

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC**  
**OF SRI LANKA**

In the matter of an application for  
mandates in the nature of Writs of  
Mandamus under and in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

**Case No: CA WRIT/80/2018**

1. Selvanayagam Gnanasegaran  
No.44, Hantanawatta,  
Kandy.

On behalf of  
Gnanasagarn Thibesha  
(Minor)

**PETITIONER**

**Vs.**

1. M. Abeygunasekara  
Principal,  
Kandy Girls High School,  
Kandy.
2. President of Interview Appeal  
Board  
Kandy Girls High School,  
Kandy.

3. Sunil Hettiarachchi,  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
4. W.M. Jayantha Wickramanayake  
Director of National Schools,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
5. Hon. Akila Viraj Kariyawasam  
Minister of Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
6. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** Hon. Dushmanta Nihal Samarakoon, J.

**Counsel:** Mr. Lakshan Dias with Ms. Hirushi Jayawardena and Ms. Nethmi Jayakody for the Petitioner.

Ms. Amasara Gajadeera S.C., for the Respondents.

**Argued on:** 12.01.2024

**Written Submissions:** 19.01.2024 by the Petitioner.

05.10.2020 by the Respondents.

**Decided on:** 31.01.2024

**D.N. Samarakoon, J**

This judgment contains six main parts, which are,

- (A)** Preliminary matters and some judgments – page 03 to 10 **(05 pages)**
- (B)** The origin of what came to be known as “Assisted Schools” and the circumstances under which they vested in the state (then the Crown) in 1961 – page 10 to 24 **(14 pages)**
- (C)** The two Acts of 1960 and 1961 – page 24 to 36 **(12 pages)**
- (D)** The application of religious ratios – page 37 to 70 **(33 pages)**
- (E)** The wrong interpretation by the respondents of the religious ratio clause which amounts to ultra vires is also irrational and disproportionate – page 70 to 71 **(02 pages)**
- (F)** The concluding remarks – page 72 to 75 **(04 pages)**

The said parts are sub divided under several sub headings.

- “Education’s purpose is to replace an empty mind with an open one –  
Malcolm Forbes<sup>1</sup>.

### **(A) Preliminary matters and some judgments:**

The respondents admit that,

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<sup>1</sup> Malcolm Stevenson Forbes was an American entrepreneur and politician. He was the publisher of Forbes magazine, founded by his father B. C. Forbes. Forbes was one of the foremost publishers and business moguls in the United States. He served as publisher, editor-in-chief, and sole stockholder of Forbes magazine from 1957 until his death in 1990. Forbes was a Princeton Alumni and served in the U.S. Army during World War II.

- (01) The petitioner is a citizen of Sri Lanka and the father of the minor child  
Gnansagarn Thibesha
- (02) The 05<sup>th</sup> respondent is the Attorney General
- (03) The petitioner was asked to present for an interview on 12.09.2017
- (04) The petitioner faced that interview with all the relevant documents and
- (05) When the petitioner's child was not selected to the Girls' High School  
Kandy upon an appeal he was interviewed on 17.11.2017

The above have been admitted by the paragraph 03 of the Statement of  
Objections dated 11.12.2018.

It is also admitted that

- (06) The petitioner and her above daughter are decedent of people of Indian  
Tamil origin

#### Paragraph 10 of the Statement of Objections

The petitioner received a rejection letter dated 06.12.2017.

This letter is marked as P.10 (in Tamil) and the translation (in English) as P.10  
A. The petitioner asks for a certiorari to quash that letter.

The learned state counsel for the respondents commenced her argument by  
saying that the petitioner is bound by what he said in his amended petition dated  
21<sup>st</sup> May 2018. She said that the petitioner did not aver that the 01<sup>st</sup> respondent  
the Principal of Girls' High School or any other respondent acted contrary to the  
religious requirement.

It was because the learned counsel for the petitioner at the commencement of  
his oral submissions referred to the taking over of schools that belonged to  
churches by the government in 1961 and religious ratios.

He said that the Methodist church then had 177 schools of which 175 were vested in the government except the Methodist College and Wesley College both in Colombo. The Girls' High School of Kandy belonged to that 175 schools vested in the government.

The religious ratios according to him are governed by the Assisted Schools and Training schools (special provisions) Act No. 05 of 1960 and Assisted Schools and Training schools (Supplementary provisions) Act No. 08 of 1961.

According to the learned counsel for the petitioner the percentage of the religious ratio for Methodist and other denominations are 38%. He said such ratios are maintained by other schools too for example Ananda and Mahinda started by Paramavingnanartha company (The Buddhist Theosophical Society) and although Ananda of Maradana is surrounded by a high density Muslim population it maintains a percentage of 99% Buddhist children as its students.

The learned counsel in reply in answering the allegation of the state that the amended petition does not refer to the religious basis (requirement or ratio) drew the attention of the court to averments 24 and 25 of the amended petition which refer to clause 3:2 of the circular. The averments referred to read as follows

“24. According to clause No. 3:2 of the circular, petitioner states that he has the right for his daughter to be enrolled to the Girls' High School Kandy since there is no other Non Roman Catholic Christian teaching school in the feeder area.

25. And also the petitioner states that school has the liability to enroll the petitioner's child to the school according to the clause No. 3:2 of the circular, since there are vacancies remaining in the school according to the clause No. 3:2.

