

PARLIAMENT OF CEYLON

2nd Session 1971-72



Court of Appeal Act, No. 44 of 1971

Date of Assent : October 28, 1971

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Court of Appeal Act, No. 44 of 1971

L. D.—O. 25/71.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND CONSTITUTION OF THE COURT OF APPEAL, FOR DEFINING THE JURISDICTION OF THE COURT, FOR THE ABOLITION OF APPEALS TO HER MAJESTY IN COUNCIL, AND FOR ALL MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: October 28, 1971]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Court of Appeal Act, No. 44 of 1971, and shall come into operation on such date as the Minister of Justice may appoint by Order published in the *Gazette*, hereinafter in this Act referred to as the "appointed date".

Short title
and date of
operation.

PART I

ESTABLISHMENT AND JURISDICTION OF THE COURT OF APPEAL

2. There shall be a Court of Appeal, hereafter in this Act referred to as the "Appellate Court", which shall have, hold and exercise exclusive ultimate appellate civil and criminal jurisdiction, and such other jurisdiction as may be vested in that Court by this Act or by Parliament, within and for Ceylon; and the judgment of that Court shall, in all cases, be final and conclusive.

Establishment
of Court of
Appeal.

3. (1) The Appellate Court shall consist of a President and of not more than six other Judges, all of whom may sit to hear and determine appeals under this Act. The minimum number of Judges necessary to constitute the Court shall be three.

Constitution
of the
Appellate
Court.

(2) If the President so directs, the Court may sit in two divisions.

(3) No judgment shall be delivered by the Appellate Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing

in this section shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

(4) The Appellate Court shall be a superior court of record and shall have all the powers of such a court for the purpose of doing justice in the case before it including the power to punish for contempt of itself.

Appointment
of Judges of
the Appellate
Court.

4. (1) The President and other Judges of the Appellate Court shall, upon the advice of the Prime Minister, be appointed to their offices by Letters Patent to be issued under the Public Seal of the Island by the Governor-General.

(2) Every Judge of the Appellate Court shall be appointed for a period of five years.

(3) Subject to the provisions of sub-section (2), every Judge of the Appellate Court shall hold office during good behaviour and shall not be removable except by the Governor-General on an address of the House of Representatives.

(4) No act or proceeding of the Appellate Court shall be deemed to be invalid by reason only of any vacancy in the office, or any defect in the appointment, of a Judge of that Court.

Salaries of
the Judges of
the Appellate
Court.

5. (1) The salaries of the Judges of the Appellate Court shall be determined by Parliament and shall be charged on the Consolidated Fund of Ceylon.

(2) The salary payable to any Judge of the Appellate Court shall not be diminished during his term of office.

Acting
appointments
to Appellate
Court.

6. Where due to sickness, leave, incapacity, absence from the Island or other cause, the President or any other Judge of the Appellate Court is unable to discharge the functions of his office, the Governor-General, acting on the advice of the Prime Minister, may appoint a fit and proper person to act as such President or Judge, as the case may be, by Letters Patent to be issued under the Public Seal of the Island.

7. Every person appointed to be, or to act as a Judge of the Appellate Court shall, before he enters upon his office, make and subscribe before the Governor-General, an oath or affirmation of office in such form as may be determined by the Minister of Justice.

Oath or affirmation of office by Judges of the Appellate Court.

8. (1) An appeal shall lie to the Appellate Court, at the instance of an aggrieved person—

Jurisdiction of the Appellate Court.

(a) with the leave of the Appellate Court—

(i) from any judgment of the Court of Criminal Appeal;

(ii) from any judgment of the Supreme Court given in the exercise of its appellate jurisdiction in any criminal cause or matter;

(b) from any judgment of the Supreme Court granting or refusing to grant a mandate in the nature of a writ under the powers vested in such Court under section 42 or section 45 of the Courts Ordinance, being an appeal on a question of law;

(c) from any judgment of the Supreme Court given under the powers vested in such Court under section 47 of the Courts Ordinance, being an appeal on a question of law;

(d) with the leave of the Appellate Court, from any judgment of the Supreme Court given in the exercise of its appellate jurisdiction in any civil cause or matter in which is involved, in the opinion of the Appellate Court, a question of general or public importance;

(e) from any judgment of the Supreme Court on any question as to whether any written law is *ultra vires* of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, or as to the interpretation of any provision of the said Orders in Council.

(2) The Appellate Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

(3) The Appellate Court shall have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Reference to
the Appellate
Court.

9. If at any time it appears to the Governor-General that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Appellate Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the Governor-General its opinion thereon.

Enforcement
of decisions
of the
Appellate Court.

10. A judgment of the Appellate Court may be enforced in like manner as if it were a judgment of the court from which the appeal was taken or preferred.

Staff of the
Appellate
Court.

11. There shall be a Registrar of the Appellate Court, and such other officers as may appear to be necessary for the administration of justice and the due execution of the powers and authorities of that Court.

