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Contents

1. Sri Lanka - D. S. Senanayake and the Passage to Dominion Status, 1942 - 1947
K. M. de Silva

15. Social Welfare Programmes, Improved Agricultural Practices and their Impact on the Role of Women and on Fertility in Sri Lanka
H. N. S. Karunatilake

35. The Reception of 'Similar Fact' Evidence in Criminal Proceedings: A Comparative Analysis of the English Common Law and a Codified Asian System
G. L. Pieris

75. Trends in the Level of Sufficiency in Rice Production in Sri Lanka 1960 - 1978
N. Dangalle.

105. A Study of Some Non Intellectual Factors Associated with Academic Achievement
F. S. Niles

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Sri Lanka: D. S. Senanayake and the Passage to Dominion Status, 1942 - 1947*

by K. M. De SILVA

In the context of the British colonial experience in Asia and Africa, the transfer of power in Sri Lanka was unusual for a number of reasons. For one thing, it was a peaceful process, in striking contrast to the situation in the Indian sub-continent and Burma. Secondly she provides a rare example of power being transferred through the electoral process, and completely democratically and constitutionally, from the original legatee of the British to a successor. Thirdly, the final phase in the transfer of power, 1942 to 1947, was dominated so far as Sri Lanka was concerned by one man, D. S. Senanayake.

In all his negotiations with Britain he was guided by a strong belief in ordered constitutional evolution to Dominion Status on the analogy of the white dominions. In insisting that Dominion Status should remain the primary objective and that this should be attained in association with rather than in opposition to the British, he stood against the prevailing current of opinion in the Ceylon National Congress that Independence rather than Dominion Status should be the goal for Sri Lanka's leaders. Secondly, to a much greater extent than the bulk of his colleagues and associates in the national leadership, he understood the implications of the fact that Sri Lanka was a plural society, and his policies for the transfer of power—and in the early years of independence—were framed on that realistic basis. The guiding principles were: his conception of Sri Lanka as a multi-racial democracy, and a multi-racial state without any special or exclusive association with any ethnic group, or any section of an ethnic group; and his commitment to the ideal of a secular state in which the lines between state and religion were scrupulously demarcated. Here again he placed himself in opposition to an increasingly influential current of opinion which viewed the Sri Lanka polity as being essentially Sinhalese and Buddhist in character and which rejected the concepts of a secular state and a multi-racial polity.

* This paper was originally read at the Commonwealth History Postgraduate Seminar at the Institute of Commonwealth Studies, University of London, on 26 May 1977.

This paper is in the nature of a brief exercise in historical revision, an examination of how the outline I sketched in 1971–72 based on published material and Colonial Office records released up to that time stands up against the new information now available to us in confidential Cabinet and Colonial Office papers.¹ In 1974 the first revision was attempted: it changed the picture quite substantially in regard to the events of 1942–43²; the present paper brings the years 1944 to 1946 into sharper focus.

But first we need to go back to 1942 for a brief look at the background at the time when D. S. Senanayake took over as leader of the Ministerial group in the island. A robust personality and an astute politician, Senanayake came to dominate the State Council and the Board of Ministers, unlike his predecessor, the scholarly and ageing D. B. Jayatilaka.

The first point to note is that the consensus on constitutional reform which Sir Andrew Caldecott, the governor of the island, and Malcolm MacDonald, Secretary of State for the Colonies, had negotiated in 1938–9 was shattered in the years 1940–42 by the force of events in the island and in the world at large. The most important of these was of course the outbreak of the second world war, which led to the decision at the Colonial Office in late 1940 to postpone, till after the war was over, the consideration of the granting of constitutional reform in the island. Caldecott was quite unwilling to accept this decision and protested strongly against it, but to no avail. The decision was confirmed and announced as official policy at the end of 1941. At the beginning of 1942 the moderate wing — by far the most influential — of the nationalist movement no longer regarded itself as bound by the compromise of 1938–39, and were set on Dominion Status as their objective. Within a year the younger policy-makers, who were increasingly influential within the Ceylon National Congress, succeeded in getting that organization to reject Dominion Status for the more emotionally satisfying concept of Independence.

Senanayake's negotiations with Caldecott and through him with Whitehall began against the background of a deteriorating military situation in South and South-East Asia. Japan had overrun Burma, Singapore, the Dutch East Indies and the Philippines, and was threatening the northeast frontier of India. When in 1944 the headquarters of

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1. "The History and Politics of the Transfer of Power", in K. M. de Silva (ed), *The University of Ceylon, History of Ceylon*, Colombo, 1973, Vol. III, pp. 489–533, particularly pp. 515–533,
 2. "The Transfer of Power in Sri Lanka – a review of British perspectives", in *The Ceylon Journal of Historical and Social Studies*, Vol. IV 1974 (1 & 2), pp. 8–19.

Mountbatten's South-East Asia command was established in Kandy, Sri Lanka's strategic importance in the Allies' war effort was underscored; she became the bridgehead for the destruction of Japanese power, and a vital link in the supply line to the Soviet Union *via* the Persian Gulf.

On 5 March 1942 Admiral Sir Geoffrey Layton was appointed Commander-in-Chief of the British forces in the island. His authority was not restricted to the armed forces but extended to the civil government as well – he was authorized to use the governor's reserve powers under the constitution to any extent he desired or thought fit. Indeed, Layton's powers were so wide-ranging that clashes with the civil government – the Governor and the Board of Ministers – seemed inevitable, and there were fears that friction between the Board of Ministers and the Commander-in-Chief could lead to a constitutional breakdown.

For Senanayake, the powers conferred on Layton and the establishment of a War Council in the island on Layton's initiative and under his control were new and unpredictable complications that confronted him in his campaign for constitutional reform. There were fears, too, that the island's strategic importance in the struggle against Japan would be a further constraint.

What happened, however, was that Senanayake soon established a cordial working relationship with Layton and Caldecott. The Board of Ministers gave their unstinted support to the war effort, and as a result Senanayake found that the island's strategic importance strengthened his bargaining powers.

In early 1942 Caldecott and Layton between them took the initiative in reopening the question of constitutional reform for Sri Lanka by urging Whitehall to respond to the spirit of co-operation demonstrated by the Board of Ministers with a new declaration of policy on constitutional reform that would "meet the desires and aspirations of the more moderate elements in Ceylon". The British government responded to this in December 1942 with a fresh statement of views on the reform of the island's constitution, but Caldecott and Layton regarded it as falling well short of what was required to meet the wishes of Senanayake and the Board of Ministers. They warned the War Cabinet that, unless a more positive declaration was forthcoming, they expected "immediate and progressive loss of co-operation and decrease of war effort, coupled with the deflection of now moderate opinion towards intransigent nationalism and the demand for the right of secession".³ At the same time, they sent

3. Co 54/980, File 55541/5, Caldecott's "personal and secret" despatches to Stanley, 27 January 1943 and 17 February 1943

home a very carefully drafted document setting out a declaration of policy on constitutional reform in Ceylon, for Whitehall approval, which they hoped would be substituted for that sent by the Colonial Office in December 1942. The principles enunciated in this document were eventually endorsed by the Colonial Office and the War Cabinet and published in the island on 26 May 1943, using much the same phraseology used by Caldecott and Layton.

A comparison of the two declarations, that of December 1942 and that of 26 May 1943, is very revealing. In both, no hope is held out about any changes during the war. But the second "definitely committed [Great Britain] to a far-reaching reform after the war". Where the first merely promised "the fullest possible development of self-governing institutions within the Commonwealth", the second offered "full responsibility for government under the Crown in all matters of civil administration". The only matters to be reserved would be external relations and defence, "while of course the proposals [did] not include the right of secession. Thus constitutionally, Ceylon while not attaining full Dominion Status, would be very much in the position... occupied [then] by Southern Rhodesia."⁴

In external affairs, a major concession had been made by 1943. This was with regard to the Indian question, the status of Indians resident in Sri Lanka, specifically their right to the franchise. The original recommendations of the Donoughmore Commission on this point had led to a public outcry in Ceylon, and Governor Stanley had taken the initiative in modifying these substantially in order to gain acceptance of the main proposals of the Commission on the fundamental political and constitutional problems of the island. But Sinhalese politicians were unwilling to regard Stanley's compromise as a permanent settlement of this crucial issue. In November 1940 D. S. Senanayake led an official Ceylon government delegation (the other members included S. W. R. D. Bandaranaike, G. C. S. Corea, and the Financial Secretary, H. J. Huxham) to new Delhi to discuss these questions, especially that of the franchise of the Indian plantation workers, with the Indian government. But little headway towards a settlement was made on this occasion, as well as in 1941 when a senior Indian official, Sri Girja Bajpai, led an Indian delegation to Ceylon on the same issues.

4. Co 54/980, File 55541/5, Stanley, Secret Cabinet paper on "The Ceylon Constitution", WP (43) 129 of 27 March 1943.

An important point about D. S. Senanayake's mission to India needs mention at this stage. Under the Donoughmore Constitution, external affairs came under the purview of the Chief Secretary. But the despatch of an official mission to India under D. S. Senanayake's leadership meant that, with regard to the crucial question of the Indian problem in Ceylon, the Board of Ministers was given the right to negotiate on behalf of the country. This was taken a stage further when a Ceylon Government representative to New Delhi was appointed — D. B. Jayatilaka — who took up the post early in 1943. Thus, at the time when D. S. Senanayake assumed the leadership in the negotiations on the transfer of power, the Board of Ministers had been conceded the right to speak on behalf of the country on one of the most crucial aspects of its external relations.

While a reform of the constitution was postponed till after the war and the Donoughmore structure was maintained intact formally, there was nevertheless a transformation in practice and by convention. The Board of Ministers became in all but name a quasi-Cabinet, and D. S. Senanayake himself very much a Chief Minister. There was correspondingly a reduction in the power and influence of the State Council and Executive Committees. The latter were soon dominated by their chairmen, who became Ministers in fact, and the committees were reduced to the status of advisory standing committees. If the exigencies of the war compelled this transformation, it was eased by the more ready availability of finances to support the welfare measures which became a feature of the last years of the Second State Council. The Board of Ministers, in control of the finances, were able to reward their supporters by making provision for projects and ventures in which the latter were interested.

D. S. Senanayake's resignation from the Ceylon National Congress in 1943, though no doubt precipitated by the entry of the Communists into that body, was also a carefully calculated move. Firstly, it was an attempt to demonstrate his severance of ties with an organization which had still not regained the confidence of the minorities. Earlier, the election of a Tamil, A. Mahadeva (son of Ponnambalam Arunachalam), as Minister of Home Affairs in place of Sir D. B. Jayatilaka, which D. S. Senanayake master-minded, heralded a well publicized abandonment of the principle of a pan-Sinhalese Ministry. Besides, he wanted as free a hand as possible in the negotiations on constitutional reform and to keep these under his personal control, though he would, of course, consult his colleagues in the Board of Ministers and seek the support, when that was

at all necessary, of the State Council. But, beyond this, he did not feel himself called upon to consult any political organizations, including the Congress, especially when he knew that their policies would run counter to those he advocated.

The first task that confronted him was to formulate a draft constitution on the basis of the conditions laid down in the Secretary of State's declaration of 26 May 1943, and the clarification of this given on 11 July 1943.⁵ There were three points of importance in this declaration: first, that the Donoughmore system would be abandoned, and there would be a return to the Westminster model in Ceylon's constitutional structure; secondly, the semi-responsible status conferred in 1931 would be further strengthened though it would fall short of responsible government. The internal control of the imperial government – the Governor's reserve powers, and the Officers of State – would be abandoned and there would be full responsible status in internal civil matters, while the Crown's reserve powers would be retained as the basis of the external control of the imperial government. Three important features of the Crown's reserve powers would be: the limitations set upon the scope of the Ceylon legislature in regard to legislation discriminating against religious or communal minorities; the Crown's constituent powers; and, finally – and most important of all – control of defence and external affairs. The new constitutional structure would guarantee the attainment of internal sovereignty, while external sovereignty would lag behind. The third important feature of the declaration had to do with the requirement that a constitution framed on these lines had to be approved by a three-fourths majority of all members of the State Council, excluding the three British Officers of State and the Speaker, or any other presiding officer – a degree of support which was well beyond the reach of any draft constitution which did not incorporate meaningful concessions and guarantees to the minorities.

The Ministers' Draft Constitution of 1944 and the Soulbury Commission

The preparation of a draft constitution that would meet the requirements of the declaration of 1943 was a challenge to the statesmanship and political acumen of Senanayake and the Board of Ministers. They and his advisers⁶ worked with remarkable speed, and by the

5. Ceylon S[essional] P[aper] XVII of 1943.

6. His chief adviser on constitutional affairs was W. I. (later Sir Ivor) Jennings, then Vice-Chancellor of the University of Ceylon.

beginning of 1944 a draft, the Ministers' Draft Constitution⁷ as it came to be called, was ready for submission to Whitehall. On the whole it bore the stamp of Senanayake's influence, especially in the concessions made to the minorities. The speed with which they had completed their work was due to a large extent to the fact that nobody outside the Board of Ministers, not even members of the State Council, had been invited to participate in the preparation of the draft constitution. While this was not contrary to the terms of the declaration of 1943, it was nevertheless one of the criticisms of the draft constitution raised by the more vocal representatives of Tamil opinion and by British business interests in the island.

Under the terms of the declaration of May 1943 it was envisaged that this draft constitution would be examined by a "suitable commission or conference" after victory over the Axis powers had been achieved. Once the draft was ready, Senanayake and the Board of Ministers pressed for an immediate consideration of their scheme. Senanayake argued that urgent local circumstances made an early decision on the constitution a matter of vital necessity. He was supported in this by Caldecott and Layton, but the most convincing case for the appointment of a constitutional commission before the cessation of hostilities was made by Lord Louis Mountbatten, who, as Supreme Allied Commander, South-East Asia Command, was consulted, and whose views were largely responsible for overcoming the original reluctance of the Colonial Office and the War Cabinet to concede Senanayake's request.⁸ This reluctance was so strong that the decision could well have gone against Senanayake, had Mountbatten not intervened.

The official announcement with regard to the appointment of a Commission to visit Ceylon was made on 5 July 1944, but, far from being received with cordiality and a sense of satisfaction at the extraction of an important concession, it was greeted in Ministerial circles in Colombo with undisguised dismay. The point at issue was the widening of the scope of the Commission's terms of reference well beyond that set out in the declaration of May 1943, from an examination of the draft constitution prepared by the Board of Ministers under the terms of that declaration, to consultations also with "various interests, including the minority communities, concerned with the subject of constitutional reform in Ceylon". Senanayake and his colleagues in the Board of Ministers argued

7. SP XIV of 1944.

8. See Mountbatten's Telegram of May 22 1944 (Marked "Top Secret") to the Chiefs of Staff. Co 54/986, 55541/5, War Cabinet 77 (44). Conclusions of meeting 13 of 1944.

that this amounted to an abrogation of one of the terms of the declaration of 1943, and urged that the terms of reference of the Commission should be restricted to the scope set out in that declaration, which meant in effect that the Commission's work would be limited to an examination of the Ministers' Draft Constitution. They added that the requirement of a three-fourths majority in the State Council was quite adequate as protection for the minorities.

The Ministers' protests were overruled and the terms of reference of the Commission were not changed when the appointment of a Chairman (Lord Soulbury) and members of the Commission was announced on 20 September 1944. In view of the anxieties of the minorities over the protection of their legitimate rights in any new constitutional arrangements, Whitehall could hardly have come to any other decision. Contrary to the impression created in Sri Lanka that the widening of the Commission's terms of reference was due in the main to pressure from Caldecott and his British advisers in the island, the recently released Colonial Office papers clearly show that the initiative in this came from Whitehall, apparently in response to criticisms made by minority representatives (Tamils in the main) about the manner in which the Ministers' constitutional proposals had been prepared.

Senanayake believed that Caldecott had let him down on this, and as a result relations between them were rather strained in the last few months of Caldecott's tour of duty as Governor of the island. But more importantly Senanayake and the Board of Ministers resolved on an official boycott of the Commission as an expression of their disapproval at the widening of its terms of reference. In practice, this meant merely that they did not appear before the Commission at its public sittings. Intermediaries conveyed their views to the Commission; Senanayake and the Ministers had private meetings with the Commissioners, and they met the Commissioners at public gatherings at which they - the Commissioners - were guests of honour. Above all, although the Ministers did not present their draft Constitution before the Commission, the latter regarded the examination of that document as their main task during their stay in the island.

Once the Commission had left the island, Senanayake decided on his own course of action - to be in London in time for the publication of its report. If that document was favourable, he would ask for more, for Dominion Status in fact; but, if it was unsatisfactory, he would repudiate it and refuse to be any longer bound by the declaration of 1943, which the British Government itself had disowned in regard to the Commission's

terms of reference. In a conciliatory gesture the then Secretary of State, Oliver Stanley, readily consented to extend an invitation to Senanayake to visit London.

Senanayake's Mission to Whitehall, August-September 1945

When he reached London in mid-July, he found that events were moving with remarkable rapidity. He met Stanley on 16 July for the first time, and was promised a copy of the Soulbury report. On the 25th, the Conservatives were swept out of power at the general election. It meant, inevitably, that no immediate response was likely from the new government to the Soulbury proposals. It was on 9 August that Senanayake met Hall, the new Secretary of State for the Colonies. At this meeting he was given a proof copy of the Soulbury report

On the international scene, the war in the East was over with dramatic suddenness, and this, too, contributed to the delay in the Cabinet review of the Soulbury proposals, for its energies were now concentrated on the more urgent task, the formulation of policy on the diplomatic and political consequences of Japan's defeat. The change in the international situation affected Senanayake's attitude to the Soulbury proposals, too. Had circumstances been different, that is to say, had the war with Japan not come to a sudden end, Senanayake would have been elated to find that the Soulbury Commissioners had in fact endorsed the main principles of the Ministers' Draft Constitution of 1944. But the war was over and there was no reason, therefore, for accepting anything short of Dominion status.

Secret Cabinet documents and the Colonial Office records for 1945 give us a much fuller picture of what transpired between Senanayake and the Labour government during his negotiations with them in August-September 1945. Indeed, drastic revisions are required in the outline sketched in 1973 and 1975 on Senanayake's proposals, and the Labour Government's response.

When Senanayake had met Hall on 16 August and had been given a proof copy of the Soulbury report, it was expected that the two sides would meet again soon to outline their respective attitudes to its proposals. It was on 4 September that they met next. The Cabinet was too preoccupied with the problems stemming from Japan's surrender to have much time for the comparatively unimportant issue of constitutional reform in Sri Lanka. When it met on 3 September, it instructed Hall to inform Senanayake that the Labour government was not committed to the conclusions in the Soulbury report and that these were to be regarded as

merely the basis for discussion.⁹ Senanayake took a completely different line. Hall summarized Senanayake's views to the Cabinet Colonial Affairs Committee thus: "... his principal plea was that Ceylon Ministers had originally accepted the 1943 Declaration as a basis for interim reforms which would enable them to increase the war effort of Ceylon, but now that the war is over, they were no longer prepared to proceed on the basis of the 1943 Declaration, but wished to press for the grant to Ceylon of Dominion Status..."¹⁰

Senanayake explained to his colleagues in the Board of Ministers that: "The recommendations of the Soulbury Commission are without doubt an advance on the existing constitution, but they cannot satisfy us now. The Commissioners' terms of reference confined it to the 1943 Declaration but the conditions on which we Ministers were prepared to frame and work a constitution within that Declaration no longer exist... the 1943 Declaration had been accepted... as adequate only in respect of war conditions then prevailing, and the conditions had now changed; opinion in Ceylon had hardened in favour of Dominion Status"¹¹.

In his discussions with Hall, he seized on the remaining obstacle to the attainment of Dominion Status by Ceylon: the limits on Ceylon's external sovereignty in regard to defence and external affairs laid down in the 1943 Declaration, and adhered to by both the Soulbury Commission and the Ministers themselves in their Draft Constitution of 1944. The restrictions in these spheres incorporated in the Ministers' Draft Constitution were elaborated upon in the Soulbury report in a manner which made them unworkable in practice, and this became one of the main arguments in Senanayake's case for the immediate grant of Dominion Status without the intermediate stage envisaged in the Soulbury report. Coupled with this was his most remarkable proposal: he urged that, if the legislation required to confer Dominion Status was likely to be time-consuming, the British Government could resort to an Order-in-Council for the purpose of granting self-government immediately, together with an agreement for the purpose of safeguarding the defence of the island and providing the same relations in external affairs as in the case of a Dominion. When he met Colonial Office officials on 7 and 10 September for a detailed review of the Soulbury¹²

9. Co 54/986, File 55541/5, "Secret", Cabinet Meeting 27 (45), 3 September 1945.
10. Co 54/986, File 55541/5, "Secret", Cabinet C (45) 3, Memorandum by the Secretary of State for the Colonies, subtitled "Ceylon Constitution", dated 12 October 1945. This document was prepared for the Cabinet Colonial Affairs Committee.
11. Sennayake's Report to the Board of Ministers, on his discussions with the Secretary of State for the Colonies, 9 October 1945. A copy of this paper is available in the Bernard Aluvihara Mss at the University of Peradeniya, Sri Lanka,
12. The Minutes of the discussions he had with Hall, and with the Colonial Offices officials, are in Co 54/896, File 55541/5.

report, he produced a "comprehensive draft of a constitution... based on the fundamental assumption that, pending the conferment of Dominion status on Ceylon full self-government would be established by Order in Council subject to an agreement about Defence and External Affairs and the general relations between the United Kingdom and Ceylon..."¹³. His advisers prepared a draft of an Order in Council, and had it delivered to Hall on 12 September, together with an explanatory letter on the 14th.

What emerges from this is the most remarkable item of revision required by the new material released by the Public Record Office. The conferment of Dominion Status through an Order in Council, and the insistence on Agreements on Defence and External Affairs as a prior condition, were the most controversial features of the transfer of power in Sri Lanka, and a good deal of the controversy arose from the belief that these had been devised by the Colonial Office and imposed on Ceylon in 1947. In fact, these proposals first came from Senanayake in September 1945, were devised by his own advisers as a pragmatic solution to a complex problem, and the Colonial Office showed not the slightest interest in them when they were first proposed.

What, in the meantime, of the Labour government's response to the Soulbury proposals? On 11 September the Cabinet decided that they would accept the Soulbury report as the basis on which Ceylon's new constitution would be framed. But they were firmly opposed to the immediate grant of Dominion status. Hall conveyed the gist of these decisions to Senanayake on 17 September.

Senanayake returned home disappointed that his main objective had not been attained, but convinced that it would not take long for the island to achieve self-government. Both he and his adviser, A. G. (later Sir Arthur) Ranasingha, believed that they had succeeded in extracting an oral promise of Dominion Status from Hall, who had been overruled by the Cabinet¹⁴. They would have been surprised to learn that Hall was no more sympathetic to this proposal than his colleagues in the Cabinet. In a memorandum to the Cabinet Colonial Affairs Committee on 12 October, Hall explained that there could be no possibility of Ceylon reaching self-government before India or Burma, but, realizing that Senanayake's support was essential to get the Soulbury proposals approved by the State Council by as large a majority as possible, he was willing to

13. Senanayake's Report to the Board of Ministers, 9 October 1945.

14. A. G. Ranasingha, *Memories and Musings* (Colombo, 1972), pp. 187-232, see particularly p. 230. Sir Arthur confirmed this in much greater detail at an interview I had with him in early 1974.

make one concession : to review this question once more and to consider the possibility of granting a form of Dominion Status to Ceylon six years after the adoption of the new constitution, that is to say, around 1953-54. A similar promise had been made to Burma, and this Hall advanced as one more argument for a revision of the new constitution based on the Soulbury report after a period of six years.

This reference to a revision after six years was contained in the original draft of the British Government's White Paper on the Soulbury Constitution. It was eventually deleted by the Cabinet in the final version of the White Paper but not because they regarded it as too long a period: they felt it to be impolitic to lay down a specific period of time.¹⁵ (The new Governor of the colony, Sir Henry Monck-Mason-Moore, understood the position perfectly when he explained that he "appreciated that His Majesty's Government may not be prepared to give Ceylon a blank cheque for self-government in six years time ...".)¹⁶ Instead, at the suggestion of Clement Attlee, the Prime Minister, a reference was made to the evolutionary character of constitutional development. The people of Ceylon were assured that the British Government were in sympathy with their desire "to advance towards Dominion Status and they are anxious to co-operate with them to that end". They added, even more reassuringly: "It is, therefore, the hope of His Majesty's Government that the new constitution will be accepted by the people of Ceylon with a determination so to work it that in a comparatively short space of time such Dominion Status will be evolved. The actual length of time occupied by this evolutionary process must depend upon the experience gained under the new constitution by the people of Ceylon".¹⁷

Senanayake and the Board of Ministers welcomed the White Paper as a clarification of the British Government's attitude to the question of constitutional reform in Sri Lanka, and were relieved to find that, while there was to be no immediate grant of Dominion status, it was merely postponed pending the successful working of the new constitution. They would have been appalled to know that by "a comparatively short space of time" the British Cabinet meant "not less than six years", and that the British Prime Minister held the view that even if Ceylon "emerged successfully from the test", it could not be taken for granted that "she

15. Co 54/986, File 55541/5, Minutes of Cabinet Colonial Affairs Committee, 15 October, C (45); and Minutes of Cabinet meetings of 26 October (CM (45) 46), and 29 October (GEN 99/1st meeting).

16. Co 54/986, File 55541/5, Secret and Personal telegram from Monck-Mason-Moore to Hall, 17 October 1945.

17. Co 54/986, File 55541/5, Minutes of Cabinet meeting of 29 October.

would automatically attain full Dominion Status". This they did not know. As it was, the White Paper strengthened Senanayake's position to the point where the State Council on 8-9 November 1945 endorsed his motion for the acceptance of the White Paper on Constitutional Reform by an overwhelming majority of 51 votes to 3, far above the three-fourths majority which the British Government was reluctant to insist upon for fear that it could not be achieved.

In less than two years after this Senanayake's objective was achieved. In early 1947, with general elections to the new Parliament scheduled for August/September 1947, Senanayake pressed Whitehall for a more precise statement of policy on the attainment of Dominion Status. India's independence was announced by the British Cabinet on 20 February 1947, and with the partition of the Indian sub-continent into the states of India and Pakistan, and the grant of Independence to Burma, the way was clear for Dominion Status for Ceylon. Arthur Creech-Jones, Hall's successor at the Colonial Office, was much more receptive to the request for Dominion Status from Senanayake. The negotiations with Whitehall were handled by O. E. (later Sir Oliver) Goonetilleke on Senanayake's behalf.¹⁸ At Whitehall, there was a clear understanding of the fact that Senanayake and the moderates were facing increasing pressure from left wing forces, apart from other critics, and that the immediate grant of Dominion Status was now an urgent necessity as a means of ensuring their political survival. In recognition of this fact, the British Government made the official announcement on 18th June, 1947 that Ceylon would receive "fully responsible status within the British Commonwealth of Nations". The formula adopted on this occasion was precisely the one proposed by Senanayake in September 1945 — an Order in Council, and Agreements on Defence and External Affairs.

This seemed to suggest a qualitative difference in the nature of the Independence that was being conferred on Sri Lanka—in comparison to the cognate process in India, Pakistan and Burma — when no meaningful difference in status was either intended by the British or accepted by Sri Lanka's leaders in the Board of Ministers prior to independence, and later, in the Cabinet. But if the political leadership in Sri Lanka took pride in the fact that the transfer of power was smooth and peaceful, they seemed oblivious to the political perils involved in making the process so bland as to be virtually imperceptible to those not directly involved. Above all, the Agreements on Defence and External Affairs

18. For these negotiations, see Sir Charles Jeffries, O. E. G.: *a biography of Sir Oliver Goonetilleke* (London, 1969), pp. 65-97. The Cabinet and Colonial Office papers on these negotiations had not been released at the time I wrote this paper.

appeared to give credibility to the argument that Sri Lanka's independence was flawed. The Agreements themselves were regarded as badges of inferiority, and checks on full sovereignty in external affairs; moreover, fears were expressed about secret clauses not divulged, or a secret treaty even more detrimental to the island's status as an independent nation. Events were to prove that these fears and suspicions were without foundations in fact, and certainly no secret undertaking had been given by Sri Lanka in 1947-48, but until 1956-57 suspicions on this score persisted,

Social Welfare Programmes, Improved Agricultural Practices and their Impact on the Role of Women and on Fertility in Sri Lanka

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The decline in fertility rates in Sri Lanka¹ has been sharper than in most other Asian developing countries. As elsewhere, in general, the broad spectrum of influences² affecting fertility have played a major role. But quite distinct from these factors the social welfare programmes that were in operation in the country over a period of more than thirty years, particularly free medical care and free education, have had a greater impact on the social and economic status of women and ultimately on population growth. Unlike in Sri Lanka, in other developing countries, these services have not been given free continuously to all segments of the population.

Since the bulk of the people, more than 75 per cent, live in the rural sector the population in the latter, in general, have been the greatest beneficiaries of social welfare even though qualitatively medical care and educational facilities in the rural sector have not been as good as they are in the principal towns and urban areas. These free services have helped to increase real income and the quality of life. In addition, the continuing efforts made by the government to improve domestic agriculture through a wide variety of strategies and policy packages have

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1. The crude birth rate has been declining steadily since 1960. In 1978 it was 28.4. Marital fertility declined very little during the intercensal period 1953-1963 but between 1963 and 1975 the decline in fertility has been more significant. Starting from 1952 the Registrar General, who is the authority responsible for the maintenance of vital statistics has furnished statistics of live births registered annually by maternal age. The numerators for the computation of fertility indices for the calendar years are obtained from the Registrar General's Department while the population censuses have given information that yield the corresponding denominators for the preparation of these indices.
 2. These include the age at marriage, the level and the duration of education, the increasing participation of women in economic activity, the amenities for recreation available in the home and out de, improvements in medical care, the rising levels of income resulting in increase in productivity in agriculture and accessibility to contraceptive techniques.

also contributed to improve the incomes and social position of rural people and induced the greater participation of women in economic activity which in turn would have had a favourable impact on fertility.

