other matters required for preservation of public health and suppression of nuisances.

8.5 Food Act No. 26 of 1980 (Cap 544)

Food laws were necessary centuries ago to control gross adulteration and cheating. They are needed even more today to deal with food additives, pesticides, mycotoxins, microbiological contamination, and many new contaminants to which foods may be exposed through modern processing techniques or environmental agents.

The earliest legislation to prevent adulteration of food in Sri Lanka was contained in the various Acts and Ordinances like the Butchers Ordinance of 1883 and the Municipal Council Ordinance of 1910.

The first attempt to introduce a food law in the country was made by Professor K C Browning, the Government Analyst, in 1912. His attempts were not successful but the outcome of his endeavours was the introduction of the Condensed Milk Ordinance and other piecemeal legislation regarding tea, butter and margarine.

After a lapse of about 34 years, a committee was appointed in 1946 to formulate a food and drugs law. This resulted in the enactment of the

Food and Drugs Act of 1949 with eleven regulations under this Act, one year after the country achieved Independence in 1948.

The Food Act provides for the regulation and control of the manufacture, sale, distribution, storage, transportation and importation of food, to establish a Food Advisory Committee, to repeal the Food and Drugs Act of 1949 and provide for matters connected therewith or incidental thereto.

It contains four parts namely:

1) Prohibition in respect of food

2) Administration -Food Advisory Committee and Food Authority

3) Legal Proceedings

4) General including making of regulations

For the administrative area of a local authority there shall be a Food Authority to enforce the provisions of this Act. The Food Authority is

a) The Municipality or local authority

b) The MOH of an area where the local authority is not appointed as the Food Authority by the Minister.

The Director General of Health Services is the Chief Food Authority. The Minister may approve any MOH, Food & Drugs Inspector, PHI or Food Inspector to be an authorized officer of a Food Authority.

Every person who commits an offence under this Act or any regulation thereunder may be arrested without a warrant and every offence under this Act shall be triable by a Magistrate's Court.

An amendment to the Food Act was passed by Parliament and includes a new section on advertising and labeling (3(2)), disposal of food unfit for human consumption and enhanced fines.

8.6 Control of Pesticides Act No. 33 of 1990 (cap 282)

The Act provides for safeguarding pesticide quality to achieve the desired effect on pests without adverse effects on crops and non-target organisms in the environment. It covers the aspect of safety of food crops which should have pesticide residues only within permissible limits, and safe handling during packing, transport and storage of pesticides.

8.7 National Environmental Act No. 47 of 1980

Provision for the protection of the environment is made in the National Environment Act No. 47 of 1980 and Amendment Act No. 56 of 1988. For the purpose of this Act the Central Environmental Authority was established. The discharge, emission or deposit of waste into the environment will be under the authority of a licence issued by the Authority in accordance with certain standards and criteria.

Where a licence has been issued to any person under this section and he acts in violation of any terms, standards and conditions of the licence, the Authority can suspend or cancel such licence.

8.8 Cosmetics Devices and Drugs Act No. 27 of 1980 (cap. 545)

The first drugs law in this country was covered by the Food and Drugs Act No. 25 of 1949, 1952, 29 of 1953 and 32 of 1954 under Chapter 216 of the Legislative Enactments. It provides for the regulaton and control of the importation, sale and distribution of food and drugs and for matters connected therewith and incidental thereto.

This Act mainly covered the area of adulteration. "No person shall add, or cause or permit any other person to add, any substance to any drug so as to affect injuriously the quality of potency of the drug."

This Act only dealt with the sale, keeping for sale, adulteration and labeling as the main highlights under which drug control activities were carried out. This Act did not cover control on cosmetics and devices.

The Cosmetics, Devices and Drugs Act No. 27 of 1980 was promulgated to overcome the deficiencies in the Food and Drugs Act. This Act covers a more comprehensive spectrum of drugs control and also cosmetics and devices.

It imposes restrictions on the manufacture, retail sale, wholesale, sale, storage, distribution, preservation, packaging and importation of cosmetics, devices and drugs. There was also an Amendment to the Act by Act No. 38 of 1984. Under this Act regulations have been framed and gazetted in Government Gazette No. 378/3 of 02 December 1985 which spells out various requirments for cosmetics regulations, devices regulations and drug regulations. Regulations have been framed under the following areas. registration of cosmetics, devices and drugs, licensing of importers of cosmetics, devices and drugs, licence to manufacture cosmetics, devices and drug, conditions for sale (retail or wholesale), Distribution - (date expired item), labeling requirments and advertising requirements.

9. Conclusion

The factors in the environment that have an effect on man's health and the role of public health services have been described. It is necessary that health services should take into account all the environmental factors

influencing health and should be able to closely monitor the changes in the health of the people consequent upto environmental changes.

The ways in which a local community and the larger society deal with the health problems of their physical environment are, to a considerable extent determined by their collective beliefs and customs. Customs will affect, for example, the sanitary habits of its members; their personal hygiene, their diet, the preparation of food, and the circumstances in which it is taken. Similarly, it will influence the type of housing, their need for privacy, the composition of the household, and so on. Changes in traditional activities that appear desirable for health reasons are more likely, therefore, to be acceptable to the community and its leaders if they take local customs and needs into account.

In order to make the services rendered more responsive to the health needs and demands of communities at grass-roots level, pradeshiya level health activities have to be strengthened and public health laws have to be implemented. Adequate environmental protection standards and monitoring mechanisms have to be in place.

