

CHAPTER XVII

THE JUDICIARY

Institutions for the Administration of Justice

146. (1) Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the People shall be —

Establishment of
Courts &c.

- (a) the Supreme Court of the Republic, which shall be the highest and final Superior Court of record in the Republic ;
- (b) the Court of Appeal of the Republic, which shall also exercise its jurisdiction in its several Divisions ;
- (c) the High Courts established for each Region and such other courts of first instance, tribunals or institutions as Parliament may by law, from time to time, ordain and establish.

(2) Subject to the provisions of the Constitution, all courts, tribunals and institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, shall be deemed to be courts, tribunals and institutions created and established by Parliament.

(3) Parliament may replace or abolish or amend the powers, duties, jurisdiction and procedure of the courts, tribunals and institutions referred to in paragraph (2) of this Article.

(4) The Supreme Court, the Court of Appeal, the Regional High Courts and the courts, tribunals and institutions referred to in this Chapter shall have and exercise such powers and jurisdiction conferred on such courts, tribunals and institutions by the Constitution or, subject to the provisions of the Constitution, by existing law as well as any such powers and jurisdiction, appellate or original, as Parliament may by law vest and ordain.

(5) (a) The Supreme Court and the Court of Appeal shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit.

(b) The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in subparagraph (c) of paragraph (1) of this Article, whether committed in the presence of such court or elsewhere.

(c) A Regional High Court shall have the power to punish for contempt of itself, whether committed in the presence of such court or elsewhere.

(d) The provisions of sub-paragraphs (a), (b) and (c) of this paragraph shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.

(6) Parliament may by law provide for the creation and establishment of courts, tribunals or institutions for the adjudication and settlement of matters relating to the discipline of *bhikkus* or any dispute between *bhikkus* or any other dispute relating to the performance of services in, or in relation to, temples and such law may, notwithstanding anything to the contrary in the Constitution, make provision —

(a) for the appointment, transfer, dismissal and disciplinary control of the member or members of such courts, tribunals or institutions, by the President or by such other person or body of persons as may be provided for in such law ; and

(b) for the exclusion of the jurisdiction of any other institution referred to in paragraph (1) of this Article in relation to such matters and disputes.

(7) In paragraph (6), the expressions “*bhikku*” and “temple” shall have the same meanings as in the Buddhist Temporalities Ordinance, as at the commencement of the Constitution.

THE SUPREME COURT, THE COURT OF APPEAL AND THE REGIONAL HIGH COURTS

Constitution of
the Supreme
Court.

147. (1) The Supreme Court shall consist of the Chief Justice and not less than ten and not more than fourteen other Judges who shall be appointed as provided for in Article 151.

(2) The Supreme Court shall have power to act notwithstanding any vacancy in its membership and any act or proceeding of the court shall not be, or shall be deemed not to be, invalid by reason only of any such vacancy or any defect in appointment of a Judge.

(3) The several jurisdictions of the Supreme Court shall be ordinarily exercised at Colombo, unless the Chief Justice otherwise directs.

(4) Subject to paragraph (5) of this Article, the jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of that Court sitting apart, as nominated by the Chief Justice.

(5) The jurisdiction of the Supreme Court shall, subject to the provisions of the Constitution, ordinarily be exercised at all times by not less than three Judges of the court sitting together as the Supreme Court.

(6) Where the question involved is, in the opinion of the Chief Justice, one of general and public importance, the Chief Justice may —

- (a) *ex mero motu*;
- (b) at the request of two or more Judges hearing any appeal, proceeding or matter ; or
- (c) on the application by a party to any such appeal, proceeding or matter,

direct that such appeal, proceeding or matter be heard by a Bench comprising of five or more Judges of the Supreme Court.

(7) The judgment of the Supreme Court shall, when it is not a unanimous decision, be the decision of the majority.

(8) Any party to any proceedings in the Supreme Court in the exercise of its jurisdiction shall have the right to be heard in such proceedings either in person or by representation by an attorney-at-law.

(9) The Supreme Court may, in its discretion, grant to any other person or the legal representative of the person, such hearing as may appear to the Court to be necessary in the exercise of its jurisdiction.

(10) The Registry of the Supreme Court shall be in the charge of an officer designated the Registrar of the Supreme Court who shall be subject to the supervision, direction and control of the Chief Justice.

(11) Parliament may by law confer any additional jurisdiction and powers on the Supreme Court.

148. (1) Subject to the provisions of the Constitution and of any law, the Chief Justice with any three Judges of the Supreme Court nominated by the Chief Justice, may, from time to time, make rules regulating generally the practice and procedure of courts including —

Rules of Court.