Although new agricultural practices and rural development in general have had an impact on fertility, socio-economic surveys conducted so far have not been able to throw light on these aspects by obtaining specific and related information on the impact of each or a combination of these factors on fertility levels. Many general socio-economic surveys³ have found it difficult to include questions on fertility in the investigations partly because it is difficult to combine the collection of general socio-economic information with data on fertility. In particular, the collection of information on fertility is a specialised task. In this context, the only way of establishing a relationship between fertility and improvements in agricultural practices and rural development is to endeavour to see whether in areas where rural development has taken place and where new agricultural practices have been used extensively whether there has been a trend towards a decline in fertility.

The main source of more recent information on fertility is the World Fertility Survey⁴ undertaken in 1975.

TABLE 1
Age Specific Fertility Rates and Marital Fertility Rates for 1963,
1970 (Registration Data) and 1974 (WFS)

Age Group	Age Specific Fertility Rates			Age Specific Marital Fertility Rates		
	1963	1970	1974	1963	1970	1974
15 — 19	52	38	31	354	449	339
20 — 24	228	172	146	396	408	357
25 — 29	278	238	161	344	323	240
30 — 34	240	219	158	270	253	189
35 — 39	157	134	126	175	151	139
40 — 44	46	38	43	53	42	53
45 — 49	7	6	6	8	7	7
TFR	5.04	4.22	3.35	—	—	—

Source: World Fertility Survey—Sri Lanka 1975

3. The Central Bank of Ceylon in September 1978 concluded field work on a Socio-Economic and Consumer Finance Survey, in four rounds, spread over a twelve month period. For the reasons given above this survey did not collect data on fertility.

4. World Fertility Survey of Sri Lanka 1975, First Report, Department of Census and Statistics, Ministry of Plan Implementation, March 1978.

Table 1 shows the changes in the age specific and marital fertility rates respectively for 1963, 1970 and 1974. In the decade 1963 to 1973 there has been a fairly significant fall in the total fertility rate from 5.04 in 1963 to 3.35 in 1974. The drop in the age specific fertility rate has been quite sharp in all segments of the child-bearing span particularly 15-19, 20-24, 25-29 and 30-34 years. The decline seems to be most significant in the age groups 20-29 years and may perhaps be explained by the sharp decline in proportions marrying.

Other than the effectiveness of family planning programmes, many factors have contributed to the decline in fertility. The most important of these are the higher levels of education achieved by women, the increasing entry of women into the labour market and a high rate of unemployment among males in the 20-29 age group. All these factors which have been a deterrent to early marriage and hence have contributed to the lower fertility levels are stated below.

1. Education and Increasing Participation of Women

The difference in the fertility levels between the different ethnic groups that constitute the population is also quite marked and this is primarily due to sociological and cultural factors. While the national average in 1971 was 30.1, the fertility rate for Moors was 39.0, 38.8 for Sri Lanka Tamils, 29.9 for Sinhalese and 25.7 for Indian Tamils in the plantation sector. In so far as agriculture is concerned the bulk of the women employed in domestic agriculture are Sinhala women and the fertility rate among this ethnic group is lower than among all others barring the Indian Tamils who are confined to the plantations.⁵ Indian Tamil workers especially the women, largely do hard and arduous tasks on the plantations, mostly in tea, such as plucking, weeding and preparation. This has not only induced Indian women workers on the plantations to be heavily occupied but has also contributed to low fertility. Technological improvements in tea have helped to slightly reduce the ratio of labour per acre of tea and Wages Boards which are

5. The World Fertility Survey Sri Lanka report indicates that women on estates have the lowest completed mean parity (which is the accumulated number of live births a woman has had) of 5.2. Rural women have the highest mean 6.2 and urban women come in between with 5.5. The wives of professional, technical and managerial workers have a relatively low fertility with a combined mean of 4.5 children. The agricultural sector as a whole has a mean of 6.5 and in the case of self employed farmers and fishermen the mean is 6.8. Unskilled workers have a high mean of 6.5 while service workers and craftsmen have a mean parity of about 5.6 which is the same as that for clerical and sales workers.

responsible for the fixing of minimum wages have made upward adjustments in the wage rates of plantation workers. These have contributed to raise family incomes and in turn tended to reduce fertility.

TABLE 2
Sri Lanka Female Participation Rates
1946-1973

Age Group	1946 Census	1953 Census	1963 Census	1973 Survey
10 - 14	11.8	9.8	4.3	2.3
15 - 19	24.3	27.8	24.2	28.2
20 - 24	23.8	28.7	32.4	49.9
25 - 29	26.3	28.5	30.1	33.8
30 - 34	28.8	30.2	27.4	38.3
35 - 39	31.1	32.2	28.1	29.7
40 - 44	33.7	34.6	28.5	29.9
45 - 49	33.4	35.6	29.3	28.2
50 - 54		35.9	28.1	26.7
55 - 59	30.1	34.1	17.5	21.8
60 - 64		30.1	11.4	7.3
65	26.0	23.2	8.9	5.6

Sources: The Determinants of Labour Force Participation Rates in Sri Lanka 1973, Economic Research Department Central Bank of Ceylon Colombo 1974 and Census of Population 1946, 1953 and 1963, Dept. of Census & Statistics

The foregoing observations more or less tally with the picture given in Table 2 which depicts the female participation rates for the period 1946 to 1973. Here it is evident that the level of female participation in the labour force has risen considerably in the age groups between 20-34 years; the sharpest increases taking place between 1963 and 1973. In the age groups 35-49 years it has more or less remained constant or decreased slightly between 1946 and 1973. The most remarkable feature is a very sharp increase in the labour force participation of women in the age group 20-24 years, which implies that larger numbers of the educated young women have come on to the labour market.

The full impact of free education⁶ introduced in 1946 was felt after 1960 and this to a large extent, explains the progressive increase in the number of women entering the labour force in the age groups 20—34 years, the younger age segments of the child-bearing span. It is also noteworthy that the highest levels of participation of women in economic activity are found in the earlier years of married life when fertility is higher than in subsequent periods. The substantial decrease in labour force participation of women after the fortieth year is presumably due to the fact that many women who are working would withdraw from the labour force once their family income level reaches a point where it could adequately sustain a family or it may be that grown up children enter the labour force to supplement family income and therefore both parents need not work. These years roughly correspond with periods when fertility itself tends to decline.

Quite apart from the impact of improved technology in agriculture on fertility one factor that has considerably contributed to reduce the birth rate and the number of children in each family has been the progressively higher levels of education of women and the impact of education on increasing the participation of women in economic activity and on postponing the date of marriage as a consequence. Education has meant that women have postponed marriage until after completion of education or they would await till the prospective partners complete their studies and secure a steady job. It has also resulted in women showing a greater readiness to accept family planning methods. The female average age at marriage was 22.1 in 1963 while it had risen to 23.5 in 1971 and to 24.2 in 1975. In comparison, the male average age of marriage rose slightly from 27.9 in 1963 to 28.0 in 1971 and to 28.3 in 1975. This clearly shows that the changes in the female age at marriage have been the more dynamic factor affecting fertility than the male age at marriage.

6. Free medical care has also had an impact on fertility in the rural sector. The Family Health Bureau the main family planning government agency operates under the government free medical care programme. The impact of the Family Health Bureau is more wide-spread than that of the voluntary organisations engaged in family planning work such as the Family Planning Association. On the other side, free medical care has contributed to sharply reduce the morbidity mortality rates since the forties. Before 1939 it was a very high infant mortality and death rate that kept the rate of population growth down.

TABLE 3
Sri Lanka Female Participation Rates

Age Group	1968 Labour Force Survey				1973 Labour Force Participation Survey			
	Total	Urban	Rural	Estate	Total	Urban	Rural	Estate
	10-14	3.9	—	—	—	2.4	2.0	2.2
15-19	25.0	14.6	19.7	67.3	28.2	26.8	25.4	52.5
20-24	38.1	27.4	30.7	89.7	49.9	48.5	46.8	70.9
25-29	32.1	18.8	22.1	91.2	33.8	34.6	32.1	42.6
30-34	26.4	16.1	19.8	83.6	38.3	39.1	37.0	44.7
35-39	27.6	16.2	23.1	84.9	29.7	29.9	29.1	34.2
40-44	27.8	17.1	19.8	88.2	29.9	31.1	28.7	36.4
45-49	25.1	12.9	23.1	78.1	28.2	28.8	27.5	32.1
50-54	20.6	12.8	15.4	73.6	26.7	21.3	27.6	31.0
55-59	15.6	9.8	14.2	41.6	21.8	22.9	22.5	12.5
60-64	9.2	9.4	8.9	11.7	7.3	6.7	7.1	12.5
65+	4.9	3.4	5.3	4.3	5.6	4.9	5.8	5.3

Source: The Determinants of Labour Force Participation Rates in Sri Lanka 1973
Economic Research Department; Central Bank of Ceylon Colombo 1974.

2. Education and Rural Women

The introduction of free education, progressively brought an increasing number of rural women into the mainstream of education. Secondary education was looked upon as the principal means of getting employment outside the agricultural sector. Before the mid forties, even though women had access to education good schools were not found in the rural areas. Even where good schools were found most men and women could not enter them and continue their education because they could not afford it.⁷ With the introduction of free education the path was clear for increasing numbers of children of both sexes to enter school and continue their education to higher levels. As a result, the literacy rate has moved up rapidly to 85.6 per cent for males and 70.9 per cent for females in 1971. However, despite free education being available for more than thirty years the drop-out rates from rural schools have been quite high, very much higher than in urban areas and this has contributed to early marriage and often tended to keep fertility levels high among poor and illiterate families. Drop-outs who have contracted early marriages have done so with partners who are equally less educated, and for those groups fertility has continued to remain at high levels.

In Sri Lanka, the bulk of the women who are engaged in agriculture or seek work in agriculture are normally not those who have had a secondary or higher education. They are mostly women who are either illiterate or have had the least education and have chosen agriculture as their main vocation due to no other option being available. Because of the lack or insufficiency of education they cannot expect to get employment in industry, in the commercial sector or in government and semi-government institutions. Most of these women work as family helpers or as paid labour in agriculture. The educational levels of rural family helpers are given in table 9. Despite the high drop-out rate an increasing number of women from the rural sector have gone through secondary school and have entered the universities.⁸ In fact, the bulk of the school going population today is rural, and the number of women in the univer-

7. In spite of attempts to widen the accessibility of education, educational opportunities in the rural areas have never equalled those in the urban sector. Most of the rural schools have an enrolment of less than 200 and so the content of educational facilities available in these schools are very limited. These disparities between urban and rural schools show up clearly in the curriculum particularly in the facilities available for science education.

8. The percentage enrolled in schools in 1975 has been as follows :

Years	Male	Female
6—11	61	63
12—17	54	54

sities from the rural areas outnumber those from the urban and estate sectors. In most universities especially in the arts streams women have outnumbered men.

A large number of educated young men and women from farming families have preferred to work in the urban areas. Even if they opt for work in the rural areas they are usually in search of work that involves non-manual or clerical duties and work in factories or other activities which would ensure a regular and stable income. The impact of education on fertility seems to be greatest in the case of rural women who are educated and are not employed in agriculture.

This is true particularly of those who have migrated to the urban areas and who work in the towns and factories. A large number of educated rural women have moved away from their villages and settled down in neighbouring towns which are closest to their work place. Unlike agriculture, other forms of employment particularly in manufacturing and the services is non-seasonal in nature and keeps women occupied during most of the day. Domestic agriculture, as distinct from plantation agriculture, being seasonal often without involving a daily routine, gives women more leisure and time at their disposal and this has not tended to have a favourable impact on fertility, unless agriculture has provided the family with a substantially higher income and consequent improved living standards which of course tends to counteract the unfavourable impact of the combination of poverty and greater leisure on fertility.

Fertility levels in general, have fallen in the rural sector in recent years as a result of agricultural development largely through resulting higher income levels.⁹ Once income levels rise the farmer becomes more conscious of his economic status, he tries to emulate the richer urban dweller and this rapidly brings about changes in certain aspects of his life style. The rural population was originally over 80 per cent but latterly this

9. The other factor has been the impact of family planning and counselling services which, of course, under the present arrangement have not had a full fledged impact all over the country. Farming families will be influenced by the family planning programmes to the extent that such services have been made available either by private voluntary organisations or by government programmes. Large areas of the country still seem to be little affected by the family planning programmes and this is largely due to the fact that the direction of activities is from the centre in Colombo and the voluntary organisations that operate at the metropolitan level have not had the resources, the personnel and the finances to have a more decentralised programme giving priority to those areas where these programmes are most vitally needed.

proportion has tended to fall and this has been due to the development of urban centres and new towns.¹⁰ There has been a gravitation of population to the urban areas with the establishment of a large number of industries in the urban western coastal belt in the sixties.

In the rural sector the ratio of females to 100 males was 86.3 in 1946 and 78.3 in 1971. The gap between the urban and rural sectors in this respect is not wide but there are marked differences between districts. This situation has resulted largely from the migration of males to urban centres of work and to certain highly productive agricultural areas, while less educated or uneducated females have continued to reside in the villages. The highest male ratios are in the dry zone agricultural districts of Anuradhapura, Polonnaruwa, Trincomalee, Moneragala and Vavuniya where the resident male population registered is very much higher because many of the males who work in these areas live elsewhere and reside in these areas only for purposes of work. In the rural areas employment opportunities are few and are highly seasonal and land holdings small and unproductive with the result that men have had to migrate to the cities in search of employment leaving their families and dependants in the village.

The absence of males from their homes tends to have an impact on fertility and the size of the family, favourable to the economy. Especially in paddy cultivation, there are a large number of migrant male, sometimes female workers, who stay away from their permanent places of residence for a long time. In Jaffna and Galle districts the number of women outnumber men and this is particularly true of Jaffna where a large number of men who work in urban centres like Colombo and Kandy have left their families behind.

Despite the importance of this factor over the years, the sex-wise disparity in the rural population has been somewhat reduced. This is because not only men but women have also tended to leave the village in search of employment or have tended to migrate very often leaving the children behind. This latter tendency has become more pronounced in the late sixties and throughout the seventies with the spread of education among rural families.

10. In 1946 the total rural population was as much as 84.63 per cent of the total population and in 1971 this had declined to 77.56 per cent.

TABLE 4
Mechanization in Agriculture
Particulars of Tractor Imports

Year	Type of Tractors		Imported	
			Quantity	Total
1971	2	Wheels	1,650	2,650
	4	„	1,000	
1972	2	„	700	730
	4	„	30	
1973	2	„	810	810
	4	„	—	
1974	2	„	1,310	1,460
	4	„	150	
1975	2	„	—	100
	4	„	100	
1976	2	„	—	—
	4	„	—	
1977	2	„	3,000	4,286
	4	„	1,286	
1978*	2	„	3,000	4,000
	4	„	1,000	

* Upto 13.8.78

Source: Sri Lanka State Trading (Tractor) Corporation.

3. Spread of New Agricultural Practices

Tables 4, 5, 6 and 7 give some indication of the prevalence of new agricultural practices in domestic agriculture or the extent of the progressive displacement of older and largely traditional techniques. The trend towards increasing mechanisation of certain agricultural operations has been evident from the early sixties. The latter has been most important in the cultivation of paddy, the largest domestic agricultural crop. Table 4 shows the increasing number of two-wheeled tractors that have been brought into the country. In 1978 and 1979 the annual level of tractor imports more than quadrupled, mainly due to the liberalised trade policies. This occurred despite the fairly sharp increase in fuel costs. The total tractor population in the country is now about 20,000 and on the basis of 1.2 million acres of cultivated paddy land there is one tractor for 60 acres of paddy land. Combined with the use of buffaloes this shows a high degree of adequacy of draught and mechanical power. One reason for the increasing use of tractors in ploughing and preparation of fields has been the shortage of buffaloes and labour and rising wage costs

in most of the paddy growing areas. Furthermore, most farmers have felt that the period of time devoted to ploughing in the traditional way is time consuming especially in view of the fact that if the rains get delayed there is not much time available to prepare the fields between the arrival of the rains and the scheduled time for sowing. Women normally do not participate in the preparation of the fields (ploughing and levelling) prior to sowing and hence the employment of tractors cannot be claimed to have displaced women from these tasks in the paddy fields.

Quite a few of the tractor operators, especially those who own two wheel types, are farmers themselves. While farmers use tractors to plough their own plots only for a short time tractors are hired to other farmers during the ploughing season. At other times they are used profitably for the general haulage of goods and for the transportation of people on trailers. Tractor hire rates have risen sharply in the last two years along with wages and this has meant higher incomes for farming families. Invariably higher incomes have tended to affect at least to some extent the traditional life style of families. With higher incomes and the prospects of better living standards farmers have become more conscious of their economic status and they realise that their living standards have a lot to do with the size of their families.

4. Irrigation and Controlled Water Supply

Table 5 refers to the acreage of agricultural crops that come under different forms of irrigation. In the Dry Zone where the bulk of the land for domestic agriculture is primarily under paddy, but includes other crops such as chillies, onions, cereals and sugar cane, cultivation is heavily dependent on irrigation. Even during the rainy season of the North East monsoon from November to February irrigation water has to be used to supplement rain or to ensure an even and regulated distribution of water. The availability of irrigation water, which is normally under the control of the irrigation authorities, has enabled the cultivator to regularly cultivate his holdings, to use more fertilizer and pesticides, to control weeds and employ improved methods of cultivation. All these practices need invariably not only an assured but a regulated water supply.

TABLE 5
Acreage Under Irrigation Schemes — 1978

District	Major Irrigation Schemes	Lift Irrigation Schemes	Drainage & Reclamation Schemes	Flood protection Schemes	Total
Colombo	10,587	—	—	—	10,587
Kalutara	—	—	777	9,904	10,681
Ratnapura	3,483	—	—	—	3,483
Matale	10,075	—	4,610	—	14,685
Galle	6,089	—	11,713	10,035	27,837
Hambantota	34,506	—	—	—	34,506
Puttalam	4,968	—	—	—	4,968
Batticaloa	61,076	—	—	—	61,076
Trincomalee	46,648	49	—	—	46,691
Amparai	120,708	—	—	—	120,708
Jaffna	23,390	1,707	—	—	25,097
Vavuniya	21,372	2,844	—	—	24,216
Mannar	22,403	—	—	—	22,403
Anuradhapura	63,520	3,961	—	—	67,481
Polonnaruwa	63,673	1,354	—	—	65,027
Kandy	17,400	—	—	—	17,400
Matale	4,270	—	—	—	4,270
Badulla	17,127	1,208	—	—	18,335
Nuwara Eliya	3,710	—	—	—	3,710
Moneragala	10,244	—	—	—	10,244
Kurunegala	34,491	—	—	—	34,491
Total	579,734	11,123	17,100	19,939	627,896

Source: Dept. of Irrigation

In 1978, a total of more than 627,000 acres came under different forms of irrigation. The bulk, nearly 580,000 acres, came under major irrigation schemes. These schemes were concentrated largely in about six areas Amparai, Batticaloa, Polonnaruwa, Anuradhapura, Hambantota and Kurunegala, which are areas where paddy output is not only generally high, but high yielding varieties have also been extensively cultivated. The availability of irrigation has encouraged multiple cropping in the dry zone and paddy is being cultivated in both the Yala and Maha seasons¹¹ with the deployment of superior cultural practices. The intensity of cultivation has increased and in certain limited areas three crops are not unknown. From the point of view of female labour and family helpers multiple cropping, superior cultural practices and a regulated water supply have meant much more work for them. In these areas in the dry zone where the highest yields have been regularly obtained, family or hired female labour is widely used for such tasks as applying fertilizer, transplanting, weeding and harvesting which are almost entirely done by female labour.

Marked differences in yields have been noticed between different water supply conditions.¹² The effect of qualitative differences in water supply is evident from the fact that yields in major agricultural schemes under irrigation are higher than those in both minor schemes and rain fed lands. The most widespread new agricultural practices on irrigated land consists of the cultivation of new high yielding varieties, the number of fertilizer dressings and the extent of area under cultivation which is transplanted. The pattern of spread of new high yielding varieties as against the older high yielding varieties may not indicate a clear trend because of the short time during which these new varieties have been available. Paddy yields have been high in all areas that were employing superior methods of cultivation. Transplanting, weeding and the systematic use of fertilizer have considerably increased the demand for female workers, either as paid workers or family helpers.

(a) Fertilizer Use

A clear relationship between fertilizer use and differences in holding size is seen mainly in Polonnaruwa in the Dry Zone and Kandy in the Wet Zone. The proportion of operators who had used three dressings of fertilizer was highest in the 4-6 acre size class. These were farmers who cultivated the relatively bigger holdings. Except in Anuradhapura, in all other

11. The Maha (meaning the big crop) cultivation season extends from October to April and in the Yala (meaning the lesser crop) cultivation is coincident with the South West Monsoon and extends from May to September.

12. See. The Agrarian Situation Relating to Paddy Cultivation in Five Selected Districts of Sri Lanka, Agrarian Research and Training Institute, December 1975.

districts 50 per cent of the farmers had used one application of fertilizer and 30 per cent had applied three dressings in extents over 4 acres. In all districts, irrespective of the water supply situation, the top dressing was usually with urea. Only about 50 per cent in most districts have used basal fertilizer and this was true of farmers who came under major development schemes. In minor and rain fed areas, except in Kandy, the proportion using basal fertilizer has been less than 20 per cent. From the foregoing it could be concluded that in areas with a high yield potential a large number of farmers have used some kind of fertilizer and have observed more closely the recommendations of the Department of Agriculture in using basal fertilizer. The extensive use of fertilizer involves regular weeding and the latter task is largely performed by women.

(b) **Transplanting**

As transplanting is a costly operation, it is normally adopted under assured water supply conditions. Over 50 per cent of the operators in the Polonnaruwa, Hambantota and Kandy districts have adopted transplanting. In Polonnaruwa as much as 78 per cent of the total labour input and in Hambantota 86 per cent consists of hired labour and for weeding, transplanting and harvesting more than 90 per cent of the hired labour consists of women. In these areas even large holdings have been extensively transplanted. The availability of an assured water supply together with the fact that farmers in these areas were traditionally used to transplanting may have contributed to this. In Polonnaruwa under major schemes transplanted crops were significantly out-yielding the broadcast crops. The difference in yields being as much as 28 bushels per acre on transplanted new high yielding varieties such as BG 10-11 or IR 8 and 20 bushels per acre for old high yielding varieties such as H4 or H8. The very small proportion of the area transplanted under minor schemes in the dry zone and in the rain fed areas in the Colombo district shows the reluctance of farmers to adopt techniques that are associated with high expenses with less favourable conditions.

Tables 6 and 7 give details of the area under high yielding varieties of paddy cultivated in the Maha season 1978/79 which produced a bumper crop. The distribution of high yielding varieties closely follows the availability of water for cultivation purposes from major irrigation schemes. Areas where high yielding varieties were widely cultivated were Anuradhapura, Polonnaruwa, Hambantota, Batticaloa and Kurunegala. The cultivation of these varieties has meant not only the employment of more labour, particularly females, but has also substantially increased incomes with the result that this has also had a fairly significant influence on the size of farm families.

TABLE 6
Cultivated Area Under High
Yielding Varieties - 1978 / 79 Maha

District	Acres
Colombo	35,329
Kalutara	14,699
Galle	13,960
Matara	39,464
Puttalam	26,660
Kurunegala	150,865
Kegalle	29,420
Ratnapura	16,128
Kandy	36,202
Matale	18,418
Nuwara Eliya	19,460
Badulla	41,962
Moneragala	23,402
Jaffna	70,760
Vavuniya	47,119
Mannar	44,053
Anuradhapura	113,904
Polonnaruwa	79,076
Trincomalee	73,675
Batticaloa	103,092
Amparai	47,626
Hambantota	41,319
Uda Walawe	18,873
Sri Lanka	1,105,466

Source: Division of Agricultural
Economics, Farm Management and
Statistics
Government Department of
Agriculture, Peradeniya.

TABALE 7
Cultivated Area Under High
Yielding Varieties 1978 Yala

District	Acres	Percentage of Gross Extent Sown
Colombo	32,715	68.9
Kalutara	10,657	22.9
Galle	13,572	25.4
Matara	37,082	77.8
Puttalam	6,484	90.5
Kurunegala	88,195	85.1
Kegalle	25,783	98.8
Ratnapura	n.a	-
Kandy	33,455	81.8
Matale	9,490	78.5
Nuwara Eliya	n.a	-
Badulla	12,968	69.3
Moneragala	2,844	65.7
Jaffna	n.a	-
Vavuniya	2,118	89.1
Mannar	313	91.0
Anuradhapura	53,996	96.6
Polonnaruwa	48,601	86.6
Trincomalee	22,239	81.9
Batticaloa	n.a	-
Amparai	64,357	94.0
Hambantota	27,600	93.6
Uda walawe	14,904	83.6
Sri Lanka	507,373	68.3

Source: Dept. of Agriculture, Peradeniaya
Dept. of Census & Statistics

TABLE 8
Gross Income Per Family

(Amount in Rupees)

	Income from all Sources	Paddy Income	Percentage of paddy income of total
Polonnaruwa*	7,915	3,943	75.1
Hambantota*	3,565	3,041	85.3
Anuradhapura*	4,768	3,260	68.4
Kandy	4,083	2,287	56.0
Colombo	4,895	1,335	27.3

* High yielding varieties extensively cultivated

Source: The Agrarian Situation relating to five selected Districts, Agrarian Research and Training Institute

The above table shows certain significant differences in the per family income levels between areas that deploy superior cultural practices and those that do not.

In the Kurunegala and Hambantota districts a large proportion of operators of medium size, that is those who cultivate 4-6 acres, have introduced new high yielding varieties in the Maha season compared to others. During the Yala as well, operators of larger holdings have planted a substantial proportion of their lands with new varieties. Farmers with access to stable water supply have readily taken to cultivation of new varieties, and 44 per cent of holdings of major schemes have been planted with new varieties compared to less than 20 per cent in minor schemes in all districts other than Anuradhapura.

The new high yielding varieties have out-yielded the old high yielding varieties in the major schemes in Polonnaruwa and Hambantota. In Polonnaruwa an average yield of new high yielding varieties of 88 bushels was significantly greater than those of the old high yielding varieties which was 56 bushels. In Hambantota the older varieties such as H4 have generally given a similar or better performance than the new high yielding varieties during the Yala.

With the increase in adoption of high yielding varieties there has been an increase in the use of complementary inputs and the adoption of improved cultivation techniques. An increasing number of farmers have fertilized the crops at the recommended rates, transplanted and used chemical weedicides and pesticides. This has also resulted in greater mechanisation of farm operations, in particular in ploughing and threshing and the use of sprayers. At the same time, for all these new operations labour requirements have also gone up. Labour requirements have increased from 51.34 man days to 68.44 which is an increase of 31.3 per cent in labour use.

A change in the type of labour used is also evident.¹³ Paddy farmers have shifted from exchange labour to family and hired labour and about 60 per cent of the labour that falls into these categories are women. The employment of hired labour has increased by 100 per cent while exchange labour has decreased by 40 per cent. The preference for hired labour is mainly on account of the greater commercialization of production as a result of the introduction of high yielding varieties.

TABLE 9
Distribution of Female Family Helpers by
Education & Sectors

Educational Level	Urban %	Rural %	Estate %	All Island %
1. No schooling (Illiterate) ..	10.91	20.73	25.23	20.09
2. No schooling (Literate) ..	1.47	2.72	2.70	2.63
3. Primary (1st - 5th grade) ..	29.50	30.12	35.14	30.20
4. Secondary (6th - 10th grade) ..	38.05	25.58	18.92	26.36
5. Passed GCE/SSC ..	9.44	4.37	4.50	4.76
6. Passed GCE/HSC ..	0.59	0.32	—	0.34
7. Passed Degree ..	0.29	0.07	—	0.09
8. Other ..	—	0.10	—	0.09
Total ..	90.27	84.02	86.49	84.55

Source: Land & Labour Utilisation Survey 1975

13. See. Nihal Amarasinghe "The Impact of High Yielding Varieties of Rice on a Settlement Scheme in Sri Lanka." *Tropical Agriculturist*, April - June 1974. Also Nihal Amarasinghe "Report on the Economic and Social Implications of the Introduction of High Yielding Varieties on Settlement Schemes in Ceylon." A case study. UNDP Research Projects, 1971/72.

The income effects¹⁴ of new high yielding varieties are significant. In a study of a settlement scheme it was found that after the introduction of new high yielding varieties farmers operating below the poverty line had been reduced from 26 to 16 per cent while 96.4 per cent reported that they were better off.

Table 9 gives details of the female family helpers and their distribution in the three sectors in terms of educational background. In the rural sector the bulk of the family helpers are either illiterate or have only gone to school upto the fifth grade. These two categories constitute more than 50 per cent. In the urban areas however, the bulk of the female helpers are concentrated in the education levels from the first grade to the tenth grade where the percentage is about 67. Since those with higher qualifications above the tenth grade are in a position to get jobs outside (because the minimum qualification today for men and women for any job is GCE Ordinary Level) they have sought work outside and no longer help their families. This is also partly due to the fact that educated women with a secondary education feel that they should go out to work and that as far as possible they should be away from agricultural activity. The figures also indicate that in all sectors, the bulk of the women with little or no education function as family helpers and that in fact, very few that fell into these categories have sought work outside. It is very high in the rural sector where women generally stay at home and look after the family because the income levels especially after the use of improved agricultural practices have risen to a point where it could sustain a family.