Clause No. 3:2 states that

3:2 In filling vacancies in schools vested to the government under Assisted Schools and Training Schools (special provisions) Act No. 05 of 1960 and

Assisted Schools and Training Schools (supplementary provisions) Act No. 08 of 1961, **(i) the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and (ii) the number of vacancies in the said school shall be accordingly divided among different religions and categories. (iii) When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. (iv) When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions**". [The emphasis added in this judgment]

The Supreme Court in a judgment given on 04.11.2018 by Justice Buwaneka Aluvihare in a Fundamental Rights application in which the facts are same as in this case because the school was Girls' High School Kandy the year of admission was 2018 and the girl in question was a Methodist Christian has decided that by not taking that girl the rights guaranteed under Article 12(1) were not violated.

In that case Justice Aluvihare has said

"The religious quota is a special factor for consideration—and not a separate tier of admission".

Is it so?

Clause 3:2 says four things.

They are,

- (i) the proportion of children belonging to different religions at the time of vesting the school to the government must be taken into consideration**

- (ii) **the number of vacancies in the said school shall be accordingly divided among different religions and categories.**
- (iii) **When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion.** [This shows the importance given to the religious factor]
- (iv) **When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions [This also shows the importance given to the religious factor which at this stage goes out of the particular religion but remain within other religions]**

The petitioner in his written submissions filed in this Court on 19<sup>th</sup> January 2024 has tendered with it marked as “X.04” the judgment in **N. Anton Balasundaram, on behalf of Devinyah Grace Jemima (Minor) vs. M. Abeygunasekara, Principal, Girls’ High School Kandy and others, C. A. Writ 183/2019** decided by Sobitha Rajakaruna J., on 10.08.2021.

That case dealt with the refusal of a Tamil Christian child (as in this case) to Girls’ High School Kandy (the same school) for year 2019 (this case is concerned with a girl who sought to enter Grade 1 in 2018) under the provisions of the Ministry of Education circular No. 24/2018 (the circular applicable for this case is No. 22/2017, the previous year).

Needless to say, therefore, that certain observations made by Justice Rajakaruna in that judgment are also relevant to this case. However, this Court will adopt a reasoning somewhat different to as in that case where it is necessary, based on

the provisions of the relevant circular which governs the question of admission of children to Grade 1 in schools.

In as much as, the provision in the circular that referred to the religious ratios, which was clause 4:2 (in certain circulars it is clause 3:2) Justice Rajakaruna observed, that, **[Beginning of Quotation]**

“It is observed that the Ministry of Education issues circulars annually relating to instructions and guidelines for admission of children to Grade 1 in Government schools for the ensuing year. On a perusal of such circulars, it is apparent that the Ministry of Education has taken steps to maintain the ratio of student population, based on their religious faith, that existed at the time of vesting such schools to the Government under Assisted Schools and Training Schools (Special Provisions) Act, No. 05 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act, No. 08 of 1961. Almost every such circular contain provisions to that effect and however the wordings in the relevant paragraphs which exhibit the above policy are slightly different during certain years in those respective circulars”. **[End of Quotation]**

This Court, in addition, finds, that, the **same provision as quoted above** in clause 3:2 had been reproduced in also in following circulars.

<b>Number of the Circular</b>	<b>Date of the Circular</b>	<b>Clause Number</b>
2008/21	17.05.2008	3:2
2011/18	11.05.2011	3:2
2012/19	29.05.2012	3:2
23/2013	23.05.2019	3:2
24/2018	31.05.2018	4:2
29/2019	24.05.2019	4:2
29/2023	10.07.2023	4.2



There is no doubt whatsoever, that, it was the practice of the government to include this provision pertaining to religious ratios in every annual circular in this regard, issued from the time “assisted schools” were taken over by the government by Assisted Schools and Training Colleges (Special Provisions) Act No. 05 of 1960 and Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 08 of 1961.

The relevant clause pertaining to religious ratios finds mention in the following judgments,

<b>Case No.</b>	<b>Page of the Judgment</b>	<b>Clause and date of the Circular or Instructions</b>	<b>In respect of which school</b>
C. A. Writ 183/2019	Page 06	Clause 3:2 of instructions dated 31.05.2018	Girls’ High School, Kandy
S. C. F. R. Application No. 335/2016 dated 30.10.2017	Page 02	Clause 3:2 of Guidelines and Instructions dated 27.05.2016	Kingswood College, Kandy
S. C. F. R. 613 – 616/2004 dated 07.11.2005	Page 07	Clause 5A of the circular No. 18/2004 dated 31.05.2004	Richmond College, Galle
C. A. Writ 190/2021 dated 28.08.2023	Page 07	Clause 4:2 of the circular No. 29/2019 dated 24.05.2019	Kingswood College, Kandy
C. A. Writ 189/2021 dated 28.08.2023	Page 07	Clause 4:2 of the circular No.	Kingswood College, Kandy

		29/2019 dated 24.05.2019	
S. C. F. R. 459/2017 dated 05.11.2018	Page 08	Clause 4:2 of circular No. 22/2017 dated 31.05.2017	Kingswood College, Kandy

**But none of those judgments have examined the reason for the inclusion of that clause continuously in relevant circulars and instructions or its origin.**

