

ENSURING JUSTICE IN CONTEMPT PROCEEDINGS: A PLEA FOR REMEDIES AGAINST SUPREME COURT VERDICTS IN SRI LANKA

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ABSTRACT

The Contempt of Court, Tribunal, or Institution Act, No. 8 of 2024, was introduced to standardise procedures and clarify punitive measures for contempt convictions in Sri Lanka. However, significant deficiencies persist, particularly the absence of judicial remedies against Supreme Court verdicts on contempt convictions, which remains a critical issue. Through a comparative analysis of the legal frameworks in the United Kingdom and India, this study highlights the effectiveness of their review mechanisms in ensuring accountability and preventing miscarriages of justice in contempt convictions. The study proposes constitutional amendments to establish a similar review mechanism tailored to Sri Lanka's legal context. By adopting such provisions, Sri Lanka can reduce the risk of judicial errors, uphold judicial integrity, and strengthen public confidence in the judiciary. Using a doctrinal and comparative methodology, the study analyses legislation, case law, and scholarly literature from Sri Lanka, the United Kingdom, and India to provide comprehensive insights into potential reforms.

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1. INTRODUCTION

The 1978 Constitution of the Democratic Socialist Republic of Sri Lanka enshrines the sovereignty of the people, encompassing the powers of government, fundamental rights, and the franchise.¹ The judicial power of the People is primarily exercised by Parliament through courts, tribunals, and institutions that are either established or recognised by the Constitution or created by laws enacted by Parliament.² Within this framework, the judiciary plays a critical role in upholding the sovereignty of the people by impartially administering justice and protecting individual rights. As the highest and final authority, the judiciary, particularly the Supreme Court, is entrusted with ensuring fairness in all legal proceedings. This responsibility becomes even more significant in contempt cases, where the lack of a review mechanism for Supreme Court convictions raises concerns about potential miscarriages of justice and judicial accountability.

The Contempt of Court, Tribunal, or Institution Act³ (“The CC Act”) was introduced to standardise the handling of contempt cases and clarify procedures for punishment. However, several significant deficiencies exist within the Act. While it outlines various acts or omissions that may constitute contempt, it fails to provide a solid definition of “contempt” and lacks specific provisions on punishments. Additionally, the Act does not clearly distinguish between civil and criminal contempt, despite the severe and distinct nature of these offences, as recognised in many jurisdictions. More critically, the Act does not offer any judicial remedy for contempt convictions made by the Supreme Court. In justifying this omission, the Supreme Court has emphasised its status as the highest and final superior court of record in Sri Lanka, asserting that there is no appellate forum to review or challenge its decisions.⁴

Given this context, it is essential to explore alternative remedies for individuals convicted of contempt by the Supreme Court to safeguard against potential “miscarriages of justice”⁵ due to wrongful punishment or

¹ Sri Lankan Constitution 1978, Art. 3.

² *ibid* Art. 4(c).

³ The Contempt of Court, Tribunal, or Institution Act, No. 08 of 2024.

⁴ SC Determination on the Contempt of a Court, Tribunal or Institution Bill (2023) (SCSD 58-62/2023) 43
<https://www.parliament.lk/uploads/bills/gbills/scdet/6305.pdf> accessed 1 July 2024.

⁵ *In re William John Clark* 5 Cal.4th 750 [No. S022475. 29 July 1993], the Supreme Court of California observed that, a fundamental miscarriage of justice can be

incarceration. A comparative analysis of jurisprudence in other common law jurisdictions, such as the United Kingdom (UK) and India, reveals that these countries have established proper review mechanisms for contempt cases, including those decided by their Supreme Courts. These mechanisms provide checks and balances to ensure judicial accountability and prevent the misuse of judicial power.

This paper examines the possibility of introducing similar review mechanisms in Sri Lanka, evaluating the advantages and challenges of adopting such models within the Sri Lankan socio-legal context. Firstly, the paper provides an overview of the contempt law and the legal framework prior to the enactment of the CC Act in Sri Lanka. Thereafter, it examines the provisions of the recently enacted CC Act and identifies its limitations. Having found that there is a lack of judicial remedies for Supreme Court contempt convictions, the paper discusses international standards on remedies for miscarriages of justice and the right to appeal, highlighting their relevance to Sri Lanka's legal system. It then explores the impact of the absence of review mechanisms for Supreme Court contempt on fairness and transparency, drawing on Rawls's theory of justice. Subsequently, the paper analyses judicial remedies for reviewing contempt cases in India and the UK, focusing on their implementation and effectiveness. It also discusses the lessons Sri Lanka can learn from international models and examines the challenges involved in adapting these models to the Sri Lankan legal system. Finally, the paper provides recommendations for necessary reforms and concludes with suggestions for future research on the area.

2. THE LAW BEFORE THE CC ACT

The primary purpose of the law of contempt of court is to sanction conduct that could harm public faith in the administration of justice.⁶ Maintaining

established by showing, *inter alia*, (a) an error of constitutional magnitude led to an unfair trial; (b) The petitioner is actually innocent of the crime which he was convicted; (c) The penalty was imposed by a sentencing authority which had such a grossly misleading profile of the petitioner (fabrication of evidence). See further, *Murray v Carrier* 477 U.S. 478 (1986) (miscarriage of justice due to non-compliance of the principles of natural justice).

⁶ V.T. Tamilmaran, 'The Path of Criticism is a Public Way: Contempt of Court and the Dilemma of a Republic' in Department of Public and International Law, Faculty of Law, University of Colombo (ed), *Law in Defence of Human Integrity: Principles and Policies* (Colombo University Press, 2020) 30.

respect and dignity for the court and its officers is crucial because, without such respect, public confidence in the justice system would erode, and the law itself would fall into disrepute.⁷ To uphold this purpose, every democratic system should have a well-defined mechanism that includes both substantive and procedural laws.

Prior to the enactment of the CC Act in Sri Lanka, there were significant concerns regarding the lack of specific legislation addressing issues of contempt.⁸ The Act was introduced to meet the urgent need to codify a substantial body of jurisprudence on contempt of court, which had been shaped and evolved by the judiciary over centuries, drawing on common law principles and practices.⁹ The aim of the Act is not to create new jurisdiction for the courts, but rather to standardise the application of the law relating to contempt. However, it has been observed that, in the absence of uniform guidelines and procedures, the judiciary often adopted a conservative approach to contempt, underscoring the need for legislative intervention to strike a better balance between competing interests.