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LOCAL GOVERNMENT FINANCE: ACCOUNTABILITY CONCERNS

by

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Auditor General

All of us are custodians of public resources. We are charged with the responsibility of managing public resources and executing public programmes and activities and for this purpose we are endowed with adequate power and authority. We hold a sacred delegation on behalf of the people who are sovereign. The sovereignty of the people is a fundamental democratic concept enshrined in the Constitution and which is exercised through several arms of the state on their behalf under a delegation.

Those who wield power and authority on behalf of a sovereign people have to be accountable to them in relation to their performance. This brings to focus another basic democratic principle, namely that no one can wield absolute power or authority. We cannot betray the confidence reposed in us by the sovereign people. Some kind of reasonable as-

surance is needed by the people, who constitute the source of power and authority, that the affairs of the state are managed properly in accordance with laws, rules, regulations, concepts and conventions in the most economical and efficient manner, using optimum resources, yielding optimum benefits and results and achieving pre determined objectives, which we refer to as programme results. Constitutional and Legislative arrangements are in place to make Governments and Governmental Agencies accountable to the sovereign people. The discharge of accountability is generally through the system of providing information explaining actions. Annual and other periodical reports constitute accountability reports which provide such information. These reports may involve diverse aspects such as technical, scientific, administrative, financial, professional, and so on. Administration reports and annual audited accounts are such accountability reports.

We can identify five aspects of public accountability:

Traditional Accountability - Need to ensure regularity of fiscal transactions and compliance with laws and administrative policies.

Managerial Accountability - Efficiency and economy in the use of public resources.

Programme Accountability - Achievement of results and objectives.

Social Accountability - Need to inspire general confidence and secure desirable social ends.

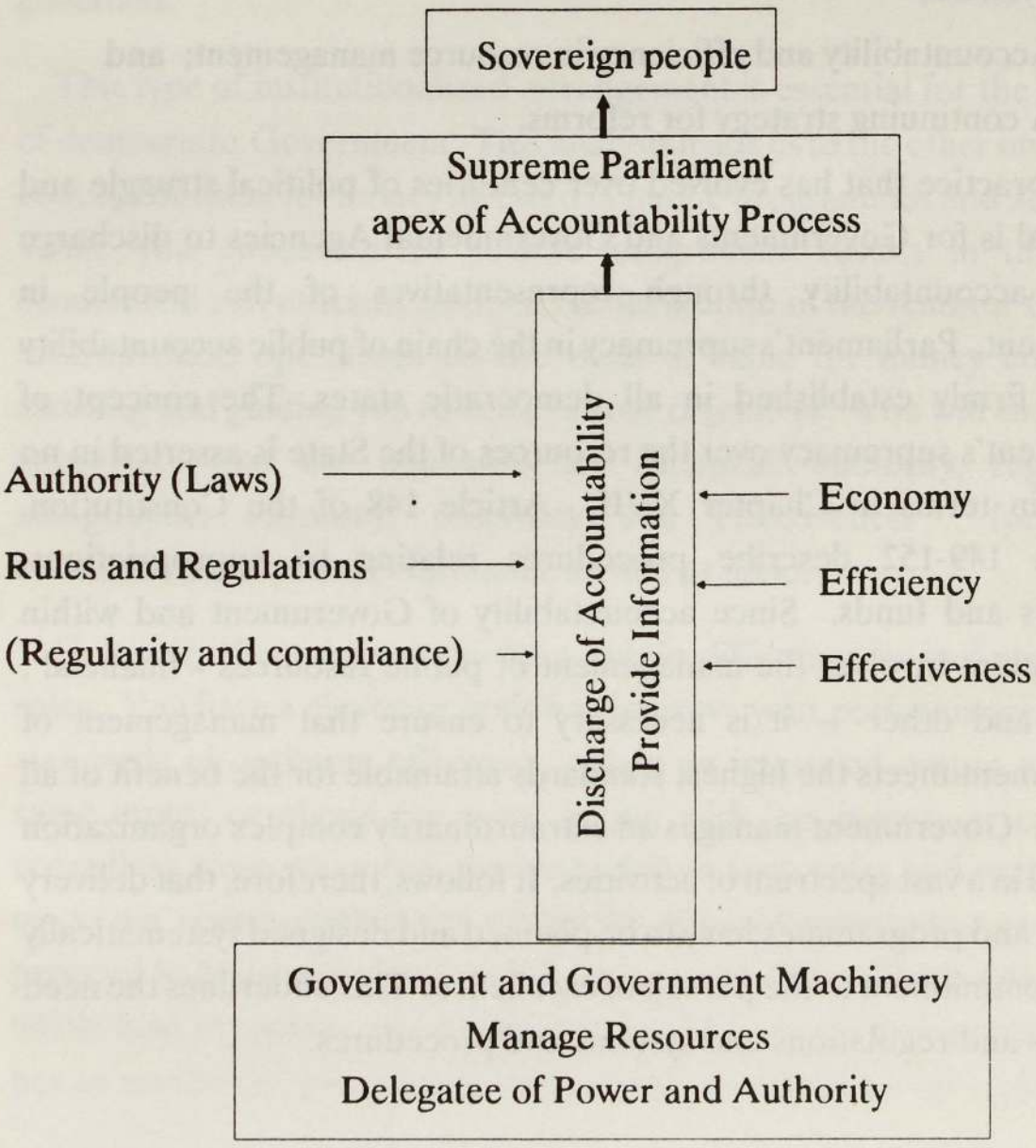
Process Accountability - Need to adhere to systems, procedures and methods.

