

RETHINKING THE IMPORTANCE OF IDENTIFYING AND ADDRESSING THE CUSTOMARY LAWS IN THE CONTEXT OF LAND LAW MAKING PROCESS (BASED ON THE SRI LANKAN EXPERIENCE OF REGISTRATION OF TITLE SYSTEM.)

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INTRODUCTION

The land is an integral part of every state. Especially land has sacred and cultural value in most of the Asian traditions apart from its social and economic value. Sri Lanka is an island state which has 25,330 sq. Mi for 21,670,000 ("Department of Census and Statistics-Sri Lanka," 2019) of population and a country which inherent legal pluralism as a result of multi-cultural ethnicity and imperialism. Further, Lands play a major and vital role in Sri Lanka, and as a country based on the agricultural economy, vast human rights such as the right to work, right to food are inseparably linked with the lands. Therefore the concept of ownership and protection of ownership of lands have crucial importance. Sri Lanka has two kinds of ownership for the lands. The first one is the ownership of state lands, and the other one is ownership of private lands. When it comes to private lands, the laws relating to private lands in Sri Lanka are governed by the General Law or the Roman-Dutch law and the personal or special laws existing in the country. All these legal systems have their own features and inherent. Derived from many different systems, Roman-Dutch Law, English law, Sinhala Law, Thesawalamei Law and Muslim Law, the law of Ceylon is rich in its source.(Tambiah, 1972, p. 82) Apart from the above mentioned laws, Mukkuwar law and statutory laws based on Hindu and Buddhist Law are other systems of laws existing in Sri Lanka. Therefore Sri Lanka inherited vast kinds of laws and customs related to the lands.

Article 16 of the Constitution of the Democratic Republic of Sri Lanka Identified the value of those special laws and grant priority over existing laws("Constitution of the Democratic Socialist Republic of Sri Lanka 1978," 1978).

Protection of ownership of lands has crucial importance, and Land registration can be identified as a way to protect lands in Sri Lanka. Generally, Land registration can be identified under three categories. They are Private Registration, Registration of Deeds, and Registration of Title. (Perera TGUP, 2010, p. 78) Sri Lanka as a country which is influenced by legal pluralism, currently register lands through the system of Deed Registration which was introduced in 1863 by the Land Registration Ordinance No 08 of 1863 and the system of Registration of Titles was introduced by the Registration of Title Act No 21 of 1998.

The registration of deeds system collaboratively works with three basic ordinances named Registration of documents Ordinance No 23 of 1927, Prevention of Frauds Ordinance No 7 of 1840, and Notaries Ordinance No 1 of 1907.

The basic logic behind the system of Registration of Deed is the registration of land transactions between parties. Under this deed registration system, protection of land is confirmed with a written deed certified by the notary public in the presence of two witnesses and the parties of the transaction. There is no need to present a copy of surveyed plan accompany with the certified deed. Therefore the clarity of the boundaries of the land parcels are not clear and ambiguous under the Registration of Deed system and caused to vast kind of land forgeries.

The system of Registration of Title was introduced by following the Torrance system that was introduced by Sir Robert Torrens by harmonizing with the core principles named as Mirror Principle, Curtain Principle and Insurance Principle and as an alternative for the British colonial deed registration system which could be easily used for forgeries and costly method of land administration when comparing with the system of title registration. The law relating to Title Registration was introduced to Sri Lanka by the Registration of Title Act No 21 of 1998.(RTA) Under this title registration system, every land parcel is given a specific unit number in the Title Register maintained under section 3 of the RTA. If someone needs to change the boundaries, a new plan should be prepared and registered. Once a title registered, it cannot be withdrawn. The above process will be caused to increase in the market value of lands. Even though this system of title registration has its own features at the same time, it affects negatively for the most of customary landowners as a result of not complying with presents day-to-day needs. Further failure of meeting prerequisites for successful implementation of a land titling Projects as recognized by the various institutions including World Best Practices caused to identify the Registration of Title system of Sri Lanka as an unsatisfactory project.