Table 10 is important because it shows that unemployed women in the urban and rural sectors dislike working as agricultural labourers or doing any form of manual work. It is only in the estate sector that women prefer to function as agricultural labourers where the percentage is as high as 53. In the estates the extensive employment of women has been conditioned by cultural and historical factors. In the rural areas job expectations are largely concentrated on non-agricultural areas. More than 15 per cent wanted to work in clerical capacities, more than 20 per cent preferred teaching jobs and 35 per cent wanted jobs presumably of a specialised nature which did not fall into these categories. The job expectations, to some extent, are an indication of the impact that these expectations are likely to have on female fertility. The jobs that the rural women seek, mainly clerical, teaching and other posts, are those that ensure a higher and a more stable income which, of course, could ultimately have a fairly important bearing on the size of the family. All these job

14. *ibid*

expectations involve some element of training or at least some post secondary school education and all these factors could have an important bearing on fertility. Moreover, most unemployed women with high job expectations would postpone marriage until they find employment or they would look for partners who have jobs consistent with their own expectations. Thus it is common to find educated rural women though temporarily unemployed marrying men who are employed as teachers, clerical hands and minor technicians.

TABLE 10

**Distribution of Unemployed Female Population
by Job Expectations**

Expected job	Urban %	Rural %	Estate %	All island %
1. Agricultural labour ..	4.93	8.13	53.18	10.01
2. Non Agricultural labour ..	11.21	12.19	10.12	11.94
3. Agriculture (self) ..	0.89	2.65	—	2.25
4. Clerical ..	17.04	15.26	11.29	15.32
5. Teaching ..	19.28	20.33	5.06	19.37
6. Technical ..	5.82	4.64	1.26	4.64
7. Executive ..	3.13	1.74	—	1.85
8. Others ..	37.66	35.02	18.98	34.57

Source: Land & Labour Utilisation Survey 1975

The Reception of 'Similar Fact' Evidence in Criminal Proceedings: a Comparative Analysis of the English Common Law and a Codified Asian System

G. L. PEIRIS

1. The Foundations of the Law

The principles of the English common law governing the admissibility of similar fact evidence in criminal proceedings have received authoritative formulation: "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."¹

The first sentence contains a general rule of exclusion.² The second sentence has been interpreted as recognizing the existence of exceptions to the exclusionary doctrine or as enumerating the purposes for which the adduction of evidence of other crimes is legitimate.³ This exposition of the English law has been accorded emphatic approval at the highest level of judicial authority.⁴

The body of evidentiary law applicable in several Asian jurisdictions including Malaysia, Singapore and Sri Lanka is modelled on the Indian Evidence Act of 1872. The provisions of the Evidence Ordinance, No. 14 of 1895, of Sri Lanka are representative of these codified South Asian

1. *Makin v. Attorney-General for New South Wales* (1894) A. C. 57 at p. 65, per Lord Herschell, L. C.

2. *Boardman v. Director of Public Prosecutions* (1974) 3 All E. R. 887 at p. 903, per Lord Hailsham.

3. R. Cross, *Evidence* (4th edition, 1974), p. 318.

4. *Boardman's case* (1975) A. C. 421 at p. 461, per Lord Salmon

systems. The provision made by the law of Sri Lanka is that "Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant"⁵ and that "When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such an act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant."⁶

The English common law and the codified Asian systems have in common the characteristic that the law aims at reconciling two conflicting postulates. The exclusionary rule enshrines "one of the most deeply rooted and jealously guarded principles of the English criminal law".⁷ Lord Loreburn, L.C., has declared that "Courts ought to be very careful to preserve the time-honoured law of England, that you cannot convict a man of one crime by proving that he had committed some other crime."⁸ It is a principle of rudimentary justice that "Criminal propensity as such can never be adduced in order to establish the guilt of a person of the offence charged."⁹ As Viscount Simon has pointed out, evidence of other occurrences which merely tends to deepen suspicion does not go to prove guilt.¹⁰ "Judges can be trusted not to allow so fundamental a principle to be eroded."¹¹ On the other hand, there are situations in which, in the interests of justice, evidence is admissible in spite of the fact that it may or will tend to show guilt in the accused of some offence other than that with which he is charged.¹² The rationale underlying the reception of similar fact evidence in these circumstances is that "If a jury are precluded by some rule of law from taking the view that something is a coincidence which is against all the probabilities if the accused person is innocent, then it would seem to be a doctrine of law which prevents a jury from using what looks like ordinary common sense."¹³

5. Evidence Ordinance, section 14.

6. Evidence Ordinance, section 15

7. *Maxwell v. Director of Public Prosecutions* (1935) A. C. 309 at 317 per Viscount Sankey L. C.

8. *R. v. Ball* (1911) A. C. 47 at p. 71; cf. *R. v. Fisher* (1910) I K B. 149 at p. 152, per Channel, j.

9. *R. v. Brown, Smith, Woods and Flanagan* (1963) 47 Cr. App. Rep. 205 at p. 211, per Edmund Davies, J.

10. *Harris v. Director of Public Prosecutions* (1952) I All E. R. 1044

11. *Boardman v. Director of Public Prosecutions* (1974) 3 All E. R. 887 at p. 893, per Lord Morris.

12. *Ibid.*

13. *R. v. Robinson* (1953) 37 Cr. App. Rep. 95 at p. 106, per Hallett, J.

II. The Concept of 'Similar Fact' Evidence

The basis of the admissibility of similar fact evidence depends on the improbability of coincidence. Thus, where the accused was charged with murdering his wife in her bath by drowning and there was no direct evidence of this other than opportunity, but two other wives could be proved to have been drowned in the same way, "no reasonable man would believe it possible that the accused had successively married three women, persuaded them to make wills in his favour, bought three suitable baths, placed them in rooms which could not be locked, taken each wife to a doctor and suggested to him that she suffered from epileptic fits, and then had been so unlucky that each of the three had had some kind of fit in the bath and been drowned."¹⁴ It would likewise intolerably strain the credulity of the jury to be asked to believe that two boys mistakenly identified as the man who made indecent overtures to them an innocent man who was in fact a practising homosexual¹⁵ or that a brother and sister who had committed incest frequently in the past later lived together, sleeping in the same bed, without committing incest.¹⁶

The basic principle is that the admission of similar fact evidence is exceptional and requires a strong degree of probative force. "This probative force is derived, if at all, from the circumstance that the facts testified to by the several witnesses bear to each other such a striking similarity that they must, when judged by experience and common sense, either all be true, or have arisen from a cause common to the witnesses or from pure coincidence."¹⁷ Where the accused who was charged with two robberies, each effected by means of a hold-up with the same car, was identified by a victim of the second crime, the English Court of Criminal Appeal held that the jury were entitled to consider the evidence identifying the accused as the perpetrator of the first robbery.¹⁸ As the trial judge put it, "If Robinson is not a guilty man, he is a singularly unfortunate man. He is identified by different people in respect of two entirely different raids."¹⁹

The essential question in each case is whether "the similar fact evidence, taken together with the other evidence, would do no more than raise or strengthen a suspicion that the accused committed the offence with

14. *R. v. Smith* (1914-15) All E. R. 262., per Lord Maugham, quoted by G. L. Williams, *The Proof of Guilt: A Study of the English Criminal Trial* (3rd edition, 1963), p. 240.

15. *Thompson v. R.* (1919) A. C. 221.

16. *R. v. Ball* (1911) A. C. 47

17. *Boardman's case* (1974) 3 All E. R. 887 at p. 897, Per Lord Wilberforce.

18. *R. v. Robinson* (1953) 37 Cr. App. Rep. 95

19. *of R. v. Adami* (1959) S.A.S.R. 81; *R. v. Giovannone* (1960) 45 Cr. App. Rep. 31.

which he is charged or would point so strongly to this guilt that only an ultra-cautious jury, if they accepted it as true, would acquit in face of it."²⁰

Several points are relevant to the determination of this question :

(i) An important consideration is the degree of similarity of the evidence which is offered as similar fact evidence.

The "striking resemblances" or "unusual features", disregard of which is repugnant to common sense, may consist either of the objective facts²¹ or of a significant similarity.²² The similarity which is a requisite of admissibility of evidence pertaining to other transactions or incidents is itself a question of degree. For instance, "while it would certainly not be enough to identify the culprit in a series of burglaries that he climbed in through a ground floor window, the fact that he left the same humorous limerick on the walls of the sitting room, or an esoteric symbol written in lipstick on the mirror, might well be enough."²³

The importance of the degree of similarity lies in the reflection that, the greater the similarity the less likely it would be that a large number of persons would commit the crime. "Similarity narrows the gap between proving the accused was a wrongdoer in general and proving he did this particular wrong."²⁴ It is a condition of admissibility of evidence that the resemblance between the acts should be so marked as to suggest a special technique pointing to the accused as the criminal.

This may be illustrated by reference to the case law. In *Makin v. Attorney-General for New South Wales*²⁵ a husband and wife were charged with murdering a baby. Its body was found buried in their garden and they were proved to have agreed to adopt it in consideration of the payment of a small premium by its parents. The accused contended that the child had died through natural causes. The Privy Council held that the prosecution was entitled to lead evidence that the bodies of other babies taken in for small premiums were found buried in the yards of houses occupied by the accused.²⁶ The similarity of the technique employed by the accused on each occasion was striking. In *R. v. Straffen*²⁷ the accused

20. *Boardman's case* (1974) 3 All E. R. 887 at p. 909, per Lord Cross.

21. *R. v. Smith* (1915) 84 L. J. K. B. 2153; *R. v. Straffen* (1952) 2 All E. R. 657

22. *R. v. Sims* (1946) K. B. 531; *R. v. Davis and Murphy* (1971) 56 Cr. App. Rep. 249.

23. *Boardman's case* (1974) 3 All E. R. 887 at p. 905, Per Lord Hailsham.

24. J. D. Heydon, *Cases and Materials on Evidence* (1975), p. 261

25. (1894) A. C. 57

26. R. Cross, *op. cit.*, p. 325

27. (1952) 2 All E. R. 657

was charged with strangling a young girl. The death occurred in a quiet country area at a time when the accused was in the area, having escaped for a short time from an institution for the criminally insane. The decision of Cassels, J. to admit evidence of two previous murders of young girls committed by the accused was upheld by the Court of Criminal Appeal. The similarities consisted of the following features: (a) each of the victims was a young girl; (b) each victim was killed by manual strangulation; (c) in each case there was no attempt at sexual interference or any apparent motive for the crime; (d) in none of the three cases was there evidence of a struggle; (e) no attempt was made in any of the cases to conceal the body. In *R. v. Smith*,²⁸ too, the similarity typifying the *modus operandi* was evident.²⁹ In each of these cases admissibility of evidence of the other crimes rested on the footing that it showed a disposition to commit murder by means of a particular technique.³⁰

The applicability of this reasoning is vividly exemplified by the recent English case of *R. v. Mansfield*.³¹ The accused was charged with causing three fires at hotels where he worked and lived. The question was whether a sufficient degree of similarity could be shown between the fires to justify trial of the charges in one indictment. The test was declared to be whether the evidence went beyond a tendency to commit crimes of the kind charged and was positively probative of the crime alleged. The court emphasized that only if the evidence of similar facts could not be explained away as coincidence did the question of admitting it as a method of proof fall to be considered.

In the latter event the major premise of the reasoning justifying the reception of similar fact evidence is that "Poisonings and fires, though often the result of accident, do not in ordinary human experience recur in the same family circle or in the case of the same occupier. Accordingly, evidence is allowed to prove the recurrence of such poisonings or such fires respectively without proof that the party concerned was more than 'involved' in order to show the high degree of improbability attending the hypothesis that the poisoning or fire under particular scrutiny was an accident."³² The requisite nexus subsumes factors like the time and the character of the acts.³³

28. (1915) 84 L. J. K. B. 2153

29. For the facts of the case, see the text at note 14, *supra*

30. R. Cross, *op. cit.*, p. 325

31. (1978) 1 All E. R. 134

32. *Martin v. Osborne* (1936) 55 C. L. R. 367 at p. 385, *Per* Evatt, J.

33. *R. v. Coombes* (1960) 45 Cr. App. Rep. 36; *R. v. Wilson* (1973) 58 Cr. App. Rep. 169.

Comparable reasoning was resorted to in the Sri Lankan case of *R. v. Seneviratne*³⁴ to justify admission of similar fact evidence. The accused was charged with cheating and criminal breach of trust in connection with a money transaction in which he acted as notary public for two of his clients, E and Mrs. P. On 21st December 1920 the accused raised a sum of Rs. 5,000 for E on the primary mortgage of a land, the lender being one W. Within a few weeks the accused informed E that W had recalled the loan and that Mrs. P was willing to lend a sum of Rs. 6,250 on a primary mortgage of the same land. Accordingly, on 21st January 1921, a bond was executed by E for this sum, of which Rs. 750 was paid to E and Rs. 5,000 was retained by the accused to pay off W and to obtain a cancellation of his bond, which the accused failed to do. The accused's explanation was that he paid Rs. 750 to Mrs. P at the request of E, and that with the latter's consent he kept the balance which was not sufficient to obtain a discharge of W's bond. E denied having given authority to the accused to make any payment to Mrs. P or to use the balance. After leading the direct evidence available in the case, the Crown proposed to lead evidence of another instance in which the accused had cheated another client in a similar manner and committed breach of trust of sums of money raised by her through the accused. Jayawardene, A.J., held that evidence regarding the second transaction was admissible.³⁵

These cases turn on application of the "hall-mark principle", the gist of which is a recurring technique or mode of operation. As the differences among the acts increase, the justification for reception of evidence relating to the accused's behaviour on other occasions becomes correspondingly slender. Thus, in a case of shopbreaking³⁶ there is an insufficient nexus between the accused's previous housebreaking and that of which he is accused, if the former occurred five days earlier at a place twenty miles away.³⁷ The fact that each shopbreaking took place during the lunch hour when the shopkeeper was away, was held not to warrant invocation of the "hall mark" principle.³⁸ The English Court of Criminal Appeal has quashed a conviction³⁹ of obtaining a pony and cart by false pretences concerning the state of the accused's family and bank account, because evidence had been wrongly admitted concerning the obtaining of provender by false pretences with regard to the condition of the accused's

34. (1925) 27 N. L. R. 100

35. See particularly at p. 130

36. *R. v. Brown, Smith, Woods and Flanagan* (1963) 47 Cr. App. Rep. 205.

37. cf. *R. v. Macpherson and Resnick* (1964) 20. R. 101.

38. cf. *R. v. Blackledge* (1965) v. R. 397

39. *R. v. Fisher* (1910) 1 K. B. 144

business.⁴⁰ A conviction for obtaining money by the false pretence that it was needed to enable the accused to spend the night in Cheltenham was quashed on account of the wrongful admission of evidence relating to a previous obtaining of money by the accused by means of the pretence that they had work elsewhere and required the money for the journey to that place.⁴¹

In a Sri Lankan case⁴² a charge of cheating arose from a transaction under which the accused agreed to deliver to the complainant certain items of furniture. The complainant paid the consideration agreed upon but, after the lapse of several months, he had received neither the furniture nor the return of the money. The second transaction in respect of which evidence was tendered, was one under which the accused had offered to rent to another person a furnished house but, having accepted an advance, the accused failed to give possession of the house or to return the money. The basis of the court's decision excluding evidence as to the accused's behaviour in connection with the second transaction was that the two situations were not sufficiently similar in character to warrant an inference as to the accused's intention on the first occasion being drawn from his conduct in regard to the second, and unrelated, matter.

The requirement relating to a "particular technique"⁴³ or "particular pattern"⁴⁴ is relative. Insistence on "a virtually complete similarity"⁴⁵ as a condition of admissibility of evidence regarding other instances or transactions has been criticized on grounds of policy, in that it places "too high a premium on versatility and too heavy a penalty on dullness".⁴⁶ However, the strictness of this requirement is unavoidable, since the reception of what

40. cf. *R. v. Holt* (1860) Bell C. C. 280; *R. v. Ellis* (1910) 2 K. B. 746; *R. v. Baird* (1915) 11 Cr. App. Rep. 186; *R. v. Boothby* (1933) 24 Cr. App. Rep. 112; *R. v. Hamilton* (1939) 1 All E. R. 469.

41. *R. v. Slender* (1938) 2 All E. R. 387

42. *Dias v. Wijetunge* (1946) 47 N. L. R. 223

43. *Boardman's case* (1974) 3 All E. R. 887 at p. 914 per Lord Salmon

44. *ibid.*

45. R. Cross, *op. cit.*, p. 314. It has been observed recently that "Evidence is admissible as similar fact evidence if, but only if, it goes beyond showing a tendency to commit crimes of this kind and is positively probative in regard to the crime charged." (*R. v. Rance* (1975) 62 Cr. App. Rep. 118 at p. 121 Per Lord Widgery, C. J.) "Such probative value is not provided by the mere repetition of similar facts; there has to be some feature or features in the evidence sought to be adduced which provides an underlying link. The existence of such a link is not to be inferred from mere similarity of facts which are themselves so commonplace that they can provide no sure ground for saying that they point to the commission by the accused of the offence under consideration (*R. v. Scarrott* (1977) 3 W.L. R. 629 at p. 634, per Scarman L. J. See also *R. v. Mustafa* (1977) Cr. L. R. 282, *R. v. Tricoglus* (1977) Cr L. R. 284).

46. *D. W. L. in* (1938) 54 L. Q. R. 335 at P. 336

purports to be similar fact evidence cannot be justified in circumstances where the means of committing a crime "might have been adopted by any one of an indefinite number of persons and where no other connection is shown to have existed."⁴⁷ The fundamental premise of the law is that evidence of the misconduct of a party on other occasions must not be given if the only reason why it is substantially relevant is that it shows a disposition towards wrongdoing in general, or the commission of the particular crime or civil wrong with which such party is charged.⁴⁸ The argument in favour of reception of evidence as to misconduct on other occasions has to be made to support a suggestion that the accused is disposed towards a particular method, as opposed to a particular kind, of wrongdoing.⁴⁹ The sameness of the method, therefore, assumes crucial significance.

(ii) The argument based on the unlikelihood of coincidence derives validity not only from strong similarity between the similar fact evidence and the main evidence but from marked dissimilarity between all the events and what might ordinarily be expected to happen.⁵⁰ For this reason similar fact evidence is more readily admitted in unusual crimes than common ones – for example, poisoning,⁵¹ incest,⁵² unnatural sexual cases⁵³ and perverted murders.⁵⁴ "If crimes are common others may have committed them. If crimes are rare, most people are inhibited from committing them, and proof of lack of inhibition is very relevant."⁵⁵

(iii) The number of previous or subsequent instances in respect of which evidence is available has a material bearing on the concept of "system". The essence of this concept has been explained judicially: "A system is not necessarily criminal: most men carry on business on a system, they may even be said to live on a system. Where, however, acts

47. *R. v. Aiken* (1952) V. L. R. 265 at p. 268

48. *R. Cross, op. cit.*, p. 310

49. *ibid*

50. J. D. Heydon, *op. cit.*, p. 260

51. *R. Geering* (1849) 18 L. J. M. C. 215; *R. v. Garner* (1864) 3 F. & F. 681; *R. v. Cotton* (1873) 12 Cox C. C. 400; *R. v. Heeson* (1878) 14 Cox C. C. 408. *R. v. Flannagan and Higgins* (1884) 15 Cox C. C. 403 But see *R. v. Winslow* (1860) 8 Cox C. C. 397

52. *R. v. Ball* (1911) A. C. 47; *Mc Conville v. Bayley* (1914) 17 C. L. R. 509; *R. v. Power* (1940) Q. S. R. 111. But see *R. v. Flack* (1969) 2 All E. R. 784.

53. *Thompson v. R.* (1918) A. C. 221; *R. v. Sims* (1946) K. B. 531; *R. v. Hall* (1952) K. B. 302; *R. v. King* (1967) 2 Q. B. 338; *Director of Public Prosecutions v. Kilbourne* (1973) A. C. 729; *Boardman v. Director of Public Prosecutions* (1974) 3 All E. R. 887. But see *R. v. Chandor* (1959) 1 Q. B. 545; *R. v. Horwood* (1970) 1 Q. B. 133.

54. *R. v. Straffen* (1952) 2 Q. B. 911; *R. v. Morris* (1969) 54 Cr. App. Rep. 69

55. J. H. Heydon, *op. cit.*, p. 261

are of such a character that, taken alone, they may be innocent, but which result in benefit or reward to the actor and loss or suffering to the patient, repeated instances of such acts at least show that experience has fully informed the actor of all their elements and details, and it is only reasonable to infer that the act is designed and intentional, and its motive the benefit or reward to himself or the loss or suffering to some third person."⁵⁶

In exceptional circumstances one previous instance may suffice. In *R. v. Bond*⁵⁷ the accused, a doctor, had been convicted of using instruments with intent to procure the abortion of X. The trial judge admitted the evidence of Y that the accused had performed a similar operation on her nine months previously and, in the course of her examination-in-chief, she said he told her that he had "put dozens of girls right." Both X and Y were servants of the accused who had been pregnant by him. The court held that the evidence had been rightly received.

Ordinarily, however, "system" cannot be established by reference to an isolated act. In *R. v. Bond* there was a difference of opinion whether the evidence of Y would have been admissible, had it not been for the allegation concerning the accused's admission of having performed similar operations on numerous previous occasions.⁵⁸ Since an isolated act may be sufficient to support an argument based on the rarity of coincidences, some of the judges were prepared to admit evidence concerning the accused's conduct towards Y as tending to negative innocent intent towards X, even if the former's testimony had not referred to the admission of similar behaviour on other occasions.⁵⁹

The number of instances required depends on the nature of the crime charged and the circumstances in which it is alleged to have been committed. Thus, although one previous abortion may be sufficient, several previous burglaries committed in a commonplace manner may not be enough⁶⁰.

The structural framework of Sri Lankan law is of interest. Sections 14 and 15 of the Evidence Ordinance serve a similar purpose. Section 14 admits facts showing the existence of any state of mind or body when the existence of such a state of mind or body is in issue or is relevant.⁶¹ Section 15 enables the introduction of evidence operating to exclude a

56. *R. v. Bond* (1906) 2 K. B. 389 at p. 420, *Per* Lawrence, J.

57. (1906) 2 K. B. 328

58. R. Cross, *op. cit.* p. 328

59. R. Cross, *op. cit.* pages 328-329

60. J. D. Heydon, *op. cit.*, p. 262

61. See the text at note 5, *supra*

defence like accident in cases where, at first glance, the question whether an act has been committed intentionally or accidentally admits of some doubt.⁶²

Section 14 is significantly wider in scope than section 15. Where evidence in regard to an act is sought to be led under section 14, the act may be an isolated act, there being no requirement relating to a series of acts. The latter element is a feature of section 15. Where, in addition to the act referred to in the indictment, only one other act of a similar kind is proved to have been committed by the accused, evidence relating to the other act may be given in appropriate cases under section 14, whatever interpretation is adopted of the phrase "series of occurrences" which forms an essential element of section 15. There may thus be situations to which section 14 applies, even though the distinct requirements of section 15 cannot be established.⁶³

In the context of section 15 there has been no unanimity in the Sri Lankan decided cases as to the interpretation of the word "series." In *R. v. Seneviratne*⁶⁴ the majority of the court⁶⁵ construed "series" as denoting that more than one act (other than that referred to in the indictment) would have to be proved.⁶⁶ However, the minority⁶⁷ was of opinion that two acts in all (the act charged and one other act) amount to a number of acts and would be sufficient to constitute a "series".⁶⁸

The Sri Lankan cases cover a variety of situations extending from those where one similar act besides that charged in the indictment has been held sufficient,⁶⁹ to those where no fewer than one hundred and fifty similar incidents were alleged to have taken place.⁷⁰ As a general rule, however, the courts of Sri Lanka have required a minimum of two acts, other than that charged, to constitute a "series."⁷¹ A flexible attitude is desirable. A Sri Lankan judge has observed: "Whether or not an act forms part of a series appears to depend entirely on the class of acts which

62. See, the text at note 6, *Supra*

63. See, example, *R. v. Seneviratne* (1925) 27 N. L. R. 100

64. (1925) 27 N. L. R. 100

65. *Schneider and Dalton*, JJ.

66. (1925) 27 N. L. R. 100 at P. 113, *Per Schneider*, J.

67. *Jayewardene*, A. J.

68. (1925) 27 N. L. R. 100 at p. 134, *per Jayewardene*, A. J.

69. *Jayewardene v. Diyoni* (1915) 18 N. L. R. 239; *Esufali & Co. v. Samarang Sea and Fire Insurance Co.* (1925) 26 N. L. R. 402

70. *R. v. Waidyasekera* (1955) 57 N. L. R. 202

71. See for example, *R. v. Wijeratne* (1935) 6 C. W. R. 314; *R. v. Jarlis* (1951) 52 N. L. R. 457.

are in question, and where the question is one of housebreaking in a particular neighbourhood on a particular night, I think that one other act is sufficient to constitute a 'series' of similar occurrences."⁷²

Although the comment has been made by the Sri Lankan courts that "Evidentiary facts are admissible to prove the intention regarding the *factum probandum* by showing what is described variously as 'system', 'design', 'course of conduct' or 'practice',"⁷³ the use of these terms should not be allowed to obscure the fact that "the basic test is a high degree of relevance, and this depends on all the evidence."⁷⁴ It is vital, therefore, to prevent the law from degenerating into a mosaic of technical rules regulating such matters as the number of acts comprising a "system" and the methods by which an adequate nexus can be established between the primary evidence and the purported similar fact evidence.

(iv) A resilient criterion should govern the degree of proximity in time postulated by the law. The nature of the crime is the decisive consideration. As a Scottish court has aptly remarked, "A man whose course of conduct is to buy houses, insure them and burn them down, or to acquire ships, insure them and scuttle them, or to purport to marry women, defraud and desert them, cannot repeat the offence every month, or even perhaps every six months."⁷⁵ In general, however, the length of the interval between the acts detracts from the strength of the nexus.⁷⁶

(v) The likelihood of repetition of the offence in question is integral to the concept of "system." This accounts for the regularity with which similar fact evidence has been received in cases involving charges of homosexual conduct.⁷⁷

Lord Sumner has observed that "Persons who commit (homosexual) offences seek the habitual gratification of a particular perverted lust which not only takes them out of the class of ordinary men gone wrong, but stamps them with the hall mark of a specialized and extraordinary class as much as if they carried on their bodies some physical peculiarity."⁷⁸ In *R. v. Sims*⁷⁹ this statement was relied on as a basis for the admission of evidence of homosexual misconduct on the part of the accused on a homo-

72. *R. v. Siyaris* (1928) 30 N. L. R. 92 at pages 93-94, *Per* Lyall Grant, J.

73. *R. v. Seneviratne* (1925) 27 N. L. R. 100 at p. 113, *per* Schneider, J.

74. J. D. Heydon, *op. cit.*, p. 261

75. *Moorov v. H. M. Advocate* 1930 J.C. 68 at p. 89, *per* Lord Sands.

76. *R. v. Adamson* (1911) 6 Cr. App. Rep. 205

77. See the cases cited at note 53, *supra*.

78. *Thompson v. R.* (1918) A. C. 221 at p. 235

79. (1946) K. B. 531 at p. 540

sexual charge without any reference to pattern or technique. Such evidence may take the form either of an explicit assertion by the accused as to his abnormal propensity⁸⁰ or of real evidence like powder puffs⁸¹ or indecent photographs⁸² found in the possession of the accused.

Dicta in *R. v. Sims* support the sweeping proposition that evidence of homosexuality is always admissible on homosexual charges. Indeed, Lord Goddard regarded sodomy as "a crime in a special category",⁸³ The high-water mark of this principle was reached in *R. v. King*.⁸⁴ Two boys alleged that the defendant met them in a public lavatory in the afternoon and committed acts of indecency and that by arrangement he met them again in the evening, took them to his flat for the night and indulged in further acts of indecency. The defendant denied the afternoon meeting but admitted the evening meeting and also that he took the boys home and that he slept in the same bed as one of them. However, he denied any act of indecency. In cross-examination, he responded affirmatively to the question: "Are you a homosexual?" The Court of Appeal held that the question and answer were properly received.

Nevertheless, the modern law leaves no room for doubt that the *ratio decidendi* of *R. v. Sims* is to be interpreted restrictively. The prevailing view is that evidence of homosexual disposition is admissible only where there is a strikingly similar technique.⁸⁵ In *R. v. Horwood*⁸⁶ the accused was convicted of attempting to procure the commission with himself of an act of gross indecency by a fourteen year old boy. The accused gave the boy a lift along a country road. The boy said that they got out to look for rabbits when the accused made the proposal and he ran away. According to the accused, he got out to urinate and, on returning to the car, found the boy missing. At a police interview the accused was asked whether he was a homosexual. He replied: "I used to be. I'm cured now." The Court of Appeal held in this case that the question and answer ought not to have been admitted. O'Connor, J. distinguished *R. v. King* as an exceptional case: "In the present case (*R. v. Horwood*) the nature of the admitted association, namely, the appellant taking the boy for a drive in his motor car in broad daylight can be contrasted with that in *R. v. King*, taking the boy home and getting into bed with him."