In the Sri Lankan context, we can recognize three distinct phases of the accountability process.

President - Accountable to Parliament and to the sovereign people who elected him.

Government (as a whole) - Accountable to Parliament representing the sovereign people as the trustee of public resources and delegates of sovereign power.

Administrative Machinery (Executive) - Accountable to Government and Parliament representing the sovereign people.



We can identify seven broad issues relating to the Public Accountability Cycle:

1. Concept of a fiscal plan;
2. A discipline in the resource allocation process;
3. Accountability of Government to Parliament;
4. Accountability of the public service to Government;
5. Accountability and efficiency in the administration of financial systems;
6. Accountability and efficiency in resource management; and
7. A continuing strategy for reforms.

The practice that has evolved over centuries of political struggle and upheaval is for Governments and Governmental Agencies to discharge public accountability through representatives of the people in Parliament. Parliament's supremacy in the chain of public accountability is now firmly established in all democratic states. The concept of Parliament's supremacy over the resources of the State is asserted in no uncertain terms in Chapter XVII, Article 148 of the Constitution. Articles 149-152 describe procedures relating to appropriations, revenues and funds. Since accountability of Government and within Government involves the management of public resources - financial , human and other – it is necessary to ensure that management of Government meets the highest standards attainable for the benefit of all citizens. Government manages an extraordinarily complex organization engaged in a vast spectrum of activities. It follows, therefore, that delivery services and programmes have to be planned and designed systematically with a commitment to the pursuit of excellence. This underlines the need for rules and regulations and systems and procedures.

Accountable management reflects the Government's response to enormous demands placed on its system of management and control by the growth in Government responsibilities in recent decades. The institution of the Auditor General is an entity superimposed by civilized democratic societies on this accountability arrangement that exists between those who exercise power and authority and the sovereign people who have delegated such authority. So you will appreciate that my institution performs a basic democratic function designed to generate public confidence in the system of Government by which they are governed.

This type of institutionalized arrangement is essential for the success of democratic Government. This analysis leads us to the other important concept of value for money invested in public programmes and activities. While you endeavour to achieve programme results in the most economical and efficient manner, the institution of the Auditor General reviews these operations on the basis of value for money concerns, assisting and guiding you to achieve your objectives. You will therefore, appreciate that our objectives are identical: authority, regularity, compliance, economy, efficiency and effectiveness form the cornerstones of your performance as well as mine.

However, there appears to be a subtle difference in our respective roles. You have a choice or option to improve your performance, attain standards of optimum efficiency, obtain an improved output with the same inputs or obtain the same output with less inputs, or carry on regardless come what may, decide to follow laws, rules and regulations or do not comply with them, obtain the planned programme results or proceed halfway and abandon the project, and so on. While you have a whole host of options, the Auditor General has no choice or option. He has to review the programmes and activities and report on reality. He

has to disclose the exact position – what is existing and not what is assumed to be. He takes a photograph, draws a picture, which must reflect nothing but what is existing. He has to conform to certain professional conventions and ethics which demand that he does not suppress any information he comes by. These exposures have to be factual, objective and unassailable. He cannot compromise with hearsay, rumour, gossip or half-baked information. He relies on evidential matter which are tested, analysed and confirmed. If you implement a project, say a hundred kilometres of road network and spend one hundred million rupees on this project, the Auditor General will need to be reasonably satisfied that you have constructed one hundred kilometres of roadway and in doing so, optimum resources have been used and the project has been executed in the most efficient manner. He will also seek evidence of compliance with laws, rules, regulations and management decisions down the hierarchy in the implementation process. Financial management and audit are the most vital elements in the accountability process. Accounting plays the central role in any financial management system. Accounting performs a control function. It will therefore be seen that accounting, financial management, auditing and accountability are inseparable links in the same chain. Professor Mackenzie's words on audit and accountability would be very relevant in this connection. I quote from Professor W. J. M. Mackenzie's Foreword to E. L. Normanton's book **The Accountability and Audit of Governments.**

"Without audit no accountability , without accountability no control, and if there is no control where is the seat of power?"

Accounting, internal control, internal audit, external audit, and accountability had been in existence in Sri Lanka even in ancient periods. There is testimony to this in an inscription of King Mahinda IV in the 10th century A.D. at Mihintale.

"Whatever is spent daily on the maintenance of the Maha Pa on revenue collections and on the renovation of works shall be entered in the register. (From the particulars contained therein) a statement of accounts shall be made with the concurrence of (those at the respective) places of business and such entries as are found false shall be expunged from the accounts. The statement of accounts shall (thus) be placed in a casket under lock (and key). Every month the sheets of accounts (so deposited) shall be made public and a (fresh) statement of accounts prepared from them. From the 12 statements of accounts (so made) during the year there shall be compiled a balance sheet at the end of (each) year which shall be read out in the midst of the community of monks and be (thus finally) disposed of. Those employees who infringe these rules shall be made to pay *ge dand* fines and be dismissed from the service."

The office of the Auditor General (it is not a Government Department falling under a Ministry in terms of Article 52 Section (7) of the Constitution) has been in existence for well over 192 years (established in 1799). The Audit Office existed even during the Dutch period The reference made in this talk to the rock inscription of the 10th century indicates the existence of audit institutions during ancient times. Yet, many Sri Lankans are uncertain about its role, responsibilities and the way in which it works. The Constitution requires that the Government of the day, before it collects or spends public money, must have the express and explicit approval of Parliament. Just as important, the Government must also account for its handling of the funds entrusted to it. The Auditor General, through a proper review of the performance of all public programmes and activities, provides an assurance to Parliament and through Parliament to the tax payers that the Government and Governmental Agencies have discharged their public accountability with due regard to propriety, regularity, compliance, economy, efficiency

and effectiveness. The last three aspects reflect the aspirations of the people for full value for their money whether it is tax rupees or borrowed dollars.

