

Plea to Recognize Constitutional Delicts in Sri Lanka

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The horizontal application of fundamental rights in Sri Lanka crafted a legal culture where basic human rights are protected only against state violations and nothing beyond. As a result, fundamental rights violations by private individuals have escaped the purview of the legal system highlighting a niche area which needs state regulations. The article explores whether judicial recognition of constitutional delicts under the category of delictual activities would contribute to closing the gap. The proposal is based on three main points of contention: First, the paper makes the case that the vertical application of fundamental rights could fall under the purview of delictual activities without the need for any legislative enactments authorising such an action. Second, personal liability for compensation cases has been justified by fundamental rights jurisprudence developed under the 1978 constitution as equitable. This article examines why the same equitable principle cannot be applied to validate the vertical application of fundamental rights before first instance courts. Thirdly, the article views the Sri Lankan Supreme Court's decision in *Karunanayake and Others v. Mannaperuma Mohotti Appuhamilage* (SC Appeal No. 130/15) as the testimony for the judicial thinking and desire to develop the Sri Lankan common law in general and particularly for delictual actions as opposed to the colonial legal heritage of Roman Dutch Law. The Mannaperuma judgement's legal reasoning is based on distributive justice and social engineering, which call for the law to be the catalyst for social change by equitably allocating the duty to compensate. The paper concludes that the Mannaperuma case has started the process of establishing a new legal framework for Sri Lanka, one that might translate the arbitrary distinction between public and private law and imagine the recognition of "constitutional delicts" by the judiciary in Sri Lanka.

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