It is true that to follow a law one need not know the cause for it. Jeromy Bentham, John Austin and H. L. A. Hart said, that, the “Law is a Command of the Sovereign”. **With the due respect to those gentlemen, the question in this case is about education and as educated men and women it is appropriate to question the cause for the presence of a law;** here in this case, that clause of religious ratios with its origin. It would, among other things, signify its standing. **It is history; and history alone; which can give depth to the two dimensions of the circular to add to it, a third, the effect of time.**

**(B) The origin of what came to be known as “Assisted Schools” and the circumstances under which they vested in the state (then the Crown) in 1961:**

**(i) Education before the arrival of missions:**

It is said in the article “**Status, Achievement and Education in Ceylon<sup>2</sup>**” published in the Journal of Asian Studies in August 1961 written by Bryce Ryan at page 470, that,

“Education has a long and honorable history in Ceylon. It is not to be suggested, however, that education, or hard work, had or was intended to have positive value for social mobility in ancient times. Among pre-colonial

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<sup>2</sup> [Status, Achievement, and Education in Ceylon on JSTOR](#)

Sinhalese, education was a responsibility of the Buddhist priesthood. Induruwe Pannatissa Thero has recently pointed out that the curriculum in the temple schools, according to an early Sinhalese text, included eighteen subjects. These ranged from poetry, languages, law, and physics to sports and the care of elephants. Religion was included, of course. The Monle quotes the Dutch traveller, Ludovici: "Under the Sinhalese Kings long before the Portuguese secured their first foothold on the shores of Lanka, every district and every province had its public school and its college." Pannatissa notes further however, that primary education in the temple school was a three-year course and implies that it was devoted to reading, writing, and diction."

**"One Hundred Years of Education in Ceylon<sup>3</sup>** of J. C. A. Corea, published in 1969 in Modern Asian Studies, Cambridge University Press is a valuable article in this regard not only because of the diverse material in it, but also the years 1868 and 1968 are significant for the education in Ceylon. According to that article education prior to 1869 stood at a situation akin to what Ryan said above. Like the Missionary schools of Christianity that thrived after the commencement of the British rule, the introduction of Buddhism about the middle of the third century B. C. was the beginning of an indigenous learning tradition. **Thus, the wind on the sails, in the Buddhist tradition of learning as well as that of Christianity was a religion.**

Harry Williams writes, in **"Ceylon, Pearl of the East<sup>4</sup>**," London, 1950 at page 95, that,

"The Portuguese were missionaries first – fanatical, zealous, cruel – and traders afterwards, but the Dutch, in their occupation of Lanka (Ceylon) were merchants first, last and all time."

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<sup>3</sup> [One Hundred Years of Education in Ceylon on JSTOR](#)

<sup>4</sup> [Ceylon Pearl Of The East : Harry Williams : Free Download, Borrow, and Streaming : Internet Archive](#)

Despite the Dutch forts were ceded to the British in 1796 and 1797 (as in India, the British introduced their common law into Ceylon. But the Dutch judges refused to take oath. The move to replace the established system of administration of justice, together with the collection of revenue, performed by Dutch officers where Roman Dutch law was applied met with stiff resistance. There was an uprising in Trincomalee. The youthful director of the British India Company, **Codrington Edmund Carrington** was entrusted with the solving of the problem. Being an officer not only with the youthful vigor but also astuteness, he suggested that once again Roman Dutch law should be the common law. This was done by the Proclamation of 1799. **Later Codrington became the first British Chief Justice of Ceylon**)<sup>5</sup> the British were not in full control until 1815 when the Kandyan kingdom was ceded by the Kandyan Convention signed at Kandy on 02<sup>nd</sup> March 1815.

## **(ii) Arrival of Missions:**

According to Corea, the Missionary Societies seeing an opportunity for setting up of schools came in the following order, Baptist (1812), Wesleyan (1814) and the Church Missionary Society (1818). The American Mission that arrived in 1813 was not very welcome for political reasons and not being allowed to settle in Colombo they removed themselves to Jaffna where they organized schools in Tamil and English and established a Seminary for higher education.

The article referred to above “**Status, Achievement and Education of Ceylon**” of Ryan says, that,

“Although the British administration seems to have favored missions it was not immediately favorable to American missionaries. At the recommendation of the Governor, they were settled in what the Governor no doubt considered back of beyond-the Jaffna peninsula. Here, despite government-created obstacles, they established an educational program which was to have important consequences. Their region was a Tamil

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<sup>5</sup> An examination into the history of this is found in my (D. N. Samarakoon) article published in the Judges Journal in its volume dated August 2017 under the title, “Legend, Legacy and Luscense of Hulftsdorp”.

settlement and their students mainly Hindu and Christian Tamils.” (page 471)

According to Corea, the industries people of the Jaffna peninsula profited by this opportunity made their children so proficient in English and Mathematics, they not only secured the clerical vacancies in the public service but excelled in commercial establishments and in the learned professions.

**The Methodist Church of Sri Lanka is a Protestant Christian denomination in Sri Lanka.** It was established on June 29, 1814, with its headquarters in Colombo. Thomas Coke, a close associate of the Reverend John Wesley, played a pivotal role in launching the overseas mission to Ceylon. The mission set sail from Portsmouth harbor on December 30, 1813. So the Methodist Church was set up by Wesleyan missionaries. Harvard, who initially stayed in Bombay due to family circumstances, eventually arrived in Galle in early 1815 and was posted to Colombo.