Under the legal framework before the CC Act, Article 105(3) of the Constitution played a pivotal role, granting the Supreme Court and Court of Appeal authority to punish contempt committed within or outside the Courts.¹⁰ However, Article 105(3) clarified that these powers did not prejudice the rights of other courts, tribunals, or institutions to punish contempt under their own laws. Courts of First Instance (also known as lower courts or subordinate courts)¹¹ could promptly punish individuals for contempt disrupting judicial

⁷ *Croos and Another v Dabrera* [1999] 1 Sri LR 205, 209.

⁸ (n 6).

⁹ (n 6) 8.

¹⁰ It is observed that the CC Act could not have been intended to derogate from or affect the original powers of the Supreme Court under Article 105(3) of the Constitution, which remains extant and unamended. Therefore, any attempt to alter or curtail the jurisdiction conferred by Article 105(3) would necessarily require a constitutional amendment. See: *The Hon. Attorney General v Nagananda Kodituwakku* (SC Contempt No: 01/2021, Supreme Court Minutes of 16.06.2025).

¹¹ High Court, District Court, the Family Court, the Small Claims Court, the Magistrate's Court or the Primary Court. See: section 2 of the Judicature Act, No. 02 of 1978.

proceedings.¹² The relevant procedural arrangements for these proceedings before the lower courts governed by the Civil Procedure Code Act.¹³

In the period preceding the 1978 Constitution, the Supreme Court and Court of Appeal handled contempt of court cases summarily, typically initiating proceedings with a *rule nisi* drafted by the Attorney General as part of the *cursus curiae* practice.¹⁴ Despite arguments that this practice became unconstitutional with the enactment of Articles 105(3) and 136(1)(b)¹⁵ of the Constitution which did not provide for procedural rules, the absence of such rules did not prevent these courts from hearing contempt cases. In the post-1978 era, numerous Supreme Court decisions have affirmed the jurisdiction of these courts to hear contempt applications, even in the absence of specific procedural rules under Article 136(1)(b). Challenges asserting the invalidity of proceedings due to the lack of rules have consistently been dismissed. The courts maintain that

¹² (a) Judicature Act, No. 2 of 1978, s. 55(1) states:

Every District Court, Family Court, Small Claims Court, Magistrate's Court and Primary Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of court committed in the presence of the court itself and all offences which are committed in the course of any act or proceeding in the said court respectively, and which are declared by any law for the time being in force to be punishable as contempt of court.

(b) Judicature Act, No. 2 of 1978, s. 18 states:

The High Court shall have power and authority to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority, and on conviction to commit the offender to jail for a period not exceeding five years. Such imprisonment shall be simple or rigorous as the court shall direct and the offender may, in addition thereto, or in lieu thereof, in the discretion of the court be sentenced to pay a fine not exceeding five thousand rupees.

¹³ Civil Procedure Act, ss. 792-800.

¹⁴ *Deniswaran v Hon. Justice C.V. Wingneswaran and others* (CA Writ Application No: 285/2017, Court of Appeal Minutes of 13.02.2019) 5.

¹⁵ Article 136(1) (b) states that the proceedings, in relation to exercise of several jurisdictions conferred on this Court by the Constitution or any other law, be governed by the Rules of the Supreme Court.

their authority to act under the law is unaffected by the absence of procedural rules.¹⁶ This stance consistently upheld in subsequent cases.¹⁷

3. A GLIMPSE AT THE CC ACT

The long title of the CC Act indicates its purpose as ensuring uniform application of the laws related to the contempt of a court, tribunal, and institution.¹⁸ It also outlines procedures for addressing such contempt and covers related or incidental matters thereto.

Section 2 outlines its objectives, including upholding the dignity and authority of judicial bodies, ensuring the due administration of justice, and maintaining public order, health, and morals. It aims to enforce compliance with judicial directives, uphold impartiality, and balance freedom of expression with respect for judicial processes.

The Act does not define the term “contempt.” However, section 3 specifies various acts that constitute contempt, including actions or omissions that undermine the authority of a court, tribunal, or institution or interfere with the administration of justice. It criminalises acts done with the intent to bring a judicial body into disrespect, interfere with ongoing litigation, or obstruct justice. This includes wilful disobedience of court orders, decrees, or undertakings, as well as false publications or actions that scandalise the judiciary or diminish its authority. Unauthorised use, publication, transmission, or tampering with audio or visual recordings of judicial

¹⁶ *Cornel & Co. Ltd. v Mitsui & Co. Ltd. and others* [1998] Vol. VII Part II BLR. 39, 43 (per Wigneswaran J). This position is reflected in a long line of cases including *In the Matter of the Application of JOHN FERGUSON for a Writ of Prohibition against the District Court* (1874) 1 NLR 181; *Kandoluwe Sumangala v Mapitigama Dharmarakitta et al* (1908) 11 NLR 195; *The Attorney General v Vaikunthavasan* (1951) 53 NLR 558; *The Queen v D. Peris et al* (1964) 68 NLR 372 and *R.A. Jayaratne v Mrs. Sirimavo R.D. Bandaranayake and others* (1966) 69 NLR 181.

¹⁷ *A.M.E. Fernando v The Attorney General* [2003] 2 Sri LR 52 and *Deniswaran v Hon. Justice C.V. Wigneswaran and others* (CA Writ Application No: 285/2017, Court of Appeal Minutes of 13.02.2019).

¹⁸ As per section 16, As explained in section 16, “institution” means, an institution created and established by written law for the administration of justice and for the adjudication and settlement of industrial and other disputes and “tribunal” means, a tribunal created and established by written law for the administration of justice and for the adjudication and settlement of industrial and other disputes.

proceedings is strictly prohibited unless prior leave of the court has been obtained. Acts that incite public dissatisfaction, cast suspicion on the judiciary, or erode public confidence in the administration of justice are also expressly prohibited.

Section 4 provides defences against such charges. It provides that publishing or expressing accurate facts or fair comments about judges, judicial officers, proceedings, judgments, or orders will not constitute contempt of court if done in good faith, without malice, and in the public interest. Further such expressions must not intentionally impair the administration of justice, and any risk of causing prejudice or obstruction should be incidental. *Bona fide* publications or fair criticisms of decisions or resolved matters, where reasonable efforts are made to avoid contempt, are also protected.

Section 6 grants the Supreme Court and Court of Appeal powers to punish contempt, and section 7 confers similar powers on the Courts of First Instance.¹⁹ Section 8 prescribes the procedure for handling contempt committed in the presence of the Supreme Court or the Court of Appeal, while section 9 outlines the procedure for contempt not committed in their presence. Section 10 details the Court of Appeal's jurisdiction over contempt committed against a Court of First Instance, tribunal, or institution, and section 11 outlines the procedure for Courts of First Instance to determine contempt cases, referencing Chapter LXV of the Civil Procedure Code.