- (a) rules as to the exercise of the several jurisdictions conferred on the Supreme Court, the Court of Appeal, and Regional High Courts by the Constitution or by any law, including the time within which appeals and other matters may be instituted or brought before such courts, the terms under which they may be entertained, proceedings including the hearing of such appeals and matters and provisions for the dismissal of appeals and other matters for non-compliance with such rules ;

- (b) rules as to the stay of proceedings ;
- (c) rules providing for the summary determination of any appeal or any other matter before such court by petition or otherwise, which appears to the court to be frivolous and vexatious or brought for the purpose of delay ;
- (d) the preparation of copies of records for the purpose of appeal or other proceedings in the Supreme Court, the Court of Appeal, and the Regional High Courts ;
- (e) the admission, enrolment, suspension and removal of attorneys-at-law and the rules of conduct and etiquette for such attorneys-at-law ;
- (f) the attire of judges, attorneys-at-law, officers of court and persons attending courts in the Republic ;
- (g) the manner in which panels of jurors may be prepared, and the mode of summoning, empanelling and challenging of jurors ;
- (h) proceedings of the Fiscal and other ministerial officers of courts and the process of such courts and the mode of executing the same ;
- (i) the binding effect of the decisions of the Supreme Court ; and
- (j) all matters of practice and procedure including the nature and extent of costs that may be awarded, the manner in which such costs may be taxed and the stamping of documents in the Supreme Court, Court of Appeal, Regional High Courts, and courts of first instance not specially provided by or under any law.

(2) Every rule made under this Article shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in such rule.

(3) All rules made under this Article shall as soon as convenient after their publication in the *Gazette* be brought before Parliament for approval and any such rule which is not so approved shall be deemed to be rescinded as from the date it was not so approved, but without prejudice to anything previously done thereunder.

(4) The Chief Justice and any three Judges of the Supreme Court nominated by the Chief Justice may amend, alter or revoke any such rules of Court and such amendment, alteration or revocation of the rules shall operate in the like manner as set out in paragraphs (2) and (3) of this Article with reference to the making of the rules of Court.

(5) All rules made under Article 136 of the 1978 Constitution and in force immediately prior to the commencement of the Constitution shall, *mutatis mutandis*, be deemed to be rules made and approved under this Article.

(6) For the avoidance of doubt it is hereby declared that in the event of any inconsistency between a rule made under this Article and the provision of any law, the provision of such law shall prevail.

149. (1) The Court of Appeal shall consist of the President of the Court of Appeal and not less than fourteen and not more than twenty-four Judges who shall be appointed as provided in Article 151.

Constitution of
the Court of
Appeal.

(2) The Court of Appeal shall exercise its jurisdiction in Colombo and in its several Divisions as hereinafter provided —

- (a) the Western Division comprising of the Western and Sabaragamuwa Regions ;
- (b) the Midland Division comprising of the Central and Uva Regions ;
- (c) the Ruhuna Division comprising of the Southern Region ;
- (d) the Rajarata Division comprising of the North Western and North Central Regions ; and
- (e) the North-Eastern Division comprising of either—
 - (i) the North-Eastern Region specified in Part B of the First Schedule ; or
 - (ii) the Northern and Eastern Regions specified in Part C of the First Schedule.

(3) Each Division of the Court of Appeal shall —

- (a) consist of not less than two Judges of the Court of Appeal designated by the President of the Court of Appeal to exercise the jurisdiction of the Court within such Division and the senior-most of the Judges so designated shall be the Chief Judge of such Division ; and
- (b) hold its sittings in the principal city of each Region comprising the Division and at any other place as may be directed by the Chief Justice acting in consultation with the President of the Court of Appeal.

(4) The Court of Appeal sitting in Colombo shall also exercise its jurisdiction in respect of the Western Division and shall, in the exercise of such jurisdiction, also hold its sittings in the principal city of the Sabaragamuwa Region and at any other place as may be directed by the Chief Justice acting in consultation with the President of the Court of Appeal.

(5) Subject to paragraphs (2) and (6) of this Article, the jurisdiction of the Court of Appeal may be exercised in different matters at the same time by several judges of the Court sitting apart as nominated by the President of the Court of Appeal.

(6) The jurisdiction of the Court of Appeal in respect of —

- (a) applications under Article 182 shall be exercised by not less than two Judges of the Court ;
- (b) judgments and orders of a Regional High Court pronounced at a trial-at-bar, shall be exercised by not less than three Judges of the Court ;
- (c) other judgments and orders of a Regional High Court, shall be exercised by not less than two Judges of the Court;
- (d) petitions relating to election to membership of Parliament or a Regional Council, shall be exercised by not less than two Judges of the Court; and
- (e) other matters, shall be exercised by not less than two Judges of the Court.

(7) In the event of any difference of opinion between two Judges constituting the Bench, the matter shall be considered by a Bench of three Judges.

(8) The judgment of the Court of Appeal shall, when it is not a unanimous decision, be the decision of the majority.

(9) The Registry of the Court of Appeal shall be in the charge of an officer designated the Registrar of the Court of Appeal who shall be subject to the supervision, direction and control of the President of the Court of Appeal.

(10) Parliament may by law confer any additional jurisdiction and powers on the Court of Appeal.

Regional High Courts.

150. Subject to the provisions of the Constitution, there shall be a High Court for every Region which shall be designated the High Court of the relevant Region.