

Judicature (Amendment)

Act No 16 of 1989

AN ACT TO AMEND THE JUDICATURE ACT, NO. 2 OF 1978

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: "

Short title. **1.** This Act may be cited as the Judicature (Amendment) Act, No. 18 of 1989 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette,

Amendment of section 2 of Act No. 2 of 1978. **2.** Section 2 of the Judicature Act, No. 2 of 1978, (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of paragraphs (b) to (e) of that section, and the substitution therefor, of the following paragraphs : "

" (b) the District Courts ;  
(c) the Small Claims Courts;  
(d) the Magistrates' Courts."

Amendment of section 4 of the principal enactment. **3.** Section 4 of the principal enactment is hereby amended by the substitution, for the words "not more than twenty Judges", of the words "not more than forty Judges."

Amendment of section 5 of the principal enactment. **4.** Section 5 of the principal enactment is hereby amended as follows:

(a) by the repeal of subsection (1) of that section and the substitution therefor, of the following subsection :"

' (1) There shall be in such judicial district of Sri Lanka a " District Court" and in every judicial division there shall be a "Small Claims Court" and " Magistrates' Court" and each such court shall be holden by and before one person to be called the " District Judge ", " Judge of the Small Claims Court" and "Magistrate" respectively.; and

(b) in the marginal note to that section, by the substitution for the words "District Courts, Family Courts, Magistrates' Courts and Primary Courts", of the words "District Courts, Small Claims Courts and Magistrates' Courts".

Insertion of new sections 5A, 5B and 5c in the principal enactment. **5.** The following new sections are hereby inserted immediately after section 5, and shall have effect as sections' 5A, 5B and 5c of the principal enactment:"

"Judicial day. 5A.

(1) For the purpose of sittings for conducting trials and inquiries in every Court of First Instance a working calendar day shall be divided into two judicial days, each such judicial day beginning not later than 9.45 a.m. and 1.15 p.m. respectively.

(2) Trials and inquiries shall be fixed for every web. Judicial day.

(3) Every such judicial day shall, for the purposes of subsections (1) and (2) consist of a sitting in open court of a minimum duration of two and a half hours.

(4) Where any judge of any Court of First Instance is unable to

comply with the provisions of this section he shall record the reasons for such inability and shall forthwith forward a copy of such reasons to the Judicial Service Commission.

Appointment 5B.  
of the  
Master.

(1) There shall be appointed to every such court as may be specified by the Minister by Order published in the Gazette, in consultation with the Chief Justice, an officer to be called the Master.

(2) The Master shall sit separately and exercise all the powers or jurisdiction vested in him by subsection (3).

(3) The Master shall attend to and deal with all pre trial and post trial matter as arise in the course of a civil proceeding instituted in the court to which he is appointed, including the framing of issues and the recording of admissions :

Provided that it shall be competent for the trial judge to record such admissions and frame such, issues, whether by way of amendment of existing issues or otherwise, as may be considered to be appropriate during the conduct of the trial before; him.

(4) The Master may, with the concurrence of the judge of the court, submit for determination by such judge any matter which, may otherwise have been properly dealt with by him.

(5) The judge of any court may refer to the Master any matter of a procedural nature arising in the course of an action instituted in that court after the stage referred to in subsection (3).

(6) The Master shall have the power to do all such acts connected with or incidental or ancillary to, the exercise of the powers and jurisdiction vested in him by subsection (3), including the maintenance of the Journals of the Court.

Appointment 5C.  
of the  
recorder.

(1) There shall be appointed to every court as may be specified by the Minister by Order published in the Gazette, in consultation with the Chief Justice, an officer to be called the Recorder.

(2) The Recorder shall sit separately and exercise all the powers or jurisdiction vested in him by subsection (3).

(3) The Recorder shall attend to and deal with all pre-trial and post-trial matters not including sentencing as arise in the course of a criminal proceeding instituted in the Court to which he is appointed, including the recording of admissions and confessions : Nothing in this section shall prejudice the powers of the trial judge to record such admissions as may be considered to be appropriate during the conduct of the trial before him.