The Auditor General is considered a part of the Legislature and not a part of the Government itself. The independence from the Government of the day and the public service is vital if the Auditor General is to perform his work effectively and meaningfully and make unbiased judgments. The Auditor General must be free of obligations to any individual or institution and also be free from fear of arbitrary retaliation or dismissal. He, therefore, reports directly to Parliament. He works for Parliament and not for the Government of the day. Parliament makes use of his reports to call the Government to account for its exercise of power and handling of public resources. In common with all other civilized democratic countries, elaborate safeguards have been provided by Parliament through the Constitution to ensure the Auditor General's independence of the executive branch and to confirm his position of being answerable only to Parliament.

Before the adoption of the Republican Constitution of 1972, there was no provision in the Constitution for the audit of local authorities. The audit of these institutions was then carried out under the provisions of the respective laws. The Constitutions of 1972 and 1978 provide a Constitutional mandate to the Auditor General to audit the accounts of local authorities in addition to other institutions. Today there are 08 Provincial Councils, 12 Municipal Councils, 39 Urban Councils, 257 Pradeshiya Sabhas and about 14000 Gramodaya Mandalas, which come within the purview of the Auditor General.

The mandate of the Auditor General in the Constitution is stated in general terms as the "Audit of Accounts". This generalization is

considered to give the Auditor General a larger degree of scope. The terms 'accounts' and 'audit' are not defined in the Constitution or any other law. Consequently, the Auditor General has wide discretion to decide the scope and extent of audit and determine what should be considered as accounts. The criteria for such determinations are the aspirations of the Legislature on whose behalf the Constitutional audit is operated, international practices and conventions. The institution of the Auditor General is professionally updated on a continuous basis. The Auditor General is a member of the International Organization of Supreme Audit Institutions, which is supported by the United Nations, the Asian chapter of this organization called the Asian Organization of Supreme Audit Institutions and the Conference of Commonwealth Auditors General. Sri Lanka is a member of the Governing Board of the Asian Organization of Supreme Audit Institutions.

The information collected by the Auditor General on the discharge of public accountability is analysed, reviewed and evaluated. Such evaluations encompass considerations of economy, efficiency and effectiveness. In this process he also addresses concerns for saving and improvements. In view of the fact that there could be technical, professional or scientific problems relevant to the Audit, provision generally exists in the statutory arrangements for the Auditor General to obtain the assistance of any technical, professional or scientific person, institution or body so that he will be in a better position to report on such aspects. Since the Auditor General is independent and has unfettered authority to review records, evidence and information and also has discretionary powers in relation to the scope and extent of his work, and is not interfered with by anyone, he has an obligation to exercise proper judgment, skill, care and caution in relation to the assessments and observations he makes in his reports and to ensure that his reports are factually correct, objective, unbiased and impartial. A very democratic

procedure is followed in audit at present. Provisional audit observations are, in the first instance, referred to the officials and institutions concerned and an opportunity afforded to submit explanations and responses before the final reports to Parliament are prepared. These institutions get a further opportunity to present their views when they are examined by the Committee on Public Accounts and the Committee on Public Enterprises on the basis of the report of the Auditor General.

The objectives of government accounting as laid down in a United Nations Manual are as follows:

a) Accounting systems have to be designed to comply with the constitutional, statutory and other legal requirements of the country;

b) Accounting systems must be related to the budget classifications. The budgetary and accounting functions are complementary elements of financial management and must be closely integrated;

c) The accounts must be maintained in a manner that will clearly identify the objects and purposes for which funds have been received and expended and the executive authorities who are responsible for the custody and use of funds in programme execution;

d) Accounting systems must be maintained in a way that will facilitate audit by external review authorities and readily furnish the information needed for effective audit;

e) Accounting systems must be developed in a manner that will permit effective administrative control of funds and operations, programme management and internal audit and appraisal;

f) The accounts should be developed so that they effectively disclose the economic and financial results of programme operations, including the measurement of revenues, identification of costs and determination of the operating results (the surplus or deficit position) of the government and its programmes and organizations;

g) Accounting systems should be capable of serving the basic financial information needs of development planning and programming and the review and appraisal of performance in physical and financial terms;

h) The accounts should be maintained in a manner that will provide financial data useful for economic analysis and reclassification of governmental transactions and assist in development of national accounts.

Today, accounting is recognized as part of the management information systems, providing vital information to the management for decision making based on economics in the control of resources. It also provides information for interested third parties.

Without a good accounting system –

a) financial control generally is greatly weakened;

b) transactions cannot be promptly carried out;

c) budgetary formulation becomes unrealistic, for lack of information on actual income and expenditure in recent periods;

d) budgetary control is weakened, for lack of information on status of current transactions;

e) decision making generally is deprived of the essential information on which it relies, and as a result there is greater scope for ill-judged or wrong decision making.

In this country, the role of accounting and its potential for improving the efficiency of management are often underestimated. Accounting in our public sector is often seen as a routine, legalistic and low status activity associated with the observance of established procedures, but not with the need to get things done. It is therefore necessary to reassert the central role played by accounting in any financial management system. Without good accounting data, activities such as budget formulation, budgetary control, progress monitoring, forecasting financial scenarios, and managing liquidity are at best severely handicapped, and at worst rendered impossible. It appears obvious that financial management improvement programmes and financial reforms generally must be preceded by a careful diagnosis of the strengths, weaknesses and capacity of the accounting system. If the system is found to be weak or to lack capacity, it is essential that these aspects receive adequate attention before improvements are made to associated financial management systems. A reasonably efficient accounting system is a precondition for good financial management.