80. *R. v. King* (1967) 2 Q. B. 338

81. *Thompson v. R.* (1918) A. C. 221

82. *R. v. Twiss* (1918) 2 K. B. 853.

83. (1946) K. B. 531 at p. 540

84. (1967) 2 Q. B. 338

85. See the text at note 88, *infra*.

86. (1970) 1 Q. B. 133

Strong support for the narrower interpretation of *R. v. Sims* is furnished by the statement of Lord Hailsham in *Director of Public Prosecutions v. Kilbourne*⁸⁷: "With the exception of one incident, each accusation bears a resemblance to the other and shows not merely that (the accused) was a homosexual which would not have been enough to make the evidence admissible, but that he was one whose proclivities in that regard took a particular form."⁸⁸ In *Boardman v. Director of Public Prosecutions*⁸⁹ reference was made in the House of Lords to the "purely passive role"⁹⁰ said to have been adopted by the accused towards the act of sodomy suggested or performed as an element of "striking resemblance"⁹¹ between the testimony of the two boys. This had been described by the trial judge as a feature "of a particular, unusual kind."⁹² The implication is that the evidence was admitted because it showed "not merely that the accused was a homosexual, but also that he proceeded according to a particular technique".⁹³ The House of Lords has now categorically declared that "There is not a separate category of homosexual cases"⁹⁴ and that "The rules of logic and common sense must be the same for all trials where 'similar fact' or other analogous evidence is sought to be introduced."⁹⁵

Contemporary mores have played a large part in facilitating this conclusion. Lord Simon of Glaisdale has remarked that, in judging whether one fact is probative of another, "experience plays as large a part as logic."⁹⁶ As Lord Wilberforce has pointed out, "What is striking in one age is normal in another; the perversions of yesterday may be the routine or the fashion of tomorrow."⁹⁷ It has been judicially recognized in England that "public attitudes and public habits, particularly in regard to homosexuality, themselves have changed."⁹⁸

In an evaluation of the law from the standpoint of policy, it would appear that the broad view emerging from the *dicta* in *R. v. Sims* is exposed to criticism on several grounds. Lord Sumner's analogy of homosexual propensity with a physical defect is inaccurate, since the former may be

87. (1973) A. C. 729

88. At. p. 751

89. (1974) 3 All E. R. 887

90. At p. 907, *per* Lord Hailsham

91. *ibid.*

92. At p. 899 *ad fin.*; *per* Lord Hailsham

93. At p. 894, *per* Lord Morris, quoting R. Cross, *Evidence* (3rd edition, p. 319)

94. *Boardman's case* (1974) 3 All E. R. 887 at p. 907 *ad fin.*, *per* Lord Hailsham

95. *ibid.*

96. *Director of Public Prosecutions v. Kilbourne* (1973) A. C. 729 at P. 656

97. *Boardman's case* (1974) 3 All E. R. 887 at p. 898

98. *R. V. Morris* (1969) 54 Cr. App. 69 at p. 79

transient or intermittent, while the latter normally exists throughout life. The menace of blackmail militates convincingly against adoption of the broad view. A tendency to homosexuality does not necessarily entail promiscuity.⁹⁹

(vi) The question arises whether criminal or delinquent behaviour with the same person is a *sine qua non* of invocation of "system". In Sri Lanka the rigid view has been taken in an isolated case¹⁰⁰ that the previous instance must involve the accused's conduct with the same person, but this does not represent the balance of judicial authority. The problem arises directly in the case of sexual offences. On a charge of incest evidence of intercourse with a relation other than the one mentioned in the charge will generally be inadmissible,¹⁰¹ but this is because such evidence does no more than show incestuous propensity.¹⁰² Similarly, general homosexual tendencies will only be admissible in exceptional circumstances.¹⁰³ But evidence of intercourse on other occasions with the person mentioned in the charge is admissible because it is highly relevant as indicating a propensity to commit incest or an unnatural offence with a particular person.¹⁰⁴

The concept of "system" should be viewed not in a metaphysical light but pragmatically. The crux of "system" is that "There is a point in the ascending scale of probability when it is so near to certainty, that it is absurd to shy at the admission of the prejudicial evidence."¹⁰⁵ In all these cases it is for the judge to ensure that a properly instructed jury, applying their minds to the facts, can come to the conclusion that they are satisfied so that they are sure that to treat the matter as pure coincidence by reason of the 'nexus', 'pattern' or 'system' is an "affront to common sense."¹⁰⁶ In this the ordinary rules of logic and common sense prevail,¹⁰⁷ whether the case is one of burglary and the burglar has left a "signature" as the mark of his presence,¹⁰⁸ or false pretences, and the pretences alleged have too many

99. J. D. Heydon, *op. cit.*, p. 265

100. *R. v. Jarlis* (1951) 52 N. L. R. 457

101. *R. v. Flack* (1969) 2 All. E. R. 784

102. R. Cross, *op. cit.*, p. 314

103. J. D. Heydon, *op. cit.*, p. 264; for an example, see *R. v. King*, *supra*.

104. *R. v. Ball* (1911) A. C. 47; *R. v. Shellacker* (1914) 1 K. B. 414; *R. v. Allen* (1937) St. R. Qd. 32

105. J. Stone, *The Rule of Exclusion of similar Fact Evidence* (1933) 46 Harvard Law Review 954 at pages 983 - 984

106. *Boardman's case* (1974) 3 All E. R. 887 at p. 906, *per* Lord Hailsham

107. *ibid*

108. *R. v. Whiley* (1804) 2 Leach 983; *R. v. O' Meally* (1953) V. L. R. 30, *R. v. Ducsharm* (1956) 1 D. L. R. 732

common characteristics to have happened coincidentally,¹⁰⁹ or whether the dispute is one of identity and the accused in a series of offences has some notable physical features or behavioural or psychological characteristics,¹¹⁰ or is in possession of incriminating articles like a jemmy,¹¹¹ a set of skeleton keys¹¹² or, in abortion cases, the apparatus of the abortionist.¹¹³

III. The Concepts of 'Relevance' and 'Admissibility'

(a) Exclusion of Evidence Relating to Other Instances on the Ground of Irrelevance

Evidence may be excluded on the ground of irrelevance when "the evidence is thought to have inadequate probative value so far as such misconduct is concerned, for it is then *a fortiori* inadequate in relation to the allegation of misconduct which is being considered by the court."¹¹⁴

In *Harris v. Director of Public Prosecutions*¹¹⁵ the accused was charged with eight larcenies of money committed in May, June and July 1951 from a certain office in an enclosed market at times when most of the gates were shut and the accused, a police officer, might have been on solitary duty there. In each case the same means of access were used and only part of the amount which might have been taken, was taken. No thefts occurred while the accused was on leave. The accused was found by two detectives in the immediate vicinity of the office at the time of the last larceny. Though they were well known to him, he avoided them for a period sufficient to hide marked money taken from the office till and found in a coal bin near where he was first seen. The accused was convicted only on the eighth count. He appealed against conviction to the Court of Criminal Appeal unsuccessfully and to the House of Lords successfully on the ground that evidence of the first seven thefts was irrelevant to the eighth. The *ratio decidendi* is contained in the observation by Lord Simon: "The fact that someone perpetrated the earlier thefts when the accused may have been somewhere in the market does not provide material confirmation of his identity as the thief on the last occasion."¹¹⁶

109. *R. v. Rhodes* (1899) 1 Q. B. 77; *R. v. Ollis* (1900) 2 Q. B. 758; *R. v. Wyatt* (1904) 1 K. B. 188; *R. v. Hurden* (1962) 46 Cr. App. Rep. 323. But see *R. v. Sagar* (1914) 3 K. B. 1112.

110. See the cases cited at note 53, *supra*

111. *R. v. Taylor* (1923) 17 Cr. App. Rep. 109

112. *R. v. Hodges* (1957) Cr. App. Rep. 218; *R. v. Hannam* (1963) 49 M. P. R. 262, 41.

113. *R. v. Paim* (1910) 4 Cr. App. Rep. 253; *R. v. Starkie* (1922) 2 K. B. 295; *R. v. Ross and McCarthy* (1955) S. R. Q. 48; *R. v. Powell, Iremonger and Kinley* (1957) N. Z. L. R. I. Cf. *Brunet v. R.* (1928) S. C. R. 375; *R. v. Campbell* (1947) 2 C. R. 351

114. R. Cross, *op. cit.*, p. 312

115. (1952) A. C. 694

116. At p. 711

In *Noor Mohamed v. R.*¹¹⁷ the appellant had been convicted of murdering A, the woman with whom he had been living. He was a goldsmith, lawfully possessed of cyanide for the purpose of his business, and A certainly met her death through cyanide poisoning although there was no evidence that the poison had been administered by the accused. He was on bad terms with her, and there was a suggestion that she might have committed suicide. The Judicial Committee advised that the conviction should be quashed because the judge had wrongly admitted evidence designed to show that the accused had previously caused the death of his wife, G, by tricking her into taking cyanide as a cure for toothache.¹¹⁸ Lord Simon, referring to *Noor Mohamed's* case, has remarked: "The Board there took the view that the evidence as to the previous death of the accused's wife was not relevant to prove the charge of murdering another woman."¹¹⁹

*R. v. Chandor*¹²⁰ was a case where a Croydon schoolmaster was charged with indecent assaults on three of his pupils, A, B and C. A alleged that the incident affecting him occurred in the lake district, and the defence to this count was that the meeting never took place. The accused admitted that he had been with B and C in Croydon at the material times, but denied the occurrence of the incidents to which they deposed. The Court of Criminal Appeal, holding that the jury were not entitled to consider the evidence of B and C when deciding on the count concerning A, said: "Evidence that an offence was committed by the accused against B at Croydon could not be any evidence that the accused met A in the lake district and committed an offence there."¹²¹

In these cases evidence pertaining to previous behaviour was excluded on the ground that it was irrelevant to the alleged act, in that it did not tend to prove the act charged. It is on this basis that evidence of consensual intercourse has been considered irrelevant to a charge of rape¹²² and evidence that the accused was a Communist atheist hostile to missionaries has been excluded in deciding whether he was likely to publish seditious words.¹²³

117. (1949) A. C. 182

118. See also *R. v. Patel* (1951) 2 All E. R. 29; *R v. Fletcher* (1953) S. R. v. N. S. W 70

119. *Harris v. Director of Public Prosecutions* (1952) A. C. 694 at p. 708.

120. (1959) 1 Q. B. 545

121. Per Lord Parker, C. J.

122. *R. v. Rodley* (1913) 3 K. B. 468.

123. *Coopr v. R.* (1961) 105 C. L. R. 177

Evidence tending to show good conduct of a party on other occasions is frequently excluded because it is insufficiently relevant, having regard to the collateral issues it might raise.¹²⁴ However, the previous misconduct, to be relevant, need not necessarily be criminal or tortious.¹²⁵

The case law clearly demonstrates that relevance is a question of degree and, therefore, often a matter of opinion. A conviction of house-breaking with intent to commit rape has been quashed by the English Court of Criminal Appeal on the ground that evidence which the trial judge had considered to be of some relevance as showing lustful disposition at the time of the alleged crime was in fact irrelevant.¹²⁶

Several Sri Lankan decisions illustrate the exclusion of evidence on the footing of irrelevance. Where the accused was charged with having committed three acts of gross indecency with three different persons within a period of twelve months,¹²⁷ Maartensz, A.J., stated as a ground for not letting in evidence as to previous acts, that the evidence "was not tendered to show a guilty passion between the accused and any of the boys or to rebut the suggestion of an innocent association, but merely to show that the accused is likely to have committed the offence with which he is charged".¹²⁸ In regard to a charge of keeping a brothel, evidence that the accused persons had been leading immoral lives elsewhere has been considered inadmissible.¹²⁹ Where a village official was charged with receiving an illegal gratification from a party to a village tribunal case, the prosecution was not permitted to call other persons to testify that they had given similar unlawful gratifications to the accused.¹³⁰ The effective reason for exclusion of similar fact evidence in each of these cases was that it lacked sufficient probative force in respect of establishment of the offence charged in the indictment.

(b) 'Relevance' Distinguished from 'Admissibility'

There is English judicial authority in support of a broad rule of inclusion founded upon the virtual equation of relevance with admissibility. Representative of this approach is the comment by Lord Goddard that "Evidence is admissible if it is logically probative, that is, if it is logically relevant to the issue whether the prisoner has committed the act charged".¹³¹

124. S. Cross, *op. cit.*, p. 311

125. *Griffin v. R.* (1937) 58 C. L. R. 185

126. *R. v. Rodley* (1913) 3 K. B. 468; cf. *R. v. Horry* (1949) N. Z. L. R. 791. See also *Holcombe v. Hewson* (1810) 2 Camp. 391; *Hollingham v. Head* (1858) 4 C. B. N. S. 338

127. *R. v. Wickremasinghe* (1934) 36 N.L. R. 135

128. At p. 137

129. *Herat v. Ran Menika* (1916) 2 C. W. R. 69

130. *Tennekoon v. Dingiri Banda* (1917) 3 C. W. R. 364

But this proposition is unacceptable, since "the expression 'logically probative' may be understood to include much evidence which English law deems to be irrelevant."¹³² Evidence which, notwithstanding its logically probative force, falls within the ambit of the traditional exclusionary rules, is typified by such categories of evidence as hearsay, secondary evidence of documents and testimony barred by the rules governing confessions.¹³³ The true principle regulating similar fact evidence is that all evidence tending to show a disposition towards a particular crime must be excluded unless it is justified by a high degree of relevance, in all the circumstances of a case.¹³⁴ This principle remains valid, despite the logical probative value attaching to the evidence.

Relevance has to be distinguished from admissibility for, even if it is relevant, evidence as to past misbehaviour is inadmissible if its only relevance is to show that the actor has a bad disposition, which has no particular bearing on some issue at the trial.¹³⁵ If relevant evidence is defined as "evidence which makes the matter which requires proof more or less probable",¹³⁶ it is clear that the concept of admissibility covers a much more limited area. There can be no doubt that evidence which satisfies the criterion of relevance, according to this definition, can well be excluded by Lord Herschell's formulation of the law in *Makin's case*.¹³⁷ "That what was declared to be inadmissible in the first sentence of this passage is nevertheless relevant, i.e. logically probative, can be seen from numerous studies of offences in which recidivists are matched against first offenders".¹³⁸

A feature of the codified systems of India, Sri Lanka, Malaysia and Singapore is their adoption of Stephen's approach¹³⁹ which endeavours to set out the rules concerning the matters that may be proved *coram iudice* entirely in terms of relevancy. Sections 14 and 15 of the Evidence Ordinance of Sri Lanka, which control the reception of similar fact evidence, are placed in the setting of a Chapter¹⁴⁰ entitled "Relevancy of Facts". The disadvantage attendant on this approach is that it suggests by implication that the basis

131. *R. v. Sims* (1946) K. B. 531 at p. 537

132. *Noor Mohamed R. v.* (1949) A. C. 182 at p. 194, *per* Lord du Parc

133. *Boardman's case* (1949) 3 All E. R. 887 at p. 902, *per* Lord Hailsham

134. *cf R. v. Hall* (1952) 1 K. B. 302 at p. 306, *per* Lord Goddard

135. J. D. Heydon, *op. cit.*, p. 255

136. *Director of Public Prosecutions v. Kilbourne* (1973) A. C. 729 at p. 756, *per* Lord Simon of Glaisdale

137. See note, 1, *supra*

138. *Director of Public Prosecutions v. Kilbourne* (1973) A. C. 729 at p. 757, *per* Lord Simon of Glaisdale. *Cf. Lowery R. v.* (1973) 3 All E. R. 662.

139. J.F. Stephen, *Digest of the Law of Evidence* (12th edition) article 1.

140. Chapter II

of exclusion of evidence not conforming with the requisites of the applicable provisions is its irrelevance to the offence charged. This obscures the fact that cogent considerations of policy frequently necessitate the exclusion of evidence, the relevance of which is indisputable.

The mode of formulation of the inclusionary rule embodied in sections 14 and 15 of the Evidence Ordinance of Sri Lanka involves explicit reference to the concept of "relevancy". This gives the Sri Lankan and other codified South Asian systems a facile veneer which could impede a proper appreciation of the complexity of the issues underlying reception or exclusion of similar fact evidence.

The substantial objection to the structure and terminology of Sri Lankan law is that it treats relevance and admissibility, within the framework of similar fact evidence, as synonymous concepts. From a comparative standpoint, it is of interest to note that a similar approach is reflected in some South African decisions.¹⁴¹ Admissibility, however, "signifies that the particular fact is relevant and something more, that it has also satisfied all the auxiliary tests and extrinsic policies."¹⁴²

Admissibility depends on a hybrid criterion, in that (i) the evidence must have a sufficiently high degree of relevancy, and (ii) the evidence should not contravene any exclusionary rule predicated on grounds of policy

In regard to element (i), it is important to note the variable quality of the standard of legal relevance. "Lawyers are never concerned with the question of whether one fact is relevant to prove another in an absolute sense: what matters to them is whether it is sufficiently relevant to justify its being heard by the court."¹⁴³ Lord du Parc has justly remarked that "Logicians are not bound by the rules of evidence which guide English Courts."¹⁴⁴ Varying gradations of relevance are not adequately catered for by the inelastic formulation, coupled with the definition of "relevancy",¹⁴⁵ embedded in the South Asian codes of evidence.

So far as element (ii) is concerned, the point which warrants emphasis is that the exclusion of evidence may be required by considerations which have nothing to do with the logical or probative relevance of the evidence

141. See, for example, *R. v. Troskie* 1920 A. D. 466 at p. 468, *per Innes*, C. J.

142. J. H. Wigmore, *Treatise on the Anglo-American System of Evidence in Trials at Common Law* (3rd edition, 1940), volume I. p. 300

143. L. H. Hoffmann, *Similar Facts after Boardman* (1975) 91 *Law Quarterly Review* 193 at p. 204.

144. *Noor Mohamed v. R.* (1949) 1 All E.R. 365 at p. 371

145. See the Evidence Ordinance of Sri Lanka, No. 14 of 1895, section 3.

tendered. These considerations include: (1) the grave prejudicial effect of the evidence which may be "out of proportion to its true evidential value";¹⁴⁶ (2) the multiplicity of collateral issues giving rise to delay, complexity and unjustifiable expense; and (3) the element of surprise which may involve unfairness to the accused. A factor of practical importance in the context of jury trials is that "It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to contain what is missing."¹⁴⁷

Consequently, the reports are replete with instances in which similar fact evidence that is undoubtedly relevant, judged by the canons of logic, has been considered inadmissible as a matter of law or in the exercise of judicial discretion.¹⁴⁸

(e) Multiple Connotations of Relevance

Lord Hailsham has made the helpful observation: "What is not to be admitted is a chain of reasoning and not necessarily a state of facts. If the inadmissible chain of reasoning be the only purpose for which the evidence is adduced as a matter of law, the evidence itself is not admissible. If there is some other relevant, probative purpose than the forbidden type of reasoning, the evidence is admitted, but should be made subject to a warning from the judge that the jury must eschew the forbidden reasoning."¹⁴⁹

In keeping with this premise a distinction may appropriately be recognized, in the interest of clarity and sound policy, between two types of similar fact evidence, the reception of which is governed by distinct considerations. The first type envisages similar fact evidence, the primary relevance of which consists of propensity,¹⁵⁰ while the second contemplates similar fact evidence having substantial relevance otherwise than through propensity.¹⁵¹ In both contexts the evidence pertaining to previous instances is logically probative, but its admissibility cannot be determined by a uniform criterion.

In the first category of case the line of reasoning which may be resorted to for the purpose of demonstrating relevance is that a person who has at several times in the past done the very kind of act of which he is

146. *R. v. Christie* (1914) A.C. 545 at p. 559, per Lord Moulton

147. *R. v. Bailey* (1924) 2 K.B. 300 at p. 305, per Lord Hewart, C.J.

148. *R. v. Butler* (1846) 2 Cav. and Kiv. 221; *R. v. Oddy* (1851) 2 Den. 264; *R. v. Winslow* (1860) 8 Cox C.C. 397; *R. v. Barron* (1913) 9 Cr. App. Rep. 236, *Perkins v. Jeffery* (1915) 2 K.B. 702; *Akerele R. v.* (1943) A.C. 253; *R. v. Ferrier* (1968) 112 Sol. Jo. 519.

149. *Boardman's case* (1974) 3 All E.R. 887 at pages 905-906

150. Z. Cowen and P. B. Carter *Essays on the Law of Evidence* (1956) p. 141.

151. Z. Cowen and P. B. Carter, *op. cit.*, p. 151.

accused on the occasion in question, can be shown to have a propensity to commit the act charged. It may be reasonably argued that "a man who has such a propensity is, *ceteris paribus*, more likely to have done it on the instant occasion than one who has not."¹⁵² But propensity is conditioned by such subjective factors as volition, exercise of self-control and individual reactions to situations and relationships. On the other hand, instances of the second category are susceptible to the application of objective norms, in that the extent of unlikelihood of the coincidence of identical or similar accidents may be assessed in accordance with ordinary experience.

The fundamental question in all cases concerning similar fact evidence is whether the intrinsic probative value of the evidence offered is sufficient to justify relegation of the drawbacks which may attend its reception. The primary disadvantage is potential prejudice which almost invariably results from the introduction of similar fact evidence; and it may readily be recognized that the risk of prejudice is substantially greater in the former type of case than it is in the latter. Accordingly, it is consistent with the policy objectives of the law to require a greater degree of relevancy as a condition of admissibility of similar fact evidence in the former situation than in the latter.¹⁵³

The basis of reception of similar fact evidence in the second category of case is demonstrably less speculative and capable of greater verifiability in conformity with objective criteria, than the footing on which its admission is sought in the first type of case. The second category envelops several classes of case: (1) those in which a variety of incidents represents, cumulatively, the "same transaction"; (2) those where evidence relating to other occasions has the effect of reinforcing testimony about matters collateral to the main issue; and (3) those in which the non-severability of a confession is relied on as the basis of inclusion of evidence as to misconduct on other occasions. These warrant separate treatment.

(1) Where the accused is charged with maliciously shooting at X, evidence that he had attacked X on the same day may be admissible if all the attacks can be reasonably viewed as incidents of one transaction.¹⁵⁴ A threat of rape and the completed act of rape may be linked by the nexus of a continuing transaction.¹⁵⁵ The amorphous concept¹⁵⁶ relating to the "same transaction" has been held to warrant the reception of evidence

152. Z. Cowen and P. B. Carter, *op. cit.*, p. 133

153. *R. v. Bond* (1906) 2 K. B. 389 at p. 417, *per Bray J.* Cf. *R. v. Mortimer* (1936) 25 Cr. App. Rep. 150 at p. 189.

154. *R. v. Voke* (1823) Russ. & Ry. 531; *R. v. O'Malley* (1964) Qd. R. 226

155. *R. v. Rearden* (1864) 4 F. & F. 76

156. *R. v. Malik* (1968) 1 All E. R. 582

as to the discovery of the proceeds of a robbery at a place where a subsequent crime was committed.¹⁵⁷ If the interception of a parcel is inextricably interlinked with the abstraction of currency notes from an envelope contained in the larger parcel, evidence as to interference with the parcel is admissible in connection with the charge of theft.¹⁵⁸ Burglaries at a series of railway booking-offices committed during the same night cannot be satisfactorily disentangled for the purpose of adducing evidence separately at trials on distinct indictments.¹⁵⁹ The principle of inclusion rests on the premise that "If crimes do so intermix, the court must go through the details."¹⁶⁰

In each of these cases the evidence admitted had a relevance other than its contribution to the proof of bad disposition on the part of the accused. The essential ground on which the evidence was received was that it pertained to an incident in the transaction forming the subject-matter of the charge. It is on this footing that the participation of the accused in an independent crime committed in the same locality as that in which the offence charged was perpetrated, may be proved if the accused denies his presence in the neighbourhood at the material time,¹⁶¹ but not otherwise,¹⁶² provided that the jury is adequately directed as to the limited use which should be made of this testimony.¹⁶³

A conceptual difference may be noticed between similar fact evidence and evidence relating to a continuing¹⁶⁴ or identical transaction. In an Australian case¹⁶⁵ the employees of a timber camp went on a drunken orgy lasting several hours. One was found near death next morning, having been struck eight or nine times on the head with a bottle; kerosene had been poured on him and his clothes ignited. Several circumstances connected the accused with the crime. The High Court of Australia held that evidence of violent assaults by the accused on other employees, including the deceased, during the orgy, all of which were brutal blows to the

157. *R. v. O Mealley* (1953) V. L. R. 30

158. *R. v. Salisbury* (1831) 5 C. & P. 155

159. *R. v. Cobden* (1862) 3 F. & F. 833

160. *R. v. Whiley* (1804) 2 Leach 983. Cf. *R. v. Ellis* (1826) 6 B. & C. 145; *R. v. Bleasdale* (1840) 2 Car. & Kir 765; *R. v. Firth* (1869) L. R. 1 C. C. R. 172; *R. v. Henwood* (1870) 11 Cox C. C. 526; *R. v. Flynn* (1955) 21 C. R. 1.

161. *R. v. Ducsharm* (1956) 1 D. L. R. 732

162. *R. v. Rogans* (1916) 35 N. Z. L. R. 265 at p.304, per Deniston, J.; cf. *R. v. Horry* (1949) N. Z. L. R. 791.

163. *R. v. Ward* (1963) Qd. R. 56

164. *Brown v. Eastern and Midland Rail Co.* (1889) 22 Q. B. D. 391, *Ex parte Burnby* (1901) 2 Q. B. 458; *R. v. Brady and Ram* (1964) 3 All E. R. 616; *Dale v. Smith* (1967) 2 All E. R. 1133

165. *O'Leary v. R.* (1946) 73 C. L. R. 566

head, was admissible, not as similar fact evidence but because it disclosed a connected series of events to be regarded as one transaction. In this case it was suggested in the charge to the jury that the crime, in its circumstances, was of a description which showed that it must have been committed by a man of a particular disposition and that such a disposition amounted to a specific means of identifying the offender. In appeal, Dixon, J. approached the matter differently. Although of opinion that the fact that the assailant concentrated his attack on the deceased's head did not warrant any inference as to any such specific connection with the prior acts of the accused as to afford an identifying mark of the kind justifying the admission of similar fact evidence, Dixon J. found no difficulty in letting in the evidence on the basis of the unifying element characterizing one transaction.

The difference between the two concepts is given expression in the law of Sri Lanka which incorporates a provision, distinct from that controlling similar fact evidence, to cater for incidents of one transaction. Explicit provision, based on the Indian Evidence Act, 1872, is made in Sri Lanka that "Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places."¹⁶⁶ The Sri Lankan courts have identified such *indicia* as "proximity of time and unity of place",¹⁶⁷ "a community of purpose and a continuity of action"¹⁶⁸ and "the relation of the acts to one another in point of purpose or as cause and effect or as principal and subsidiary acts"¹⁶⁹ as elements of the concept of the "same transaction". The recognition of this principle as a basis of inclusion of evidence by the law of Sri Lanka is wholly independent of the *facta probanda* regulating the admissibility of similar fact testimony.

(2) In a case where the accused was charged with having had carnal knowledge of a girl aged fourteen, the girl, giving evidence said that the accused told her that he had previously done the same thing to another girl under sixteen years of age.¹⁷⁰ Cross-examination of the accused in regard to the latter statement was held to be proper. In a prosecution for forgery¹⁷¹ accomplices giving evidence for the prosecution described the

166. Evidence Ordinance, section 6.

167. *R. v. Aman* (1920) 21 N. L. R. 375 at p. 377, *per* Bertram, C. J.

168. *Don Wilbert v. Sub-Inspector of Police, Chilaw* (1965) 69 N. L. R. 448 at p. 450, *per* Alles J.

169. *Jonklaas v. Jomadasa* (1943) 44 N. L. R. 227 at p. 230, *per* Wijeyewardene, J.

170. *R. v. Chitson* (1909) 2 K. B. 945

171. *R. v. Kennaway* (1917) 1 K. B. 25

fraudulent scheme of which the forgery was a part and related a conversation with the accused in which he stated to them that some years earlier he had forged another will in pursuance of a similar scheme. Questions put to the accused in cross-examination about this other forgery, were held to be legitimate. In another case¹⁷² a woman was convicted of manslaughter by performing an illegal operation on the prosecutor's wife. The prosecutor said that he had been given the accused's address by another woman who stated that the accused had performed an illegal operation on her. The accused's defence was that the only time she had seen the prosecutor was when he called to inquire about accommodation, and it was held that the accused had been properly cross-examined concerning the alleged operation on the other woman.

The purpose of the cross-examination in each of these cases was to furnish support for an inference relating to matters collateral to the guilt of the accused on the occasion in question.

(3) Where the accused, in a confession, the truth of material portions of which can be proved, acknowledges not only his guilt of the crime alleged but his complicity in other offences, the confession may be received as evidence indicating his participation in the latter offences. The rationale is that "Confirmation in material points produces ample persuasion of the trustworthiness of the whole."¹⁷³

In an English case¹⁷⁴ the accused was convicted of murdering his child. One of the items of evidence against him was a statement which he had made to the police to the effect that he had murdered his wife as well as his child and concealed their bodies in the same place. The Court of Criminal Appeal held that the entirety of this confession had been properly read to the jury because the wife's body was found near that of her child.

It is evident from this analysis that, both in principle and on the basis of policy, the distinction between similar fact evidence the primary relevance of which is through propensity, and similar fact evidence having substantial relevance otherwise than through propensity, is supportable. However, while it cannot be disputed that the latter kind of similar fact evidence is received with much less inhibition than the former, Lord Herschell's exposition of the principle applicable, in *Makin's case*,¹⁷⁵ is to

172. *R. v. Lovegrove* (1920) 3 K. B. 643

173. J. H. Wigmore, *op. cit.*, volume 111, pages 338-339

174. *R. v. Evans* (1950) 1 All E. R. 610

some extent misleading, in that it suggests that a condition of admissibility of similar fact evidence is its relevance in some manner otherwise than by facilitating proof of disposition.