Section 12 is a key provision dealing with appeals. An appeal may lie from any order or decision of the Court of Appeal in the exercise of its jurisdiction to punish for contempt of itself and a Court of First Instance, tribunal or institution, as the case may be, to the Supreme Court.²⁰ A person who is aggrieved by an order or decision of a Court of First Instance may file an appeal to the Court of Appeal.²¹

¹⁹ As defined in section 16, "Court of First Instance" means, the High Court of the Republic of Sri Lanka, the High Court for a Province established by Article 154P of the Constitution, the District Court, the Family Court, the Small Claims Court, the Magistrate's Court or the Primary Court.

²⁰ The Contempt of Court, Tribunal, or Institution Act, s 12(1).

²¹ The Contempt of Court, Tribunal, or Institution Act, s 12(2).

Section 13 imposes a one-year limitation period for instituting contempt proceedings, and section 14 addresses contempt committed by a body of persons.

Although the Act aims to provide a uniform procedure for punishing contempt, it does not specify sentences for each type of contempt. As a result, the existing prescribed sentences for each contempt will continue to apply. In this regard, Superior Courts have the discretion, under Article 105(3), to determine suitable sentences (imprisonment or fine) as they see fit. For contempt before Courts of First Instance, sections 18 and 55 of the Judicature Act²² and sections 799²³ and 800²⁴ of the Civil Procedure Code are applicable.

4. CRITICAL GAP IN JUDICIAL REMEDIES FOR SUPREME COURT CONTEMPT VERDICTS

The CC Act highlights a critical gap in addressing judicial errors within Supreme Court contempt verdicts, prompting concerns about fairness and accountability in the judicial process. Despite its role as the highest judicial authority, the Supreme Court is susceptible to errors in contempt cases. These errors may stem from misinterpretation of evidence, procedural oversights, or personal biases. Without mechanisms for review, such mistakes can erode public trust in the judiciary and diminish respect for court decisions.

²² Judicature Act 1978 (n 12).

²³ Civil Procedure Code, s. 99 states:

Every sentence of fine or imprisonment passed by a Court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of, contempt of Court, and offences by this Ordinance made punishable as contempt of Court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Code of Criminal Procedure Act for carrying into effect sentences of fine or imprisonment passed by any Court, in the exercise of its ordinary criminal jurisdiction.

²⁴ Civil Procedure Code, s. 800 states:

The provisions of Article 105 (3) of the Constitution and Sections 18 and 55 of the Judicature Act shall apply to the sentence of fine or imprisonment, as the case may be, that may be imposed on conviction for contempt under this Chapter by the various Courts

4.1. The Need for Remedies and International Standards

The legal principle of *ubi jus ibi remedium* (where there is a right, there must be a remedy)²⁵ establishes the foundational necessity for remedial measures in cases of judicial error. This principle is not merely a domestic ideal but is reinforced by international law, which creates a positive obligation on states to provide such remedies. Article 8 of the Universal Declaration of Human Rights (UDHR) explicitly states that everyone has the right to an effective remedy for violations of their fundamental rights.

This obligation is further concretized in the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a State party. Article 2(3) obligates state parties to ensure that individuals have access to effective remedies when their rights are violated. To give effect to this and other ICCPR provisions not yet recognized in domestic law, the Sri Lankan Parliament enacted the International Covenant on Civil and Political Rights (ICCPR) Act of 2007.²⁶ A pivotal section of this Act is 4(2), which guarantees every person convicted of a criminal offence the right to appeal to a higher court.

It is a well-established principle of law in Sri Lanka, that ‘an appeal never lies to a party to a legal proceeding from an order made in it unless the right is expressly given by statute’.²⁷ However, the Supreme Court fundamentally expanded this understanding in the landmark case of *Gunawardhana v Sumanasena*.²⁸ The Court was dealt with a conviction under the Sri Lankan Bureau of Foreign Employment Act,²⁹ which contained no specific right of appeal. By applying section 4(2) of the ICCPR Act, the Court held that a general right of appeal now exists against all Magistrates’ Court (a Court of First Instance) convictions,

²⁵ See, in *Marbury v Madison* (1803) 5 U.S. 1 Cranch 137, Chief Justice Marshall quotes - 3 William Blackstone, *Commentaries on the Laws of England* 23 (Dawsons of Pall Mall, 1966). Also see, *Kumara v The Divisional Secretary, Mawathagama* (CA/WRIT/444/ 2014, Court of Appeal Minutes of 31.03.2021).

²⁶ Act No. 56 of 2007.

²⁷ *In Re Wijesinghe* (1913) 16 NLR 312. See further: *The Indian Bank Ltd v Sri Lanka Shipping Company Limited* (1976) 79 (1) NLR 1; *Rathnayake v. Karunathilake* (SC Appeal 31/2009 and SC Appeals 35/2009-78/2009, Supreme Court Minutes of 6 July 2018).

²⁸ *Gunawardhana v Sumanasena* (SC Appeal No. 201/2014, Supreme Court Minutes of 15 March 2018).

²⁹ Act No. 21 of 1985

notwithstanding the silence of the specific statute. As Justice Aluwihare, PC clarified, this expansion of appellate jurisdiction applies exclusively to criminal cases and has no bearing on civil matters.³⁰

This evolution underscores the critical function of remedies in upholding justice. They provide an essential mechanism for individuals who have been wrongfully convicted or unjustly sentenced to seek redress and correct injustices. Without such strong mechanisms, the legal system risks irrevocable miscarriages of justice, where individuals endure penalties without any avenue for correction. Ultimately, by ensuring effective remedies are available, the legal system safeguards fundamental rights, maintains fairness, and sustains public trust in the integrity of judicial processes.

4.2. Constitutional Constraints and Limited Remedies

Under Article 118 of the Constitution, the Supreme Court of Sri Lanka serves as the final court of appeal and lacks statutory jurisdiction to rehear, review, alter, or vary its decisions. This constitutional limitation means there is no internal mechanism within the judiciary to challenge Supreme Court verdicts³¹ including those on contempt of court. The only remedy currently available is to request for a Presidential Pardon under Article 34(1) of the Constitution. However, this power has historically been selectively exercised, potentially for political reasons,³² raising concerns about its impact on judicial independence and the separation of

³⁰ *Gunawardhana* (n 28) 8.