However, this project is still going on with the constraints and shortcomings of the current practice. Therefore finding a most appropriate system for land registration procedure is the responsibility of policymakers in Sri Lanka. One of the emerging literature in this regard is to find alternatives and pragmatic approaches in the way of awarding property rights to communities, which then decide on the most suitable tenure arrangements (Deininger & Binswanger, 2001, p. 247)

Objective

When considering the land registration systems in Sri Lanka, the Registration of the Deeds system is not questioned or deprive the rights of customary landowners. After introducing the new system of Registration of Title, those customary landowners' rights were neglected without providing proper identification for their cultural land rights. Through this paper, the author hopes to identify this issue and analyse how it affects the land rights of the customary landowners and what should be done to prevail those issues. For this purpose, the author selects the system of Kandyan law, which is applied to Kandyan Sinhalese and governed most of their civil law matters, including lands. Further, unlike other special laws available in Sri Lanka, the Kandyan system of law still has vast customs and practices alive except its codified part.

Methodology

In order to satisfy the objectives of the paper, the author hopes to provide a brief introduction about the special laws in Sri Lanka in the first part of this paper, and then author hopes to analyse the registration of title system and its implementation procedure in Sri Lanka under the RTA No 21 of 1998. Then the author hopes to analyse the effects on the RTA Act to the customary laws in the country in light of Kandyan Law. Finally, the author hopes to conclude the paper by introducing recommendations to the existing law.

The main characteristic of qualitative research is that it is most appropriate for small samples, while its outcomes are not measurable and quantifiable (Langkos, 2014). Therefore the research basically conducted as a qualitative research based on secondary data which include Constitution of Sri Lanka, Legislations, Internet Tools, Books, and Scholarly Articles in magazines and journals including other literature available with regard to the implementation of land registration systems in Sri Lanka.

The pluralistic legal system in Sri Lanka

The Sri Lankan Legal heritage derives from three of the world's greatest systems of jurisprudence- Roman law, Islamic law, and English common law and at least two indigenous systems. (SWE Goonesekere, 1985, p. xx) Probably in no other country of comparable size do so many legal systems exist side by side as in Ceylon. (Nadarajah, 1951, p. xx)

The ethnic and religious diversity of the nation, and also its colonial history, have a direct bearing on aspects of the legal system of Sri Lanka and the concept of special laws or the laws to personal ones defining various ethnicities or the territories was introduced by the British rulers to Sri Lanka. Before, their intervention laws of the land were uniformly applied to all its inhabitants (*Mongee v Siarpaye*, 1820, p. 26). British invaders introduced these special laws according to their political agenda named "strategy of divide and rule". The proclamation of 1799 and 1815 were used for this purpose at the initial stage, and after that, they started to codify the customary laws. ("Sri Lanka: Legal Research and Legal System," 2009) Even though they couldn't successfully codify all the norms and customs of inhabitants, they introduced three systems of laws for Kandyan Sinhalese, Muslims, and Jaffna Tamils, those laws are not generally applied to rest of the citizens in the country.

Therefore most of the authors identified the legal system of Sri Lanka as a mix of the plural legal system. According to the categorization of Sri Lanka falls within the category that the 'weak' sense of legal pluralism where different laws apply to different communities of the population. (Griffiths, 1986, p. 24) The policymakers of the country have to look after all these laws because of this complexity of the law. Even though this caused to create of conflicts at any time, this has in another way caused to establish the social woven or the structure of the society. Therefore this pluralistic society should be protected. Therefore in the next part, provide a brief introduction about the various legal systems available in Sri Lanka.