According to the article “**The Wesleyan Methodist Mission in the Printing and Publishing Industry in the 19<sup>th</sup> Century Ceylon**” by E. D. T. Kularatne, published in the Journal of Royal Asiatic Society of Sri Lanka” in 1997, Harvard installed the printing press in Colombo in their Pettah premises in Cayman’s Street later renamed Dam Street. The article says, that,

“When the press was installed in Colombo, it appeared that the Government 'attempted in the first place to get the press out of our hands'. The Governor, Sir Robert Brownrigg sent his private secretary, Bisset, several times 'to purchase this press - and at that very time the Government had more printing presses than they knew what to do with or how to manage. Nevertheless, the missionaries could not agree to sell a press that belonged to the Mission in London. The motive to purchase the press became clear to the missionaries sometime later and they quoted the words of **Sir Alexander Johnston, the Chief Justice**: 'They are alarmed lest anything Methodistical should be printed and circulated among the

natives' . Further, the Chief Justice had been subscribing 250 Rix Dollars per annum for four years to a Tract Society in Colombo, but complained that nothing had been circulated among the natives due to that concern. This shows that the Government was careful not to allow the missionaries to print and distribute Methodistical literature, fearing that it would create problems for the Government, **the more so because the Kandyan Convention of 1815 undertook to maintain and safeguard Buddhism”.**

**(iii) Colebrooke Commission Report in 1831:**

Corea says that the Colebrooke Commission appointed in 1831 made some far reaching recommendations in relation to the administrative, economic and social organisations of Ceylon. It appears, that, **the Colebrooke-Cameron Commission appointed in 1833 as a Royal Commission of Eastern Inquiry** by the British Colonial Office to assess the administration of the island of Ceylon, the principle reason for the appointment of which was that by year 1828, the government expenditure of the country had rapidly exceeded government revenue due to several reasons such as carrying out the administration of the country by dividing it into two parts, the upcountry and the low country, recommended, among other things,

- (i) The admission of Ceylonese into the Ceylon Civil Service,
- (ii) An appointment of a commission to manage education and
- (iii) An establishment of a principal public school on the British model for English education and teacher training - Colombo Academy was established as the principal public school in the island.**
- (iv) The three Prophets of Education in Ceylon:**

Corea identifies as three prophets who predicted the course of educational development far ahead of their time,

- (a) Governor Mackenzie (James Alexander Stewart-Mackenzie the 07<sup>th</sup> Governor of British Ceylon)** who said in 1840, that, all education should

be free and given in the mother tongue of pupils; (1840 was the last year he served in Ceylon and then in 1843 he died at the age of 59 when he was the Lord High Commissioner of Ionian Islands)

- (b) **Governor Manning (Brigadier-General Sir William Henry Manning, GCMG, KBE, CB the 23<sup>rd</sup> Governor of British Ceylon)** who said in 1919 (served as Governor from 1918 to 1925) that with compulsory education Christian missions should withdraw from education and leave it to the state; and
- (c) **Hon. Mr. P. Arunachalam, later Sir (Ponnambalam) Arunachalam** who wrote in 1912 that education should be broad based and directed to the harnessing of Ceylon's total resources in men and materials in industrial, commercial and agricultural undertakings to increase the prosperity of the people; (Arunachalam was Member of the Executive Council of Ceylon 1912–1913, Member of the Legislative Council of Ceylon 1912–1913 and President of the Ceylon National Congress 1919–1920)

In retrospect, what was said in (a) has proved to be disastrous having been implemented, especially after 1956. **Free education could be good, but not always practical and what is better is the “Freedom of Education,”** that is if a student may one day in society by virtue of the education he followed, not due to the Hobson's choice he had, but freely choosing what he likes to learn, can still gain what is called “social mobility”, but also contributing morefully to the production of wealth. Private International Schools were allowed to be established from 1981 and today both the government and the students have realized the advantages of being educated in the English medium. They signify that the history, the final judge, decided, that, the action taken in 1956 (according to Corea Governor Mackenzie also said) was short sighted.

In regard to (b) today private enterprise in providing of education is encouraged **as the resources of the state are limited and often mismanaged so that even the available resources are not utilized for optimal benefit.** The present case also is something similar.

**What is in (c) is the only statement, as it appears, that was made with a vision for the future social, economic and cultural advancement of this country.** As Corea quotes what Arunachalam said was,

“The education received by young men in Ceylon is suitable for the legal and medical professions and in the Government Service for the lower division of Civil Service and for the Clerical Service, but not for the higher division of the Civil Service or for the scientific branches of the Government Service. Whilst there is scarcely any provision for agriculture and commerce training and none in manufacture.” (page 161)

**(v) Morgan Report and the Denominational System:**

A sub committee of the Legislative Council has been appointed in 1867 to examine the state of education and to suggest reforms. This signifies an important turning point in the education in Ceylon, which is, the **Report of the Morgan Sub Committee of the Legislative Council, Ceylon Sessional Papers, VIII, 1897**, which gave birth to a new scheme that came to be known as the Denominational System, that dominated the system of education for the next 82 years, until the enactment of the Education (Amendment) Act No. 05 of 1951.