No accounting system can be efficient if financial rules and internal control procedures are not observed. Any attempt to improve financial management needs to be accompanied by modernization, wide dissemination and study of financial rules covering all aspects of financial administration and internal control. In such an exercise, financial rules should be brought together in one comprehensive document and should be reviewed and updated from time to time. Authority for such rules should be derived from existing legislation so that they become legally binding. Responsibility and accountability should be clearly demarcated and fixed, not left ambiguous.

Internal control on the other hand should be built into the departmental structure by a rational distribution of staff and duties to

ensure that the work of one officer is overseen by another. Financial responsibility must continue to rest with the man at the top and not the man to whom authority is delegated. Coordination must be encouraged among officers and collusion discouraged through rotation of staff at reasonable intervals. Officers should be encouraged to take annual leave when it becomes due.

An additional internal control mechanism is the installation of a reasonably efficient internal audit system. Incumbents of the top posts in such internal audit systems should be accountable to the Head of the Institution.

I will now refer to the legal background relating to the financial management of Provincial Councils and Local Authorities which now operate under the Provincial Council set up.

The establishment of and devolution of functions powers to the Provincial Councils is provided for in Chapter XVII A of the Eighth Schedule to the Constitution. The Eighth Schedule shows the Provincial Council List (List 1), Reserved List (List 11) and Concurrent List (List iii) of the functions. The Provincial Councils Act No. 42 of 1987 provides for the procedures to be followed and the Provincial Public Service.

The financial responsibilities and powers of the Governor are also provided for in the Provincial Councils Act.

The relevant sections are :

Emergency Fund	Sc. 20(1) (2) (3)
Auditor General's Report	Sc. 23(2)
Statutes relating to financial matters	Sc. 24

Annual Budget	Sc. 25
Demand for Grants	Sc. 26(3)
Supplementary Grants	Sc. 28
Expenditure pending sanction by PC	Sc. 30
Public Service	Sc. 32(1) (2) (3)
Provincial Public Service	Sc. 33(1)
Chief Minister's powers relating to the issue of warrants for withdrawals are specified in	Sc. 19(3)

Legislation relating to Municipal Councils and Urban Councils is contained in Chapters 576 and 577 respectively of Volume XVIII of the Legislative Enactments. The Pradeshiya Sabhas Act No. 15 of 1987 provides the statutory basis for the Pradeshiya Sabhas.

The following funds are required to be established by the Provincial and Local Authorities:

Provincial Fund by Provincial Councils - under Sec. 19(1) of the Provincial Councils Act.

Municipal Fund by Municipal Councils - under Sec. 185(1) of the Municipal Councils Ordinance

Local Fund by Urban Councils - under Sec. 158(i) of the Urban Councils Ordinance and

Pradeshiya Sabhas Funds - under Sec. 129(i) of the Pradeshiya Sabhas Act.

Items of revenue and other receipts such as rates, taxes, duties, fees and lease proceeds payable to these funds are described in the relevant enactments.

No moneys out of these funds can be appropriated except in accordance with and for the purposes and in the manner provided for in the respective enactments.

A budget containing an estimate of the available income and details of expenditure for the ensuing year is required to be prepared and submitted to the Council by the Governor/Mayor/Chairman of the Council.

Provincial Councils - at least five months before the commencement of the financial year.

Municipal Councils - on a date fixed by the Mayor in each year (The budget has to be considered by the Council at a Special Meeting called in the last month of the financial year),

Urban Councils - on or before such date as fixed by by-laws of the Council,

Pradeshiya Sabhas - on or before such date as specified by the rules.

A special feature of the annual financial statements of the Provincial Councils is that the sums required to meet the expenditure described by the Provincial Councils Act as expenditure charged upon the Provincial Fund and the sums required to meet other expenditure proposed to be made from the Provincial Fund should be shown separately.

An appropriation statute and a warrant under the hand of the Chief Minister are also required for the withdrawal of moneys out of the Provincial Fund of a Provincial Council.

The procedure relating to accounting that should be followed by Provincial Councils and Local Authorities can be summarized as follows:

Provincial Councils: - The custody of the Provincial Fund of a province, the payments of moneys into such fund and all other matters connected with, or ancillary to, those matters have to be regulated by rules made by Governors.

Municipal Councils

(i) The Mayor is required to submit at each general meeting of the Council a Statement of Receipts and Disbursements on account of the Municipal Fund from the close of the previous financial year up to the close of the month preceding that in which the meeting is held.

(ii) The Mayor is also required to submit to the Council a detailed report of his administration during the previous year with a Statement of Receipts and Disbursements as soon as possible after the close of each financial year. The report of the Mayor and the Statement of Receipts and Disbursements should be submitted to the Minister together with any resolutions that may be passed thereon by the Council within 6 weeks of the date when the same were first submitted to the Council.

Urban Councils: - The Chairman of the Council is required to prepare as soon as possible after the close of each financial year and submit to the Council a detailed report of the administration of the Council during such financial year with a statement showing the nature and amount of receipts and disbursements on account of the Local Fund, in such form as prescribed by the Commissioner, and the report of the Chairman together with the statement and any resolution that may have been passed thereon by the Council should be submitted to the Minister through the

Commissioner within 6 weeks of the date when they were first submitted to the Council or within such other period as the Council with the approval of the Commissioner may determine.