Legal systems exist in Sri Lanka

Norms and customs are embedded in the rule systems and institutions that govern everyday life, which in turn serve to maintain and reinforce these systems of meaning. ("Customary law and policy reform: engaging with the plurality of justice systems (English)," n.d.) When it comes to the Sri Lankan land law regime, most customs and norms relating to the lands had been codified under the colonial system, and those special laws can be identified as follows.

Thesawalamai Law

The word Thesawalamai means the customs of the land. The origin of the Thesawalamai can be traced back to the customs and usages of the Dravidians from the Malabar Coast of India. (Cooray, 2011, p. 142) This Thesawalamai law is applicable to Tamils of Northern Province. In 1707 the Dutch Government issued a codification of these usages in Dutch, and in 1806, soon after the British occupation, this Thesawalamai code, translated into English, was given the force of statute law. (Marasinghe & Scharenguivel, 2015, p. 34) Currently, there are three legislations available for the Thesawalamai law names as the Jaffna Matrimonial Rights and Inheritance Ordinance no 1 of 1911, Jaffna Matrimonial Rights and Inheritance (amendment) Ordinance no 58 of 1947 and the Thesawalamai pre-emption ordinance of 1947.

Muslim Law

The Muslims of Sri Lanka belong to different ethnicities. The Ceylon Moors (of Arab descendants), the Coast Moors (of Indian descendants), and the Malays who were bought to Ceylon by the Dutch and British from Indonesia, Malaysia, and Sumatra to serve as soldiers. (Marasinghe & Scharenguivel, 2015, p. 255) Unlikely other special laws, Muslim law based on Islamic religion (Nadarajah, 1951, p. 34). Mohommadan Code of 1806 was the first legislation relating to the Muslim law of Sri Lanka and Muslim Marriage and Divorce Ordinance no 27 of 1929 as amended by Ordinance no 9 of 1934 and by the Muslim Marriage and Divorce Act no 13 of 1931 and *Muslim Intestate Succession and Wakfs Ordinance* no 10 of 1931 are the laws affected to the Muslims in Sri Lanka. However, if there is no specific law relating to them, the General Law applies to fill those gaps.

Mukkuvar law

The Mukkuvar was a fisher caste who migrated from the western coast of India and settled down in Sri Lanka, mainly in Puttalam, Kalpitiya, Jaffna, and Batticaloa. (Cooray, 2011, p. 149) Even though they don't have a specific code of law introduced by empirical rulers, they also have their customs and practices relating to the lands.

Buddhist and Hindu law

Even though Sri Lanka is not a religious country, article 9 of the constitution of the Democratic Republic of Sri Lanka 1978 provides a foremost place to Buddhism while assuring to all religions the rights granted by Articles 10 and 14(1) C of the constitution.

Article 10 of the constitution

Every person is entitled to freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice, and teaching. ("Constitution of the Democratic Socialist Republic of Sri Lanka 1978," 2019)

Buddhist and Hindu ecclesiastical law and temporalities are governed by the Buddhist law and Hindu law. Generally, courts are not intervening purely in ecclesiastical matters. However, if there is any linkage between civil rights and rules laid down by religious communities, then the Court will take in to account religious law. The field of land law comes under the category of civil law, and as a result of it, religious laws also affected the lands in Sri Lanka. Because most of ecclesiastical laws dealing with the lands. Such as Temple Lands (Compensation) Ordinance No. 28 of 1944 and Viharagam and *Devalagam Ordinance No.19* of 1931.

Kandyan Law

Kandyan law is the customary law that applies a particular section of the community within Kandyan provinces, namely the Kandyan Sinhalese. At the time of the Kandyan Convention, Sinhalese law or Kandyan law was common law in the strict sense. It contained in no book, it was almost untouched by legislation, and it acknowledges no judicial decisions. It was essentially the custom of the realm, known to the people, administered by judges. (F A Hayley, 1993, p. 12)

However, after the British invade, imperial rulers tried several times to codified customary laws, but they couldn't able to identify all the laws. As a result of it, there are some customs that exist in Kandyan provinces relating to the lands which are not recognized under any legislation. If someone wants to establish those unwritten customs, he or she can affirmatively establish the fact on the Court according to the current law. (*Savundranayagam v Savundranayagam* (1917) 20 NLR 247) Kandyan law applies to matters relating to intestate succession, marriage, and division of property (De Silva, 1981). However, the codified part of the law coming under several legislations named as *Kandyan Law Declaration & Amendment Ordinance, No 39* of 1938, *Kandyan Marriage, and Divorce Act No .44* of 1952.

