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Rethinking the Compatibility of Sri Lanka's Trust Law with Modern Needs: Three Essential Recommendations to the Trusts Ordinance

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Abstract

The Trust law evolves over time, adapting to contemporary needs. In the pursuit of equitable development, many countries make use of trust concepts. In contrast, Sri Lanka's Trusts Ordinance No.9 of 1917 remains entrenched in the past, reflecting outdated English legislation. This stagnation persists despite scholarly critiques identifying its shortcomings. This article seeks to address this issue by providing essential recommendations to modernize the Trusts Ordinance. Specifically, it advocates for a paradigm shift in charitable trusts to encompass environmental and animal welfare concerns, calls for a more inclusive approach in constructive trusts that recognizes non-pecuniary contributions, and proposes the integration of trust principles into the commercial landscape to foster economic progress. These recommendations draw inspiration from comparative jurisdictions, specifically the legal frameworks of the UK, Australia, and Canada. By undertaking these proposed reforms, Sri Lanka can better align its trust law with contemporary global standards, promoting equitable development.

Keywords: *Trust Law, Modern needs, Equity, Recommendations, Comparative jurisdictions*

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Introduction

Trust is the golden creation of equity.[1] A person who has legal ownership over a property can be recognized as a trustee to hold that property for the benefit of another person. The Trusts Ordinance No.9 of 1917 (hereinafter referred to as the "Trusts Ordinance" or "the Ordinance") is in effect in Sri Lanka regarding trusts, and Professor Mark Cooray has stated that the sections of this statute are of paramount importance.[2] The Ordinance is sourced from the English Trustees Acts prior to 1917 and the decisions of the English Chancery Courts.[3]

However, this old statute has been amended only once to date. Even in that amendment, the focus is more on express trusts, and it is limited to the purpose of preventing terrorist financing and money laundering. For example, Trusts Ordinance (Amendment) Act No.6 of 2018 has addressed the issue of not specifying what constitutes an express trust by adding subsection 'p' to section 3 of the main Ordinance, and the Hansard reports on the 20th of March 2018 mentioned the objectives of this amendment. Accordingly, the then Deputy Minister of Justice and Buddha Sasana said that they wish to reduce the risk to the Special Task Force to prevent crimes related to money laundering and terrorist financing through this amendment to the Trusts Ordinance.[4] Thus, it is *per se* clear that the legislature did not intend to address the basic issues of the Ordinance.

This article, therefore, purports to provide recommendations to address some shortcomings identified in the areas of charitable trusts, constructive trusts, and trusts arising in commercial contexts.

Research Methodology

The research employed a qualitative methodology to explore the theoretical and conceptual aspects of the subject matter. The study

[1] George W Keeton, *The Law of Trusts* (4th edn, Sir Isaac Pitman & Sons Ltd. 1947) 1.
[2] LJM Cooray, 'The Interaction Between English Law and Roman-Dutch Law in the Law of Trusts in Ceylon' (1971) IV CILS A 1, 4.
[3] ibid 2.
[4] Trusts (Amendment) Bill Deb 20 March 2018, col 538

delved into the Trusts Ordinance No. 9 of 1917, alongside other statutes, case law, academic literature, and scholarly publications. To inform the recommendations for Sri Lanka, the study also drew from the legal frameworks in the UK, Australia, and Canada.

Addressing the Issue Identified with respect to Charitable Trusts

Chapter X of the Trusts Ordinance provides provisions relating to charitable trusts. In terms of Section 99, it is clear from the view that charitable trusts cannot be created for the welfare of animals, plants or the environment as a whole. Viewed in that way, Professor Mark Cooray has stated that under the law of Sri Lanka, charitable trusts can only be created on behalf of natural and legal persons.[5] According to Section 99(1) of the Ordinance, any charitable trust must be specifically for the public welfare and "*(a) for the relief of poverty or; (b) for the advancement of education or knowledge or; (c) for the advancement of religion or the maintenance of religious rites and practices or; (d) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.*" And Section 3(e) of the Ordinance defines a beneficiary as a person capable of accepting the benefit of a property. In the same vein, Section 2 of the Interpretation Ordinance[6] provides that the interpretations of this Ordinance apply to every written law unless there is an inconsistency in the subject or context, and its subsection (s) defines 'person' as anybody of persons corporate or non-corporate. The above-mentioned section 99(1) of the Trusts Ordinance is largely consistent with the opinion of Lord McNaughton in *Income Tax Commissioner v Pemsel*.[7] He has laid down that a charitable trust can be created for (i) poverty alleviation or; (ii) the advancement of education or; (iii) religious advancement or; (iv) other purposes beneficial to the community. To distinguish, the word 'community' has been used in Lord McNaughton's view, whereas the aforesaid provision of the Trusts