Pradeshiya Sabhas: - As stipulated in rules made under Section 171 of the Pradeshiya Sabhas Act.

Audit:

Accounts of all local authorities are required to be audited by the Auditor General in terms of Article 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sections 220 of the Municipal Councils Ordinance and 181 (2) of the Urban Councils Ordinance empower the auditor to require the production before him of all books, deeds, contracts, accounts, vouchers and other documents and papers, which he may deem necessary for the purpose of audit and to require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents or papers to appear before him at any such audit and examination or adjournment thereof and to make and sign a declaration with respect to the same.

Penalties for neglect or refusal to produce any document or to make or sign a declaration required for the purpose of audit are laid down in Section 221 of the Municipal Councils Ordinance and Section 181 (3) of the Urban Councils Ordinance.

Surcharges

Sections 226 of the Municipal Councils Ordinance, 182 (1) of the Urban Council's Ordinance and 172 (3) of the Pradeshiya Sabhas Act require the Auditor General to disallow every item of the accounts which

is contrary to law and to surcharge the same on the person making or authorizing the making of the illegal payment, and to charge against any person the amount of any deficiency or loss incurred by the negligence or misconduct of that person and any sum which ought to have been, but is not, brought into account by that person.

Before making any surcharge or disallowance against any person the Auditor General is required to afford an opportunity to such person to be heard or to make any representations with regard to the matter.

Appeals against surcharges

Municipal Councils - Any person aggrieved by any disallowance or surcharge by the Auditor General can appeal therefrom to the Minister within 14 days of the date of decision of the Auditor General being communicated to him.

No appeal shall be entertained by the Minister in any case in which the appellant had failed or neglected to make any representation with regard to the matter of such disallowance or surcharge after an opportunity to do so had been afforded to him by the Auditor General.

Urban Councils - Any person aggrieved by any disallowance or surcharge may appeal against such decision to the Court of Appeal or, in lieu of an appeal to the Court of Appeal, may appeal from such decision to the Minister within 30 days of the date of decision of the Auditor General being duly communicated to him.

Pradeshiya Sabhas - Any person aggrieved by any surcharge or disallowance may appeal therefrom to the Court of Appeal or, in lieu of an appeal to the Court of Appeal, may appeal against the decision of the Auditor General to the Secretary to the Ministry of the Minister.

Recovery of Surcharges

The amounts surcharged by the Auditor General should be paid to the Commissioner within 14 days after the decision of the Auditor General and the recovery of any amount which had not been so paid is the responsibility of the Commissioner.

CONSTITUTIONAL AND LEGAL ASPECTS OF LOCAL GOVERNMENT IN SRI LANKA

by

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1. Introduction

1.1 There are three types of local authorities functioning in Sri Lanka at present. They are the Municipal Councils and Urban Councils for urban areas and Pradeshiya Sabhas for other areas which are mainly rural in character. These authorities are based on a framework of legislation with powers, functions and duties for the provision of services and regulating locally activities for the promotion of the 'comfort, convenience and welfare' of the rate-payers of the respective areas. Local Government is a recognized level of government through democratically elected councils and served by officials who should maintain political impartiality.

Local authority law empowers these institutions to generate revenue locally by rates, taxes and licence duties and receive grants and aid from the centre on a nationally accepted formula to attend to their functions as recognized partners in administration.

1.2 A wide range of legislation having a bearing on the local government functions confers further power on these authorities. Subsidiary legislation in the form of regulations, by-laws framed by the Minister, by-laws-framed and adopted by the Councils within the enabling provisions of the law and other customs and practices confer additional legal power on the local authorities to perform their functions. It is an accepted principle that a local authority which enjoys the status of a body corporate cannot attend to any function or exercise power or duty unless there is legal sanction for such activities. Any transgression will mean a cause for legal investigation administratively by a central government authority or by judicial review by the appropriate courts.

2. Constitutional Provisions

2.1 The Constitutional provisions could be viewed from two angles.

(1) Provisions prior to the enactment of the Thirteenth Amendment to the Constitution of the Demoeratic Socialist Republic of Sri Lanka on 14. 11. 1987.

(2) Provisions after the passage of the Thirteenth Amendment.

2.1.1 The need was not felt to deal with the local government system in the body of the Constitution before the adoption of the Thirteenth Amendment. As a function of government, Local Government was a subject assigned to a Line Minister of Cabinet rank ap-

pointed by H.E. the President at the time of the appointment of Ministers to the Cabinet. The notification under Section 44 (i) of the Constitution published by the President had entrusted this portfolio to the Minister in charge of Local Government of Housing and Construction. The ultimate responsibility of the appointee is to Parliament. (Section 43 (1)).

2.1.2 This clearly established the link between Parliament and the local authorities which functioned under laws controlled by Parliament. The Minister was answerable to the public through Parliament for the performance of local authorities and was responsible for amending, rescinding or adopting laws connected therewith and exercising central control directly or through organizations recognised by the law.

2.1.3 Section 104 of the Constitution has entrusted the Commissioner of Elections the duty of conducting elections by virtue of the legal powers vested in him and in this context by virtue of the Local Authorities Elections Law.

2.1.4 The Accounts of Local Authorities are subject to audit by the Auditor General under Section 154 of the Constitution who should report to Parliament about the state of the financial administration of Local Authorities within ten months of the completion of the financial year. The financial control over local authorities by Parliament is guaranteed by this process.