Instances are discoverable in which the relevance of evidence admitted by the English courts consisted exclusively of the suggestion that the accused, on the occasion referred to in the indictment, succumbed to his proved disposition. *R. v. Straffen*¹⁷⁶ is one illustration of such a situation. *R. v. Ball*¹⁷⁷ provides another. The accused, a brother and sister, were convicted of incest committed during certain periods in 1910. The main prosecution evidence was that the accused, who held themselves out as married, were seen together at night in a house which had only one furnished bedroom, containing a double bed showing signs of occupation by two persons. The brother had been seen coming from the bedroom in a half-dressed state, while the woman was in nightdress. The similar fact evidence admitted by Scrutton, J. was that three years later, before incest was made criminal, the accused had lived together as man and wife sharing a bed, and that a baby had been born, the accused being registered as its parents. Lord Loreburn, L. C. said: "I consider that this evidence was clearly admissible to establish the guilty relations between the parties and the existence of a sexual passion between them as elements in proving that they had illicit connection in fact on or between the dates charged." There is no doubt, *ex facie* this statement, that the sole relevance of the previous incestuous relationship was (i) to prove a disposition on the part of the accused persons to commit incest, and (ii) to suggest that the opportunity of committing incest was exploited by them on the occasion in question.

Hoffmann formulates the proposition that "Similar fact evidence will be admissible *either* (i) if it has a relevance in addition to showing the accused's disposition *or* (ii) if it shows only the accused's disposition but this is highly relevant to the issue of guilt."¹⁷⁸ The merit of this approach to the definition of the scope of the inclusionary rule is that, while emphasizing the need for a distinction between similar fact evidence relating exclusively to disposition and similar fact evidence relevant in some other way, and permitting reception of the latter category of evidence in a wider variety of circumstances than the former, it recognizes, in correspondence with the case law, that the admission of similar fact evidence of exceptional probative value but pertaining altogether to dispo-

175. See note 1, *supra*

176. See note 27, *supra*

177. (1911) A. C. 47

178. L. H. Hoffmann, *The South African Law of Evidence* (2nd edition, 1970), pages 38, 39.

tion, is not precluded absolutely.¹⁷⁹ A lacuna in the method of formulating the exclusionary rule, adopted by the American Federal Rules, that "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity there with",¹⁸⁰ is that this contingency has not been provided for. A similar criticism is justifiable in respect of the South Asian codes of evidence on this point.

IV. Proof of the Actus Reus

In regard to this aspect of the law there is a basic difference between the position in England and that under the codified systems of South Asia.

The ambit of the inclusionary rule is appreciably narrower under the systems deriving from the Indian Evidence Act. Section 14 of the Evidence Ordinance of Sri Lanka allows the admission of similar fact evidence only when it demonstrates the existence of a state of mind or body. A condition precedent of the reception of evidence in terms of section 15 is that doubt exists whether an act was "accidental or intentional, or done with a particular knowledge or intention."

These provisions do not enable the reception of evidence to establish either the occurrence of the main fact or the identity of the actor. This is clearly illustrated by the case of *R. v Wijesinghe*.¹⁸¹ The accused was charged in one indictment with having cheated three different milk vendors and obtained money on false pretences on three different occasions within one year. The prosecution endeavoured, unsuccessfully, to call witnesses to prove that the accused had committed other offences of the same kind. In *Wijesinghe's* case the doubt concerned not the intention with which the accused had committed the act but the question whether he had perpetrated the act at all. Ennis, J., said: "Where evidence is admitted, it is admitted only to show the absence of accident or the presence of intention, but not to prove the original fact itself. For instance, where an accused was charged with burning down his house in order to obtain money for which it was insured, evidence that the accused had lived in a number of houses successively which he had insured and that in each of them a fire had occurred, is admissible to show that the fire in the case under trial was not accidental; but that evidence is not admissible to prove the main fact that the accused set fire to the house."¹⁸²

179. cf clauses 3 (1) and 3 (2) of the draft Bill annexed to the 11th Report of the English Criminal Law Revision Committee

180. Rule 404 (b) of the American Federal Rules

181. (1919) 21 N. L. R. 230

182. At p. 232

It is of interest, comparatively, to note the broadly similar reasoning of the South African courts. The Appellate Division has observed that "The repetition of the acts is admissible to prove not the commission of the act in issue but its nature, its commission being proved by other admissible evidence."¹⁸³ The Cape courts have asserted that "Normally similar conduct shows only propensity and therefore is not admissible to prove the *actus reus* in question."¹⁸⁴

By contrast, under the English common law, the *actus reus* itself may be proved by similar fact evidence of adequate cogency. In *Makin's case*¹⁸⁵ evidence relating to the discovery of the bodies of other infants in the yards of houses occupied by the accused was admitted not to support an inference as to the intention with which the accused had acted but to establish that the baby, whose death was the subject of the charge, had been murdered. In a series of cases¹⁸⁶ evidence of previous or subsequent deaths from arsenical poisoning has been admitted (a) to show that the death in question was not brought about by natural causes, and (b) to connect the accused with the commission of the crime.

The gist of the reasoning in support of reception of similar fact evidence in these cases is "the argument from the point of view of the doctrine of chances, the instinctive recognition of that logical process which eliminates the element of innocent intent by multiplying instances of the same result until it is perceived that this element cannot explain them all."¹⁸⁷ Thus, in *R. v. Smith*,¹⁸⁸ the accused's contention was not that he had caused the woman's death by accident, but that her death had been caused by a heart attack. The object of admission of evidence having a bearing on the deaths of his previous "brides" was to prove the *actus reus* on the occasion in question.

The view that similar fact evidence is never admissible to prove the *actus reus*, is diametrically at variance with the statement by Lord Atkinson: "Surely, in an ordinary prosecution for murder, you can prove previous acts or words of the accused to show he entertained feelings of enmity towards the deceased, and that is evidence not merely of the malicious mind with which he killed the deceased, but of the fact that he killed him."¹⁸⁹

183. *R. v. D.* 1958 (4) S. A. 364 (A. D.) at p. 369, *per Hoexter*, J. A.

184. *S. v. B.* 1976 (2) S. A. 54 (C) at p. 59

185. See note 1, *supra*

186. See the cases cited at note 51, *supra*; cf *R. v. Armstrong* (1922) 2 K. B. 555

187. J. H. Wigmore, *op. cit.*, volume 111, section 302, p. 196.

188. See note 14, *supra*

189. *R. v. Ball* (1911) A. C. 47, *arguendo*

An explicit Commonwealth authority for the admission of similar fact evidence to establish, in their entirety, the elements of the *actus reus* is the Australian case of *Martin v. Osborne*.¹⁹⁰ The accused was charged with operating a commercial transport vehicle without a licence. Such a vehicle was defined as one in which passengers were carried for a reward. It was proved that the vehicle was driven by the accused at the material time, but there was no direct evidence that he received a reward. He was carrying passengers on a journey from Ballarat to Melbourne, and he stopped at various places en route where passengers boarded and alighted from the vehicle. Evidence of similar journeys on the last two days preceding that covered by the charge was held by Evatt, J. to have been rightly admitted, and the conviction of the accused was upheld. This conclusion, which cannot be made to accord with the structure and content of the principles contained in the South Asian codes, has been accepted as applicable to English law.¹⁹¹

Ironically, there are contexts in which similar fact evidence is received by English law if the accused denies physical participation in the crime, but not if he admits the *actus reus*. This is borne out by a comparison of *Makin v. Attorney-General for New South Wales*¹⁹² and *R. v. Smith*¹⁹³ with *R. v. Harrison-Owen*.¹⁹⁴ In the first two cases the defence put forward by the accused persons was not the absence of volition in regard to physical acts on their part which resulted in death, but the lack of any physical behaviour which was causally linked with the deaths. Similar fact evidence was admitted in these cases to prove the *actus reus* which was vigorously denied by the accused. On the other hand, the accused, in *Harrison Owen's* case, did not contest the commission of the *actus reus*. The accused was found in a dwelling-house about one o'clock in the morning. At his trial for burglary he pleaded by way of defence that he had no recollection of entering the house and must have done so in a state of automatism, and he gave evidence to this effect. Stable, J. thereupon directed counsel for the prosecution to put to the accused a number of previous convictions of housebreaking and larceny. The Court of Criminal Appeal quashed the conviction on the basis that the evidence of previous convictions was wrongly admitted. This was held to be so because the accused sought exoneration from liability not on the ground that there was no act imputable to him but on the distinct ground that

190. (1936) 55 C. L. R. 367

191. R. Cross, *op. cit.*, p. 330

192. See note 1, *supra*

193. See note 14, *supra*

194. (1951) 2 All E. R. 726

his act was unaccompanied by the requisite element of intention or blameworthy knowledge. *Harrisons-Owen's* case, although doubted by Lord Denning,¹⁹⁵ has been followed recently in Western Australia.¹⁹⁶

In general, however, it would seem consistent with sound policy that similar fact evidence should be received with less stringency when the *actus reus* is conceded by the accused than in circumstances involving the denial of both the *actus reus* and the *mens rea* by the accused. The reason for the distinction is that "the disposition of the accused will make his innocence a much stranger coincidence if he admits the *actus reus* but denies some part of the *mens rea* than if he denies the *actus reus*."¹⁹⁷ This difference can be given practical expression by requiring that the degree of similarity should be materially greater, and hence the reception of evidence more strictly controlled, in the latter situation than in the former. An analogous distinction, pertinent to the kind of similar fact evidence adduced rather than to the extent of similarity, is reflected in the proposal by the English Criminal Law Revision Committee that, where the *actus reus* of the crime charged is admitted, evidence of the accused's misconduct on other occasions should be admissible to prove *mens rea* or to negative lawful excuse, although it shows only a disposition to commit the kind of offence charged.¹⁹⁸

These nuances cannot be accommodated within the framework of the South Asian systems which inflexibly preclude the admission of similar fact evidence to establish any aspect of the *actus reus*.

V. Categories of 'Similar Fact' Evidence

The statement by Lord Herschell in *Makin's* case that similar fact evidence is admissible when "it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused"¹⁹⁹ has encouraged the compartmentalization of similar fact evidence in subsequent judicial decisions.

The purpose for which similar fact evidence has been received in the decided cases may be readily classified:

195. *Bratty v. Attorney-General for Northern Ireland* (1963) A. C. 386 at p. 410

196. *Tedge v. R.* (No. 2) (1979) W. A. R. 89

197. J. D. Heydon, *op. cit.*, p. 260

198. See 11th Report, paragraphs 70-101

199. (1894) A. C. 57 at p. 65

(a) Proof of the Intentional Quality of the Accused's Act

Where the accused was charged with murdering a female cyclist by driving his car into her, evidence that he had driven his car into other female cyclists on the previous day, and later on the same day, has been admitted to show that he intended to knock the deceased down.²⁰⁰ The combination of instances rendered the plea of accident implausible.

(b) Rebuttal of a Plea of Ignorance or Mistake of Fact

The decided English cases²⁰¹ make it clear that a principal's plea that he was unaware of the fraudulent practices of his agent may be rebutted by proof of similar conduct of the agent on other occasions from which the principal invariably benefited,²⁰² and a plea that false statements concerning the financial position of a business were prompted by excessive optimism rather than an intent to defraud has been held to warrant the reception of evidence concerning the obtaining of subscriptions to a business with the same name by means of similar statements on an earlier occasion.²⁰³

The object of reception of such evidence is to exclude the hypothesis of a *bona fide* error: "It is not conclusive, for a man may be many times under a similar mistake, or may many times be the dupe of another; but it is less likely that he should be so often, than once, and every circumstance that shows he was not under a mistake on any one of these occasions strengthens the presumption that he was not on the last."²⁰⁴

Several Sri Lankan decisions illustrate the admission of similar fact evidence on this ground. In *R. v. Arnolis*²⁰⁵ the accused had agreed with a timber merchant to sell the latter a certain quantity of timber. The accused went with another person to a timber store, opened the store and loaded carts with timber. Evidence was received at the trial to prove that the accused had sold timber unlawfully removed from the same store to other persons on previous occasions. Bertram, C. J. observed: "It was relevant as evidence of a systematic course of dealing by the accused inconsistent with a possible defence on the part of the accused, namely, that he had innocently fetched the carts, or that he had on this occasion innocently

200. *R. v. Mortimer* (1936) 25 Cr. App. Rep. 150

201. *R. Cross*, *op. cit.*, p. 327

202. *Blake v. Albion Life Assurance Society* (1878) 4 C. P. D. 94; cf *Barnes v. Meritt & Co.* (1899) 15 T. L. R. 419; *R. v. Boyle and Merchant* (1914) 3 K. B. 339. See also *R. v. Cooper* (1849) 3 Cox C. C. 547

203. *R. v. Porter* (1935) 25 Cr. App. Rep. 59

204. *R. v. Farncis* (1874) L. R. 2. C. C. R. 128 at p. 131, *per Coleridge J.* cf *R. v. Gregg* (1964) 49 W. W. R. 732

205. (1921) 23 N. L. R. 225

lent himself to the scheme of the real thief.'²⁰⁶ In *Jayakody v. Sub-Inspector of Police, Hettipola*²⁰⁷ it was held that, where a person is charged with the offence of having abducted a girl in order that she might be forced or seduced to have illicit intercourse, evidence of similar acts of abduction of other girls by the accused could be led by the prosecution if it was elicited in cross-examination of the girl that she was taken away by the accused by reason of a mistake. Samerawickrame, J., emphasized that this evidence was relevant not to show that the accused was a person whose disposition was such that he was likely to have abducted the girl on the day in question, but only in order to rebut the defence of mistake or accident.²⁰⁸ In *Jayawardene v. Diyonis*²⁰⁹ Wood Renton, C. J. remarked: "The appellants admitted that opium had been found in their physical possession. Their defence was that its presence was accidental. It was open, therefore, to the prosecution to negative this defence by proving previous instances in which the appellants had been in possession of, and had been dealing with, opium."²¹⁰ In *Rosalin Nona v. Perera*²¹¹ the accused was charged under the Brothels Ordinance with rendering assistance in the management of a brothel. The prosecution led evidence to show (i) that on a previous occasion the accused had accosted a person and taken him to the brothel, and (ii) that on two other occasions the accused had been seen in front of the brothel speaking to the person responsible for the management of the brothel. Dias, J. was of opinion that the accused's guilty intent could be proved by reference to these items of evidence.²¹²

(c) Refutation of an Innocuous Explanation

Where the accused has been found in possession of arsenic,²¹³ forged deeds²¹⁴ or housebreaking implements,²¹⁵ and an innocent explanation is tendered by the accused for his possession, evidence of his participation in previous or subsequent crimes of the kind alleged in the indictment is admissible for the purpose of imputing a criminal intention to the accused on the occasion in question.

206. At p. 228

207. (1969) 75 N. L. R. 160

208. At pages 163-164

209. (1915) 18 N. L. R. 239

210. At p. 240

211. (1946) 47 N. L. R. 523

212. cf *Wikremasuriya v. Seryhamy* (1922) 4 C. L. Recorder 83

213. *R. v. Armstrong* (1922) 2 K. B. 555

214. *R. v. Mason* (1914) 10 Cr. App. Rep. 169

215. See the cases cited at note 112, *supra*

(d) Negation of a Plea of False Identification

In *Thompson v. R.*²¹⁶ evidence as to previous homosexual behaviour was admitted as "tending to show the probability of the truth of the boy's story as to identity".²¹⁷ *R. v. Hall*²¹⁸ was a case where the appellant was convicted of acts of gross indecency on different occasions with C, B and R. So far as the latter was concerned, the appellant's defence was that he had never seen R. It was held that the evidence of C and B concerning acts done to them by the accused in circumstances similar to those narrated by R had been rightly admitted by the trial judge. The basis on which this evidence was admitted was that "It was for the jury to say whether R was a liar or a witness of truth, and in deciding that question they were entitled to take into account the evidence given by B and C."²¹⁹ In *R. v. Davis and Murphy*²²⁰ evidence of visual identification of the accused was held to have been confirmed by testimony relating to his complicity in an independent crime in which a strikingly similar technique had been employed. In *R. v. Morris*²²¹ a recurring pattern was thought to reinforce circumstantial evidence pointing to the accused as the perpetrator of the crime.

(e) Rebuttal of the Defence of Innocent Association

If the relationship between two persons is capable of an innocent interpretation as well as one involving criminal liability, the existence of a guilty passion between them may be proved by having recourse to previous or subsequent acts. Similar fact evidence has been admitted in this context in Sri Lanka,²²² England²²³ and in other Commonwealth jurisdictions like New Zealand,²²⁴ Australia²²⁵ and Ireland.²²⁶

However, compartmentalization of grounds on which similar fact evidence is admissible, is open to serious objection in terms of policy. At the highest level of judicial authority a closed list of cases has been consi-

216. (1918) A. C. 221

217. At pages 225-226, per Lord Finlay

218. (1952) 1 K. B. 302

219. At p. 308, per Lord Goddard, C. J.

220. 1971) 56 Cr. App. Rep. 249

221. (1969) 54 Cr. App. Rep. 69

222. *R. v. Jarl s* (1951) 52 N. L. R. 457

223. *Weatherly v. Weatherly* (1854) 1 Ecc. & Ad. 193; *Boddy v. Boddy and Grover* (1860) 30 L.J. P. & M. 23; *Wales v. Wales* (1900) p. 63; *R. v. Stone* (1910) 6 Cr. App. Rep. 89; *R. v. Bloodworth* (1913) 9 Cr. App. Rep. 80; *R. v. Hewitt* (1925) 19 Cr. App. Rep. 64; *R. v. Marsh* (1949) 33 Cr. App. Rep. 185

224. *R. v. Ratahujui* (1947) N. Z. L. R. 581; *R. v. Hare* (1952) N. Z. L. R. 588

225. *R. v. Whitam* (1962) S. R. Qd. 49

226. *Attorney-General v. Dempsey* (1961) I. R. 288

dered unacceptable.²²⁷ Lord Morris has declared: "Just as a closed list need not be contemplated, so also where what is important is the application of principle, the use of labels or definitive descriptions cannot be either comprehensive or restrictive."²²⁸

The English and Scottish cases have made a useful contribution to the identification of the elements of "system". While a mere succession of facts, in the sense of repetition, is generally insufficient,²²⁹ the additional elements required have been described as "underlying unity",²³⁰ "unity of intent, project, campaign or adventure"²³¹ and "part of the same criminal conduct".²³² But these criteria which "must only be used as guides to principle",²³³ do not lend themselves to mechanical or pedantic application. The principle must be applied with caution,²³⁴ having regard to the circumstances of each case. The governing considerations are, for example, "the number of instances involved, any interrelation between them, the intervals or similarities of time, circumstances and the details and character of the evidence."²³⁵ But to demand a nexus in time, in method or in circumstance to enable an inference to be drawn²³⁶ is, in the final analysis, "only another way of saying that similar fact evidence must be highly relevant to the issue of guilt".²³⁷

The assumption that similar fact evidence is received to rebut particular defences leads to confusion of thought and may produce anomalous results. Lord Wilberforce has expressly disapproved of this approach.²³⁸ The illogicality inherent in rigid stratification is illustrated by the fact that, on charges of abortion, evidence that the accused had performed other abortions is admissible if the accused's defence is that he performed the operation in respect of which he is charged with innocent intent,²³⁹ but not if the accused pleads that he had nothing to do with the prosecutrix on the

227. *Harris v. Director of Public Prosecutions* (1952) A.C. 694 at p. 705, per Viscount Simon

228. *Boardman's case* (1974) 3 All E. R. 887 at p. 893

229. At p. 905, per Lord Hailsham; cf. *H. M. Advocate v. A. E.* 1937 J. C. 96

230. *Moorov v. A. M. Advocate* 1930 J. C. 68

231. *ibid.*

232. *R. v. Sims* (1964) K. B. 531

233. *Boardman's case* (1974) 3 All E. R. 887 at p. 894 per Lord Morris

234. *Ogg v. H. M. Advocate* 1938 J. C. 152 at p. 158

235. *Boardman's case* (1974) 3 All E. R. 887 at p. 905, per Lord Hailsham

236. See the valuable article by D. T. Zeffertt, *Similar Fact Evidence in Criminal Proceedings* (1977) 94 South African L. J. 399

237. R. B. Sklar, *Similar Fact Evidence - Cacthwords and Cartwheels* (1977) 23 McGill L. J. 60 at pages 61-62

238. *Boardman's case* (1974) 3 All E. R. 887 at p. 896,

239. *R. Cross. op. cit.*, p. 333

occasion in question.²⁴⁰ This distinction does not seem defensible rationally. Lord Hailsham has thought it unrealistic to differentiate between cases involving a plea of innocent association and cases of unqualified denial, since "the permutations are too various to admit of universally appropriate labels."²⁴¹

A compelling objection to the unimaginative use of categories is that demarcation of the circumstances in which a defence may be considered potentially open to the accused, frequently entails conceptualism of the least helpful type. Lord Sumner has stated: "The mere theory that a plea of 'not guilty' puts everything material in issue is not enough for this purpose. The prosecution cannot credit the accused with fancy defences in order to rebut them at the outset with some damning piece of prejudice."²⁴² However, the question whether the defence must actually have been raised by the accused before evidence of his misconduct on other occasions can be admitted to rebut it, has been variously answered in the affirmative²⁴³ and in the negative.²⁴⁴

A similar controversy has arisen in Sri Lanka. *R. v. Waidyasekera*²⁴⁵ was a prosecution for causing the death of a woman by an act done with intent to cause miscarriage. A nurse who was employed under the accused, gave evidence that during the ten months of her service there were about one hundred and fifty cases in which the accused had caused miscarriage. The Court of Criminal Appeal stated: "Under our law the prosecution may adduce all proper evidence tending to prove the charge against the accused, including evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, without waiting for the accused to set up a specific defence calling for rebuttal."²⁴⁶

The approach based on the classification of categories is fundamentally misconceived, since the legitimate distinction is between degrees, rather than kinds, of relevance.²⁴⁷ The crucial question is whether "the

240. *Brunet v. R.* (1928) S. C. R. 161 *R. v. Campbell* (1947) 2 C. R. 351

241. *Boardman's case* (1974) 3 All E. R. 887 at p. 905

242. *Thompson v. R.* (1918) A. C. 221 at p. 231

243. *R. v. Cole* (1941) 165 L. T. 125

244. *R. v. Sims* (1946) K. B. 531

245. (1955) 57 N. L. R. 202

246. At p. 212, *per* Basnayake, A. C. J.

247. L. H. Hoffmann, *Similar Facts after Boardman* (1975) 91 L. Q. R. 193 at p. 200

evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed to make it desirable in the interest of justice that it should be admitted."²⁴⁸

The formulation of the applicable principle in the South Asian codes which emphasize discrete mental elements like intention, knowledge, good faith, negligence, rashness, ill will and goodwill²⁴⁹ and the question whether an act was accidental or intentional,²⁵⁰ may be justifiably criticized on the basis that it serves unwittingly to entrench the approach characterized by stratification into watertight compartments. A similar criticism may be made of the principle enshrined in the American Federal Rules, that similar fact evidence may be admitted for purposes such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."²⁵¹ The true principle, however, is that "Evidence of abnormal propensity may, in the circumstances of a particular case, be of such probative force as to warrant its reception"²⁵² and that the categories which are a feature of the case law merely illustrate the application of this principle.

The ossification of categories blurs the fluctuating standard of legal relevance and the importance of considerations of policy in excluding relevant similar fact evidence on the ground of potential prejudice. Thus, although a clearly proved disposition to commit a particular crime may be inadmissible if there is nothing to connect the accused with the crime charged,²⁵³ an extremely tenuous connection, like possible opportunity, may be sufficient, if the surrounding circumstances, in their cumulative effect, have an overwhelming probative impact.²⁵⁴ These gradations are not catered for by the conceptually neat, but pragmatically inadequate, enumeration of categories which represent a characteristic of the codified South Asian systems.

VI. Exclusionary Discretion

There is impeccable judicial authority suggesting that, as a matter of practice, even where similar fact evidence is technically admissible, it may be excluded when its potentiality to prejudice the accused outweighs its

248. *Harris v. Director of Public Prosecutions* (1952) 1 All E. R. 1044 at p. 1047, per Viscount Simon; cf D. T. Zeffertt, *op. cit.*, p. 408, note 53; of *Mood Music Publishing Co. Ltd. v. de Wolfe Ltd.* (1976) 1 All E. R. 763 at p. 766, per Lord Denning, M. R.

249. See the Evidence Ordinance of Sri Lanka, section 14

250. Evidence Ordinance of Sri Lanka, section 15

251. Rule 404 (b)

252. D. T. Zeffertt, *op. cit.* p. 407

253. D. T. Zeffertt *op. cit.*, p. 403, note 30

254. See the case cited at note 27, *supra*.

probative value.²⁵⁵ Viscount Simon has stated: "This proposition flows from the duty of the judge when trying a charge of crime to set the essentials of justice above the technical rule if the strict application of the latter would operate unfairly against the accused."²⁵⁶

A similar distinction between technical admissibility and fairness to the accused has been made in this context by the Sri Lankan courts: "When evidence of previous conduct is given, although it may be strictly relevant, the evidence may be so trivial or so remote as to be practically valueless. In such cases it is the duty of the trial judge to decide whether such evidence should be shut out altogether."²⁵⁷ This has been propounded not as a rule of law but as a caution intended to ensure that a fair and dispassionate trial would not be jeopardized by the reception of evidence likely to generate prejudice wholly incommensurate with the value of the evidence sought to be adduced.

There are contexts in which exclusionary discretion, recognized in explicit terms, serves a salutary purpose in criminal proceedings.²⁵⁸ Lord Reading, C.J. has stated: "The principles of the law of evidence are the same whether applied at civil or criminal trials, but they are not enforced with the same rigidity against a person accused of a criminal offence as against a party to a civil action. There are exceptions to the law regulating the admissibility of evidence which apply only to criminal trials, and which have acquired their force by the constant and invariable practice of judges when presiding at criminal trials. They are rules of practice and discretion."²⁵⁹

It is submitted, however, that an exclusionary discretion, distinct from the criteria governing admissibility, is superfluous in the area of similar fact evidence, since the element of discretion is subsumed in the rules which regulate admissibility. Especially after *Boardman's* case it is clear that if evidence is of such a nature that it is not worthy of being admitted because its probative force is not so strong as to warrant its admission despite the disadvantages of admitting it, it is inadmissible.²⁶⁰ In a case decided after

255. *Harris v. Director of Public Prosecutions*, *supra*; cf. *R. v. Barton* (1913) 24 Cox C. C. 83; *R. v. Christie* (1914) A. C. 545,

256. *Harris v. Director of Public Prosecutions* (1952) A. C. 694 at p. 707

257. *R. v. Jais* (1951) 52 N. L. R. 457 at p. 461, *per* Dias, J.

258. The reception of confessions and the precautionary rule requiring corroboration of an accomplice's testimony are examples.

259. *Director of Public Prosecutions v. Christie* (1914) 10 Cr. App. Rep. 141 at pages 164-165

260. D. T. Zeffertt, *op. cit.*, p. 403, note 30

Boardman v. Director of Public Prosecutions the English Court of Appeal has commented: "The criminal courts have been very careful not to admit such evidence unless its probative force is so strong that it should be received in the interests of justice: and its admission will not operate unfairly to the accused."²⁶¹

So far as the structural framework of the law is concerned, since the principles controlling admissibility are themselves founded on a compromise between relevance and potential prejudice, it is submitted that the element of discretion is better conceived of as an integral aspect of these principles than as a gloss on them. Indeed, this approach seems to have been foreshadowed in some English decisions²⁶² which do not recognize an overriding exclusionary discretion separable from the substantive rules. Matters such as unreliability or staleness of the evidence²⁶³ or doubt as to the criminal character of the accused's behaviour on previous occasions²⁶⁴ - which have been sometimes treated as relevant to the exercise of discretion - can be taken into account properly within the framework of the rules bearing on admissibility.

VII. Conclusions

The following conclusions are warranted by this analysis of the English common law and the codified South Asian systems, of which the Sri Lankan system is typical:

- (1) A basic feature of the Sri Lankan system consists of its approach to the formulation of the inclusionary rules relating to similar fact evidence solely in terms of the concept of "relevance". This approach obscures (a) the varying standard of legal relevance, and (b) the applicability of general considerations of policy and a wide range of empirical factors in excluding logically probative evidence on the footing of disproportionate potential prejudice.
- (2) In particular, the criteria underlying reception of similar fact evidence which find expression in the Sri Lankan system, do not readily accommodate the dichotomy, desirable in principle, between different types of similar fact evidence - for example, similar fact evidence the primary relevance of which is through propensity and similar fact evidence having substantial relevance

261. *Mood Music Publishing Co. Ltd, v. de Wolfe Ltd*; (1976) 1 All E. R. 763 at p. 766, per Lord Denning, M. R.

262. *Hales v. Kerr* (1903) 2 K. B. 601; *Perkins v. Jeffery* (1915) 2 K. B. 702.

263. *R. v. Cole* (1941) 165 L. T. 125

264. *R. v. Doughty* (1965) 1 All E. R. 560

in some other manner. A uniform and immutable standard should not govern the admission of these categories of similar fact evidence which are convincingly distinguishable in terms of the purpose for which they are sought to be adduced and their probable impact on the jury in the evaluation of the totality of the evidence in the case.