³¹ *Ganeshanatham v Vivienne Goonewardena and Three others* [1984] 1 Sri LR 321; *Jayaraj Fernanadapulle v Premachandra de Silva* [1996] 1 Sri LR 70 and *Electroteks Network Services Private Limited v Dialog Broadband Network (Private) Limited* (SC/MISC/03/201, Supreme Court Minutes of 19.05.2023).

³² *Hirunika Eranjali Premachandra v Hon. AG and others* [(SC FR Application No. 221/2021); *Sumana Premachandra v Hon. AG* (SC FR Application No. 225/2021); *Ghazali Hussain v The Hon. AG and others* (SC FR Application No. 228/2021) – Supreme Court Minutes of 17.01.2024] and *Women & Media Collective v Hon. AG and others* [SC (F/R) 446/2019, Supreme Court Minutes of 06.06.2024]. Also see, Apsara Rodrigo, ‘Sri Lanka Supreme Court to Hear Case Against Pardoning Gnanasara Thero’ (Economy Next, 4 October 2020) <https://economynext.com/sri-lanka-supreme-court-to-hear-case-against-pardoning-gnanasara-thero-133659/> accessed 11 July 2024.

separation of powers.³³

In summary, while the CC Act aims to provide a uniform procedure for contempt cases, the absence of specific provisions for reviewing Supreme Court verdicts limits avenues for correcting judicial errors. This situation poses significant challenges to the integrity and accountability of the judicial process in Sri Lanka.

4.3. Impact of No Remedies for Supreme Court Contempt Verdicts on Fairness and Transparency – Rawls’s Justice Theory

The unavailability of judicial remedies against Supreme Court contempt verdicts poses significant challenges to the fairness and transparency of the judicial process. Analysing this issue through the lens of John Rawls’s (1921–2002) theory of justice³⁴ provides a vital framework for understanding these challenges.

Rawls’s “equal liberty principle” and “justice as fairness” emphasise that each person should have the same basic liberties as other,³⁵ with fair procedures and transparent processes in administering justice being paramount. However, the lack of any judicial review mechanisms for Supreme Court contempt verdicts undermines this principle by denying individuals the right to seek review and correction of judicial decisions. This absence of remedy can foster perceptions of injustice and arbitrariness, contrary to the concept of equal liberty.

While the CC Act provides judicial relief in some cases through appeals, it excludes any avenue for appealing, revising, or remedying Supreme Court contempt verdicts. When it comes to Supreme Court contempt verdicts, relying solely on Presidential Pardon as the remaining remedy is not accessible to everyone. This may allow for potential misuse of judicial power, disproportionately affecting vulnerable or less powerful individuals. This situation conflicts with Rawls’s conception of justice, where institutions are meant to protect the interests of the “least

³³ Justice Anil Gooneratne, ‘I beg your pardon, the grant of the President’s Pardon’ (2020) XXV The Bar Association Law Journal (Sri Lanka) 9.

³⁴ Rawls, J., *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

³⁵ Penner, JE and Melissaris, E, *McCoubrey and White’s Textbook on Jurisprudence* (5th edn, OUP 2012) 190.

advantaged.”³⁶ Therefore, it is argued that equitable outcomes in the judicial system necessitate mechanisms for reviewing and rectifying decisions. The absence of such mechanisms in contempt cases leaves individuals subjected to potentially unjust decisions without remedy, exacerbating inequalities and undermining the fairness of the legal system.

5. JUDICIAL REMEDIES FOR REVIEWING CONTEMPT CASES IN INDIA

In India, the law governing contempt of court combines statutory and common law principles, with the Contempt of Courts Act, 1971 being the key legislation.

5.1. *Civil and Criminal Contempt*

The Contempt of Courts Act, 1971 defines “contempt of court” as civil or criminal. According to section 2(b), civil contempt refers to the wilful disobedience of a court order, typically involving non-compliance with orders that directly benefit the opposing party.³⁷ In contrast, criminal contempt, as defined in section 2(c), encompasses acts that scandalise the authority of the court, prejudice ongoing judicial proceedings, or obstruct the administration of justice.³⁸ While civil contempt primarily concerns private disputes and remedies for parties, criminal contempt is considered an offence against the dignity of the court and the broader public interest, aiming to uphold respect for the judiciary and ensure the proper functioning of the justice system.

5.2. *Contempt Jurisdiction*

Both the Supreme Court and High Courts can hear contempt committed in their presence. Article 129 of the Constitution empowers the Supreme Court to punish for its contempt, emphasising judicial dignity. Article 215 grants similar powers to High Courts, governed by the Contempt of Courts

³⁶ Rawls, J, ‘Justice as Fairness: Political not Metaphysical’ (1985) 14(3) *Philosophy & Public Affairs* 227.

³⁷ *Vidya Sagar v Third Additional District Judge, Dehradun*, [1991] Cr LJ 2286.

³⁸ See, *Delhi Judicial Services Association v State of Gujarat and others* (1991) 4 SCC 406; *Legal Remembrancer v Motilal Ghose* ILR 41 Cal. 173.

Act. Sections 10 and 11 of the Contempt of Courts Act state that High Courts have jurisdiction over contempt of themselves and lower courts, following the same procedures for both. However, a High Court cannot take cognizance of contempt against a subordinate court if the act is punishable under the Indian Penal Code.³⁹

5.3. Punishments

Section 12(1) of the Act provides that both civil and criminal contempt may be punished with simple imprisonment for a term up to six months, a fine of up to two thousand rupees, or both. In cases of civil contempt, section 12(3) states that if a fine is deemed inadequate, the contemnor may be detained in a civil prison for a period not exceeding six months. Civil prisoners are individuals who fail to comply with court orders in civil matters and may maintain themselves and receive necessities from private sources.⁴⁰ However, the accused may be discharged, or the punishment awarded may be remitted on apology⁴¹ being made to the satisfaction of the Court.

5.4. Appeals

An aggrieved party can appeal a single judge's decision of a High Court to a bench of two or more judges of the same High Court.⁴² If a bench of two or more judges decided the case, the appeal lies with the Supreme Court.⁴³ Appeals from decisions by the Judicial Commissioner of a Union Territory

³⁹ The section 10 provides:

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself: Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

⁴⁰ The Prisons Act, 18941, s. 3(4) and 31.

⁴¹ 12(1) explanation says: *an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.*

⁴² The Contempt of Courts Act, 1971, s. 19(1)(a).