[5] LJM Cooray, *The Reception in Ceylon of the English Trust* (first published 1971, Lake House Printers and Publishers) 83.
[6] No. 21 of 1901
[7] ([1891] A.C. 531)

Ordinance stated 'mankind'. In biology, a community is meant to be an interacting group of various species in a common location.[8] In that sense, this paper argues that by employing the word 'community', Lord McNaughton wanted to suggest the fact that trusts can also be created for charitable purposes on behalf of the welfare of animals and plants, like that of mankind. Accordingly, the opportunity provided by the English law to create trusts for the sake of animals and plants has been intentionally removed from the Trusts Ordinance of Sri Lanka. Professor Mark Cooray explains the reason and states that since Sri Lanka is a developing country, the welfare of people is more important than the welfare of animals.[9] However, it is crucial that humans live thanks to the balance between animals and plants. Accordingly, Professor Alastair Hudson emphasizes that protection and improvement of the environment is essential for the public good.[10] He further argues that "*a civilized human society only truly achieves a higher level of civilization when it is capable of treating all creatures humanely*".[11] As such, charitable trusts can be created under paragraph (i) of Section 3 of the England Charities Act 2011 for the protection and enhancement of the environment and for the welfare of animals under paragraph (k). Recognizing this stance of the English law, the Court in *Re Moss*[12] held that the trust that has been created for the welfare of cats and kittens is valid.

However, Paul Davies and Graham Virgo are of the view that,
"*[ ] if any trust is carried out according to its tenor, no animal within the area may be destroyed by man no matter how necessary, that destruction may be in the interests of mankind or in the interests of the other denizens of the area or in the interests of the animal itself; and no matter how painlessly such destruction may be brought about, it seems impossible to say that the carrying out*

[8] BD Editors, 'Community' (*biology dictionary*, 28 April 2017) < https://biologydictionary.net/community/> accessed 7 July 2023
[9] Cooray (n5) 170.
[10] Alastair Hudson, *Equity and Trusts* (8th edn, Routledge 2015) 1151.
[11] ibid 1152.
[12] [1949] 1 All ER 495

of such a trust necessarily involves benefit to the public".[13]

Accordingly, prevention of destruction of animals by man through carrying out a trust, if it is either for the welfare of the animal or for the welfare of mankind, cannot be taken in the sense of public welfare. In the view of the author, this means that upholding an animal's right to life may not be in the best interests of the public at large. For example, in the case of *Re Grove Grady*[14], the Court accepted the view that setting up an asylum for animals is not a valid trust as it is not for public welfare. Although protecting an animal's right to life is not for the welfare of the public, creating an asylum for the animal's welfare could be done in the name of education advancement or with the intention of preventing potential harm from that animal to the public by designating that animal as a beneficiary indirectly to create a charitable trust that is legally recognized.

In the specific context of Sri Lanka, the realm of public law has acknowledged the significance of the trust doctrine, particularly in the protection of natural resources. Drawing from Roman law, which underscores the state's responsibility to safeguard natural resources for the sustainable benefit of both present and future generations[15], the doctrine of public trust assumes a pivotal role in environmental preservation and the pursuit of sustainable development.[16] While it may not be surprising that there are no reported cases of trusts specifically dedicated to animals, given the economic challenges faced by the country, the absence of such cases does not negate the potential impact. If the Trusts Ordinance permits the establishment of trusts for the welfare of animals and plants, even a limited number of individuals in society such as activists, volunteers, and organizations could capitalize on this provision. Such a framework could prove beneficial

[13] Paul S Davies and Graham Virgo, *Equity & Trusts* (7th edn, Oxford 2008) 263
[14] [1929] 1 Ch 557
[15] Dinesha Samararatne, *Public Trust Doctrine: The Sri Lankan Version* (first published 2010, ICES Colombo) 7
[16] See in general in this regard, *Bulankulama v Sec, Ministry of Industrial Development* [2000] 3 Sri L.R. 243

not only to the public law domain, which mandates the state's role in safeguarding natural resources but also within the private sphere, where trust law could serve as an incentive for individuals to contribute to environmental protection. This becomes particularly relevant in Sri Lanka, where the Constitution imposes a fundamental duty on every individual in the country to protect nature and conserve its wealth.[17] This paper also posits that the utilization of the term "includes" in section 99(1) of the Trusts Ordinance implies that charitable trusts encompass considerations beyond just the public or mankind, thereby supporting the argument for extending the scope of trusts to encompass environmental conservation.