2.1.5 The jurisdiction of the Parliamentary Commissioner on Administration (Ombudsman) is extended to cover local authorities to inquire into instances of maladministration and this arrange-

ment provides further safeguards under the Constitution (Section 156).

2.1.6 The corporate body status bestowed on local authorities by the enactments responsible for their constitution provides for legal remedies to any aggrieved party to seek redress through the Supreme Court by way of injunctions and judicial reviews in the form of writs (Section 140).

2.2.1 Local Government has been included as a devolved subject in list 1 (4.1) of the Ninth Schedule to the Thirteenth Amendment to the Constitution entrusting the supervision of the administration to the Provincial Councils with the **provision to confer additional powers but not to take away their powers.** While Municipal Councils, Urban Councils and Pradeshiya Sabhas enjoy recognition as local authorities by this Amendment to the Constitution, Gramodaya Mandalayas too have been recognized as statutory institutions along with local authorities and are entitled to receive additional powers from Provincial Councils.

2.2.2 The following changes became effective after the establishment of Provincial Councils and the entrusting of the Central Government function of the supervision of the Local Authorities to the Provincial Councils:

(a) Conferment of powers by Statutes to be enacted by the Provincial Councils (Section 154 G (1)).

(b) Assumption of responsibility by the Ministers and executive officers in the Provincial Council for exercising the powers functions and duties earlier performed by the Line Ministers and executive officers of the Central Government

(Provincial Councils Consequential Provisions Act No. 12, 1989).

(c) Adoption of new procedure to amend the existing laws (i) by a majority of votes cast on a Bill in Parliament where there is agreement on the part of all the Provincial Councils (ii)by a two-thirds majority when there is disagreement (Section 154 G (2)).

(d) Parliament can give assent to a new law framed at the request of a Provincial Council by a bare majority. (Section 154 G (4)).

(e) For judicial review - the High Court in the Province to exercise jurisdiction on *habeas corpus* applications and the issue of writs in the form of *certiorari, prohibition, procendo, mandamus* and *quo warranto*.

2.2.3 The Thirteenth Amendment specifically states that **"the constitution, form and structure of Local Authorities shall be determined by law".** The passage of legislation is controlled by Parliament in consultation with Provincial Councils within the provisions of the Constitution.

3. Some Basic Aspects of Local Government Law

3.1 The Local Government Law exhibits the following characteristics in the discharge of the responsibilities through the Councils elected to office in each authority:

(a) the Council is a corporate body;

(b) decisions are taken by or on behalf of the whole Council without any separate source of executive authority; and

(c) officers serve the Council as a whole.

3.2 Corporate Body

3.2.1 A Local Authority is a **corporate body** and therefore enjoys the recognition of a legal person. This concept is expressed in the three main Ordinances dealing with their establishment. The following references are significant in this regard.

Municipal Councils

3.2.2 Part 1V - Status, Powers and Duties of Municipal Councils

(i) Every Municipal Council shall be a **corporation** with per petual succession and a common seal and shall have power, subject to this Ordinance, to acquire, hold, sell property and may sue and be sued by such name and designation as may be assigned to it under this Ordinance.
(M.C. Ordinance (Chapter 576) Section 34 (i))

Urban Councils

(ii) Every Urban Council shall be a **corporation** with perpetual succession and a common seal, and may sue and be sued by such name as may be assigned to it in the Order constituting the Council, or any subsequent order in modification thereof.
(Urban Councils Ordinance (Ch. 577), Section 31)

Pradeshiya Sabha

(iii) Every Pradeshiya Sabha constituted by an order under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall have power, subject to the provisions of this Act, to acquire, hold and sell

property and may sue and be sued in such name. (Pradeshiya Sabha Act No 15 of 1987 - Sec. 2 (2))

(iv) There is similar provisions for Gramodaya Manadalayas. (Development Councils Amendment (Act 32 of 1982))

3.2.3 Three main legal considerations emerge from this definition of local authority as a corporate body. They are:

(i) A local authority can attend to activities permitted by the law.

(ii) Failure to observe the law will involve the authority in investigations by the Ministry responsible for its supervision or by ratepayers affected by the decisions of the authority who could resort to legal action in the form of writs obtained from courts. Hence, the need to conform to the law in the discharge of Council activities.

(iii) The Auditor General is empowered to surcharge any illegal expenditure.

3.3 Decision Making

3.3.1 The Council headed by the Mayor or the Chairman is responsible for the decision making process in a local authority.

The whole Council functions as the policy making body and the activities are regulated by the available law, the role of the leader of the executive team being performed by the Mayor/Chairman of the Authority.

3.3.2 The Municipal Council Ordinance provides for the formulation of Statutory Committees (there should be a minimum of 3 under the law) - (Section - 26-28) to attend to Council business. These Committees can be referred to as the Workshops of the Council,

which make the Council work easy. However, the recommendations of the Standing Committees will have to receive the formal approval of the Council for them to have the force of law for implementation as Council decisions. The Committees in Urban Councils and Pradeshiya Sabhas operate as advisory bodies and their decisions are not effective as in the case of Standing Committees of Municipal Councils.

3.3.3 The law is clear regarding the role of the head of the Local Authority as the Chief Executive of the Council.M.C. Ordinance (Chap. 576) defines it as follows: The Mayor of the Municipal Council shall, subject to the provisions of Section 254 A, be the Chief Executive Officer of the Council and all executive acts and responsibilities which are by this Ordinance or by any other written law directed or empowered to be done or discharged by the Council may, unless the contrary intention appears from the context, be done or discharged by the Mayor(Section 14 (3)).