⁴³ *ibid* s. 19(1)(b).

also go to the Supreme Court.⁴⁴ The Act permits only one appeal,⁴⁵ but a further review application to the Supreme Court is possible under Article 136 of the Constitution through a special leave petition.⁴⁶ It is important to note that Article 136 does not confer a right of appeal on any party, but it confers a *discretionary power* on the Supreme Court to interfere in *suitable cases*.⁴⁷

5.5. Supreme Court Contempt Verdicts and Review Mechanisms in India

When the Supreme Court convicts a person for contempt, there is generally no appeal or review since it is the final highest court. However, errors in contempt verdicts can be reviewed under Article 137 of the Constitution,⁴⁸ which allows for the correction of judicial errors. This review power amounts to an acknowledgement by it that sometimes errors or mistakes in judgments do occur resulting in a miscarriage of justice.⁴⁹

⁴⁴ *ibid*

⁴⁵ Abin Alex, 'Understanding the Law on Criminal Contempt in India' The Nyaaya Guest Blog (15 February 2022)

⁴⁶ Article 136 provides that:

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
- (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

⁴⁷ Supreme Court of India, Handbook on Practice and Procedure and Officer Procedure (2017) 9. Available at <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/notices-circulars/ppop2017.pdf>> accessed 20 August 2025. Also see, Order XLVIII (Part IV) of the Supreme Court Rules, Extra Ordinary Gazette No. 287 dated 29.05.2014. <<https://images.assettype.com/barandbench/import/2014/07/Supreme-Court-Rules-2013.pdf>> accessed 20 August 2025.

⁴⁸ Article 137 states:

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

⁴⁹ Muteti Mutisya Mwamisi, 'The Indian Supreme Court and Curative Actions' (2007) Indian J. Const. L. 207 <http://www.commonlii.org/in/journals/INJConLaw/2007/10.pdf> accessed 12 July 2024.

Article 145(1)(e) allows the Supreme Court to create rules as to the conditions subject to which any judgment pronounced, or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered, with the President's approval.

In *Sow Chandra Kante and another v Sheikh Hai*,⁵⁰ Justice Krishna Iyer emphasised this review is a serious step, warranted only by glaring omissions or grave errors. Explaining the scope and ambit of the review jurisdiction of the Supreme Court, Justice Krishna Iyer stated that:

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient.

An application for review under Article 137 of the Constitution read with Order XLVII of the Rules⁵¹ shall be filed on the grounds mentioned in Order XLVII Rule 1 of the Code, namely, discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge or could not be produced by the petitioner at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.⁵²

A review petition must be filed within thirty days from the judgment date,⁵³ certified by an Advocate on Record as the first application based on admissible grounds.⁵⁴ The Court disposes of the petition, often by circulation without oral arguments. The application should, as far as practicable, be circulated to the same Judge or Bench that delivered the

⁵⁰ (1975) 1 SCC 674.

⁵¹ Order XLVIII (Part IV) of the Supreme Court Rules, Extra Ordinary Gazette No. 287 dated 29.05.2014. <<https://images.assettype.com/barandbench/import/2014/07/Supreme-Court-Rules-2013.pdf>> accessed 20 August 2025.

⁵² Supreme Court of India, Handbook on Practice and Procedure and Officer Procedure (n 47). Also see, *Kamlesh Verma v Mayawati* (2013) 8 SCC 320.

⁵³ Supreme Court of India, Handbook on Practice and Procedure and Officer Procedure (n 47) Rule 2.

⁵⁴ (n 51) Rule 1 para 2.

original judgment or order.⁵⁵ If the Court finds an error, it may reverse or modify its decision. No further application for review shall be entertained in the same matter once an application for review has been made and disposed of.⁵⁶

In addition to reviews, the Supreme Court can entertain “curative petitions”, as established in *Rupa Ashok Hurra v Ashok Hurra and Another*,⁵⁷ for cases of gross miscarriage of justice even after a review petition is dismissed. While Article 137 allows for the review of judgments to correct errors apparent on the face of the record or to consider new and important evidence, curative petitions are meant for the “rarest of rare cases” where a judgment has resulted in a gross miscarriage of justice due to a violation of natural justice principles, such as a party not being heard or bias in the proceedings. Justice Quadri, in stating his opinion in *Rupa Ashok Hurra*,⁵⁸ noted that the Supreme Court, as the apex court in the judicial hierarchy, should balance the principles of finality and justice in its judgments. He recognised that, in rare cases, reconsideration of a final judgment may be necessary to correct miscarriages of justice, particularly when violations of natural justice or judicial bias are involved:

We are faced with competing principles – ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principle of natural justice or apprehension of bias due to a Judge who participated in decision making process not disclosing his links with a party to the case, or abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty... though Judges of the highest Court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error.

(emphasis added)

⁵⁵ (n 51) Rule 3.

⁵⁶ (n 51) Rule 5.

⁵⁷ (2002) 4 SCC 388.

⁵⁸ *ibid.*

In a curative petition, the petitioner must specifically state that the grounds mentioned were included in the review petition, which was subsequently dismissed by circulation.⁵⁹ The curative petition must be accompanied by a certificate from a Senior Advocate, confirming that the petition meets the requirements outlined in the *Rupa Ashok Hurra* case.⁶⁰ Additionally, a certificate from the Advocate on Record must be provided, stating that it is the first curative petition filed in the impugned matter.⁶¹ Initially, a bench of the three most-senior judges, along with the original judgment judges if available, scrutinises the petition.⁶² If deemed necessary, it warrants a full hearing to ensure no gross injustice remains.⁶³ Unlike review petitions, which must be filed within thirty days and are often disposed of by circulation without oral arguments, curative petitions do not have a fixed timeframe but are expected to be filed within a reasonable time and without undue delay.⁶⁴

6. JUDICIAL REMEDIES FOR REVIEWING CONTEMPT CASES IN UK

In UK, contempt of court law is based on both common law and statutory provisions. Common law contempt includes direct contempt (e.g., disruptive behaviour in court) and indirect contempt (e.g., disobeying court orders).⁶⁵ The Contempt of Court Act 1981⁶⁶ complements common law, addressing issues like prejudicial publications. The Act enforces strict liability for publishing material that risks prejudicing active proceedings, regardless of intent.⁶⁷ Section 14 of the Act allows Superior Courts to

⁵⁹ (n 51) Rule 2(1).

⁶⁰ (n 51) Rule 2(2).

⁶¹ (n 51) Rule 2(3).

⁶² (n 51) Rule 4(1).

⁶³ (n 51) Rule 4(3).