Moreover, Section 107 read with Section 6 of the Ordinance does not require the beneficiary to be specified in relation to a charitable trust. But under Section 99(1)(d) of the Ordinance, plants and animals cannot be made beneficiaries. There is some inconsistency between these two clauses too, and due to all these reasons, the Ordinance should be amended to allow for the creation of charitable trusts with plants and animals as beneficiaries by substituting the word 'community' in place of 'mankind' in Section 99(1)(d) of the Ordinance. It is also important to replace the word 'person' with a word like 'creature' in the interpretation clauses of 3(a) and (e) of the Ordinance. Otherwise, it conflicts with Section 2 of the Interpretation Ordinance No.21 of 1901.

These alterations in the Ordinance are required given that, without individual action, no one will conserve plants and animals. The best way to do this is to give individuals the ability to create trusts that name plants and animals as beneficiaries.[18] It is worth bearing in mind that humans exist thanks to the harmony between animals and plants.

Addressing the issue Identified vis-à-vis Constructive

[17] The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art. 28(f)
[18] Sachintha Randil, 'A much needed Amendment to the Trust Ordinance' (2020) Manurawa < https://sllchrm.lk/manurawa/articles/46.html > accessed 23 October 2023

Trusts

Chapter IX of the Trusts Ordinance provides provisions relating to implied trusts. More significantly, it is necessary to mention that Chapter IX of the Trusts Ordinance has been named Constructive Trusts, which should be corrected to Implied Trusts, since there are provisions in the chapter pertaining to both constructive and resulting trusts, which are commonly identified as implied trusts.

This part of the paper, *inter alia*, seeks to illustrate a problem with constructive trust, namely the difficulty of creating constructive trusts in Sri Lanka vis-à-vis their purpose. Accordingly, Section 90 of the Ordinance states that, "*where a trustee…, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained*." In view of this section, it is clear that the provision is limited to 'pecuniary advantage'[19]. When reading this phrase in conjunction with the illustrations to Section 90 of the Ordinance, it is evident that the term 'pecuniary advantage' refers to an advantage that has a monetary value. Therefore, under the law of Sri Lanka, if someone gets a non-financial benefit, it is a major weakness of the Ordinance to allow that relevant person to become unjustly enriched by not being able to create a trust impliedly for that non-pecuniary advantage.

A strong criticism has been leveled by feminists in this regard, as

[19] In *Abeyesundera v Ceylon Exports* [(1936) 38 N.L.R. 117] the Privy Council has determined that the transferee was bound by the trust that the transferor made on his son, but there is no reference to the Trusts Ordinance. Thus, it could be presumed that the conversion of the village title to a crown title was considered a pecuniary advantage. On the contrary, the Court in *Raja v Nadaraja* [(1943) 44 N.L.R. 470] held that the transferee was, in a similar situation, entitled to the land. Therefore, it is clear that the Court in the latter case has not accepted the trust and the fiduciary position of the transferor. However, the Privy Council in *Amunugama v Herat* [(1958) 59 N.L.R. 505] held that the administrator of the property who was the wife of the deceased had not gained a pecuniary advantage against the adopted daughter of the deceased as per the compromise. Therefore, Dr. Cooray (at page 144) argues that this decision assumes that land could constitute a pecuniary advantage.