Under this report not only that the British Administration could take charge of the larger share of establishing schools, **but also all other religious denominations were given freedom to establish schools for children who profess their own religion** without any restrictions on religious instructions.

Corea says, that, although the Buddhists, Hindus and Moslems were theoretically free to establish schools, they could not take the opportunity as they lacked (a) financial resources (b) leadership and (c) the support of well organized institutions such as those that were behind Christian Missions operating in Ceylon.

He says,



“Although there were growing signs of religious fervour among the Buddhists, the urge for setting up their own schools was not realized until the arrival of Col. H. S. Olcott in 1880. He roused the Buddhists to a sense of their rights and obligations, and sixteen years after the Morgan Report<sup>6</sup> the Buddhist Theosophical Society was established with the sole aim of starting schools for the education of Buddhist children. **Within ten years this society succeeded in setting up 63 assisted schools, among them four leading schools-Ananda, Dharmaraja, Mahinda and Musaeus (girls) College.** The Hindus and Moslems soon followed this example and began to establish schools for their own children.” (page 157 and 158)

**(vi) The establishment of Girls’ High School, Kandy in 1879:**

**Girls' High School, Kandy was founded in 1879 by Wesleyan Methodist missionaries which is the oldest school for girls in Kandy affiliated with the Methodist Church in Sri Lanka<sup>7</sup>.** In 1873, the need of a school in connection with Wesleyan Mission work was urged by Rev. Samuel Langdon and so a Day and Boarding school was built in Katukele, Kandy.

Therefore, the establishment of this school in 1879 was a boon for the parents and children of Kandy and it should be managed and operated in the spirit Rev. Samuel Langdon and Mrs. Langdon created it with the Wesleyan mission. How this could be done, as it has been preserved by the government of Ceylon and the government of Sri Lanka, its successor in office, will be discussed in due course.

**(vii) The American Mission in Jaffna and its Effect:**

Corea says about the American mission in Jaffna, that, since the British administration while taking even a casual interest in education in the western

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<sup>6</sup> Must be around 1883.

1. 7 [\*"Razor-sharp confidence"\*](#). *Daily News*. Retrieved 2021-04-27.

and southern areas of Ceylon, left all education in the Jaffna peninsula to American, Wesleyan and Anglican missionaries, the industrious people of Jaffna who profited by every opportunity afforded to them in education were able to compete successfully for vacancies in the clerical staffs of the public and mercantile services in the larger and more commercially developed areas of western and southern Ceylon and to gain in those areas an influential position in the learned professions.

In the article “**Status, Achievement and Education in Ceylon**” Ryan says,

“The best education available in Ceylon, with the possible exception of Colombo, was in Jaffna from which region poured a steady stream of excellently equipped, versatile, and energetic students. These persons were all Tamil and chiefly Hindu. **Educational facilities were retarded in the Kandyan or interior Sinhalese region partly because there was no demand for them by the intransigent and little acculturated Kandyans.**”

**(viii) Sharp division of opinion about the place of the national languages:**

Corea says, that, an age of prosperity dawned in Ceylon in the first two decades of the twentieth century as the Tea industry which had experienced a slump at the end of the last century improved under scientific methods of cultivation and manufacture. **This is an effect of the principle Arunachalam enunciated for the system of education. It is unfortunate, that, that principle had not gained full force.**

He says,

“A new middle class gradually emerged, ambitious to take a larger place in the life of the community. The need for reviving Ceylon's ancient culture and the importance of Sinhala and Tamil receded into the background owing to the immediate benefits that accrued to a new generation educated in English. 'English, more English and better English' became the cry.” (page 160)

When evidence was given before an Education Committee in 1911 (Ceylon Sessional Papers, XX, 1912) while all agreed, that, education of a high quality based on the best British traditions was necessary, **there was a sharp division of opinion regarding the place national languages should occupy in the schools** and on what adjustments were needed to bring the school curriculum into line with the sociological background of pupils.

**Alec Fraser of Trinity College, Kandy said,**

“The teaching of the vernaculars makes it simpler also to interest boys in the social and economic welfare of their people. The exclusion of the vernaculars favours the tendency to think all local knowledge and local problems are unworthy of respect...**Language, History, Literature, Reading Books, all deal with foreign conditions. But real thought is created best in boys by the application of ideas to their known environment and conditions.** Without this, thinking becomes unstable and a mere caricature of the real thing.” (Corea page 161)

**(ix) Learning the best of both worlds; Oriental and Occidental in lingua franca:**

This is correct and the solution is to teach everything, perhaps, except the vernacular itself (but that too had been taught in English producing worthy citizens; Veditantrige Eustace Reginold de Silva, who turned to be Professor Ediriweera Sarathchandra whose first school was Richmond College, Galle – he has had four schools – whereas the Richmond College too was founded by the Wesleyan missionary George Bough in which the first principal was Rev Samuel Langdon, offered Pali, Sanskrit and Sinhala for the first degree and passed out in 1936 with a first class and sat the Ceylon Civil Service examination and came first in the island. Thus he learnt Pali, Sanskrit and Sinhala – three highly advanced languages in the oriental tradition – in English) **in English.** That is because English is the lingua franca. It is not the literary strength of a language that propagates it but the powerfulness of the people who speak it. It is said that English is spoken world over, not because Shakespeare wrote it, but because **Kennady** (for that matter one can refer to any other U. S. President too) **speaks it.**

There is no doubt, that, on a test of competency with regard to the inherent qualities of a good language, Tamil and Sinhala will be on par with English, otherwise.