⁶⁴ (n 51) Rule 3.

⁶⁵ The Criminal Procedure Rules 2020 (No. 759), Rule 48.9. The rule sets out the procedure to be used when these and other breaches occur and notes to the rule state that “the conduct to which this rule applies is sometimes described as ‘civil’ contempt of court”.

⁶⁶ Contempt of Court Act 1981 (c. 49).

⁶⁷ Contempt of Court Act 1981 ss 1-2.

imprison for up to two years or impose unlimited fines, while Inferior Courts can impose up to one month's imprisonment and a £2,500 fine. Tribunals lack authority to sanction for contempt. This system ensures serious offences are handled by higher courts.

6.1. Civil and Criminal Contempt

Contempt in the UK is divided into civil and criminal categories. In *Attorney General v Crosland*, the Supreme Court explained that civil contempt involves breaching court orders to protect private rights,⁶⁸ while criminal contempt involves serious interference with justice.⁶⁹

6.2. Courts with jurisdiction to hear contempt matters

Courts are categorised into superior and inferior courts in the UK judicial system:

(1) Superior Courts of Record:

- (a) Higher Courts: High Court, the Court of Appeal, and the Crown Court⁷⁰ and the Supreme Court⁷¹
- (b) Any other court that is identified in legislation as being a Superior Court of Record, including the Court of Protection, the Upper Tribunal (UT) the Employment Appeal Tribunal (EAT), the Court Martial Appeal Court and the Special Immigration Appeals Commission (SIAC)⁷²

(2) Inferior Courts: County Court and Magistrates' Courts.

For contempt purposes, "court" includes these courts and many tribunals. Some tribunals, like the UT and EAT, are superior courts of record. Bodies

⁶⁸ *Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103 at [23]

⁶⁹ *ibid*, citing *Director of the Serious Fraud Office v O'Brien* [2014] AC 1246 at [39] (Lord Toulson). The judgment is also published as *R v O'Brien* [2014] UKSC 23

⁷⁰ Senior Courts Act 1981.

⁷¹ *ibid*, ss 15(1), 19(1), 45(1); Constitutional Reform Act 2005, s 40(1).

⁷² Mental Capacity Act 2005, s 45(1); TCEA 2007, s 3(5); Employment Tribunals Act 1996, s 20(3); Courts Martial (Appeals) Act 1968, s 1(2), Armed Forces Act 2006, s 272; Special Immigration Appeals Commission Act 1997, s 1(3).

like SIAC and the Parole Board,⁷³ though not formally named courts, are treated as such for contempt.

Superior courts of record have an inherent power to deal with any contempt affecting their own proceedings. The High Court additionally has inherent supervisory jurisdiction ‘to prevent interference with the due course of justice in inferior courts and to assist them so that they may administer justice fully and effectively’.⁷⁴

6.3. Right of Appeal for Contempt Cases

The appeal process for contempt orders varies:

- (a) High Court orders in contempt proceedings go to the Court of Appeal (Civil Division) if heard by a single judge, or to the Supreme Court if heard by a Divisional Court.⁷⁵
- (b) Under Section 13 of the Administration of Justice Act 1960, appeals from the Court of Appeal (Civil Division) lie to the Supreme Court.
- (c) Appeals from the Court of Appeal (Criminal Division) also lie to the Supreme Court, based on legislative history.

6.4. Appeals from Decisions of the Supreme Court

The Supreme Court of the UK is the final court of appeal for all UK civil cases and criminal cases from England, Wales, and Northern Ireland. It has inherent powers to deal with contemptuous behaviour in its presence. Any application alleging contempt of the Court shall be referred to a panel of three Justices who shall hold an oral hearing.

Although section 13 of the Administration of Justice Act, 1960 provides a mechanism for appeals against contempt verdicts of higher courts, it does not specify an appeal route for contempt findings by the Supreme Court.

⁷³ The status of the Parole Board as a “court” for the purposes of contempt of court was recently clarified in *R (Bailey and Morris) v Secretary of State for Justice* [2023] EWHC 821 (Admin).

⁷⁴ *Proprietor of Ashdown House School v JKL* [2019] UKUT 259 (AAC), [2019] ELR 530 at [120]. See also *R v Parke* [1903] 2 KB 432, 442; *The Law Society of England and Wales v Otopo* [2011] EWHC 2264 (Ch) at [46].

⁷⁵ The Law Commission of UK, Contempt of Court Summary of the Consultation Paper (2024 July) 28.

In *Attorney General v Crosland*, it was argued that the Act precludes appeals in contempt verdicts of the Supreme Court.⁷⁶ However, the majority rejected this view and affirmed the need for an appeal right in cases that could result in imprisonment or fines.⁷⁷ The Court considered the principles in relation to appeals and found that a right of appeal against a “first instance decision” of the Supreme Court is essential:

If there were no right of appeal from the decision on contempt of the First Instance Panel, that would represent a serious lacuna in the law. That is because it is well accepted that there ought to be a right of appeal by the defendant in a contempt matter that may result in imprisonment or a fine. This was expressed in very strong terms by the 1959 Report entitled Contempt of Court by Justice (chaired by Lord Shawcross). The Justice Report preceded section 13 of the Administration of Justice Act 1960 and said, at p 35:

At present there is no right of appeal against any decision or punishment for any criminal contempt whether it is committed in the presence of the court or out of court. As no human being is infallible, and as any sentence of imprisonment involves a basic question of civil liberty, it is not surprising to find that in every system of law of any civilised State there is always a right of appeal against any sentence of imprisonment. For contempt of court alone can an Englishman be sent to prison by a court from whose decision there is no appeal.... Even in enemy-occupied territory in time of war, there must, under the Hague Convention, always be some right of appeal or petition against any sentence of imprisonment.⁷⁸

The court concluded that there is nothing in the Administration of Justice Act to suggest that appeals from a Supreme Court order or decision are excluded from the right of appeal provided by section 13. Moreover, the Court rejected the argument that it would be a “conceptual impossibility” for an appeal to lie “from one organ of the Supreme Court to another.”⁷⁹ This is because in this context the Supreme Court is exercising its original jurisdiction by dealing with a contempt in the “first instance”, as opposed to its “appellate jurisdiction”.

⁷⁶ *Crosland* (n 68) at [42] (Lord Briggs, Lord Kitchin, Lord Burrows, Lady Rose).

⁷⁷ The decision was by majority (Lord Briggs, Lord Kitchin, Lord Burrows, Lady Rose), with Lady Arden dissenting at [96]-[153].