Professor Hudson points out, in most cases, "*the claimant is a woman who does not work because the parties' lifestyle is organized around the woman as carer and the man as breadwinner*".[20] Nevertheless, early English decisions, such as *Heseltine v Heseltine*[21], *Cooke v Head*[22], *Binions v Evans*[23], *Hussey v Palmer*[24], and *Eves v Eves*[25] have affirmed that in such cases, a constructive trust arises for the benefit of the party contributing non-pecuniary labor. In *Binions v Evans*[26], the England and Wales Court of Appeal explained the reasons and stated that it would be unfair to allow the trustees of the purchaser of a property to evict that purchaser's widow, who is described as a 'tenant' from that property. The Court was, therefore, of the view that the widow had an equitable interest in the property, and the Court protected that interest by granting an injunction against the landlord, restraining him from turning her out. This was accepted by Lord Denning in the earlier-decided case of *Davis v Vale*, where he declared that,

"... it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded on large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share in it".[27]

In the same vein, the majority opinion of the Court of Appeal in *Eves v Eves*[28] expressed the idea that it is essential to bear in mind the fact that the plaintiff has contributed her labor for the reparation and the improvement of the house. However, later English decisions like *Midland Bank Ltd v Dobson*[29], *Burns v Burns*[30], and *Grant v*

[20] Hudson (n10) 794.
[21] [1971] 1 All ER 952
[22] [1972] 2 All ER 38
[23] [1972] 2 All ER 70.
[24] [1972] 3 All ER 744
[25] [1975] 3 All ER 768
[26] *Binions* (n19).
[27] *Davis v Vale* [1971] 2 All ER 1021, 1026
[28] [1975] 3 All ER 768
[29] [1986] 1 FLR 171
[30] [1984] 1 All ER 244

Edwards[31] excluded this view and emphasized that in such a case, the common intention of both parties should be considered. Viewed in that way, the English Court in *Pettitt v Pettitt*[32] held that the husband would not have an equitable interest to the matrimonial home purchased by the wife despite his improvements made to the property. Accordingly, Emeritus Professor Philip H. Pettit identified these later decisions as "*a movement away from a revolutionary new model of constructive trust, to an evolutionary extension of the traditional constructive trust*".[33] Thus, the feminists' criticism is that the English approach does not give any recognition to the work that is done by women in this circumstance, as Professor Hudson said.[34]

Nevertheless, some recognition of women's non-financial contributions can be found in Canadian and Australian law. As the law of Canada recognizes, if a person who owns property is allowed to retain that property and thus becomes unjustly enriched, that person has an equitable duty to transfer that property to the other person. The dictum of Justice Dickson accepting this view in *Pettkus v Baker* states that,

"*...where one person in a relationship tantamount to spousal prejudices herself in the reasonable expectation of receiving an interest in property and the other person in the relationship freely accepts benefits conferred by the first person in circumstances where he knows or ought to have known of that reasonable expectation, it would be unjust to allow the recipient of the benefit to retain it*".[35]

As Professor Hudson points out, the provision of compensation is not sufficient to prevent unjust enrichment.[36] Therefore, Canadian law creates constructive trust for the non-financial contributions of women. Furthermore, the Australian law facilitates the position of

[31] [1986] 2 All ER 426
[32] [1970] AC 777
[33] Philip H Pettit, *Equity and the Law of Trusts* (6th edn, Butterworths 1989) 166
[34] Hudson (n10) 794.
[35] *Pettkus v Baker* (1980) 117 DLR (3d) 257, 274
[36] Hudson (n10) 791.

law as recognized in Canada, and in terms of Section 44(1) of the Trustees Act 1925, where a person is entitled to the capital of the trust property or to a share in it, the trustee must hold more than half of the value of the property or share for the welfare of that person. This was accepted in *Muschinsk v Dodds*[37] and in *Bryson v Bryant*.[38] In the former case, the plaintiff and the respondent were in an adulterous relationship and the plaintiff purchased a property for them. The respondent repaired and improved that property, but the two later separated. The Court decided that although the plaintiff claimed title to the entire property, the defendant had an equitable right to it. In the same vein, Kirby P. in the latter case states that,

"*It is important that the 'brave new world of unconscionability' should not lead the court back to family property law of twenty years ago by the back door of a preoccupation with contributions, particularly financial contributions... Nor should those who have provided 'women's work' over their adult lifetime ... be told condescendingly, by a mostly male judiciary, that their services must be regarded as 'freely given labor' only or, catalogued as attributable solely to a rather one-way and quaintly described 'love and affection', when property interests come to be distributed*".[39]

Particularly in Sri Lanka, by recognizing the right of a married woman to hold, transfer, or alienate property under the Married Women's Property Act[40], the married woman is considered a *feme sole* on one hand, and the married woman is recognized as a person who is 'competent to contract' under Section 3(m) of the Trusts Ordinance, which was enacted prior to the Married Women's Property Act on the other hand, making it clear that it is necessary to amend the Trusts Ordinance by substituting the words 'pecuniary or non-pecuniary advantage' in place of 'pecuniary advantage' mentioned in Section 90 of the Ordinance.