- (3) The statutory formulation contained in Sri Lankan law is incomplete, in that it does not provide for the reception, in exceptional circumstances, of similar fact evidence of compelling probative force but pertaining exclusively to disposition – a kind of similar fact evidence which the English courts have not been inclined to exclude absolutely.
- (4) The canon of inclusion evolved by the English common law is more extensive in scope than that embodied in the law of Sri Lanka, not only for the reason spelt out in conclusion(3), above, but because the Sri Lankan codified system, differing in this respect from English law, inflexibly debars the reception of similar fact evidence for the purpose of establishing either the occurrence of the main fact or the identity of the actor. Thus, similar fact evidence has an intrinsically narrower dimension under the codified Sri Lankan system than in the English common law, since the former system links the admission of similar fact evidence exclusively with the determination of the state of mind or body of the perpetrator of the act.
- (5) The distinction drawn by English law between acts of the accused which are alleged to be accidental and involuntary, with the object of confining the reception of similar fact evidence rigidly to the former area, is not defensible from a rational standpoint and may be dispensed with according to the formulation adopted by the Sri Lankan system.
- (6) The stratification and compartmentalization of defences—which represent a tacit feature of the Sri Lankan system—give the law the appearance of a patchwork and render difficult the identification of the general principle, permutations of which control the admission of similar fact evidence to prove states of mind like intention, knowledge, good faith, negligence and rashness. The unreflecting use of categories stultifies the overall objectives of the law by allowing scope for linguistic and tactical manipulation and by encouraging futile controversy in regard to such matters as the number of instances constituting a “system” and the

circumstances in which a specific defence may be considered potentially available to the accused. Moreover, the mechanical use of categories is exposed to the basic objection that it engenders the misconception that kinds of relevance should be distinguished, when the true distinction is between degrees of relevance.

- (7) The *Makin* formulation which apparently propounds a general exclusionary rule and recognizes limited qualifications to its applicability, has the disadvantage of enhancing the importance of catch-words and labels, and distracting attention from the fundamental question — whether the relevance of the similar fact evidence tendered, in all the circumstances of the case, sufficiently outweighs the prejudice attendant on its reception. The resilience and malleability of the common law have enabled the English courts gradually to abandon the fetters of the *Makin* formulation and to adopt a broader approach, culminating in the *Boardman* ruling. By contrast, the elements of stratification characterizing the statutory provisions applicable in Sri Lanka deprive the courts in that jurisdiction of a comparable degree of flexibility and scope for initiative.
- (8) Despite judicial observations to the contrary in both jurisdictions, discretion on the part of the courts to rule out similar fact evidence on the ground of unjustifiable prejudice to the accused should be viewed as an essential element of the substantive rules regulating admissibility rather than as a supplementary basis of exclusion.

Trends in the Level of Sufficiency in Rice Production in Sri Lanka 1960-1978

NIMAL DANGALLE

Self-sufficiency in rice production has been a priority in development planning in Sri Lanka for a considerable period.¹ However, despite the increase in production of paddy/rice in the recent past the realization of this goal, i. e. self-sufficiency, is yet to come. The identification of the factors that retarded the continuous pace of the march toward self-sufficiency in rice production, therefore, would be of some value, especially in future planning in the paddy sub-sector. An examination of the trends in the level of sufficiency in rice production in the recent past may provide an opportunity to identify the underlying variables that determined the degree of sufficiency during that period.

In this article an attempt will be made to examine the changes in the level of sufficiency in rice production in Sri Lanka during the period 1960-78². The year 1960 has been selected as the beginning of the study period primarily for two reasons. First, many of the agricultural development programmes and plans introduced in the 1950s envisaged a state of self-sufficiency by mid 1960s [see Agricultural Plan 1958 (1959) p. 9; The Ten Year Plan 1959-69 (1959) p. 228]. Second, the paddy production in the island, in fact, did show a marked increase in the 1960s (Fig. 1). To quote the Budget Speech 1968-69, '...the National Government introduced a new orientation to economic policy when it came to power in 1965 by laying greater emphasis on agricultural development... an all time record was established in the sphere of paddy production...' (Budget Speech 1968-69, p. 29). A study of the level of sufficiency in rice production in the island in the 1960s and 1970s, therefore, provides an opportunity to compare the achievements with expectations.

The following method may be employed to estimate the extent of sufficiency in rice production in the island.

$$S = NP - D$$

-
1. Various programmes aimed at self-sufficiency in rice production have been documented in the Agriculture Plan (1959), The Ten Year Plan 1959-1969 (1959), Agricultural Development proposals 1966-70 (1966) and the Five Year Plan 1972-76 (1971).
 2. Rice is the staple food of the people of Sri Lanka. It accounts for nearly 75 per cent of the calories consumed in the form of cereals by an average Sri Lankan per day. The second major cereal in the Sri Lankan's diet - wheat - contributes about 18 percent of the calories supplied by cereals.

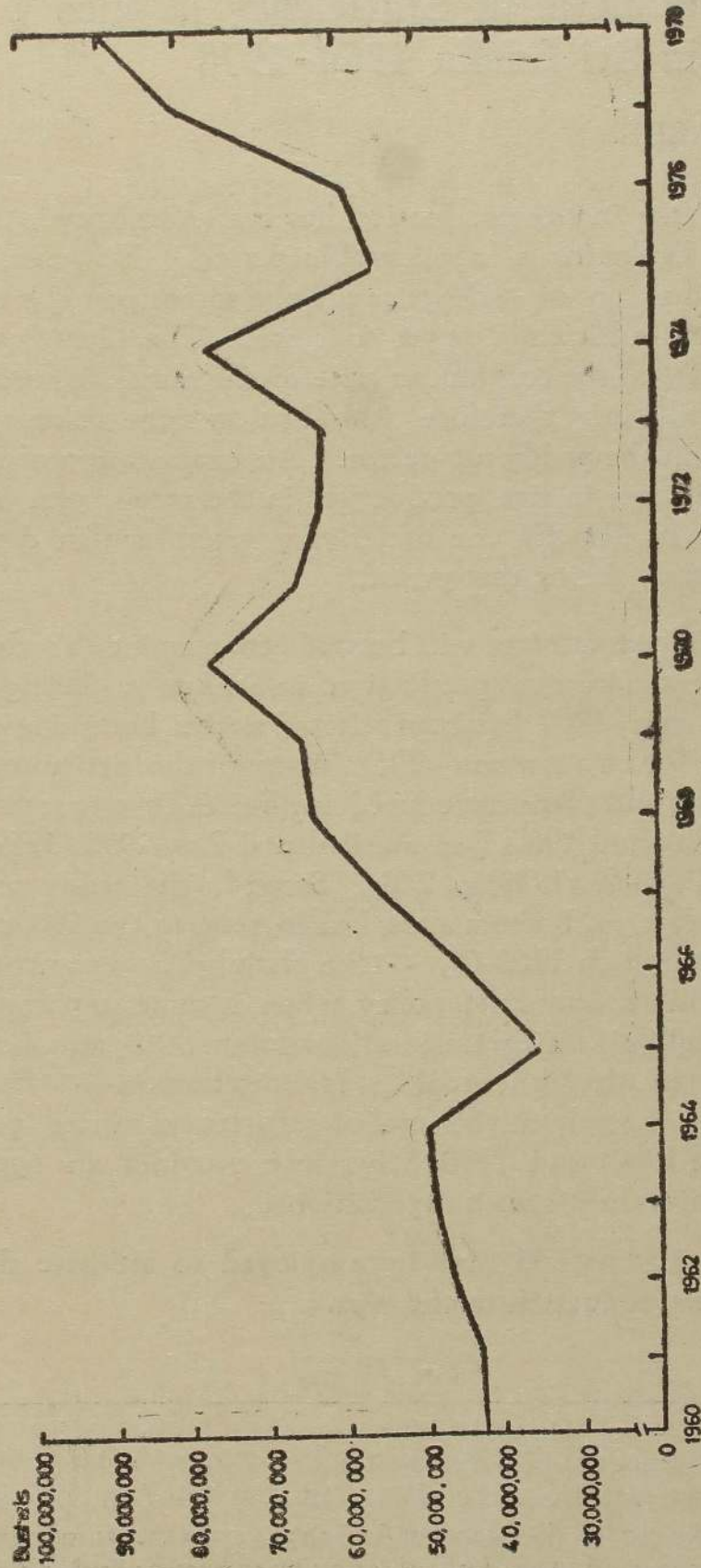


Fig. 1. Sri Lanka. Gross Production of Paddy.

where,

S = the extent of sufficiency in rice production

NP = net production of rice in the island in the given year

D = demand for rice in the given year

In the examination of the degree of sufficiency in rice production, it is necessary to have a knowledge of the quantity of rice required to feed the entire population of the country. An estimation of the total requirements of rice may be based on either per capita demand or per capita consumption of rice. However, in a study undertaken by the writer, it was apparent that per capita consumption (or per capita demand) of rice during the sixties and early seventies had been affected considerably by the government's rice rationing scheme (Dangalle, 1978). The per capita consumption of or per capita demand for rice at that time, therefore, does not necessarily show a situation under free market conditions. As such, it is doubtful whether these measures provide rational yardsticks that can be employed in the estimation of the total rice requirements in the island during that period. Moreover, in the study mentioned above it was also found that an average Sri Lankan does not consume enough rice in terms of nutritional requirements. In planning a food policy for Sri Lanka, therefore, the immediate goal should be a level of consumption which is adequate in nutritional terms. Hence, in this study, the estimation of the total requirements of rice in the island has been based on a nutritional criterion.

The recommended allowances of rice by age and sex given in the Sri Lanka Medical Research Institute's (MRI) chart - 'A Balanced Diet for Ceylon' - were used to weight the population in the island in order to obtain a measure on which the estimation of the requirements can be based. In other words, the concept of consumption units was applied. This technique of estimation of foodgrain requirements by consumption units rather than by individuals has been widely used in many developing countries. A number of examples can be cited in the case of India.

In 1941, Aykroyd used such a technique to estimate the foodgrain requirements of India (Aykroyd, 1941). A similar attempt was made by Baljit Singh in 1947. According to the Singh scale 100 persons in India were considered equal to 77.34 consumption units (Singh, 1947). In 1970, examining the foodgrain sufficiency patterns in India, Chakravarti used the Singh scale (Chakravarti, 1970). Two years later, in 1972, in an attempt to identify the surplus and deficit areas in food production in Rajasthan, a provincial state in India, Gupta and Hiran also followed a similar method. According to their findings each 100 persons in Rajasthan were equal to 70 consumption units (Gupta and Hiran, 1972).

In the case of Sri Lanka, however, such an exercise has rarely been attempted. Vidya Sagar, FAO agricultural expert attached to the then Ministry of Agriculture and Food, in a paper drafted in 1967 introduced the concept of 'total adult population' (Sagar, 1967). Justifying his exercise, Sagar says that 'the concept of total adult population has been introduced because the consumption of rice (or any other foodgrain) by children below 10 years of age is usually 50 percent of that of adult consumption' (Sagar, 1967, p. 3). According to the Sagar scale each 100 persons in Sri Lanka were equal to 85 adults.

Quite naturally, Sagar's adult population equivalent faces numerous criticisms. First, he has not given the method of computation and this may encourage someone to conclude that adult population equivalent is somewhat of an arbitrary product.

Second, the assumption that consumption of rice by a child below 10 years of age is equal to 50 percent of that of an adult appears to be an overestimation. The available literature on consumption of foodgrains suggests that it is not correct to consider all children below 10 years of age as a homogenous group. In the case of Sri Lanka, in fact, children of lower age groups may be divided into two in terms of their requirements (recommended allowances) of rice. It was found that the recommended allowance for a child in the first age group of 5 - 9 years was 48 percent of that of an adult male (in the age group of 15 - 19 years). On the other hand, a child in the age group 1 - 4 years requires 32 percent of that of an adult. Third, in the application of the adult population equivalent Sagar has considered all individuals over 10 years of age as a homogenous group. In other words, he did not take into account the variation in requirements by different age groups or variation by sex.

With all these drawbacks in Sagar's exercise in mind, an attempt was made by the writer to compute another set of consumption units in order to estimate the island's rice requirements (Dangalle, 1978). The same method has been applied at present.

Using the allowances of rice recommended for various age/sex groups by the MRI, a set of co-efficients of consumption was obtained. Since a person in the male age group of 15 - 19 years had been given the highest allowance, it was decided to consider a person in that age group as a full consumption unit (1.00). Other age/sex groups were scaled down in relation to this major group. For example, a child in the age group of 10 - 14 years was regarded as 0.76 of a full consumption unit. Thus, applying the co-efficients of consumption, all individuals in Sri

Lanka were converted into consumption units in order to estimate the total requirements of rice (see Appendix A). The recommended allowance of rice for a consumption unit (i. e. a person in the male age group 15 - 19 years) according to the above mentioned MRI table was 161.42 kg per annum. The estimated number of consumption units in Sri Lanka's population as well as their annual requirements of rice during the period 1960 - 78 are given in Table 1.

Table 1
Sri Lanka
The Estimated Number of Consumption Units and
Total Requirements of Rice 1960 - 1978

Year	Population (a)	Consumption Units (CU) (b)	Consumption Units per Individual	Requirements of Rice per CU (kg annum) (c)	Total Requi- rements of Rice (t)
1960	9,558,623	5,929,923	.620	161.42	957,208.2
1961	9,825,074	6,088,250	.619	..	982,765.3
1962	10,094,061	6,252,039	.619	..	1,009,204.1
1963	10,285,767	6,366,238	.618	..	1,027,638.1
1964	10,623,839	6,565,645	.618	..	1,059,826.4
1965	10,818,580	6,629,426	.613	..	1,070,121.9
1966	10,089,454	6,792,050	.612	..	1,096,372.7
1967	11,350,493	6,947,709	.612	..	1,121,499.1
1968	11,633,618	7,119,132	.612	..	1,149,170.2
1969	11,893,007	7,278,395	.612	..	1,174,878.5
1970	12,162,106	7,432,824	.611	..	1,199,806.0
1971	12,338,942	7,609,546	.616	..	1,228,332.9
1972	12,584,051	7,760,575	.617	..	1,252,712.0
1973	12,753,108	7,895,351	.618	..	1,274,467.5
1974	12,935,800	7,994,060	.618	..	1,290,401.1
1975	13,160,963	8,134,180	.618	..	1,313,019.3
1976	13,368,514	8,269,544	.618	..	1,334,869.7
1977	13,563,465	8,397,605	.619	..	1,355,541.3
1978	13,809,597	8,545,039	.619	..	1,379,340.1

Notes;

- (a) Based on the estimates of mid-year population published by the Registrar General's Office.
 (b) See Appendix A.
 (c) See the Text.

Thus, a slight change has been made in the method which was to be used to estimate the degree of sufficiency in rice production in the island.

Instead of,

$$S = NP - D$$

the revised method will be,

$$S_1 = NP - R$$

Where S_1 and R are the extent of sufficiency and requirements of rice respectively, both measured on the basis of MRI recommendations

Retaining the basic idea of the method, in order to estimate the extent of sufficiency in rice production per consumption unit in a given year the revised method as well may be re-written as follows:

$$s = \frac{P}{CU} - r$$

where,

s = sufficiency in rice production per consumption unit in a given year

P = net production of rice in the island in that year

CU = number of consumption units in the island's population in that year, and

r = requirements of rice per consumption unit per annum

Three types of answers may be obtained from the formula.

If $\frac{P}{CU} - r = 0$, the island is considered as self-sufficient in rice production. If the calculation ends up with a negative answer, i. e., $\frac{P}{CU} - r < 0$, the island is said to be deficient in rice production by that amount in the answer. Finally, if $\frac{P}{CU} - r > 0$, it is said that the island is surplus in rice production.

The present study has been based, primarily, on the data and information supplied by several government departments in Sri Lanka. The required data were, mainly, of three types, viz., (a) data on area and production of paddy (b) data on mid-year population by age and sex, and (c) data on recommended allowances of rice by age and sex.

As mentioned elsewhere, data on area and production of paddy in Sri Lanka are given in the annual publication of the Department of Census and Statistics - Statistical Abstract of Ceylon. These data have been used to estimate the net production of rice. The formula used to estimate the net production was,

$$NP = \frac{GP - (S + W)}{70.46}$$

where,

NP = net production of rice in tonnes

GP = gross production of paddy in bushels

S = allowance for seed use in bushels

W = allowance for wastage in bushels

70.46 = conversion rate of bushels of paddy into tonnes of rice.

Gross Production

The basic method to estimate the gross production of paddy is to multiply net harvested area by the average yield per unit area. In the publication mentioned above, the Department of Census and Statistics (DCS) gives details on paddy production including harvested acreage and average yield per acre. The net harvested area is considered as 85 percent of the gross harvested area.

Allowance for seed use

From the time it is harvested foodgrains tend to lose some proportion of their quantity in various ways. This includes losses due to spoilage and germination, destruction by rodents and pests and inefficient transportation. However, it is not an easy task to make a reliable estimate of this loss. According to the Food and Agriculture Organization (FAO), in tropical and sub-tropical regions where weather and climatic conditions are conducive to rapid multiplication of pests, loss in storage alone might be of the order of 10 percent of the production. In the case of Sri Lanka, however, a high rate as such cannot be expected. The island is served by a transport network of fairly high standard, and the storage facilities as well are satisfactory. Furthermore, in Sri Lanka, paddy is transported over comparatively short distances. When all these factors are taken into account, it would not be unreasonable to assume a rate of wastage of 5 percent of the production. In fact, in estimating the wastage in paddy production in Sri Lanka many researchers have used this rate (Jogaratham and Poleman, 1969; Sagar, 1967, 1971).

The gross production of paddy in Sri Lanka in 1960, according to the DCS, was 43,067,892 bushels. Using the above mentioned formula the net production of rice in that year can be estimated as follows:

$$\frac{43,067,892 - (2,964,264 + 2,005,181)}{70.46}$$

$$= 540,710 \text{ tonnes.}$$

The annual net production of rice in Sri Lanka during the period under review is given in Table 2

Table 2
Sri Lanka
Net Production of Rice 1960 - 1978

Year	Gross Production (a)	Allowances for		Net Production	
		Seeduse (b)	Wastage (c)	Paddy(bu)	Rice(t) (d)
		bushels			
1960	43,067,892	2,964,264	2,005,181	38,098,447	540,710.3
1961	43,198,984	2,991,696	2,010,364	38,196,924	542,107.9
1962	47,428,774	3,155,012	2,213,638	42,059,124	596,921.9
1963	49,153,538	3,150,238	2,300,165	43,703,105	620,254.5
1964	50,505,094	3,112,330	2,369,639	45,023,125	638,988.4
1965	36,252,358	3,041,678	1,660,534	31,550,147	447,773.8
1966	45,787,428	3,241,238	2,127,310	40,418,882	573,642.9
1967	54,961,722	3,464,174	2,574,877	48,922,671	694,332.5
1968	64,593,188	3,555,024	3,051,909	57,986,257	822,967.0
1969	65,863,691	3,437,248	3,121,322	59,305,121	841,684.9
1970	77,447,026	3,663,084	3,689,197	70,094,746	994,816.1
1971	66,895,034	3,665,378	3,161,483	60,068,174	852,514.5
1972	62,901,250	3,575,006	2,966,312	56,359,933	799,886.0
1973	62,899,919	3,861,942	2,951,902	56,089,136	796,042.2
1974	76,794,100	3,632,180	3,658,096	69,503,825	986,429.5
1975	55,314,599	3,540,962	2,588,682	49,184,955	698,055.0
1976	59,932,796	3,941,354	2,799,573	53,191,869	754,922.9
1977	80,317,637	4,276,332	3,802,065	72,239,240	1025,251.8
1978	90,620,812	4,339,580	4,264,062	82,017,170	1164,024.5

- Notes: (a) Department of Census and Statistics, Colombo.
 (b) At the rate of 2 bushels per sown acre.
 (c) At the rate of 5 percent of production.
 (d) One tonne of rice is equal to 70.46 bushels of paddy.

Estimates of the mid-year population (over one year of age) by sex and quinquennial age groups were obtained from the Registrar General's Office of Sri Lanka. As mentioned before, data on recommended allowances of rice by age and sex were derived from the MRI publication - 'A Balanced Diet for Ceylon'. It should be mentioned that the data given in the MRI chart had to be slightly adjusted in order to make them comparable with population data.

It is evident from the preceding paragraph that the data on which the present study has been based are only estimates, and for the same reason, findings of the study are not free of limitations. In interpreting the observed trends in the level of sufficiency, therefore, these limitations should be borne in mind. At the same time, however, it should be added that a researcher who attempts to examine the trends in the level of sufficiency in rice production at national scale has no alternative but to rely on data furnished by the government departments concerned.

Sufficiency in Rice Production

The major trends in the level of sufficiency in rice production in Sri Lanka during the period under review (1960 - 78) have been presented in Fig. 2. First, it shows that Sri Lanka has not achieved self-sufficiency in rice production so far. In 1978 for instance, although the island's paddy production reached a peak, it was sufficient to meet only 84 percent of the domestic requirements of rice. As may be seen from Table 3, the island was deficient in rice production by approximately 215,000 tonnes in that year. In per consumption unit terms, this was a deficit of nearly 25 kg per annum. In other words, the deficiency was 74 g per consumption unit per day.

Second, although the island was not self-sufficient in rice production, the deficiency has shown a decreasing trend in recent years. In 1960, for instance, paddy production in the island was sufficient to meet only 56 per cent of the domestic requirements. By 1969, the level of sufficiency had risen to nearly 72 percent. The increasing trend continued, and in 1978, local farmers produced 84 percent of the country's rice requirements. The improvement in the level of sufficiency in rice production may also be shown in per consumption unit terms. As Table 3 shows, in 1960, the deficiency in rice production was approximately 70 kg per consumption unit per annum (192 g of rice per consumption unit per day). By 1969, it decreased to 46 kg per consumption unit per annum (125 g per consumption unit per day). The downward trend in deficiency is apparent from Table 3.

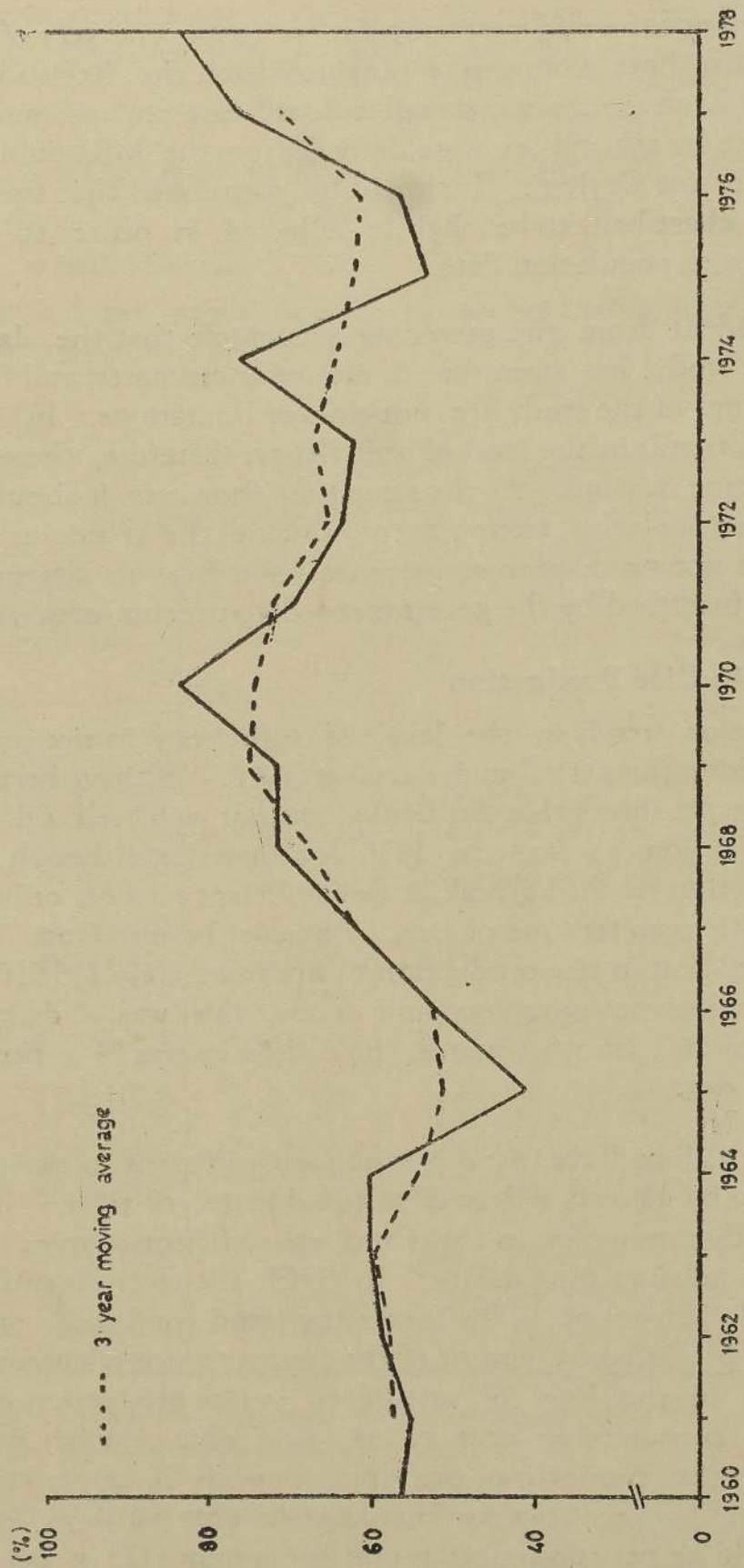


Fig. 2. Sri Lanka, Sufficiency in Rice Production

Table 3
Sri Lanka
Sufficiency in Rice Production

Year	Requirements of Rice (r) (a)	Net Domestic Production of Rice (t) (b)	Surplus/Deficit (tonnes)	Surplus/Deficit per CU kg/annum (c)	Sufficiency as % of Requirements (d)
1960	957,208.2	540,710.3	-416,497.9	-70.23	56.49
1961	982,765.3	542,107.9	-440,657.4	-72.37	55.16
1962	1,009,204.1	596,921.9	-412,282.1	-65.94	59.15
1963	1,027,638.1	620,254.5	-407,383.6	-63.99	60.36
1964	1,059,826.4	638,988.4	-420,838.0	-64.09	60.29
1965	1,070,121.9	447,773.8	-622,348.1	-93.87	41.84
1966	1,096,372.7	573,642.9	-522,729.8	-76.96	52.32
1967	1,121,499.1	694,332.5	-427,166.6	-61.48	61.91
1968	1,149,170.2	822,967.0	-326,203.2	-45.80	71.61
1969	1,174,878.5	841,684.9	-333,193.6	-45.77	71.64
1970	1,199,806.0	994,816.1	-204,989.9	-27.57	82.91
1971	1,228,332.9	852,514.5	-375,818.4	-49.38	69.40
1972	1,252,712.0	799,886.0	-452,826.0	-58.34	63.85
1973	1,274,467.5	796,042.2	-478,423.3	-60.59	62.46
1974	1,290,401.1	986,429.5	-303,971.6	-38.02	76.44
1975	1,313,019.3	698,055.0	-614,964.3	-75.60	53.16
1976	1,334,869.7	754,922.9	-579,946.8	-70.13	56.55
1977	1,355,541.3	1,025,251.8	-330,289.5	-39.33	75.63
1978	1,379,340.1	1,164,024.5	-215,315.6	-25.19	84.38

Note : (a) See Table 2

(b) See Table 1

P - r

(c) = $\frac{P - r}{CU}$

(d) = $\frac{P}{R} \times 100$

Third, although the level of sufficiency in rice production showed an upward trend during the period under review, the rate of increase of growth has not been constant. This, as is apparent in Fig. 2, was mainly due to heavy fluctuations seen in the sufficiency level. In some years, in fact, a downward trend in the level of sufficiency (or an increase in deficiency) was apparent. For example, during 1965 - 70 the level of sufficiency showed an increasing trend and by 1970 local production of rice was sufficient to meet approximately 83 percent of the country's total rice requirements. Thereafter, however, the level of sufficiency dropped, and

in 1975 local production was sufficient to meet only 53 percent of the island's rice requirements. Since 1975, however, the sufficiency level has been increasing again.

Fourth, on the basis of the above mentioned discontinuities in the level of sufficiency in rice production the entire period under review (i. e., 1960 - 78) may be divided into four distinctive sub-periods. The first, which extends from 1960 to 1964 has been characterized by a relative stability in the degree of sufficiency at a low level. During this period, the level of sufficiency, on the average, remained at 58 percent of the requirements. In 1965, the sufficiency level experienced a sudden drop due to a shortfall in production of paddy which was in turn a result of a severe drought. As Fig. 2 shows, the second sub-period 1966 - 70 has been characterized by an increase in the level of sufficiency in rice production. As shown in Table 3 the sufficiency rose to a level of 83 percent of the requirements in 1970 compared to that of 52 percent in 1966. The third sub-period which extended from 1970 to 1975 has been marked by a decreasing trend in the level of sufficiency. With the exception of the situation in 1974 the degree of sufficiency dropped from a high level of 83 percent of the requirements in 1970 to a low level of 53 percent by 1975 (see Table 3). It may be recalled that this was a period of rice crisis in Sri Lanka which coincided with the worldwide crop failures that caused havoc in the international grain markets. The fourth sub-period beginning in 1976, once again, has shown signs of a promising future. In 1976 the level of sufficiency rose to 57 percent and by 1978 it was 84 percent of the requirements. However, it should not be forgotten that in 1978 we only reached a level that existed eight years earlier.