The Subhashita (Sanskrit: सुभाषित, subhāṣita) is a literary genre of Sanskrit epigrammatic poems. This is how two of its verses sung in Sinhala, would appear with their meaning in English<sup>8</sup>.

6. එබැවින් සෙවෙහි වියතුනි ගුණ යුත් පවර

කීරියෙන් දියර වෙන් කළ හස මෙන් පතර

මවිසින් කියන මෙහි වරදක් දුටත් හැර

සතො සිත් අස්වූ පදරැන් විමසා ගැඹර

අදහස : එහෙයින් සභාවෙහි සිටින උතුම් ගුණයෙන් යුත් පණ්ඩිත වරැනි, පැතිරුණු කිරෙන් ජලය වෙන් කළ හංසයන් මෙන්, ම විසින් කියනු ලබන මේ කාව්‍යයෙහි දොසක් දුටත්, එය ඇත හැර ගැඹුරු පදාර්ථ විමසා බලමින් සතුවත් අසත් වා. .

To the noble learned who read this,  
even if you see a frailty in this verse,

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<sup>8</sup> As this Court has taken the liberty of referring to the highly advanced Sinhalese Literature, nourished by those of Pali and Sanskrit, it is apt to quote from an article of Prof. Balram K. Gupta, Senior Advocate, Director (Academic) Chandigarh Judicial Academy. Former Director, National Judicial Academy, Bhopal, published in the Judges Journal, Vol. VI, December 2020 (available at the website of the Judges Training Institute of Sri Lanka) under the Title “Blending Law with Literature”, where he says,

“H.M. Seervai was a Constitutional Law scholar of the highest academic distinction. He was offered judgeship of the Supreme Court of India twice. He did not accept it. He thought, he would be able to make his lasting contribution in shaping the Indian constitution through the medium of his book on Constitutional Law. Indeed, he did. His love for literature was so deep. He blended the two together. It was in 1973. First trip out of India. To U.K.. He was at the Pitt’s Cottage. Some lines were inscribed over the fire place. To the amazement of every one, he said: “Oh Scott -- But what a pity, the next few lines were not inscribed.” He recited the lines: “Now is the stately column broke; The beacon light is quenched in smoke...” He completed the last stanza. He was asked, are you a Professor of literature at Oxford or Cambridge? He laughed and said, no! I am a lawyer from India. Still another one. 4th July, U.S Independence day Celebrations at U.S Consulate in Bombay. The Vice Consul was amazed. Seervai rattled off Abraham Lincoln’s Gettysburg as also the second Inaugural Address. He was fond of literature. He knew hundreds of poems. He could recite them with body, mind and soul. Shakespeare was part of his vocabulary. He knew the great lines in different plays by heart. A rare mix of law and literature”.

Ladies and Gentleman; it is allowed.

as the Sawn that discerns the milk from water,  
be glad to look at the substance not the form.

(English rendering by me)

7. පබඳ කිවින් බැඳි කවි රසෙහි විසිතුරු  
සබඳ වීදු දනෝ පළ කෙරෙහි දියතුරු  
නො මඳ රසින් දිවයුරු පොබයයි නමුරු  
සුවඳ දිගන විහිදයි හමන මඳ මරු

අදහස : කීර්තිමත් කවියන් විසින් බඳන ලද කාව්‍ය වල රසයෙහි විවිත්‍ර භාවය හිතවත්  
පණ්ඩිත ජනයා ලෝකය පුරා පතළ කොට හරිති. සූර්යයා බොහෝ වූ රශ්මියෙන් නෙලුම්  
මල් පුබුදුවයි. හමන මඳ සුළඟ (ඒ නෙලුම්) සුවඳ දිශාවන්හි පතුරුවයි.

The immense beauty of verse composed by prestigious poets,  
is propagated by the loyal learned,  
just as the light and the heat of the sun makes lotus bloom,  
the fragrance of which is spread by the light wind.

(English rendering by me)

#### **(x) Donoughmore Constitution 1931:**

In 1931, the drafters of the Donoughmore Constitution (the only constitution in the British Empire (outside Dominions of Australia, South Africa and Canada) enabling general elections with adult universal suffrage) were apprehensive of entrusting power and responsibility to an educated and privileged minority. It granted universal franchise to the people of Ceylon. (For the first time, a "dependent", non-Caucasian country within the empires of Western Europe was given one-person, one-vote and the power to control domestic affairs) No doubt that this move granted a new liberty to the subject and conferred a fresh value on the citizenry.