Section 254 (A) referred to in the above paragraph deals with the powers vested in the Municipal Commissioner in the recovery of payments due to the Municipal Council. This Amendment was brought about by Act 48, 1971 to exempt the members from the responsibility of the recovery of revenue which hitherto was vested in the Councils.

Similar references appear in regard to the eminent role of the Chairman of an Urban Council (U. C. Ordinance Chap. 577 Sec. 19 (3). Pradeshiya Sabhas Act 15, 1987 has drawn inspiration from the M.C. and U.C. Ordinances in referring to the Chairman as the Chief Executive Officer (Section 8).) Councils are elected democratically by the voters in the local authority area and therefore represent the will of the

rate-payers. The Council (headed by the Mayor/Chairman) will decide on the policy for implementation by paid officials under its supervision.

3.4 The Role of Officers

3.4.1 The policy of a Council is implemented by the officers. A Council will have to act within the ambit of the law and take policy decisions. The officers serve the Council as a whole.

3.4.2 Statutory references appear in the Ordinances to the Chief Officer of the Council. It is the Municipal Commissioner in the case of a Municipality and a Secretary in the case of an Urban Council or Pradeshiya Sabha. They enjoy certain statutory powers such as the responsibility for the timely collection of revenue due to Councils and exercise delegated authority from the head of the Council. The maintenance of local authority services is the responsibility of the paid officials who should be politically impartial, efficient and effective in their performance.

4. The Structure of Local Government: The Main Ordinances

4.1.1 The following are the types and number of local authorities and the main Ordinances applicable to them.

(a) Municipal Councils, 12, Municipal Councils Ordinance (Chap. 576);

(b) Urban Councils, 39, Urban Councils Ordinance (Chap. 577);

(c) Pradeshiya Sabhas, 269, Pradeshiya Sabhas Act 15, 1987.

4.1.2 Any area declared as a Municipal area by the Minister could be brought within the provisions of the MC Ordinance. Similarly, an area which by reason of its development has become urban in character is entitled to be declared an Urban Council area. Areas excluding the Municipalities and Towns are declared as Pradeshiya Sabha areas with the objective of facilitating the effective participation of the people in local government and development functions. The areas selected should be co-terminus with the limits of the Asistant Government Agent's Division wherever practicable.

4.1.3 The Pradeshiya Sabhas have been set up to achieve two main objectives viz. (i) to attend to Local Government functions and (ii) to undertake development functions. Considering the sequence of events in a chronological order, the following comments may be made on the Pradeshiya Sabha Act.

a) The Pradeshiya Sabha Act was approved by Parliament on 16.4.1987.

(b) Section 3 refers to it as a local authority using the traditional terminology. However, in the definition of the term "Local Authority" in the same Act, Pradeshiya Sabha is not included as a local authority by name (Sec. 226).

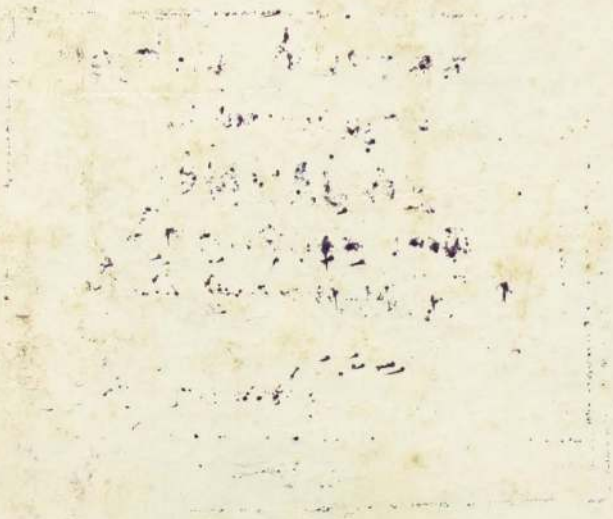
(c) This law had been passed before the repeal of the Development Councils Act No. 35, 1980 (which was done in 1989). The P.S. Act while repealing the Town Councils Ordinance and Village Councils Ordinance had assumed the powers exercised by the Development Councils under the by-laws applicable to those Councils - (to be made effective from the appointed date (Sec. 224).

(d) The Pradeshiya Sabha Act was approved several months before the passage of the Provincial Councils Act 42, 1987 (Nov. 14, 1987).

(e) The Pradeshiya Sabha Act was approved several months before the passage of the Provincial Councils law. These councils are expected to function as agencies at the Divisional level to put through the divsional programme of development activities, a role hitherto not entrusted to Municipal and Urban Councils.

(f) The provisions of the Pradeshiya Sabha Act have been formulated 'to provide grater opportunities for the people to participate effectively in decision making process relating to administrative and development activities at a local level' These opportunities have been spelled out as 'effective participation of the people in local government and development functions' in Section 2(1) of the Act. Hence legal provisions to achieve these objectives have been included in the Pradesiya Sabha Act. The provisions relating to development functions are not features in Municipal Council and Urban Council Ordinances.

The entire country is served by a network of Local Authorities coming under the administrative supervision of the Provincial Councils in terms of the Thirteenth Amendment to the Constitution. A study of the laws applicable to local authority services and regulatory activities for the communal well-being will be necessary to understand the scope and impact of Local Government in Sri Lanka.



The editor and the publisher gratefully acknowledge the financial assistance and the encouragement provided by the Kondrad Adenauer Founation, Germany, for the workshop and the publication of this book.