Seal of the
Appellate
Court.

12. The Appellate Court shall have and use a seal which shall be known as "The Seal of the Court of Appeal", and the said seal shall be kept in the custody of the President of that Court.

Rules of
Court.

13. (1) The President of the Appellate Court may, from time to time, with the concurrence of the Minister of Justice, make rules of Court for regulating generally the practice and procedure of the Appellate Court including—

(a) rules as to the persons practising before the Appellate Court ;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Appellate Court are to be entered;

(c) rules as to the costs of and incidental to any proceedings in the Appellate Court and as to the fees to be charged in respect of proceedings therein;

(d) rules as to the granting of bail;

- (e) rules as to stay of proceedings and the disposal of productions;
- (f) rules providing for the summary determination of any appeal or application which appears to the Appellate Court to be frivolous or vexatious or brought for the purpose of delay.

(2) All persons shall comply with any requirements of such rules of Court so far as they affect such persons, and compliance with such rules may be enforced by order of the Appellate Court.

(3) Every rule of Court shall be published in the *Gazette* and shall come into operation on the date of such publication; or on such later date as may be specified in such rule.

(4) All rules of Court made under this Act shall, as soon as convenient after their publication in the *Gazette*, be brought before the House of Representatives for approval. Any such rule which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

PART II

ABOLITION OF APPEALS TO HER MAJESTY IN COUNCIL AND TRANSITIONAL AND GENERAL PROVISIONS

14. The Appeals (Privy Council) Ordinance is hereby repealed.

Repeal of the Appeals (Privy Council) Ordinance (Chapter 100).

15. The Criminal Procedure Code is hereby amended as follows:—

Amendment of the Criminal Procedure Code (Chapter 20).

(a) by the repeal of sections 333 and 334 of that Code; and

(b) by the omission of the heading "OF APPEALS TO THE QUEEN IN COUNCIL" appearing immediately before the said section 333.

16. The Courts Ordinance is hereby amended as follows:—

Amendment of the Courts Ordinance (Chapter 6).

(a) by the repeal of sections 39 and 40 of that Ordinance; and

(b) by the omission of the heading "APPEAL TO HER MAJESTY IN COUNCIL" appearing immediately before the said section 39.

Amendment
of the Court
of Criminal
Appeal
Ordinance
(Chapter 7).

17. Section 23 of the Court of Criminal Appeal Ordinance is hereby repealed.

Abolition of
the right of
appeal to
Her Majesty
in Council.

18. Notwithstanding any law or convention obtaining in Ceylon, or any Royal Prerogative or anything contained in any Act of Parliament of the United Kingdom, it is hereby declared that no appeal shall lie or be brought from any judgment or order of the Supreme Court or from any other court or tribunal in Ceylon to Her Majesty in Council, or to any court, tribunal, board or any other authority by which, in the United Kingdom, appeals to Her Majesty in Council may be ordered to be heard.

Appeals or
petitions
pending before
the Privy
Council.

19. Any appeal or petition registered at the office of the Privy Council and not disposed of before the appointed date, shall, notwithstanding anything to the contrary contained in section 8, be deemed to be an appeal duly made to the Appellate Court and shall be dealt with and disposed of by such Court in such manner as it may deem fit, and all proceedings thereon before the Privy Council, shall be discontinued and shall, by virtue of this Act, abate on the appointed date.

Saving of the
jurisdiction of
Her Majesty in
Council.

20. (1) Nothing contained in section 19 shall affect the jurisdiction of Her Majesty in Council to dispose of—

- (a) any appeal or petition on which the Judicial Committee of the Privy Council has before the appointed date delivered judgment or, as the case may be, reported to Her Majesty, but which has not been determined by an Order in Council of Her Majesty; or
- (b) any appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment.

(2) Any Order of Her Majesty in Council made on an appeal or petition on and after the appointed date, shall for all purposes, have effect as if it were a judgment of the Appellate Court delivered in the exercise of the jurisdiction conferred by this Act.

21. The provisions of this Act, shall, for all purposes and in all respects, be as valid and effectual as though those provisions were in an Act for the amendment of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947 enacted by Parliament after compliance with the requirement imposed by the proviso to sub-section (4) of section 29 of the Ceylon (Constitution) Order in Council, 1946.

The provisions of this Act to be regarded as amendments to the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

22. (1) In this Act, unless the context otherwise requires—

Interpretation

“aggrieved person” means a party to an action, application, prosecution, or other proceeding, and includes the Attorney-General;

“judgment” includes decree, order, sentence or decision;

“President” means the President of the Appellate Court appointed under this Act;

“Registrar” means the Registrar of the Appellate Court;

“rules of Court” means the rules made under section 13.

(2) Where any judicial or public officer is referred to in this Act by the title or designation of his office, any person for the time being acting in that office shall be deemed to be included in that reference.