**(xi) The end of Denominational System: Act No. 05 of 1951:**

The **Education (Amendment) Act No. 05 of 1951** brought the end of the Denominational system. Under the new system schools were divided into three groups:

- (01) Free Schools directly administered by the Government,
- (02) Free schools managed by denominational bodies but receiving full grants for running expenses and
- (03) Fee levying schools (denominational and private) receiving no grants from the government

**(xii) The Report of the All Ceylon Buddhist Congress; “The Betrayal of Buddhism” 1956:**

The revivalist Buddhist movement which had begun in the last decades of the nineteenth century which made little headway under the British rule, gathered momentum from the Buddha Jayanti Celebrations in 1956 that marked the 2,500<sup>th</sup> anniversary of Buddhism and the Sinhalese race. The Buddhists felt that the traditional Sinhala culture and Buddhist values should regain their proper influence in state policies, education and social organizations. Also in 1956, a report commissioned by the All Ceylon Buddhist Congress under the name, “The Betrayal of Buddhism” detailing the disabilities experienced by the Buddhists under British colonial rule was published. As Corea says,

“By the terms of the Kandyan convention of 1815 the British had agreed to maintain and protect Buddhism, but 'under pressure from Christian missionary organizations in England, the British Government decided it was inappropriate for a British official to bear responsibility for maintaining property, confirming officers and generally overseeing the affairs of Buddhist temples', as the Sinhalese Kings had done previously”.

The Buddhist Commission's report launched an attack on the Denominational system advocating a state system of education in which all students received religious instructions according to their faith.

The Tamils in Jaffna were "in revolt" owing to their dissatisfaction with the government's language policy which they feared would undermine their employment prospects and reduce their economic and political status. Rumors were abroad of a Tamil conspiracy to take control of the administration by sinister infiltration. Feelings ran high and discharged themselves in the riots of 1958, about which **Tarzie Vittachi**, in his book "**Emergency, 1958**", London gives a vivid account, to the discredit of two groups of otherwise law abiding honourable people.

Bryce Ryan in one of his previous articles, "**The Dilemmas of Education in Ceylon**<sup>9</sup>," October 1960, published in Comparative Education Review, says,

"If Tamils and Burghers are effectively shut out of government, then the question of revaluation of status achievement goals will be forced on them. At this stage one might do little beyond speculating on this as a force in developing enterprise and productive occupational goals for these groups. The main Tamil response to the threat has not been reassuring. The few major Tamil political leaders talk in terms of a Tamil state-distinct but federated. Since the bloodletting of 1958, Tamils are bitter and frightened. In any case they will fight for language parity rather than for some rational design fitted to the Ceylonese economy and to linguistic limitations. Burghers will no doubt continue their efforts to migrate to other countries." (page 91)

**The 26 years Civil War and the unprecedented destruction and loss of life from 1983 to 2009 is now history. But that history will definitely repeat, not only if we do not learn history, but also if those who are in charge of**

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<sup>9</sup> [The Dilemmas of Education in Ceylon | Comparative Education Review: Vol 4, No 2 \(uchicago.edu\)](https://www.uchicago.edu/publications/comparative-education-review/vol-4-no-2)

**the system of education does not realise what went wrong and take precautionary measures.**

**(xiii) The Report of the Special Committee on Education 1943:**

Although the need for diversification of education had been considered from time to time since the publication of the Report of the Special Committee on Education in 1943, the idea did not commend itself to the public owing to their distrust of any but academic education which was for them the only road to the more remunerative forms of employment. Corea observes three radical changes in the educational system from 1944 to 1969. They are,

(01) The Free Education Scheme of 1947 which made education free from the kindergarten to the university,

(02) The extensive use of the national languages of the country as media of instruction in schools and

**(03) The take over of the denominational schools by the state in 1960 (page 170)**

**(C) The two Acts of 1960 and 1961:**

**(i) Introduction:**

Therefore, having in mind what was discussed above, it is pertinent at this stage to consider the **Assisted Schools and Training Colleges (Special provisions) Act No. 05 of 1960 and the Assisted Schools and Training Colleges (Supplementary provisions) Act No. 08 of 1961.**

The Preamble to the 1960 Act says,

**“An act to make provision for the appointment of the Director of Education as Manager of every Assisted School other than a school which the proprietor has elected to administer as an unaided school, to enable the Director of Education to divest himself of the management of**



certain Assisted Schools to give effect to a decision by the teachers and the parents of pupils in such schools on a poll taken under this Act and to provide for matters connected therewith or incidental thereto.”

The Act had come to power on 17<sup>th</sup> November 1960.

The Preamble to the 1961 Act says,

**“An Act to provide for vesting in the Crown without compensation,** the property of Assisted Schools of which the Director of Education is or becomes the Manager under the Assisted Schools and Training Colleges (Special Provisions) Act No. 05 of 1960, to provide for such Director for and on behalf of the Crown to conduct and maintain schools on such property, **to provide for the imposition of penalties on persons who offer resistance or obstruction to the entry of such Director to such school and to the taking possession of property vested in the Crown,** to provide for government making good or repairing any loss or damage caused to the property of Assisted Schools and for the recovery of cost thereof by the government from the persons responsible for such loss or damage in a summary manner and to regulate the establishment of schools on or after the date of the commencement of this Act”.

The Act had come to power on 02<sup>nd</sup> March 1961.