(4) The provisions of subsections (4),(5) and (6) of section 5B shall, mutatis mutandis, apply to and in relation to, the powers and functions of a Recorder appointed under subsection (1)."

Amendment of **6.** Section 6 of the principal enactment is hereby amended in subsection (1) of that section,

section 6 of the enactment

by the substitution for the words, " Every District Judge and Judge of the Family Court, Magistrate and Judge of the Primary Court and ", of the words " Every District Judge, Judge of the Small Claims Court and Magistrate".

Amendment of section 8 of the principal enactment

**7.** Section 8 of the principal enactment is hereby amend ed as follows:

(a) in subsection (1) of that section, by the substitution for the words " Additional District Judges and Judges of the Family Court, Magistrates or Judges of the Primary Court, to the same District Court, Family Court, Magistrate's Court and Primary Court respectively", of the words " Additional District Judges, Judges of the Small Claims Court and Magistrate's Court respectively in ;

(b) by the repeal of subsection (2) of that section and the substitution, of the following subsection therefor:"

" (2) Every Additional District Judge, Judge of the Small Claims Court or Magistrate appointed to any such Court, shall sit separately and exercise all the powers and the jurisdiction vested in the District Court, the Small Claims Court or the Magistrate's Court as the case may be. ; and

(c) by the addition immediately after subsection (2) of that section of the following subsection :-

" (3) Every Magistrate appointed to a judicial division shall have concurrent jurisdiction with the Magistrate appointed for every other judicial division, for the purposes of exercising jurisdiction under section 9(b) (iii) of the Code of Criminal Procedure Act, No, 15 of 1979."

Replacement of section 11 of the principal enactment.

**8.** Section 11 of the principal enactment is hereby repealed and the following section substituted therefor: "

Trial by Jury. 11.

(1) Subject to the provisions of sub-section (2) all trials in the High Court shall be before a Judge of the High Court sitting alone without a Jury.

(2) Trial in the High Court shall be by Jury before a Judge of the High Court where at least one of the charges is for an offence referred to in the Second Schedule hereto and the accused elects to be tried by a Jury.

(3) The election by the accused, to be tried by a Jury, shall be made at any time before the commencement of the trial."

Amendment of section 13 of the principal enactment.

**9,** Section 13 of the principal enactment is hereby amended of section ed by the substitution for subsection (2) of that section of the following subsection:"

" (2) The Admiralty jurisdiction vested in the High Court shall be as provided for by law for the time being in force. The rules in force immediately prior to the coming into operation of this Act, shall continue to be in force until new rules are made, and any acts done in pursuance of these rules, after the coming into operation of this Act shall be deemed to

have been, and to be, validly done."

Replacement of section 19 of the principal enactment.

**10.** Section 19 of the principal enactment is hereby repealed and the following section substituted therefor: "

"Jurisdiction 19. of District Courts.

(1) Every District Court shall be a court of record and shall within its district have unlimited original jurisdiction in all civil revenue, trust, matrimonial, insolvency and testamentary matters, save and except such of the aforesaid matters as are by or under this Act or by virtue of the provisions of any other enactment exclusively assigned by way of original jurisdiction to any other court of vested in any other authority and In the exercise of such jurisdiction to impose fines, penalties and forfeitures and shall in fake manner also have jurisdiction over the persons and estates of persons of unsound mind, minors and wards, over the estates of cocstuis que trust and over guardians and trustees and in any other matter in which jurisdiction is given to District Courts by law. ",

Insertion of new section 19A in the principal enactment.

**11.** The following new section is hereby inserted immediately after section 19 of the principal enactment and shall have effect as section 19A of that enactment:"

" Civil jurisdiction. 19A. Every District Court shall have cognizance of and full power to hear and determine all pleas, suits and actions in which a party defendant shall be resident within the district in which any such suit or action shall be brought, or in which the cause of action shall have arisen within such district or where the land in respect of which the action is brought lies, or is situate wholly or partly within such district, or the contract sought to be enforced was made within such district. "

Replacement of section 23 of the principal enactment.