Production of Paddy / Rice

The level of sufficiency in rice production, in the context of the present study, is determined mainly by two factors, namely, production of paddy/rice and population. The interaction of these two variables in deciding the level of sufficiency may be shown diagrammatically as follows-

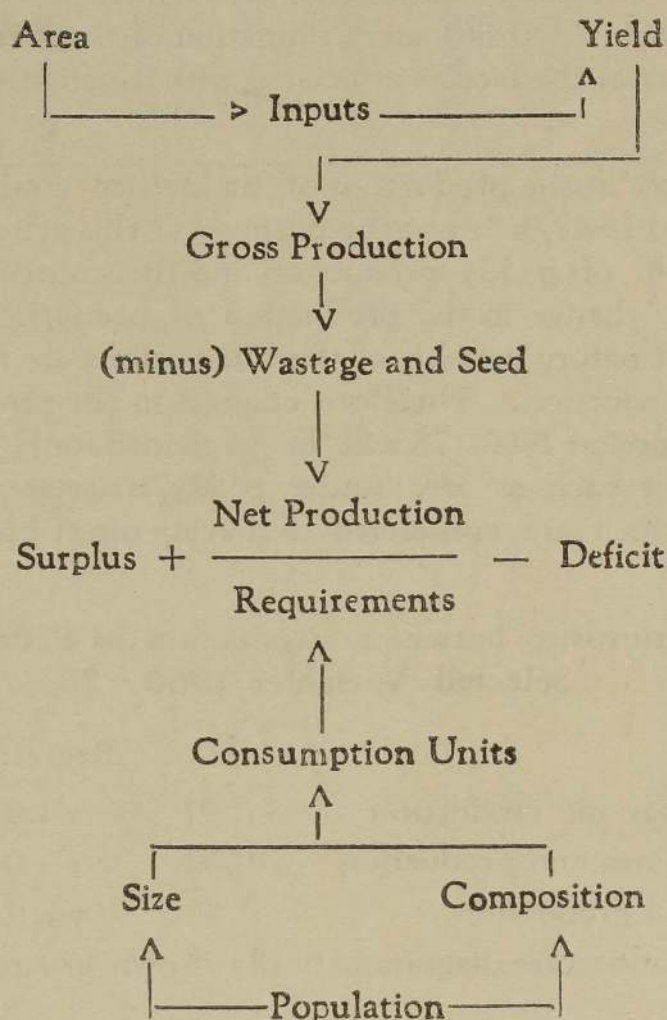


Fig- 3. Sri Lanka - Factors Influencing Self-sufficiency in Rice Production.

As Fig. 3 suggests the degree of sufficiency in rice production in a given year is determined partly by population or, more specifically, the number of consumption units. Therefore, population is of great importance as a determining variable of the level of sufficiency in a given year. However, it may not be a strong variable as such, as far as the temporal pattern of the level of sufficiency in Sri Lanka is concerned. As Fig. 4 shows, the number of consumption units in Sri Lanka's population during the period under consideration continued to increase (at an annual rate of 2.1 percent) resulting in an increased volume of rice consumed annually. However, the constant increase in the number of consumption units has not shown a definite trend of association as such with the level of sufficiency in rice production during this period. On the contrary, a close relationship was identified when the level of sufficiency was compared with that of production of paddy/rice.

Since there is a close relationship between the level of sufficiency and production of rice ($r^2 = 0.86$), an examination of the trends in production of rice would reveal the factors associated with fluctuations in the level of sufficiency.

The changes in the production of paddy/rice could be explained in many ways. However, it is not the purpose of this article to analyse the inter-relationship of paddy production and the contributory variables in detail. Rather, change in the production of paddy/rice has been considered as an explanatory variable of the fluctuations in the level of sufficiency in rice production. Therefore, changes in the production of paddy/rice during the period 1960-78 will be explained only in terms of some selected variables such as area under paddy, irrigated area of paddy and fertilizer use which are considered as having direct bearing upon production.

Relationship between Production of Paddy and Selected Variables 1960 - 78

	R	Regression Equation
Area under paddy and production	0.97	$y = 0.17x - 60.3$
Irrigated paddy area and production	0.92	$y = 0.27x - 52.7$
Fertilizer use and production	0.86	$y = 0.36x + 31.8$

(Regression equations are diagrammatically shown in Appendix B).

It is apparent from Fig. 5 that there were clearly identifiable four sub-periods of paddy production as well during the period under review. During the first sub-period which extended from 1960 to 1964 production of paddy showed an increasing trend. For example, in 1960, the gross production of paddy in the island was 43.0 million bushels (611,238 tonnes of rice), and by 1964 it increased to 50.5 million bushels (716,791 tonnes of rice), recording an increase of 17 percent at an average annual rate of 4 per cent. At the same time, it may be of importance to note that the number of consumption units in the island's population increased only by 11 percent (at an average annual rate of 2.6 percent), over the same period. The result was an improvement in the level of sufficiency in rice production which stood at 60 percent of the requirements in 1964 compared to that of 56 percent in 1960.

Between 1960 and 1964 the gross area cultivated with paddy in Sri Lanka increased by 7.9 percent (see table 4). It should be noted however, that the gross area harvested is less than the gross area sown. In 1960, for instance, the harvested area of paddy was only 94.8

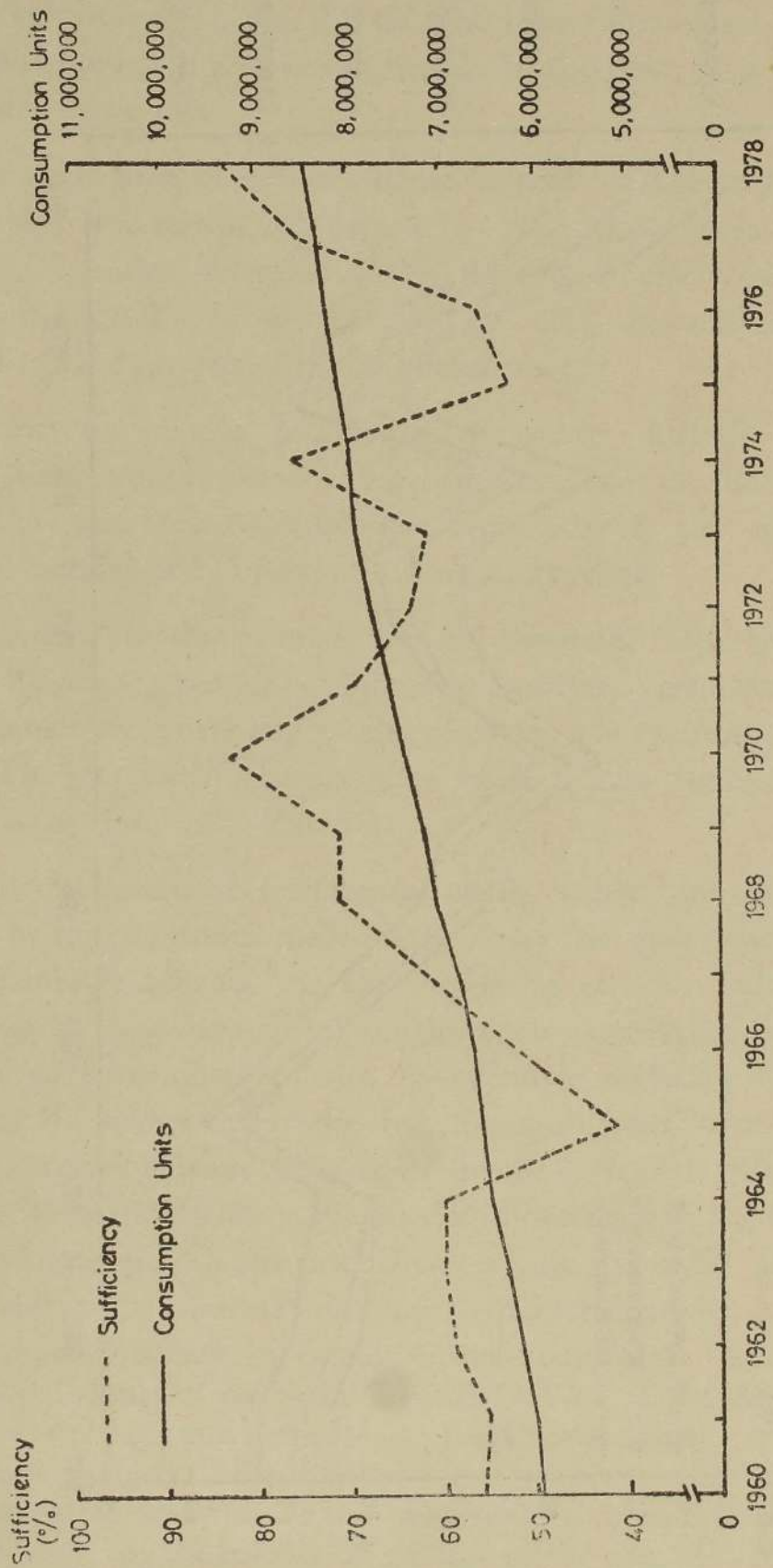


Fig. 4 - Sri Lanka, Number of Consumption Units and the Level of Sufficiency in Rice Production, 1960 - 1978.

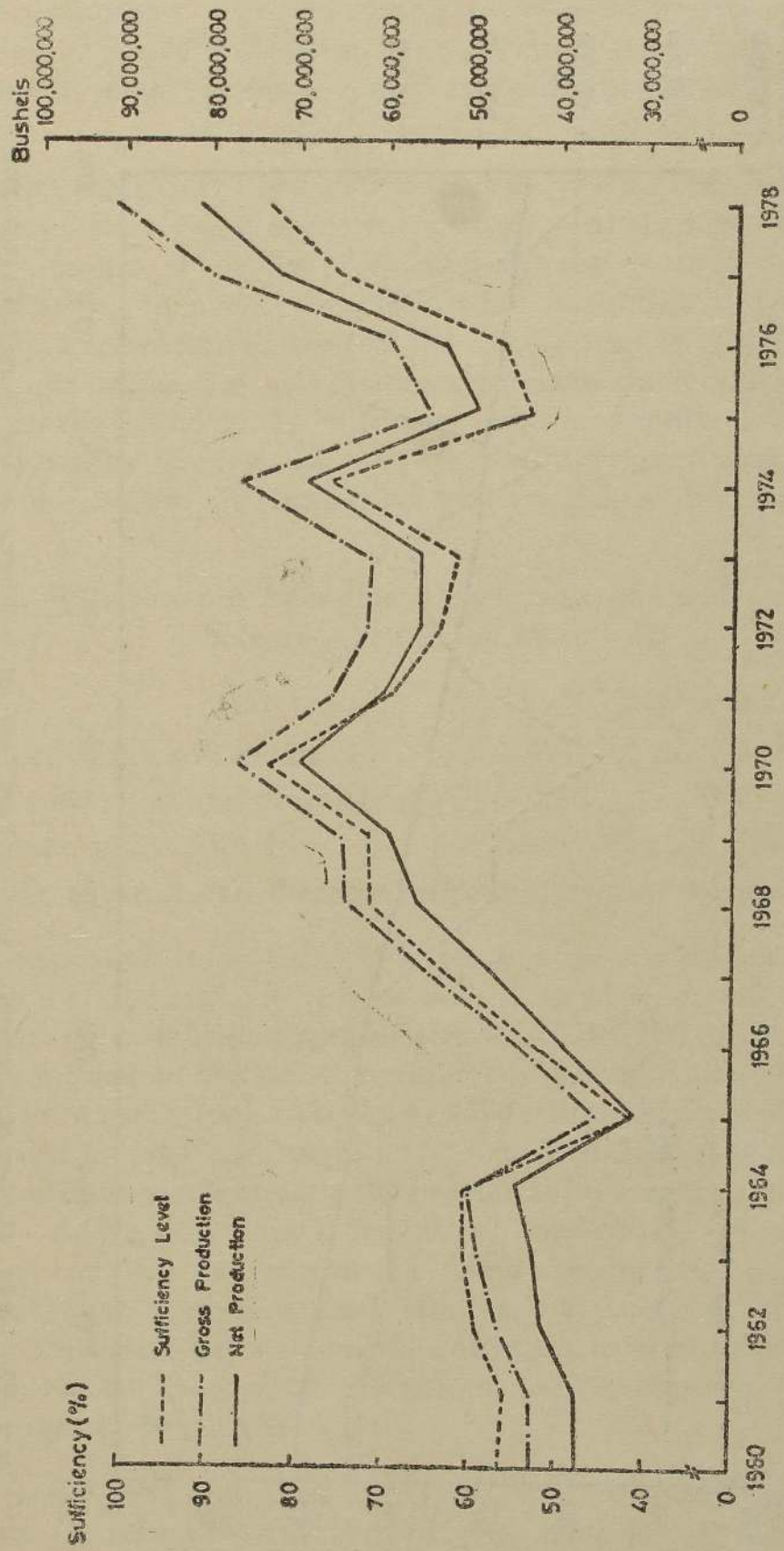


Fig. 5. Sri Lanka, The Level of Sufficiency and Production of Paddy.

percent of the total area sown. By 1964, however, an increase in the gross area of paddy harvested also was recorded. In this year, 96 percent of the sown area was harvested.

At the same time, attention should be paid to the increase in the irrigated paddy land during this period. In 1960, there were 337,682 ha of paddy land under irrigation (both major and minor works) - 56.8 percent of the total area sown - and by 1964 the area expanded to 380,746.7 ha (59.3 percent of the total area sown).

The increase in the production of paddy during the above mentioned sub-period, to some extent, was a result of the increase in paddy yield per unit area. As can be seen from table 4, the average yield recorded an increase of 6.3 percent during this period.

This increase was due to many reasons. Between 1960 and 1964 an appreciable increase in the use of inorganic fertilizers (mainly urea, saphos phosphate, super phosphate and nitrate of potash) in the paddy sub-sector was seen. The increase in the quantity of fertilizers consumed in the paddy sub-sector is shown in Table 4.

The increasing use of fertilizer in paddy cultivation may have been encouraged by the provisions made available by the government through the fertilizer subsidy scheme. At the beginning of the sub-period the fertilizer subsidy was limited to smallholders cultivating 5 acres and below who were members of the co-operative societies. "The subsidy amounted to 1/3 of the cost of the fertilizer and loans were granted to meet the cost of the balance 2/3" (Administration Report, Commissioner of Agrarian Services 1959-60, p.39). In the following year, the scheme was amended and according to the new scheme a subsidy of 50 percent was made available to cultivators who purchased fertilizer for cash either through co-operative societies or cultivation committees (Administration Report, Commissioner of Agrarian Services 1961-62, p. 46). Again in 1963, the scheme was revised and according to the Commissioner, a subsidy of 50 percent was made available to all paddy cultivators whether members of the co-operative societies or not who wish to obtain their fertilizer needs on payment of the balance 50 percent of the cost of the fertilizer in cash (Administration Report, Commissioner of Agrarian Services 1962-63, p. 57).

Table 4
Sri Lanka
Paddy Statistics: Sown and Harvested Area,
Fertilizer Consumption, Average Yield
and Sufficiency Level in Rice Production

Year	Sown Area (ha)	Harvested Area (ha)	Harvested Area as% of Sown Area	Fertilizer Consumption		Average Yield kg/ha	Sufficiency as % of Requirements
				Total (t)	kg/ha		
1960	594,255.7	563,683	94.8	20.4	34.5	1,879	56.49
1961	595,703.3	569,333	95.5	29.5	49.5	1,866	55.16
1962	621,583.2	603,910	97.1	38.6	62.2	1,957	59.15
1963	632,100.4	617,298	97.6	47.8	75.6	1,958	60.36
1964	641,520.8	621,093	96.8	61.0	95.2	1,998	60.29
1965	588,971.7	502,886	85.4	42.7	72.5	1,772	41.84
1966	654,343.6	612,024	93.5	41.1	62.8	1,839	52.32
1967	663,266.3	634,143	95.6	53.7	80.9	2,131	61.91
1968	705,166.7	661,327	93.8	85.5	121.3	2,400	71.61
1969	691,684.3	622,997	90.0	87.4	126.3	2,599	71.64
1970	759,027.5	718,696	94.7	86.7	114.2	2,649	82.91
1971	725,864.4	693,786	95.6	96.9	133.4	2,385	69.40
1972	726,253.3	638,984	88.0	89.8	123.6	2,420	63.85
1973	726,253.7	671,975	92.7	127.5	175.5	2,302	62.46
1974	824,798.5	797,038	96.6	93.0	118.8	2,357	76.44
1975	695,819.5	597,242	85.9	97.9	140.6	2,272	53.16
1976	723,954.3	635,484	87.8	72.4	100.0	2,319	56.55
1977	828,082.5	782,301	94.5	128.7	155.4	2,526	75.63
1978	875,392.1	839,442	95.9	128.6	146.9	2,618	84.38

Source : Department of Census and Statistics, Colombo.
Ceylon Fertilizer Corporation, Colombo.

At the same time, the increase in the area cultivated with pureline seed also should be emphasized. In 1964, there were 41,923 ha of paddy land sown with pureline seeds compared to that of 33,872 ha in 1960.

As Fig. 2 shows, the level of sufficiency in rice production in Sri Lanka dropped suddenly in 1965. One might reasonably interpret this interruption as a discontinuity in the increasing trend of the sufficiency level. It may be seen from Fig. 5 that the instantaneous drop in the level of sufficiency was closely in association with a simultaneous drop in the production of paddy. While the level of sufficiency in 1965 decreased to 41.8 percent of the requirements from that of 60.3 percent in 1964, the production of paddy also decreased by 28 percent (from 50.5 million bushels in 1964 to 36.2 million bushels in 1965).

The decline in the production of paddy in 1965 was caused by a severe drought that devastatingly affected the extent of land sown and harvested and yield per unit area. By 1964, the gross area cultivated with paddy in Sri Lanka was 641,520.8 ha. In the following year, however, due to severe drought conditions, the sown area was limited to 538,971.7 ha., a decline of 8.2 percent. It should also be noted that the reduction in the cultivated extent of paddy lands was more pronounced in the leading paddy producing districts in the Dry Zone of the island. For example, in Anuradhapura, a major paddy producing district, 37.1 percent of the area cultivated in 1964 (approximately 19,646 ha) was abandoned in 1965. In another major paddy producing district, Hambantota, 29.3 percent of the area cultivated in 1964 was left uncultivated in the following year. Furthermore, the year 1965 saw a decrease in the harvested area of paddy. In 1965, the gross extent of paddy land harvested was only 502,885.9 ha compared to 621,092.7 ha in the preceding year, a decrease of 19 percent. On the other hand, the gross extent of paddy land harvested in 1964 amounted to 96.8 percent of the land sown in that year. However, only 85.3 percent of the sown area was harvested in 1965.

It should also be noted that between 1964 and 1965 there was a considerable decline in the extent of irrigated paddy land. According to the DCS, in 1965, there were only 339,488 ha of paddy land under major and minor irrigation works compared to 380,747 ha in the preceding year.

Between 1964 and 1965, a decline in the average yield of paddy was recorded. In 1964, the average yield was 1998 kg/ha (38.7 bu/acre), and in the following year it was only 1772 kg/ha (34.3 bu/acre) – a decrease of 11.3 percent. The decline in yields has been attributed to the drop in fertilizer use. To quote the Administration Report of the Commissioner of Agrarian Services for the year 1964-65 ‘... for the first time since 1960 there has been an overall decrease in the consumption of paddy fertilizer. It will be observed that there has been a severe reduction in the consumption of fertilizer in the Dry Zone districts which were affected by drought during the Maha 1964-65 and Yala 1965 cultivation seasons.... It has even been reported that some of the fertilizer purchased and removed by societies (co-operatives) in October and November 1964, has remained unutilized as the cultivation of a substantial extent of sown land had to be abandoned owing to lack of water’ (p. 5). The use of pureline seed also reported

a decline in 1965. As the DCS shows, in 1964 there were 41,923 ha of paddy land cultivated with pureline seed. In the following year, the area decreased to 32,396 ha.

As seen in Fig. 2 the level of sufficiency in rice production in Sri Lanka showed an impressive increase during the period 1966-70. One might view this improvement as just a continuation of the trend prevalent during the early 1960s. However, according to the information available, it is no exaggeration to suggest that the increase during 1966-70 was more definite and pronounced. During this period the level of sufficiency rose by 58.5 percent (from 52.3 percent of the requirements in 1966 to 82.3 percent in 1970) compared to that of a 7 percent increase during the previous period (i.e., 56 percent of the requirements in 1960 to 60 percent in 1964).

The improvement in the levels of sufficiency in rice production during this period can be attributed to many factors. Between 1966 and 1970 the number of consumption units in the island's population increased by only 9.4 percent (from 6,792,050 to 7,432,824) with an average annual rate of 2.3 percent, a welcome change compared to 2.6 percent average annual growth rate during 1960-64.

The most welcome change, however, that lifted the level of sufficiency occurred in the production front. During the period under consideration the gross production of paddy increased by 69 per cent (from 45.8 million bushels in 1966 to 77.7 million bushels in 1970) with an average rate of increase of 14 percent per annum. It may be of interest, perhaps, to compare these rates with those recorded during 1960-64. During the earlier period, the gross production of paddy increased only by 17 percent at an average rate of increase of 4 percent per annum.

The remarkable progress in production witnessed in the late 1960s was a result of the combination of two main factors. First, recording an increase of 16 percent, the area cultivated with paddy expanded to 759,028 ha in 1970 from 654,344 ha in 1966. Second, the yield of paddy per unit area also showed an appreciable increase of 44 percent over the same period.

During the period under review the hectarage of paddy with irrigation facilities as well showed an increase. In 1970, the extent of paddy land benefited from major and minor irrigation schemes was 464,825 ha compared to that of 397,679 ha in 1966, a 17 percent increase.

The rise in paddy yields witnessed in the late 1960s was partly due to increasing use of fertilizer. In 1970, according to the Administration Report of the Commissioner of Agrarian Services, inorganic fertilizer consumption in the paddy sector was 86,723 tonnes, an increase of 110.8 percent over the quantity consumed in 1966. By 1969, fertilizer subsidy scheme had been amended again in order to encourage farmers to use more and more fertilizer. With the commencement of the cultivation season Maha 1968-69, a single rate of subsidy of 50 percent for both cash and credit purchases was introduced. To quote the above mentioned report, 'this brought to an end the system of dual subsidies under which purchases of fertilizer for cash payment were entitled to a subsidy of 50 percent, and purchases of fertilizer under the credit scheme were entitled to a lower subsidy of 33 1/3 percent' (Administration Report, Agrarian Services 1968-69, p. 9).

At the same time, the hectarage of paddy cultivated with improved varieties also recorded an increase. In 1970, the extent of paddy land sown with pureline seed was 213,310 ha compared to that of 91,628 ha in 1966, thus showing an increase of nearly 132 per cent.

The degree of sufficiency in rice production in Sri Lanka after reaching a relatively high level in 1970, showed a declining trend. In 1971, as Table 3 shows, the level of sufficiency dropped to 69 percent of the requirements. Apart from the exceptional situation in 1974, the deterioration continued, and by 1975, the level of sufficiency had fallen to 53 percent of the requirements. It is evident from Fig. 2 that since 1976 the level of sufficiency has shown a rising trend again.

One contributory factor to the decline in sufficiency level was continuous increase in population. During the period 1970-75 the estimated number of consumption units in Sri Lanka's population increased by 9.4 per cent, registering an average rate of growth of 1.8 percent per annum. It should be noted, however, that with the onset of the 1970s the number of consumption units in Sri Lanka's population did begin to show signs of a declining rate of growth (during 1960-64 the average rate of growth of consumption units was 2.6 percent per annum and it was 2.3 percent per annum between 1965 and 1970). Unfortunately, the opportunity created by the declining rate of growth of population to enhance the level of sufficiency could not be enjoyed owing to untimely and unappreciated decrease in rice production during this period.

According to the DCS, the gross production of paddy in Sri Lanka in 1975 was 55 million bushels, a decrease of 28.5 percent compared to 77 million bushels produced in 1970. Furthermore, despite the little progress witnessed in 1974 the production tended to decrease continuously after 1970. The decrease in production during this period could be attributed partly to the low hectareage sown with paddy. In 1970, for example, the total area cultivated with paddy amounted to 759,030 ha and by 1975 it decreased to 695,820 ha, thus registering a drop of 8 percent. At the same time, as Table 4 shows the gross harvested area of paddy as well decreased substantially during this period. In 1970, approximately 95 percent of the sown area was harvested. However, only 86 percent of the sown area was harvested in 1975.

During the period 1970-75 yield of paddy as well decreased more or less continuously. Compared to the average yield of 2650 kg/ha obtained in 1970, the average yield in 1975 was only 2272 kg/ha, a gross reduction of approximately 14 percent. During this period, however, purchases of paddy fertilizer showed an increase. In 1975 the total quantity of paddy fertilizer purchased amounted to 97,900 tonnes compared to that of 86,723 tonnes in 1970. An increase in purchases of fertilizer, however, does not necessarily imply an increase in their consumption.

The period 1970-75 experienced some significant changes in the socio-economic and political order in the island. Just after the harvest of 1970-71 Maha season the insurgency - popularly known as 1971 insurrection - broke out. It is difficult, however, to make an assessment of the effects of the insurgency on paddy production in the island. Yet, it is equally unreasonable to assume that the political disorder and social unrest and tension prevalent during that time did not affect the normal functioning of paddy cultivation at all. To quote the Budget Speech 1971 - 72, 'when one considers the devastation that accompanied the insurgent activities beginning on 4th April 1971, and the dislocation of the economy, not merely in the affected areas but throughout the country, one is not surprised at the negligible growth during the year 1971. Not only the government machine, but the whole economy came to a grinding halt. Departments ceased to function; industrial establishments closed down. Paddy crops remained uncropped and where reaped, the harvest could not be gathered' (Budget Speech 1971 - 72, p. 8). However, the severe drought conditions that affected paddy cultivation in the major producing areas during that time make the estimation of the effects of the insurgency on paddy production more difficult.

The reduction in the extent of land sown with paddy and the subsequent decrease in the harvested area and yield, to a larger extent, were due to drought conditions that devastated the island's cropland during that time. In 1973, not only in Sri Lanka, but most of Asia's cropland was destroyed by a severe drought and in such countries as Thailand grain exports had to be stopped in order to prevent a food crisis. In Sri Lanka, too, numerous measures were taken by the authorities to avoid mass starvation.

In 1972, the then government introduced land reforms with the objective of maximizing the productivity and employment opportunities in the agricultural sector. Under the provisions of the Land Reforms Law (LRL) of 1972, the Land Reform Commission (LRC) was established and it was empowered to expropriate the agricultural land owned by individuals above a specified ceiling. The LRL permitted a person over 18 years of age to hold a maximum of 25 acres of paddy land or 50 acres in the case of other agricultural land. However, contrary to rather optimistic expectations of the Commission, some writers are of the opinion that it (land reforms) cannot be conceived as of a radical transformation of the agrarian structure of the country. Although an individual was given permission to own 25 acres of paddy land, owners who possessed more than 25 acres of paddy land were very small in number. It should be noted that approximately 85 percent of the paddy area in Sri Lanka are comprised of holdings of less than 10 acres in size. According to the Annual Report of the Central Bank of Ceylon 1975, the total area of land cultivated with paddy vested in the LRC was 7,450 ha, approximately 3.3 percent of the total area vested in the LRC. In other words, only 1.3 percent of the total asweddumized area of paddy was acquired by the Commission. However, it would not be reasonable to assume that the uncertainty prevalent during this time regarding the ownership of some cultivated land did not affect the normal functioning of paddy cultivation at all.

Since 1975, the level of sufficiency in rice production in Sri Lanka has been rising. In that year, as mentioned earlier, domestic production of rice was sufficient to meet only 53 percent of the requirements. By 1978, however, local farmers were able to produce 84 percent of the country's requirements. As far as sufficiency levels are concerned, the total number of consumption units in the island's population showed a favourable rate of growth (although the structure of the population was slightly unfavourable) between 1975 and 1978. During this period, the number of

consumption units increased only by 5 percent. However, the rising levels of sufficiency since 1975, to a greater extent, was due to increase in rice production which rose by 64 percent.

The increase in production during this period was largely due to expansion of the area cultivated with paddy. In 1978, there were 875,392 ha of paddy land in Sri Lanka, showing an increase of approximately 26 percent over that of 1975 (most of the new land cultivated with paddy was found in the North Central Province). Of the total hectareage sown in 1978 nearly 98 percent was harvested compared to that of 86 percent in 1975. In other words, the incidence of crop failure was minimized in 1978.

At the same time, the yield of paddy per unit area also showed a slight improvement during this short period. In 1975, the average yield was 2272 kg/ha and it rose to 2314 kg/ha by 1978. The increase in yields may be attributed to several factors. According to the Ceylon Fertilizer Corporation the use of inorganic fertilizers in the paddy sector showed a considerable increase during the period 1975-78. In 1978 the total quantity of inorganic fertilizers used in the paddy sector was 128,090 tonnes compared to 97,900 tonnes in 1975. During the same period the application of fertilizer per unit area sown as well showed an increase being 146.9 kg/ha compared to 140.7 kg/ha in 1975.

Conclusions

In this article an attempt was made to examine the level of sufficiency in rice production in Sri Lanka during the period 1960-78. As the study revealed, the island has not achieved self-sufficiency so far. It was apparent, however, that the level of sufficiency in rice production, with some interruptions, has been rising in the recent past. Every government in power to date, in anticipation of a state of self-sufficiency, introduced and implemented several plans and programmes to increase the production of paddy. However, unfavourable weather conditions coupled with other factors, so far, have been able to retard the pace of the march toward self sufficiency.