What is the significance of the Registration of Title?

"The English law of property is admitted to be insecure, costly, cumbrous, tardy, injurious, and unsuited to the requirement of the inhabitants of these colonies." Torrens, R., Gawler, H. (1962)

Sir Robert Torrance noted this in his monograph when he introduced a new land registration system to Australia named the system of title registration in alias the Torrance system of title registration as an effective and suitable method of land administration other than existing British colonial system. (Perera TGUP, 2010) Sir Torrens believed that a land register should show the actual state of ownership rather than provide evidence of ownership, and under this system, the government guaranteed all rights shown in the land register. ("Torrens Land Registration System Definition," n.d.) Therefore, the landowners don't want to worry about the loss of documents or searching for paper trails. Because after registering a land under the Torrance system, past omissions or errors in the conveyancing process will not be affected apart from some exceptions those are going to discuss later.

As a result of three key principles named Curtain, Mirror, and Insurance Principle, the Torrance system grants indefeasibility, indemnity, and inexorably title. The first principle is Curtain principle, and it reflects the importance of preserving a specific register for title registration to records the interest and rights relating to the ownership. The second principle, named Mirror principle, and it says that the register should drive as a mirror, which should reflect the rights and interests those attached to the land parcel within the cadastre. As a result of it, interests recorded in the register will become final and conclusive rights. The final element is the Insurance principle, and under this compensation will be provided who suffers loss because of this registration system. This system of registration currently adopts and enforces countries like Malaysia, Singapore, the United Kingdom, and America.

Law relating to title registration in Sri Lanka

The history of title registration law in Sri Lanka started with the Land Registration Ordinance No 5 of 1877, and this Ordinance only limited to three areas in the country named Dehiwala, Wellawatta, and Kirulphona. The current system of the title registration was introduced to Sri Lanka through the Registration of Title Act No 21 of 1998, which was enacted by following the Torrance system. In the year of 2007, the government of Sri Lanka launched a project named Bim Saviya to enforce the Registration of Title Act No 21 of 1998 under the vision of *"Towards a prosperous and dispute free society"* (Rgdmn, 2019.). *"Strengthen the ownership"* is the mission of this project, and the government expected to complete this project within fifteen years as a collaborative work of three government Departments named Registrar General Department, Survey Department, and Department of Land Settlement (N S KALANSOORIYA, n.d.). Commissioner of title registration is appointed under section 2 of the Registration of Title Act No 21 of 1998 to responsible for the due performance of the duties and functions assigned to him under the RTA. This process is implemented at the district level, and this has been launched in some areas of the following districts. They are Gampaha, Negambo, Rathnapura, Gampala, Anuradhapura, Kurunegala, Delkanda, Kandy, and Hambanthota.

The validity of the land registers maintained under the Registration of Document Ordinance No 27 of 1927 will no longer exist as a result of section 28 of the Registration of Title Act No 21 of 1998 and title registries established under the section 3 of the Registration of Title Act No 21 of 1998 will become into force. Once a land registered under the Bimsaviya project, the old deeds will be replaced with ownership certificates, which confirm the ownership of the registered owner without considering the prior defects of the title. Even though lot of statutes available in Sri Lanka relating to lands such as *Prevention of Frauds Ordinance No 7* of 1840, *Registration of Documents Ordinance No. 23* of 1927, *The Notaries Ordinance No 1* of 1907 and *Apartment Ownership Act No. 11* of 1973 for Condominium Properties; none of these legislations have connection with the concept of protection of land rights through electronic media. However, this concept was first introduced through section 73 of the Title Registration Act No 21 of 1998, and as the first step of it, the registry of lands of Colombo has launched an e- land register as a pilot project from January 15 2018. Therefore some authors identified that this RTA no 21 of 1998 would be a new

era for a land registration regime in Sri Lanka. However, the next part focus on the fact of conflicting situations existing among the RTA act and the customary laws by the special reference with Kandyan Law relating to the property.