**12.** Section 23 of the: principal enactment is hereby repealed and the following section substituted therefor:"

" Appeal. 23.

(1) Any person who is dissatisfied with, any judgment pronounced by a District Court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment far any error in fact or in law.

(2) Any person who is dissatisfied with any order made by a District Court in the course of any civil action, proceeding or matter to which he is or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained."

Replacement of Chapter V of the principal enactment.

**13.** Chapter V (including sections 24 and 29) of the principal enactment is hereby repealed and the following Chapter substituted therefor:

Jurisdiction 24.  
of Small  
Claims  
Courts.

(1) Every Small Claims Court shall be a court of record and shall have exclusive original jurisdiction and shall have cognisance of and full power to hear and determine all actions in which the debt, damage, or demand does not exceed such sum as may be specified by the Minister by an Order published in the Gazette and in which the party or parties defendant is or are resident within the jurisdiction of such court, or in which the cause of action has arisen within such jurisdiction and all proceedings under Chapter LXVIA of the Civil Procedure Code where the land or any part thereof is situate within the jurisdiction of such court, and all hypothecary action in which the amount claimed does not exceed such sum as may be specified in such order, and the land hypothecated, or any part thereof is situated within the jurisdiction of such court, and also all actions in which the title to, interest in, or right to the possession of any land is in dispute, and all actions for the partition or sale of land:

Provided that the value of the land or the particular share, right, or interest in dispute or to be partitioned or sold does not exceed such sum as may be specified in such Order and the same or any part thereof is situate within, the jurisdiction of such court, and shall exercise any other jurisdiction as may be vested in it by any other law:

Provided always that such court shall not have cognisance of any action for criminal conversation, or for seduction, or for breach of promise of marriage, or for separation a mensa et thoro, or for divorce, a vineulomatrimonii, or for declaration of nullity of marriage.

(2) An Order made under subsection (1) shall not have effect until it is approved by Parliament and notification of such approval, is published in the Gazette.

Costs. 25. It shall be lawful for the judge of every such court, in pronouncing his judgment or order in any case, to make such order respecting the payment of costs and expenses as to him shall appear just and reasonable.

Appeal. 26. Any person who is dissatisfied with any final judgment of the Small Claims Court in any action, proceeding or matter or an order having the effect of a final judgment of such court may, (except where such right is expressly disallowed) appeal to the High Court established by Article 154P of the Constitution for the province in which such Small Claims Court is situated, against any such judgment or order, with, the leave of such Small Claims Court or where such leave is refused, with the leave of such High Court. The High Court may in the exercise of its appellate jurisdiction in respect of such judgments or orders, affirm, reverse, modify or correct any such order or judgment according to law or may give directions to the Small Claims Court from which the appeal has been preferred or order a new trial or further hearing, on such terms as such High Court shall think fit.

Where  
defence or  
claim in 27. Where in any proceeding before any Small Claims Court any defence or claim in reconvention of the defendant involves matter beyond the jurisdiction of the Court, such defence or claim in reconvention shall not

reconvention affect the competence or duty of the Court to dispose of the matter in is beyond controversy in so far as it relates to the demand of the plaintiff and the jurisdiction defence thereto and the claim in re-convention: Provided that in such case it of court. shall be lawful for the Court of Appeal or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from the court in which it is instituted to some court having jurisdiction over the whole matter in controversy and in such case the record in such proceeding shall be transmitted by the Registrar of the Court to the court to which by such order the proceeding is so transferred and the same shall thenceforth be continued and proceeded in such, court as if it had been originally commenced therein.

Judge of Small Claims Court to execute judgments, &c. in appeal. 28. The Judge of every Small Claims Court shall conform to and execute all such judgments, orders, and decrees of the Supreme Court or Court of Appeal or High Court established by Article 154P of the Constitution as shall be made and pronounced in any appeal, in like manner as any original judgment or order pronounced by the said Judge could or might have been executed.

Where value of action is beyond jurisdiction of court. 29. Where there is evidence that the value of any action filed in any Small Claims Court is over the monetary jurisdiction of that Court, the Judge shall make order accordingly and shall record such fact and thereupon the action shall stand removed to the appropriate District Court.