⁷⁸ *Crosland* (n 68) at [33] (Lord Briggs, Lord Kitchin, Lord Burrows, Lady Rose).

⁷⁹ *Crosland* (n 68) at [46] (Lord Briggs, Lord Kitchin, Lord Burrows, Lady Rose).

7. ADDRESSING GAPS IN SRI LANKA'S CC ACT: LESSONS FROM INDIA AND THE UK

A comparative analysis of the legal frameworks in India and the UK reveals valuable insights for addressing the deficiencies in Sri Lanka's CC Act. Both jurisdictions employ mechanisms that enhance judicial accountability and minimise errors in contempt proceedings, offering potential models for reform.

India's legal framework empowers the Supreme Court to review its own contempt judgments. In contrast, the UK adopts a jurisprudential approach, as seen in cases like *Crosland*, where the "first instance decision" of the Supreme Court can be reviewed through an appeal to another panel of judges. While replicating the UK's appeal mechanism may present constitutional challenges in Sri Lanka, adopting India's model of internal review against Supreme Court contempt verdicts in exceptional circumstances appears more feasible within Sri Lanka's existing legal context.

7.1. Benefits of Adopting India's Approach

India's approach to handling contempt cases through internal review mechanisms offers several benefits for Sri Lanka. By enabling the Supreme Court to revisit its own contempt judgments, this system promotes greater judicial accountability and transparency. Errors or injustices in contempt cases can be addressed promptly, safeguarding the rule of law and protecting individual rights. However, the UK's experience demonstrates that judicial interpretation has been the primary driver of relief in contempt cases, rather than a uniform approach. For example, in the *Crosland* decision, the judiciary did not unanimously support an appeal mechanism for Supreme Court contempt convictions, reflecting the complexities and differing opinions within the UK legal system.

7.2. Current Stance in Sri Lankan Jurisprudence and Practical Obstacles

In *Ganeshanatham v Vivienne Goonawardene and others*, the Supreme Court of Sri Lanka held that it has no jurisdiction to act in revision of cases decided by itself, and none of the provisions of the Constitution expressly confers such a jurisdiction on it, nor has the legislature conferred such a jurisdiction by law. It was further stated that the Supreme Court is a court

of last resort in appeal and there is finality in its judgment whether it is right or wrong⁸⁰ and that is the policy of the Law.⁸¹

In *Jeyaraj Fernandopulle v Premachandra De Silva and Others*,⁸² although it was stated that the Supreme Court has no statutory jurisdiction to reconsider, vary or set aside its orders, it recognised that there are certain circumstances under which a Court has the power to reconsider judgments or order given by it using its inherent powers.⁸³ Recently, in *Electroteks Network Services Private Limited v Dialog Broadband Network (Private) Limited*,⁸⁴ the Supreme Court has taken the view that the Court's inherent powers are adjuncts to the existing jurisdiction to remedy injustice and cannot be made the source of a new jurisdiction to revise a judgment rendered by a court.⁸⁵

As noted above, the existing constitutional framework and judicial precedents in Sri Lanka do not support the implementation of a review mechanism for decisions made by the Supreme Court. As evidenced by the rulings in *Ganeshanatham v Vivienne Goonawardene and Others*,⁸⁶ *Jeyaraj Fernandopulle v Premachandra De Silva and Others*,⁸⁷ and

⁸⁰ *Ganeshanatham v Vivienne Goonawardene*, [1984] 1 Sri LR 321, 328.

⁸¹ *Electroteks Network Services Private Limited v Dialog Broadband Network (Private) Limited* (SC/MISC/03/201, Supreme Court Minutes of 19.05.2023) 9.

⁸² [1996] 1 Sri L R 70.

⁸³ The Sri Lankan courts on certain occasions, where mistake was so obvious, have used the *per incuriam* concept: *Police Officer of Mawalla v Galapatha* (1915) 1 CWR 197; *Ranmenika v Tissera* 65 NLR 214; *Kariawasam v Priyadharshani* [2004] 1 Sri L R 189. The SC's power to review a judgment of its own passed in appeal where it appears that fresh evidence has been discovered since such judgment was pronounced: *Loku Banda v Assen* (1897) 2 NLR 311. Clerical mistake or error from an accidental slip or omission can be rectified: *Marambe Kumarihamy v Perera* (1919) VI CWR 325; *Padma Fernando v T. S. Fernando* (1956) 58 NLR 262. The SC has inherent power to set aside its order by way of remedying the injustice caused to the petitioner and grant relief: *Palitha v OIC Police Station, Polonnaruwa and Others* [1993] 1 Sri LR 161.

⁸⁴ (n 81) 13.

⁸⁵ Also see, *Ranaweera Sarath Nandalal and Another v Public Enterprise Reform Commission and others* (SC/FR/ Application No. 117/2007, Supreme Court Minutes of 08.08.2024) and *All Ceylon Commercial and Industrial Workers Union v Ceylon Petroleum Corporation and Another* [1995] 2 Sri LR 295.

⁸⁶ *Ganeshanatham* (n 80).

⁸⁷ *Jeyaraj Fernandopulle* (n 82).

Electroteks Network Services Private Limited v Dialog Broadband Network (Private) Limited,⁸⁸ the Supreme Court has consistently held that it lacks statutory jurisdiction to revise or review its own judgments, and no legislative changes have been made to alter this stance. Given these limitations, it is an opportune moment to consider amendments to the Constitution to enable a review mechanism for reviewing contempt verdicts. This approach would align Sri Lanka's judicial system with practices in other jurisdictions, such as India, where Article 137 of the Constitution provides the Supreme Court with the authority to review its judgments and orders.

Introducing a review mechanism for contempt cases in Sri Lanka will face practical challenges, including the need for procedural adaptation and institutional readiness. Sri Lanka's distinct legal traditions and judicial interpretations may complicate the direct adoption of India's approach. Further, necessary constitutional reforms are essential to effectively introduce such mechanisms. Without a clear provision enabling a review mechanism like in Article 137 of the Indian Constitution, an amendment must be introduced to rectify any errors in Supreme Court contempt verdicts.

Article 118(g) of the Sri Lankan Constitution empowers Parliament to confer jurisdiction on the Supreme Court, subject to constitutional provisions. By exercising this authority, Parliament can enact laws to enable the Supreme Court to review its contempt verdicts. These reforms would not only rectify errors in contempt cases but also ensure consistency, enhance public trust, and uphold the principles of justice and fairness in Sri Lanka's judicial system.