The ownership of registered lands under the title registration act has been divided into three categories. Section 14 of the RTA 1998 categorizes them as First Class Title of Absolute Ownership, the second class title of ownership and title of co-ownership. Section 32 denotes the effect of these ownership categories and 32(1) subsection mentioned that if a person registered under the First Class Title of Absolute Ownership will acquire the absolute ownership of such land parcel together with all rights and privileges belonging or appurtenant thereto, subject to any subsisting interests as registered in the Encumbrances Section of the Title Register.

Section 33 of the RTA no 21 of 1998 denotes that Entries in the Title Register maintained under the provisions of this Act, shall be conclusive evidence of the existence of the ownership or interest specified in such entries and shall not be questioned in a Court of law except as provided for in this Act. Even this provision fulfil the intention of the legislature about the principle of indemnity, but this will severely affected the right to justice of the customary landowners of the country.

The RTA 21 of 1998 mainly focus on the concept of protection of ownership, and When it comes to the concept of ownership under ancient Kandyan law that we can see ancient Kandyan king was identified as the lord of the soil. However, a considerable part of the current Kandyan law based on statutory laws and this concept of ownership in the Kandyan system of law relating lands based on the various factors. Kandyan property rights vested according to the nature of the property and the rights and obligations connected to the property.

Therefore the concept of ownership in this system of Kandyan law has special characteristics. The Kandyan system of law has three kinds of ownership for properties and lands considered as immovable properties. Ownership can be identified as individual ownership, public or communal ownership of certain property and state ownership. When it comes to individual rights over property, it can be categorized under three categories, such as property rights by acquisition, Matrimonial property rights, and inheritance property rights. All these property rights directly allied with the land rights in Kandyan Provinces.

Even though the Current Kandyan statutory law doesn't have a descriptive interpretation for the concept of the acquired property, the ancient Kandyan law identified acquired properties as a *Lathmi property*, and This is obtained by gift, will, purchase, prescription, occupancy, or accession. (Marasinghe & Scharenguivel, 2015, p. xx) In the judgment of *Mudalihamy v Bandirala*, the Court said that the concept of acquired is equivalent to the English law term purchased. The concept of *Lathmi* is far broader than the concept of mere purchased. (Marasinghe & Scharenguivel, 2015, p. xx) Properties acquired without money considerations also come under this category. Therefore in the case of *Hapu v Esanda* held that gift of ancestral lands by a father to his son converts to acquired property. Considering the deed of gift relating to the lands ; Section 4 of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938 denotes that the donor can revoke the gift at any time except the situations where the deed gifted to a trustee of a temple or gifted as a contemplation of a marriage or as Charitable trust or gifted with Renunciation of the right to revoke.

(Marasinghe & Scharenguivel, 2015, p. 55) properties acquired by prescription also considered under category of acquired property and according to the Modder, even though the concept of prescription governed by ordinance no 22 of 1871 according to the English law principles, customary Kandyan law has its own rules relating to the law of prescription. (Modder, para 111). However, system of title registration abolishes the concept of prescription as a result of granting absolute ownership for landowners. Kandyan People valued the lands and they always took steps to protect their land by cultivating or using the land for the betterment of the people but they never attempted to just protect the ownership of the land. Nevertheless, the above mentioned Kandyan Law concepts do not comply with the basic norm of title registration named absolute ownership for land. Therefore RTA has been implemented in the Kandyan Law governing areas ignoring the special law provisions.