Amicable settlement. 30. It shall be the duty of the Judge of the Small Claims Court by all lawful means to endeavor to bring the parties to an amicable settlement where appropriate and to remove, with their consent, the real cause of grievance it any, between them."

Repeal of Chapter VII of the principal enactment. **14.** Chapter VII (including sections 32 and 36) of the principal enactment is hereby repealed.

Amendment of section 37 of the principal enactment. **15.** Section 37 of the principal enactment is hereby amended by the substitution for the words "the District Courts, the Family Courts or the Magistrates' Courts", of the words "the District Courts, the Small Claims Courts or the Magistrates' Courts".

Amendment of section 45 of the principal enactment. **16.** Section 45 of the principal enactment is hereby amended in subsection (4) of that section, by the substitution for the words "District Judge, Judge of the Family Court or Magistrate", of the words "District Judge, Judge of the Small Claims Court or Magistrate".

Amendment of section 49 of the principal enactment. **17.** Section 49 of the principal enactment is hereby amended in the Proviso to subsection (3) of that section by the substitution for the words " the District Court, Family Court, Magistrates' Court and Primary Court "; of the words "the District Court, Small Claims Court and the Magistrates' Court".

Amendment of section 52 of the principal enactment. **18.** Section 52 of the principal enactment is hereby amended as follows:"  
(a) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection : "

" (1) There shall be appointed to the High Court and to each of the District Courts, Small Claims Courts and Magistrates' Courts established under this Act, a Registrar, a Deputy Fiscal and such other officers as may be necessary for the

administration and for the due execution of the powers and the performance of the duties of such courts including the service of process and the execution of decrees of court and other orders enforceable under any written law." ; and

(b) by the addition immediately after subsection (2) of that section, of the following subsection:"

" (3) Every Deputy Fiscal appointed to a court shall be responsible for the service of process issued by that court and the execution of decrees and orders made by that court and shall act under the supervision, direction and control of the fiscal."

Amendment of section 54 of the principal enactment.

**19.** Section 54 of the principal enactment is hereby amended as follows :"

(a) in subsection (1) of that section by the substitution for the words " High Court, District Court or a Family Court", of the words "High Court, District Court or a Small Claims Court" ; and

(b) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection :"

" (3) Such injunctions may be granted at any time after the commencement of the action and before final judgment after notice to the defendant, where the object of granting an injunction will be defeated by delay, the court may enjoin the defendant until the hearing and decision of the application for an injunction but for periods not exceeding fourteen days at a time."

Amendment of section 55 of the principal enactment.

**20,** Section 55 of the principal enactment is amended as follows: "

(a) in subsection (1) of that section by the substitution for the words " Every District Court, Family Court, Magistrates' Court and Primary Court shall", of the words " Every District Court, Small Claims Court and Magistrates' Court shall" ;

(b) in subsection (2) of that section"

(i) by the substitution in paragraph (a) of that subsection for the words " by a District Court and Family Court" of the words " by a District Court" ;

(ii) by the repeal of paragraph (b) of that subsection and the substitution therefor of the following paragraph :"

"(b) by the Small Claims Court and the Magistrate's Court fine not exceeding one thousand five hundred rupees or imprisonment either simple or rigorous for a period not exceeding eighteen months." ;

(iii) by the repeal of paragraph (c) of that subsection.

Repeal of section 57 of the principal enactment.**21.** Section 57 of the principal enactment is hereby repealed.

Insertion of new section 60A in the principal enactment.**22.** The following new section is hereby inserted immediately after section 60 of the principal enactment and shall have effect as section 60A of that enactment.

"Effect of an Order under section 3. For the avoidance of doubts it is hereby declared that where, by reason of an Order made under section 3, any area of a judicial zone, judicial district or judicial division falls into another or new judicial zone, judicial district or judicial division, the court in which any action, proceeding or matter is pending on the day immediately preceding the date of such Order, shall have full power and jurisdiction to carry on and complete such action, proceeding or matter."