Appendix A

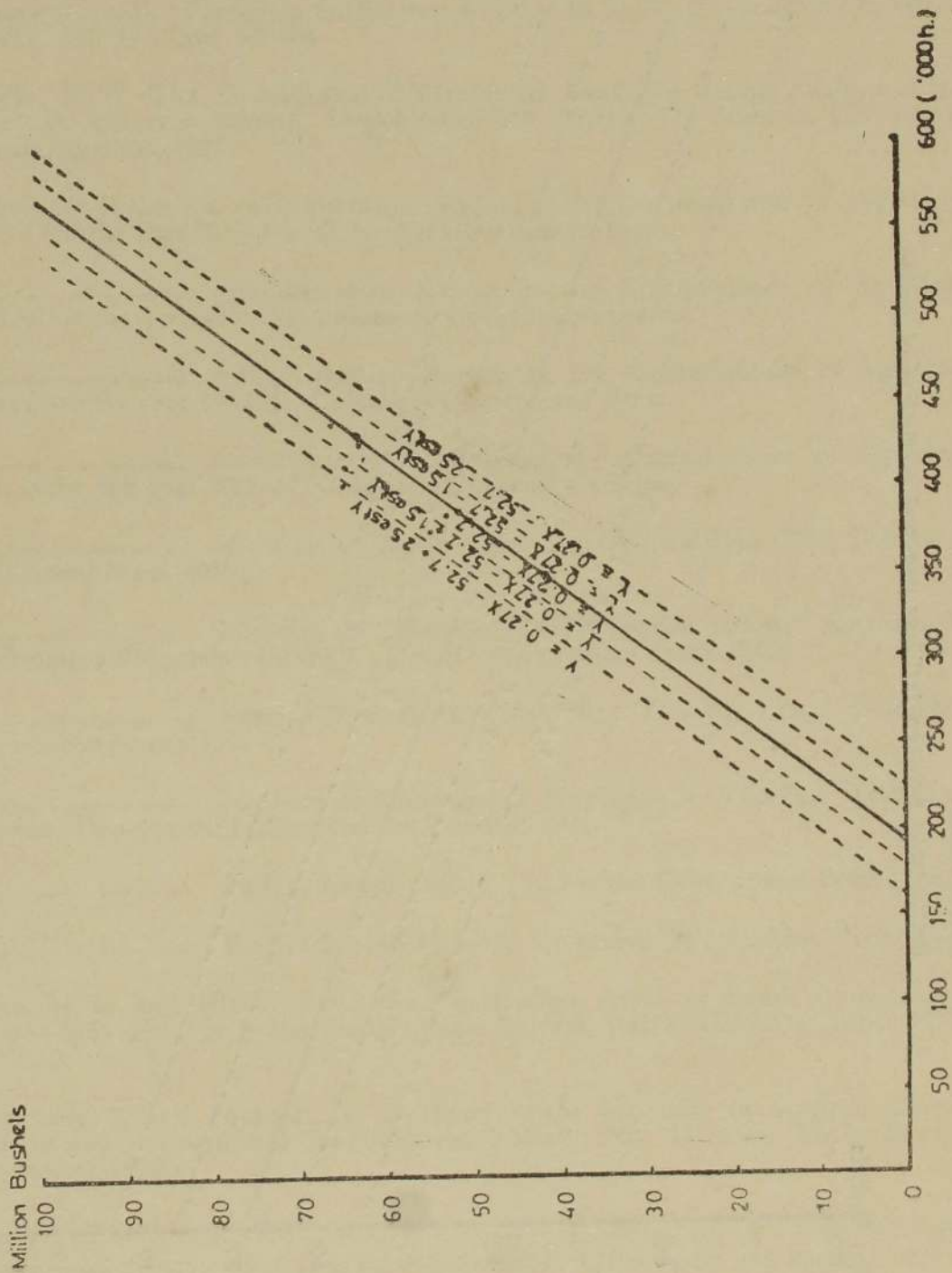
Sri Lanka: Estimated number of Consumption
Units (of Rice), 1978,

Age Group	Population	Co-efficient of Consumption Units	Number of Consumption Units
Males 15-19	769,000	1.00	769,000
Lactating Mothers	380,393	0.90	342,354
Males 20-29	1,249,000	0.86	1,074,140
Males 30-39	832,000	0.83	690,560
Males 40-49	674,000	0.80	539,200
Children 10-14	1,799,000	0.76	1,367,240
Males 50-59	469,000	0.64	300,160
Males 60-69 } Females 15-19 }	1,029,106	0.58	596,881
Females 20-229	1,002,759	0.51	511,407
Females 30-39 } Children 5-9 }	2,557,777	0.48	1,227,733
Males 70+ } Females 40-49 }	768,955	0.45	346,030
Females 50-59	390,000	0.42	163,800
Females 60+	406,000	0.35	142,100
Children 1-4	1,482,607	0.32	474,434
All Ages	13,809,597		8,545,039

Notes: Same method has been followed in the computation of the number of consumption units in all other years.

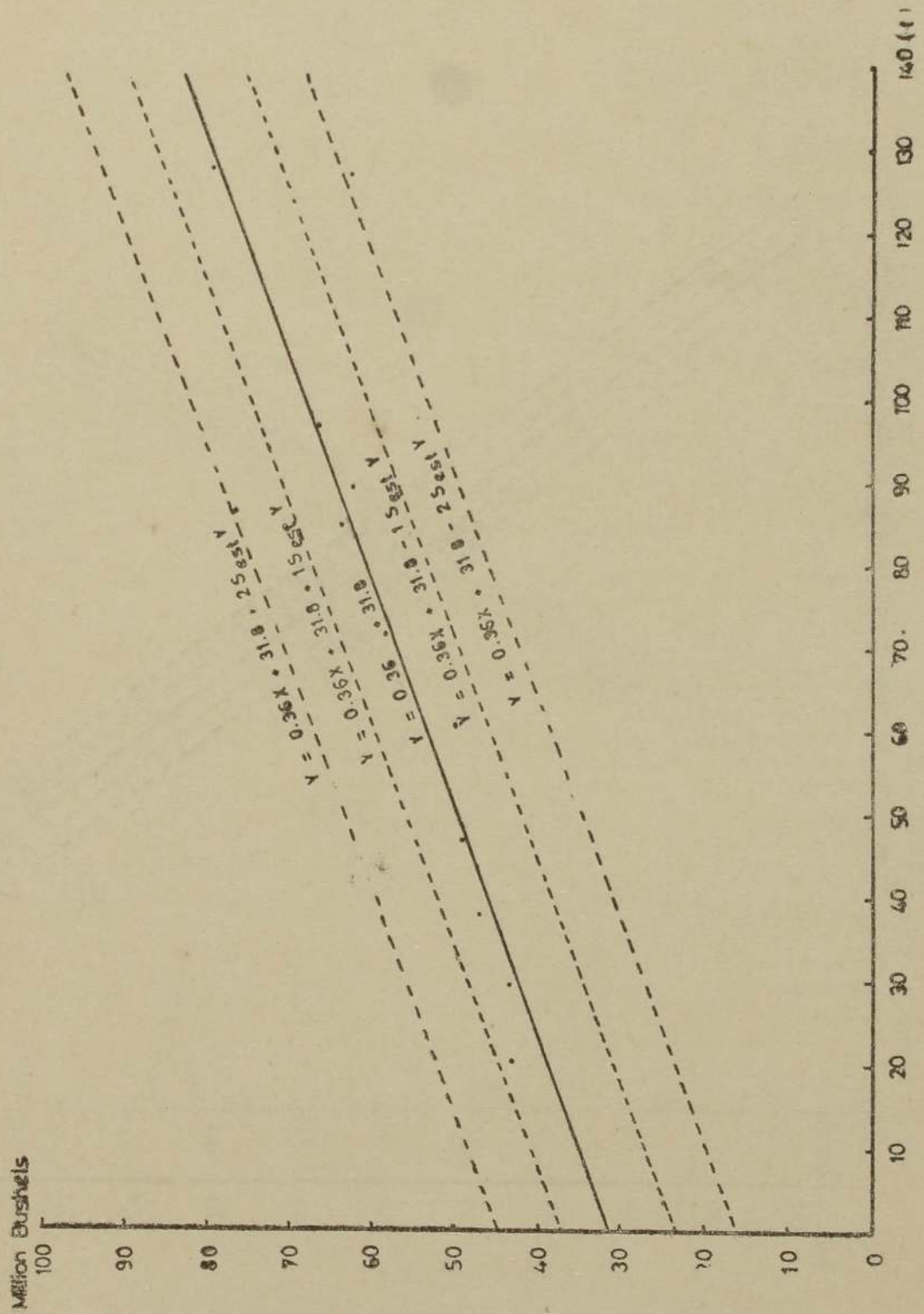
Appendix B.

Relationship between irrigation and production of paddy.



Appendix B.

Relationship between fertilizer use and production of paddy



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A study of some Non - Intellectual Factors Associated with Academic Achievement

F. S. NILES

Since nowhere in the world has it been possible to show a one-to-one correspondence between input and output in educational attainment, there has been a growing concern among politicians and educationalists alike, to identify and label the causes of unequal achievement in school and in the labour market. In socialist countries especially, this can become a potentially explosive issue, but although successive governments have proclaimed a policy of providing equality of educational opportunity for all, they are confounded by so many apparently inexplicable factors which nullify their efforts. Research in many countries has been gathering momentum and from admitting somewhat generally (Alexander 1935) that one component of school attainment was "something in the nature of industriousness which affects all school work" and referring largely to intellectual factors, we have now a wealth of evidence ranging from factors associated with socio-economic status and home background to the not so readily defined and complex constructs like ambition, values, motivation, etc., which are all found to influence differential achievement.

In Sri Lanka although no serious empirical work was undertaken this has proved a vexing question and has had the attention of every Minister of Education. Several measures were undertaken to make this system of education equally available to all. Free education for all, even at the University, was introduced as early as 1945 and this was followed by several progressive measures, such as the change in the medium of instruction to the national languages, the creation of the Central school system (to provide at least one well-equipped school in each school district) a system of scholarships which gave the gifted child from the poor home the opportunity to study in any school of his choice, the take-over by the State of all religiously affiliated schools to ensure a uniform system of education throughout the country, and more recently far reaching changes in the Curriculum and the Examination system and free books for all school children. The annual expenditure by the state on education in Sri Lanka is very high, nearly 5% of her GNP (which compares very well with expenditure on education in many developed countries), but even today we cannot claim that there is equality of educational opportunity and more importantly an equal chance for success for all in Sri Lanka.

Most of the research into the status attainment process stress the importance of the individual's socio-economic background and research in many countries abroad, namely U.S.A., U.K., Sweden, Canada and Australia, especially in their earlier studies, have found the evidence to support this. Socio-economic status (SES) is usually taken as a composite measure of parental occupation, education and income but it is often taken to include measures of material possessions of the family too. Correlations between these factors of SES severally and together with scholastic attainment indicate an undeniable relationship between them.

Research evidence has substantiated the belief that poverty has a stultifying effect in any achievement situation. Evidence in support of this has been gathered over a long period of time and is indeed formidable. Even as early as the first quarter of this century this problem generated research interest and the conclusions made have been for the most part consistent. For example Lindsay (1926) wrote that "it has been conclusively proved that success in winning scholarships varies with almost monotonous regularity according to the quality of the social and economic environment" Although somewhat overstated this is generally typical of the kind of belief that is widely accepted. About the same time in America too similar evidence was gathered (Chauncey 1929). This does not mean that there was no contradictory evidence (e.g. : Crawford 1929 and French 1959) but by and large sifting through all the available data we could conclude that a relationship between SES and achievement, either in school or occupationally, does exist. But the important point is that the mere fact of a relationship explains very little. Especially in the more affluent countries where economic differentiation is not as pronounced as in a country like Sri Lanka, research evidence like that of Floud, Halsey and Martin (1957) seems to point to the conclusion that where material differences are not great, the kind of family background especially the kind of support given and the richness of experiences, and attitudes towards educational matters were important determinants of academic achievement. What seems evident therefore is that a family background variable, not by any means synonymous with SES, is an important determinant of achievement. Pidgeon (1959) reviewing work done by the National Foundation for Educational Research (N.F.E.R.) in England claimed that "the most important factor bearing on educational progress of all those so far investigated was the attitude of the child's parents". In the Fraser (1959) study too, one of two highest correlations with educational attainment was parental encouragement in studies. Toomey (1974) reviewing several research studies writes that the process of socialization within the family "influences a child's educational oppor-

tunities to an important extent independently of differences of income and material conditions" and that SES is "a relatively poor predictor of children's scholastic attainments compared with the more sensitive and detailed examinations of children's home and backgrounds", and Sugarman (1966) writes that 'social class' is just a shorthand way of referring to a complex of factors which correlate with occupation".

We see therefore the development of two main 'theories' concerning differential achievement. One upholds the view that SES alone is only a poor indicator of attainment and that meaningful answers can be sought only through consideration of the more subtle forces that operate in respect of different homes and backgrounds, though they are undeniably linked to SES. The second tends to support the view that the appropriate attitudes and values are essential for success. And many argue that these are linked to subcultures within a society, with social class a significant subcultural influence.

The 'culture of poverty' idea formulated by Oscar Lewis (1968) and others, that differences between the different socio-economic levels is not merely one of material conditions but of differences in value orientations, also provides a strong argument for linking the two theories together. It argues that the poor experienced a feeling of powerlessness, which affects their capacity to act effectively in life's situations, especially when the situation is highly competitive. This is mirrored to some extent in their value orientations and there are now several studies which attempt to relate 'values' to scholastic attainment. Most of this research take as its basis the Kluckhohn and Strodtbeck (1961) classification of common human problems to which a limited number of solutions are available. They attempt to assess the capacity of individuals or groups of people to feel in control of their environment and have 'modernistic' values. Generally it was found that higher scholastic attainment goes with the belief that the environment can be mastered by human effort—the so called values of 'Activism' or 'Mastery', and with the related value of 'Individualism' which stresses individual as against collective responsibility (Sugarman, 1966, Rosen, 1959, Strodtbeck, 1961, Jayasuriya, 1960). The question that arises from these studies which has generated some debate is whether these values are related to 'class' differences. Most studies report only weak correlation between SES and values, while the relationship between values and scholastic attainment seems stronger (Sugarman, 1966, Musgrave and Reid 1969) This may be explained by hypothesizing that values are the product of several influences of which socio-economic status is only one. Although Craft (1970) argues that social-class differences over-ride most

other subcultural patterns, he accepts that the usual two-level model of class differentiation is often inadequate to explain differences and that there is much variation within classes.

The massive Coleman study (1966) gave a tremendous boost to this line of thinking by affirming a relationship between feeling of being in control of one's environment (he describes this as a 'sense of control') and academic achievement. Similar findings were also made in the work of Crandall, Katkovsky and Crandall, (1965) where children who felt in control of their circumstances exhibited more interest in academic pursuits, spent more time on intellectual activities and scored higher on Intelligence, and academic tests.

However, any research about factors influencing academic achievement in Sri Lanka must begin with a survey of material conditions and family background for several reasons. This piece of research is virtually the first of its kind and therefore before we involve ourselves in studying the more subtle influences we must estimate the effects of SES and background i. e. the basic sociological factors impinging on the achievement process. Also research has established unmistakably that material conditions are important and form the base for other more complex influences which intervene. We have a wealth of evidence, that has not been proved wrong, which reiterates the belief that SES is related to achievement. However, we now also know that social class per se is not a very meaningful variable, it is social class in context that is recognised as a powerful factor in determining final destinations. One must not however under-estimate the influence of SES and home background even in the more affluent countries of the present day. Douglas (1964) claimed that "it seemed probable that impoverished home environment would progressively become handicapped". Several Royal Commissions (e.g. Newson and Plowden) emphasized the disadvantage which accrued to children living in slum conditions in Britain. Sexton (1961) presents a clear picture of the extent to which poverty still acts as a major factor in the school performance of children in the U.S. Floud, Halsey and Martin (1956) also showed that where socio-economic status was lower and housing conditions less favourable, the successful children at each level were distinguished by relative material prosperity of their homes. Even researchers in the present decade do not disclaim the influence of one's class related background which we see in what Connell (1972) writes; "What we can say now is that material conditions of life in the different social classes, their collective social experience are not very far back in the causal pattern....." Toomey (1974) reviewing several studies, estimates the influence of the composite variable

of SES and family background on scholastic attainment to be around 50%. This includes apart from parental status, education and income other influences of the home such as 'literacy' in the home, the extent to which the home provides material information and ideas directly relevant to school learning, parental aspirations for their children, parents' interest and concern for and encouragement of the child's education, the physical conditions of the home, family size etc. I would argue, therefore, that should conditions of the home related to poverty change, the pattern of academic success could alter appreciably in Sri Lanka, but as things are today material disadvantage seems to be an insurmountable barrier and seems to be the first cause. But we must find the evidence to support this contention.

We therefore undertook a survey of factors which we hypothesized would influence academic achievement in our schools. The aims of this research were therefore:

- (1) to examine the relative importance of certain home related variables in relation to school achievement;
- (2) to examine the influence of certain value orientations and attitudinal factors on achievement;
- (3) to assess the relationship between home related variables and value and attitudinal ones.

A sample of 49 schools was picked randomly (using a table of random numbers) from a list of schools throughout the island. Although systematic differences between groups of children were not anticipated the sample was stratified to obtain better representation of different groups and so proportionate numbers of schools were picked from different educational regions, urban/rural areas and from different media schools. However, so as not to disrupt the school too much the sampling unit was the whole class in each school that was picked. Where there were more than one class of Grade 9 s in a school, one only was picked randomly. However, although 49 schools were sampled only 41 schools were actually 'tested'. The 'testing' program had to be completed before the N. C. G. E. examination in early December and since the program did not commence till October we had only a very limited period in which to complete it and therefore certain unforeseen circumstances, like flood conditions in the South prevented us from getting to all the schools on time. We obtained a final sample of 2,231 children from Grade 9 in 41 schools in Sri Lanka

Since the sample was large and the time and resources available were limited the most feasible method was that of the Questionnaire, although we were aware of the limitations of this method. Our information is entirely dependent on how much the child knows and how much he/she wishes to reveal in his/her answers. However, to avoid the avoidable limitations such as imperfect understanding of the questions posed, we carried out a pilot study in two schools in Colombo (one Sinhala boys' and one Tamil boys') both with a reasonably wide range of ability and SES. The final questionnaire therefore was refined on the basis of the information gained by the pilot study, i.e. the wording was changed where lack of complete understanding was suspected and where (only a very few) questions were not expected to provide any reliable information or where non-response was high, substitute questions were framed or these questions omitted. However, the pilot study showed us that given the limitations of this methodology we could still expect to gather useful data.

The three attitudinal scales were of the Likert format. They consisted of measures of

- (1) general value orientation
- (2) perceived parental interest and attitude to education
- (3) subjects' own attitude to education.

Item analyses were carried out and only items with acceptable values of discrimination (Ds) were included. Attitude scales 2 & 3 were constructed for the purpose of this research but scale 1 was based on Strodtbeck's 'V' Scale. This 'V' Scale derives from a long tradition of empirical work on 'Value' measurement which lends it a degree of validity, especially because the results have been consistent and along the expected lines. However, there is the question of cross-cultural application which we have tried to answer empirically. The pilot study gave us the expectation that we should have meaningful results, and we have not been disappointed in this.

The data from the questionnaire, the three attitudinal measures and the measures of academic achievement obtained from a composite score (the grades obtained in each of the subjects were assigned a score and these were summed to form a composite score for each class) for the N. C. G. E. results gave us 35 variables in all. Unfortunately, because of limited computer facilities (and the high cost involved) we could only obtain co-efficients of correlations between these variables. However, the

results encourage the belief that trends in Sri Lanka are no different from that seen in other countries, and give us significant pointers for further analyses of the data and for future research in Sri Lanka.

Academic achievement was found to correlate with SES and factors of the family environment as shown in the table below. Some of the correlations are low although they are statistically significant. We have, however, no reason to accept the null hypothesis and can justifiably claim that an unmistakable relationship does exist between academic achievement and variables such as father's occupation, facilities in the home, literary interest of the family, family's educational background, family size and parent's interest in the child's progress report from school. Our data gives us reason to believe that the overall trends in Sri Lanka are not contrary to trends found in western research. The same kind of SES and home background factors seem to influence academic achievement. In the UK or USA or in most other industrialised countries typical correlation between father's occupation or father's education are generally not very high. For example, Miller (1970) estimates that the relationship between social class and examination performance is generally in the region of .30 - .35 in these countries. Therefore the correlation of .26 for instance, obtained between father's occupation and achievement on this study is comparable. It is also higher than correlations reported in some third world countries, especially in Africa; eg: -.09 in Malawi between parental educational attainment and examination performance (Heyneman, 1980). Further, it is possible that should father's occupation have been measured and scored more sensitively we may have obtained higher correlations. The sample too, which was randomly picked seemed to under-represent the more affluent segment of the population.

TABLE 1.

**Zero-Order Correlations between Academic Achievement and
SES, Home Background ***

Father's occupation	.26
Literary interest	.26
Facilities in the home	.26
Educational background	.20
Family size	-.17
Interest in progress report	.13
Persons/Rooms index	.12

Other variables described as "process variables" (Keeves, 1972) which were examined showed only a low relationship with academic achievement for example the child's perception of parents' interest in their school work and perceived parental plans for their future, (.08 & .01 respectively). Problems of accurate measurement could have affected these correlations because it is generally agreed that attitude measurement is affected by response sets. More objective measure of parental interest, namely their reaction to and interest in the school progress report showed a correlation of .13 but parental interest measured by a scale correlated .31 with achievement. Certain questions however produced low correlations. For instance we argued that parental interest in their children's education would be reflected in interest in the PTA and in the number and purpose of their visits to school. But these measures produced very low correlations (.01 & .03). These may be explained by the fact that apart from imperfect reporting by children, parental involvement in the PTA and their visit to school was also dependent on the amount of influence exerted by Principals and staff on parents to encourage (even coerce) interest and attendance and was therefore related to the school more than to the individual parent.

The child's aspiration for his future also showed a low, though statistically significant (1% level) correlation with academic achievement (.09). What we hypothesize is that children at this stage of their school career are still rather vague and uncertain about their future. The future in a country where opportunity is limited even for the middle-class and the more than average child, and where having any kind of well defined aspiration seems futile, would therefore be poorly defined conceptually. However, it would be possible to argue that aspirations and achievement would show some relationship, although the tendency is for children of higher achievement levels to have higher aspirations than vice versa. We cannot also say which, precedes which, although it is more likely that aspirations reflect achievement levels.

The child's emotional response to school elicited by a question measuring degree of happiness in school (rather too general a question perhaps), showed a low relationship (.08, significant at the 5% level) to academic achievement. Obviously, a child who is unhappy in school cannot function effectively but this is an aspect rather difficult to measure and certainly merits more subtle techniques and more detailed analysis.

In conclusion we may suggest that the achieving child in our schools comes from better SES levels, has supportive parents and a more enriching environment. But we need firm evidence to make more definite assertions.

The relationship between some of these variables and SES of the family were examined to discover if parental interest and support and home conditions were related to SES differences. If father's occupation is taken as an index of SES, we find that the correlations suggest that factors of SES and background have some relationship to each other.

TABLE 2
Correlations Between SES and Family Variables

Family Education	.28
Literary interests	.15
Emotional climate of home	.15
Facilities for Study	.15
Family size	— .14
Mother employed	— .09

SES or more specifically father's occupation has some relationship to the kind of home which will generate a climate conducive to educational activity. Higher literary interests such as interest in books, in reading and library membership, proper facilities for studying at home, such as a quiet place, a separate table etc., a stable emotional climate (i.e. a lack of discord between the child and members of his family, smaller families, all seem to be related to higher socio-economic status. The mother in employment seems to be negatively related to SES and is also negatively related to academic achievement (- .11). In Sri Lanka it seems that women of the lower SES levels are more likely to be employed and this could explain the negative correlation with achievement too. However, since the relationship to achievement is somewhat higher we could hypothesize that mother's full time devotion to the home is more significant than any economic contribution her employment could bring. Again the strength of the relationships are low so that there is a need for more evidence to strengthen any arguments we can make.

Turning to the question of the relationship between academic achievement and attitude and values we find that on the whole attitudinal orientation has higher correlation with academic achievement. It is however not possible to claim unequivocally that attitudes are therefore more important than home background factors in influencing academic achievement, because differences in these two sets of relationships could be due to a number of factors. For instance, there could be an element of unreliability in students' answers about father's occupation and some arbitrariness in its classification. Attitudes on the other hand were scaled and

somewhat more obliquely or projectively measured. Further, an important question concerns the comparability of different types of measurement. However, the significant fact is that attitudes and values are related to academic achievement, though again it is difficult to determine causal precedence. Poverty and other oppressive forces can give one the feeling of being controlled by one's environment and since achievement seems related to one's class position, poor achievement could compound this feeling of 'powerlessness', which could lower motivation and the general impetus to achieve leading to further lowering of achievement levels. This however, is only one explanation, although a plausible one, but there could be others. Correlations however are only indices of relationships and in no way indicative of causation.

TABLE 3
Attitudinal Variables x Academic Achievement.

	1	2	3	4
1. Achievement values	—	.40	.21	.31
2. Parental attitude40	—	.40	.31
3. Attitude to Education21	.40	—	.28
4. Academic achievement31	.31	.28	—

We could have evidence here to suggest that measurement by scaling is superior to measurement by a single question, or even by objective indices of behaviour. Certainly the measure of parental attitude to education correlates rather highly with achievement values of the child and his own attitudes to education and is clearly related to achievement too. We may therefore argue that an individual who feels 'mastery' over his environment does not yield to a fatalistic stance in relation to life's achievement situations and is in an advantageous position to approach it with confidence.

Attitudinal variables were also significantly related to a number of home background variables (Refer Table -4) but the correlations are lower than those between attitudinal factors and achievement and also between SES and family background and achievement. This suggests the possibility

that SES and family background may have an influence on the formation of positive values and favourable attitudes to education, but clearly other factors perhaps of the school environment, the individual's ability to succeed, personality related variables and other unidentified influences are also important in shaping the appropriate attitudes for success in academic matters.

TABLE 4

Values and Attitudes x Background Factors

	Facilities at home	Literary Interest	Interest in School Progress	Father's occupation
Values	.15	.12	.10	.09
Parental interest	.13	.12	.10	.10
Attitude to education	.13	.13	.09	.09

An 'activist' attitude for mastery of the environment, the feeling that one is in control of one's destiny enhances the individual's chances of success. This line of argument has support from research abroad. Sugarman (1966) found a significant relationship between high value scores and school achievement, conduct and father's occupation. Craft (1970) traced a relationship between values and early school leaving. Most of these also found a relationship between values and social class. More positive values were associated with middle class status (Jayasuriya 1960, Rosen 1959). The relationship between 'values' and 'social class' status though not very strong in our study, is still unmistakably present. This could point to a significant difference between the situation in Sri Lanka and elsewhere but this has to be verified by further research.

Evidently, a number of variables in interaction influence differential achievement but the methodology employed in this research, (cross-sectional self-report survey), and the limitations of the statistical analysis precludes us from making any causal inferences. However, we have been able to identify the outlines of a pattern of relationships and can show that SES and other factors of the home environment, appropriate value orientations and positive attitudes to education all have a contribution to make to the process of educational attainment in Sri Lanka.

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The Social Science Research Centre (Sri Lanka)

The Science Research Centre was set up in May 1977 under the National Science Council of Sri Lanka. Its main objective is to promote research in the social sciences in relation to Sri Lanka's national requirements. It fulfils a long felt need for an official agency at the national level to undertake, sponsor, organise, coordinate and direct research in the field of social sciences. Sri Lanka has had very few institutions for social science research and those that exist do not adequately fulfil the research needs in the entire field of social sciences. Many of them specialise in certain areas to the exclusion of others.

The Centre is administered by the Statutory Working Committee on Social Science Research which has been set up under Section 19 of the National Science Council of Sri Lanka Law No: 36 of 1975. The Social Science Research Centre has been the main implementing arm of the Statutory Working Committee on Social Science Research. The latter hopes to achieve most of its objectives through the Research Centre.

Among these objectives would be the identification of priority areas for research in social science in accordance with national needs; the promotion of research at the postgraduate level; and coordination of research activity in these areas within the country. The Centre will also provide social scientists with a continuing forum to meet and discuss their research interests and problems.

Social science research and studies in Sri Lanka need considerable encouragement by giving it due recognition and financial support. Moreover, there must also be facilities to disseminate this research and to get some sort of recognition from the government and policy makers. An urgent and immediate task is to create a research environment within which potential researchers could be stimulated to work. It is hoped that in the course of time the Centre will help to overcome these shortcomings.

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Vol. 3 No. 1 June 1980

Contents

- 1 Indigenization of Social Sciences
S. C. Dube

- 9 The Tamils and the Constitution of the Second Republic
of Sri Lanka (1978)
C. R. de Silva

- 19 The Reception of Evidence of Opinion : A Reappraisal
of Traditional Attitudes
G. L. Pieris

- 43 Achievement and Under-Achievement in Sri Lanka
A Survey of Navodaya Scholarship Winners
Swarna Jayaweera, Raja Gunawardhane

- 67 Critical Theory and Sinhalese Creative Writing in the Twentieth
Century : An Attempt at Documentation
K. N. O. Dharmadasa

- 89 A Commentary on the Significance of Recent Cross-Cultural
Piagetian Research
Elsie Kotalawela