Kandyan system property law has its inherited features that cannot separate from the day to day life of the people. A most relevant example is the next categorization of the individual property named as matrimonial property. When it comes to a law relating to matrimonial property, the nature of the marriage is affected . Marriages among the Kandyans consist of two kinds, as regards civil immunities sanctioned by the conventional or common law of the country, namely Marriage in Deega and marriage in Binna(Dissanayake & Soysa, 1963, p. 52)A marriage in Deega is when a woman is given away and according to the terms of the contract, removed from her parents' adobe and is settled in the house of the husband. This is most common of the two, and marriage in Binna is when the bridegroom is received into the house of the bride, and according to certain stipulations, abides therein permanently. (Dissanayake & Soysa, 1963, p. 52). Therefore a spouse did not automatically acquire rights over property to other spouse during the lifetime. (Marasinghe & Scharenguivel, 2015, p. 67) However, this has been altered the situation of the death of a spouse. Therefore if one-party died without a last will, the rules regulating intestate succession rights under Kandyan Law, depending on whether the property belongs to a male or female as acquired or Paraveni or whether marriage is on Deega or Binna. Section 10 of the **Kandyan Law** Declaration and Amendment Ordinance No.39 of 1938 defined Paraveni Property as follows;

The expressions "Paraveni property" or"ancestral property"or"inherited property"and equivalent expressions shall mean immovable property to which a deceased person was entitled –

- (a)by succession to any other person who has died intestate, or
- (b)under a deed of gift executed by a donor to whose estate or a share thereof the deceased would have been entitled to succeed if the donor had died intestate immediately prior to the execution of the deed, or
- (c)under the last will of a testator to whose estate or a share, thereof the deceased would have been entitled

to succeed had the testator died intestate: Provided, however, that if the deceased shall not have left him surviving any child or descendant, property which had been the acquired property of the person from whom it passed to the deceased shall be deemed acquired property of the deceased.

This concept of Paraveni property has immense value in the context of intestate property rights, and these rights directly conflict with the RTA concept of absolute ownership of Lands. As a result of this concept of absolute ownership and the conclusiveness of the registry under the section 33 the rule of 'Nemo dat quod non habet', ("no one gives what he does not have") will not apply to lands registered under the title registration and the registered owner can have unquestionable state guarantee indefeasible title over anyone even if there is a forgery at the initial stage which caused to deprive the rights of actual landowners. Therefore the one who has absolute ownership over the property can use and enjoy the land as his wish without worrying about prior conditions such as life interest. On the other hand, this system of registration of title will cause to deprive the rights of the land rights of Kandyan land possessors.

Further rights relating to Paraveni properties denote in section 11 of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938, and most of those rights cannot implement under this registration of the title system. Such as Under Kandyan law, if a male spouse died, the widow has the right to administrate his estate, including land. But there is a condition which said that she holds that property only a life interest in it. This type of possession grants for a widower as a result of the principle called that property should revert to the source from which it came. (Tambiah, 1968, p. xx) It is further stated that in the event of a widow contracting a Deega marriage, she shall forfeit her right to maintenance out of the Paraveni property, but that her right to be maintained out of the acquired property remains unaffected. (Marasinghe & Scharenguivel, 2015, p. 91)

The registration of the title system holds the second aspect, and this new system caused to create a protective environment for financial institutes as a result of certainty and guarantee provided under the registration of the title Act. Even this system suites for the existing land market in Sri Lanka, ignorance of the prior title apart from the title registered under the Act caused to deprive the rights of the actual owners who faced land forgeries under this system. Because, section 59 of the Act, identified the situations available for the rectification procedure under the court order. However, the section further mentioned that Court should not order the rectification of a register so as to affect the title of a registered owner who is in possession and who has acquired the land parcel or interest therein for valuable consideration, unless such owner was a party to such fraud. In this scenario, the only remedy available for the actual owners whose property rights are suppressed by the rules of the present system is providing economic security under the insurance scheme under section 60. Subsection one and two of section 60 indicate the probabilities available for deprived landowners as follows.