Repeal of Third and Fourth Schedules to the principal enactment. **23.** The Third and Fourth Schedules to the principal enactment are hereby repealed.

Amendment of the Fifth Schedule to the principal enactment.

**24.** The Fifth Schedule to the principal enactment is hereby amended as follows: "

(a) by the substitution, for the words "The Deputy Solicitors-General, Senior Assistant Secretaries to the various Ministries, The Deputy Secretary-General of Parliament", of the words " The Deputy Solicitors-General, Deputy Legal Draftsmen, Senior Assistant Secretaries to the various Ministries, The Deputy Secretary-General of Parliament " ;

(b) by the substitution, for the words " Senior State Counsel", of the words "Senior State Counsel, Senior Assistant Legal Draftsmen";

(c) by the substitution for the words " State Counsel and Assistant Secretaries to the various Ministries", of the words " State Counsel, Assistant Legal Draftsmen and Assistant Secretaries to the various Ministries\*1;

(d) by the omission therefrom, of the reference to " Judge, of the Family Court and Registrars of Family Courts ";

(e) by the substitution for the words " The Judge of each Primary Court ", of the words " The Judge of each Small Claims Court ";

(f) by the substitution for the words "The Registrars of District Courts, Family Courts, Magistrates' Courts and Primary Courts " of the words " The Registrars of District Courts. Magistrates' Courts and Small Claims Courts ", respectively; and

(g) by the addition at the end of that Schedule of the following: "

" Officers-in-charge of Police Stations (including Acting Officers-in-charge of Police Stations) of, or above the rank of Sub-Inspector of Police, for their respective Police areas,".

Transitional provisions. **25.**

(1) All matrimonial actions, proceedings or matters pending in a Family Court on the day preceding the date of coming into operation of this Act, shall stand removed to the appropriate District Court and such District Court shall have jurisdiction to take cognisance of, hear and determine or to continue and complete the same, and the judgments and orders of the aforesaid Family Court delivered or made before the coming into operation of this Act shall have the same force and effect as if they have been delivered or made by that District Court.

(2) All civil actions, proceedings or matters pending in a Primary Court, on the day preceding the date of coming into operation of this Act, shall stand removed to the appropriate Small Claims Court and such court shall have jurisdiction to take cognisance of, hear and determine or to continue and complete the same, and the judgments and orders of the aforesaid Primary Court delivered or made



before the coming into operation of this Act, shall have the same force and effect as if they have been delivered or made by that Small Claims Court.

(3) All criminal actions, proceedings or matters pending in a Primary Court on the day preceding the date of coming into operation of this Act, shall stand removed to the appropriate Magistrate's Court and such court shall have jurisdiction to take cognisance of, hear and determine or to continue and complete the same and judgments and orders of the aforesaid Primary Court delivered or made before the coming into operation of this Act, in respect of any such criminal action, proceeding or matter shall have the same force and effect as if they have been delivered or made by that Magistrates Court

(4) All proceedings pending in a Primary Court under section 66 of the Primary Courts Procedure Act on the day preceding the date of coming into operation of this Act, shall stand removed to the appropriate Small Claims Court and such court shall have jurisdiction to take cognisance of, hear and determine or to continue or complete the same and all orders made, in respect of every such application before the coming into operation of this Act shall have the same force and effect as if they have been made by that Small Claims Court.

(5) "Where a proceeding under section 86 of the Primary Courts Procedure Act in respect of a dispute is transferred to a Small Claims Court, the following provisions shall apply to the hearing and determination of such proceeding: "

(a) in making an order under Chapter LXVIA of the Civil Procedure Code (Chapter 101) in respect of such dispute, the Judge of the Small Claims Court shall disregard any oral evidence adduced in the Primary Court in the course of such Proceeding;

(b) for the purpose of the application of subsection (i) of section 833C of that Code to such proceeding, the information in respect of such dispute shall be deemed to have been filed on that date on which this Act comes into operation ; and

(c) section 833C (6) (ii) of that Code shall apply to such proceeding as if for the reference to " one week " appearing in that section, there were substituted a reference to " two weeks ".

Sinhala text to prevail in case of inconsistency. **26.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.