[37] [1985] HCA 78
[38] (1992) 29 NSWLR 188.
[39] ibid 220.
[40] No.18 of 1923

The argument to include 'non-pecuniary advantage' should not be confined only to gender-based issues. It should be more broadly approached to include all possible situations. As Professor Hudson points out, "*the prevention of the exploitation of one party at the expense of the other is the most useful foundation for the allocation of equitable interest*".[41] However, it does not address the problem, *inter alia*, pertaining to the welfare of children. Therefore, Professor Hudson[42] quotes the words of Lord Reid in *Pettitt v Pettitt*, considering it a "great resonance" in a context of such "tremendous social importance" that "*the whole question can only be resolved by Parliament and in [his] opinion, there is urgent need for comprehensive legislation*".[43] This makes it clear that the Sri Lankan legislature should take immediate steps to remove this lacuna from the Trusts Ordinance. Otherwise, in the context of Sri Lanka, trust law should no longer be the golden creation of equity, as Keeton asserts.[44] The reason is that the primary purpose of imposing the law of trust is to reinforce equity.

Updating the Trusts Ordinance with respect to Trusts Arising in a Commercial Context

Today, the concept of trust has extended to commercial law, as many countries have used it in their commercial settings for economic progress. The Trusts Ordinance was passed during a time when such progress was unimaginable. Although the Ordinance was amended in 2018, as discussed above, its purpose was to prevent terrorist financing and money laundering. It is, therefore, the need of the hour to update the law to enable the creation of trusts in the commercial context.

As Professor Hudson points out, "*the traditional rules relating to the availability of proprietary remedies sit uneasily in the commercial context*." He further argues that the specific principles vis-à-vis family

[41] Hudson (n10) 800.
[42] ibid.
[43] [1970] AC 777, 797
[44] Keeton (n1).

trusts are not well suited to deal with the demands and difficulties presented by commercial contracts.[45] This was accepted by Lord Justice Browne-Wilkinson in *Target Holdings v Redferns*, where the dictum said that,

"*In the modern world the trust has become a valuable device in commercial and financial dealings. The fundamental principles of equity apply as much to such trusts as they do to the traditional trusts in relation to which those principles were originally formulated. But in my judgment, it is important, if the trust is not to be rendered commercially useless, to distinguish between the basic principles of trust law and those specialist rules developed in relation to traditional trusts which are applicable only to such trusts and the rationale of which has no application to trusts of quite a different kind*".[46]

In the Sri Lankan context, the legal scholar Kaushani Pathirana argues that the scope and wording of the Ordinance seem out of date in terms of current legal procedure.[47] In a similar vein, George Bogert mentions that it is easier to modernize the law of trusts than to adopt a new system.[48] All of these scholarly views imply that it is essential to take immediate alternatives to adjust the level of nutrition required for the concept of trust to be grown in the soil of commerce.

Accordingly, a trust can be recognized as a mechanism that an employer can use to pay pensions to his or her employees. In view of Kaushani Pathirana, the advantage of employing a trust structure for a pension fund is that *"[ ] if the employer comes into a financial difficulty there is separation of money of pension fund*".[49] Professor Gary Watt,

[45] Hudson (n10) 1042.
[46] [1996] AC 421, 429
[47] Kaushani Pathirana, 'Modern Use of Trusts in Commercial Transactions: Possible Reforms in the Sri Lankan Trusts Law' (2014) University of Colombo <https://cmb.ac.lk/wp-content/uploads/MODERN-USE-OF-TRUSTS-IN-COMMERCIAL-TRANSACTIONS.pdf> accessed 23 October 2023.
[48] George G Bogert, 'A Project for Improvement of Trust Law' (1939) University of Chicago Law Review: Vol. 7: Iss. 1, 113
[49] Pathirana (n43).