60(1) Any person suffering loss or damage or who has been prejudiced by reason of-

- (a) any rectification of the register in pursuance of an order of Court under this Act; or
 - (b) not rectifying the register in consequence of an order of Court made under section 59,
- shall on order of Court be entitled to be indemnified by the government out of the Insurance Fund.

(2) No sums shall be paid by way of indemnity under this Act, to any person who has himself caused, or substantially contributed to any fraud referred to in section 59 or who derives his title from a person who has caused or substantially contributed to such fraud.

However, the country like Sri Lanka specially which has multiple laws; the application of this Insurance principle without providing a proper mechanism to prevent fraud is an ultimate violation of people's right to justice because the countries have insurance schemes for genuine landowners like Australia, Singapore, Malaysia which have a conveyancing processes which provide valid documents to their land registries and the land frauds are controlled through rigorous rules of their conveyancing practice and the high ethical standards of the conveyancing practitioners. Further Lack of clarity of the procedure in RTA can be used to forgeries and if a landowner subjected to a forgery because of this fact, they cannot pledge any relief under the Act apart from the remedy available under section 59 and 60 of the registration of title act as before mentioned. Therefore excluding the judiciary without providing sufficient protection for actual landowners finally caused to deprive of the right to justice of customary landowners.

Findings

The question here is a country like Sri Lanka, which has a plural legal system, and an agricultural culture which is mostly based on the land rights can be significantly affected because of this registration of title system if it is not regulated according to the needs of the country. Especially when considering the co-owners rights, rights of landowners who governed under the special laws and the rights and interest relating to the traditional paddy and Chena lands are affected by this system as a result of section 33 and the section 59 of the registration of title act. Even the procedure provided through the Act caused to speedy implementation of the Bim Saviya project at the same time the unclarity of the initial completion procedure can be caused to social unrest as a result of depriving the rights of actual landowners. In the case of rural areas, even if the compensation provided through the Insurance fund, the damage occurred to the peasants cannot be covered because the live hood of those people is interconnected with the land. This same principle applies for the other landowners in the because once they lost their ownership they cannot recover it and even if they acquired the possession of that land for the period of ten years they cannot apply for the prescriptive right also under this registration of title act according to the section 57 of the Act. Currently, Australia, the country which gave the birth of this system, has changed the laws relating the indefeasibility. In 1971, *Breskvar v Wall* (1971) 126 CLR 376 case, the High Court of Australia accepted the notion of immediate indefeasibility as the doctrine of choice for the Torrens system. The principle is so essential, and adherence to it so essential that registered title can be challenged, under the legislative provisions in each of the States, only in the most exceptional circumstances. (Perera TGUP, 2010)

Conclusion

Except for few occasions; the current system of registration of title caused to deprive the security of tenure for the customary landholders and failed to provide recognition of the significant land rights that affect the majority of the population. Further it failed to obtain and retain public trust in the system of land registration in Sri Lanka.

Because of undermining the rights of actual landowners. As a result of this, the legislature couldn't accomplish its intention of introducing a trustworthy, cost-effective, and efficient system for registration of lands. Even though this registration of title system can be used progressively to the administration of land rather than the registration of document system, procedural errors at the initial stage and abolition of the right to access to the justice or court procedures will cause to undermine the value of the Act. Furthermore ignorance of the rights of the customary land owners without providing any assurance or alternative also affected to weaken the value of the RTA no 21 of 1998. Therefore the right to access justice should be included into the registration of title act by amending section 33 and the 59 of the registration of title act in Sri Lanka and the legislature should focus for an alternative land registration system which has protection for the customary land owners in the country.

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