8. EXPANDING THE INTERNAL REVIEW MECHANISM OF THE SUPREME COURT: BEYOND CONTEMPT VERDICTS

The proposed review mechanism, similar to India's, would address not only contempt convictions but also rectify potential miscarriages of justice in any matter under the Supreme Court's jurisdiction. Introducing an internal review mechanism is also warranted when the Supreme Court exercises some of its unique constitutional and statutory powers. These include the adjudication of fundamental rights,⁸⁹ presidential election

⁸⁸ *Electroteks Network Services Private Limited* (n 81).

⁸⁹ The 1978 Constitution of Sri Lanka, Art. 118(b) and Art. 126.

petitions,⁹⁰ breaches of parliamentary privileges,⁹¹ and issues of professional ethics relating to Attorneys-at-Law and their suspension⁹² and expulsion of party membership.⁹³ Unlike lower courts and the Court of Appeal, where findings can be scrutinised through procedures like appeal, revision, or *restitutio integrum*, no comparable avenues exist when the Supreme Court utilises its exclusive jurisdiction.

The Supreme Court's current authority to revisit concluded matters is limited to clarifying its orders or judgments and correcting accidental omissions, slips, or clerical or arithmetical errors. Additionally, it may set aside previous decisions rendered *per incuriam* when necessary to uphold justice.⁹⁴ However, the Court has sometimes encountered prolonged delays in addressing decisions deemed *per incuriam*, often relying on the emergence of a similar issue in subsequent cases to revisit such rulings. This challenge was expressly highlighted in the recent case of *Indrani Mallika v Siriwardane and Others*.⁹⁵ The Supreme Court while declaring its decision in *Karunawathie v Piyasena and Others*⁹⁶ as *per incuriam*, stated:⁹⁷

If a decision is ex facie *per incuriam*, such as in *Karunawathie v. Piyasena*, it ceases to be a binding precedent and the doctrine of stare decisis has no applicability. There is no necessity to wait until it is overruled by a five-judge bench. What happens if it is never overruled? Then should all Courts perpetuate the admittedly erroneous decision and act in violation of the express statutory provisions, in derogation of the intention of the legislature? The Supreme Court judgment in *Karunawathie v. Piyasena* was delivered on 05.12.2011 (11 years ago) and it has not been overruled until today. Far from being overruled... a

⁹⁰ The 1978 Constitution of Sri Lanka, Art. 118(e).

⁹¹ The 1978 Constitution of Sri Lanka, Art. 118(f).

⁹² Judicature Act No. 2 of 1978, s. 42. Also see, Supreme Court Rules (Part VII) of 1978 made under Article 136 of the Constitution.

⁹³ The 1978 Constitution of Sri Lanka, Art. 99(13)(a).

⁹⁴ *Electroteks Network Services Private Limited* (n 81) 10.

⁹⁵ *Indrani Mallika v Siriwardane and others* (SC/Appeal/160/2016, Supreme Court Minutes of 02.12.2022).

⁹⁶ [2011] 1 Sri LR 171.

⁹⁷ *Indrani Mallika* (n 95) at page 28-29.

numerically equal bench of the Supreme Court in *William Singho v. Japin Perera and Others* (SC/HC/CALA/145/2011, SC Minutes of 08.06.2012) followed the judgment in *Karunawathie v. Piyasena* by refusing leave to appeal. If the Court of Appeal in *Jane Nona v. Surabiel* had also followed *Karunawathie v. Piyasena*, knowing very well that it is *per incuriam* but on the basis of a self-imposed fetter and ordered retrial as was done in *Karunawathie v. Piyasena* and the appellant did not have the financial resources to come before this Court to challenge the bad precedent, what would have been the position? Then should all Courts continue to breach express statutory provisions by following an erroneous decision in the name of *stare decisis*? I repeat I cannot subscribe to such a view.

.....

However much a decision is bad in law, the overruling of it does not automatically take place. A litigant has to invoke the jurisdiction of the Supreme Court in that regard, as in this case, and bear the costs of litigation. Litigation is not only costly but also time-consuming. This case which commenced in 1966 is a textbook case to illustrate this.

(emphasis added).

Accordingly, the Supreme Court held that a lower court can decline to follow a decision given *per incuriam* by a superior court when the defect clearly appears on the face of the judgment, as in *Karunawathie v Piyasena*.⁹⁸ While this recognition is commendable, such delayed acknowledgment undermines the efficiency, predictability, and certainty that are fundamental to the rule of law. If the Supreme Court requires a decade to declare a decision as *per incuriam* and subsequently affirms that lower courts are not bound by such flawed decisions, the assurance of effective and timely justice becomes questionable.

Ideally, the Supreme Court should be empowered to review its decisions *suo motu* or through an accessible mechanism that facilitates the timely reconsideration of such rulings. Such a mechanism would address these procedural shortcomings and align judicial practices with the principles of justice and fairness. To eliminate delays in delivering justice, ensure uniformity in the application of the law, and strengthen public trust in the judicial system, it is imperative to establish a comprehensive and effective

⁹⁸ *Karunawathie* (n 96).

review mechanism. This responsibility lies with Parliament, which is vested with the authority to exercise the judicial powers of the people through the courts.⁹⁹ Taking proactive legislative action to introduce such a mechanism would not only enhance judicial accountability but also reinforce public confidence in the judiciary.

9. CONCLUSION

The 1978 Constitution of Sri Lanka mandates an impartial and effective judiciary. However, the judicial system faces significant challenges in addressing contempt cases, particularly due to the absence of a review mechanism for Supreme Court contempt verdicts. This study has identified the lack of such a mechanism as a critical issue that undermines judicial accountability and the principles of fairness and justice. A comparative analysis of India and the UK demonstrates the effectiveness of their respective review mechanisms in ensuring transparency and preventing miscarriages of justice in contempt proceedings.

Addressing this gap requires constitutional amendments to establish a review mechanism similar to Article 137 of the Indian Constitution, which permits the Supreme Court to review its judgments and orders. Implementing such a reform would not only rectify shortcomings in contempt proceedings but also apply to other situations where the Supreme Court acts as a first-instance court in hearing and determining matters. This broader applicability strengthens judicial accountability across various contexts and promotes consistency in legal standards.

Moreover, this proposed approach provides a foundation for future research, offering a framework to examine other areas where judicial reforms may enhance procedural fairness and transparency. Establishing a strong and timely review process upholds the rule of law and fortifies the integrity and credibility of Sri Lanka's judicial system while opening avenues for further scholarly and legislative developments.

⁹⁹ The 1978 Constitution of Sri Lanka, Art. 4(c).