in his recent edition of *Trusts and Equity* finds out that "*in the late 1980s, after several years of stock market growth and increases in the value of real estate, many pension funds were greatly in surplus*," but later "*after several years of declining performance on the stock markets pension surpluses are looking increasingly to be a thing of the past*," and, "*many pension funds will notionally be in deficit*".[50] This hints at the necessity of amending the ninth chapter of the Trusts Ordinance so as to make a reserve of some money as a resulting trust to pay pensions to the employees. Nevertheless, apart from the Trusts Ordinance, the Employee's Trust Fund Act[51] makes provisions for the maintenance of a fund or the welfare of employees who are not eligible for the government pensions. Section 7(b) mentions one of the objectives of this piece of legislation, which is "*to promote the employee participation in management through the acquisition of equity interest in enterprises*," and paragraph (c) enables "*to provide for non-contributory benefit to employees on retirement*." This can be recognized as a progressive development in Sri Lankan trust law.

A trust can also be established to provide security for loan transactions. In Sri Lanka, Section 89 of the Trusts Ordinance is the only provision in existence in this regard. It reads as, "*where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein*." However, the English law has gone far and introduced the concept of 'Quistclose Trust', i.e., if a debtor uses the loan amount for a purpose other than the purpose for which the loan was obtained, he has to hold it for the benefit of the creditor. Professor Gary Watt explains that even though the creditor transfers the entire beneficial ownership of the money, he is still linked to the money by a thread, whereas the creditor's interest in seeing how the money is transferred is, in his words, "*if the fish do not bite as*

[50] Gary Watt, *Trusts and Equity* (first published 2003, Oxford University Press) 173.
[51] No. 46 of 1980

intended [ ] the transferor will reel back the bait".[52]

The concept of trust may be used as a tax planning technique where, on the one hand, it is used as a means of collecting taxes for the government which contributes to economic development. For example, the Inland Revenue Act[53] makes it possible that tax is imposed on trusts under its Section 57, which reads, "*A trust shall be taxed as an entity, except a trust of an incapacitated individual (not being a minor), which shall be taxed as though it were an individual*." It is worth bearing in mind that the concept of trust can also be used to avoid taxes. For example, if the author of a trust is in a high-tax country, he or she may transfer property to a trustee in a low-tax country to gain some advantage.

Section 90 of the Ordinance can also be employed to establish trusts in the context of commerce. Currently, Section 90 predominantly emphasizes pecuniary advantages, restricting its application in the commercial realm, where benefits often extend beyond monetary gains. In the business landscape, non-pecuniary benefits such as proprietary rights, intellectual property, or contractual commitments hold equal significance. Notably, challenges arise when dealing with intellectual property, like patents, trademarks, and copyrights, which often possess non-pecuniary value. For example, the exclusive rights granted by a patent may not immediately translate into monetary gain but carry immense strategic value. Consider a scenario where a software developer creates a groundbreaking algorithm yet to be monetized. In its present form, Section 90 may not fully recognize the value of this non-pecuniary asset, creating a gap in trust law's ability to protect and manage such intellectual property. Consequently, there is a need for Section 90 to be expanded to encompass a broader spectrum of advantages prevalent in commercial dealings.

Accordingly, a comprehensive review and expansion of Section 90 are essential to bridge the existing gaps in trust law and better accommodate the multifaceted nature of advantages in commercial

[52] Watt (n46) 169.
[53] No.24 of 2017

dealings. Additionally, the Trusts Ordinance should proactively incorporate provisions facilitating trust creation in the context of commerce, aligning with contemporary legal needs. The adoption of progressive concepts like the 'Quistclose Trust' from English law could further enhance the adaptability and effectiveness of the Sri Lankan legal framework for trusts in commercial settings.

Conclusion

Enacted more than a century ago, the Trusts Ordinance, which has been amended only once, is an outdated law that does not meet modern needs. Hence, it should be amended to suit the novel circumstances in society, and in particular, the primary weaknesses, of the Ordinance should be removed immediately. Since the trust was established on the basis of equity, it is imperative that the equitable rights of persons and that of flora and fauna are protected in this particular area of the law. The law drafters must consider developments relevant in the Sri Lankan context while maintaining equity in all areas, including commerce. Nevertheless, it is important to bear in mind, as Professor Anton Cooray points out that, "*if the law of trusts is to become an evolving law rich enough to meet novel situations and challenges, it is essential that we give full effect to trusts' underlying concepts*".[54]

[54] Anton Cooray, 'Oriental and Occidental Laws in Harmony: The Case of Trusts in Sri Lanka' (2008) 3:1 J Comp L 133, 144