Hence the purpose of 1960 Act is,

- (i) To appoint the Director of Education as Manager of every Assisted School, except
  - (a) in which the proprietor has elected to administer as an unaided school
- (ii) To enable the Director of Education to divest himself of the management of certain Assisted Schools

(b) in respect of which, a decision has been taken by the teachers and the parents of pupils, on a poll taken under this Act that the management of that school be divested in the Director of Education

(ii) **Provisions of the Acts:**

Section 17 of the Act said,

**“Assisted school” means any school or training college to which aid is contributed from state funds or was contributed from such funds on 21<sup>st</sup> July 1960;...”**

It was said above, that, the **Education (Amendment) Act No. 05 of 1951** divided schools into three groups. They were, the free schools directly administered by the government, free schools managed by denominational bodies **but receiving full grants for running expenses** and fee levying schools (denominational and private) receiving no grants from the government. It appears, that, it was the secondly and thirdly referred to categories in regard to which the 1960 Act applied.

Under section 03 of the Act the Minister could by order published in the gazette declare, that, with effect from a particular date the Director of Education shall be the manager of every Assisted School to which the Act applied.

The same section provided, that, if the proprietor of the Assisted School serves under section 05 a written notice on the Director, that, from the date specified in the notice he has elected to carry on the administration of that school as an unaided school, the order of the Minister ceased to apply in regard to such a school.

Under section 07 of the Act the proprietor could make a written request to the Director to take a poll for the purpose of enabling the teacher and the parents of pupils to elect whether or not the school should be administered by the proprietor as an unaided school with the right to levy fees for admission to and the educational and other facilities provided by the school.

Under section 11 of the Act if the Minister after examination of representations made to him by any person or persons entitled to do so under section 08(b), (i.e., a teacher or a parent of a pupil) that the decision in favour of the proprietor to run the school unaided with a right to levy fees was obtained by fraudulent or improper means or after consultation with the Director is of the view, that, the school is run unaided in contravention of any regulations or an order made under the Act, can by order published in the gazette direct, that, such school cease to be an unaided school, that it be deemed for all purposes as an Assisted school and that the Director shall be the Manager of such school.

Under section 16 of the Act in the event of a conflict, the Act prevailed over any other written law.

Hence the state had wide powers not only to direct, that, an Assisted School shall vest on it, but also to determine whether a school is an assisted school or not.

The Preamble to the 1961 Act,

- (i) Makes it certain, that, the property of the Assisted Schools is vested on the Crown without compensation,
- (ii) Makes it certain, that, the Director of Education can on such property maintain the school on behalf of the Crown,
- (iii) Makes provision to impose penalties on persons who offer resistance or obstruction to the entry of the Director to the school and to the taking possession of the property vested in the Crown,
- (iv) Makes provision to effect the repairing of any loss or damage caused to the property of the Assisted School and for the recovery of the cost from persons responsible for such loss and damage in a summary manner and to
- (v) Make provisions to regulate the establishment of schools on or after the date of the commencement of the Act

Section 16 provided, that, the Director, any teacher of the school, the pupils attending such school for instruction, parents of such pupils and employees of such school shall be entitled to enter the premises of any school to which this Act applies during such hours as may be determined by the Director. Any person who obstructs shall be guilty of an offence under this Act.

Under section 17 where the Director is unable to conduct and maintain the school by reason of the presence of or occupation by any person or persons or by reason of obstruction or resistance offered by any person or persons in occupation of any premises used for the purpose of such school, the Director shall on his making an ex parte application in that behalf to the Magistrate's Court having jurisdiction over the place be entitled to an ex parte order directing the Fiscal to deliver possession.

Under section 18, where any person is unable or apprehends that he will be unable to exercise, etc., the powers vested under section 3(2) too sections 17(1) to 17(3) applied mutatis mutandis.

Like in the 1960 Act section 31 provided that in the event of any conflict or inconsistency with any other written law, the provisions of this Act shall prevail.

**(iii) Resistance and Obstruction to the Taking Over:**

**The provisions of the above Acts of 1960 and 1961 together with the fact of the necessity to enact the latter, considered in the historical circumstances discussed, indicate that either there was in fact, or at least the state verily believed, that, there will be resistance and obstruction to the “taking over” of the Assisted Schools by the government.** The deduction and finding in respect of resistance and obstruction, to which this Court came upon the historical context and the provisions in the two Acts in question are confirmed by what is referred to next.

The feature article under the title “**Schools take over, attempted 1962 coup**<sup>10</sup>”, by W T A Leslie Fernando published on the Sri Lanka Guardian dated 21<sup>st</sup> January 2011 says, that,

“Under the British colonial regime, Catholics and Christians enjoyed a privileged position in the field of education. By 1939, both Catholics and other Christians who comprised only 6.25 percent of the population obtained 73.2 percent Government grant for denominational schools whereas Buddhists, Hindus and Muslims who constituted 93.7 percent of the population received the balance 26.3 percent of the grant. (Prof J E Jayasuriya; Education in Ceylon - page 3) Besides higher education which was in English was fee-levying and was limited”.

.....

“At the 1960 July election the SLFP vociferously declared that the assisted schools would be vested in the State. Accordingly the Schools Takeover Act was passed in Parliament with a majority of 60 members. Only the UNP and the Federal Party voted against it. Nevertheless the Catholic Church was getting ready from 1956 to resist the Schools Takeover. In 1959, at a meeting held in Negombo, T B Cooray the Archbishop of Colombo said, “Our schools should not be touched. We would fight to the end even by shedding blood” (Dinamina June 30, 1959)”.

“When the schools were taken over, many Catholics at the instigation of the Catholic Church protested against it. Some Catholics forcibly occupied schools and many schools in Catholic areas had to be closed. This took a serious turn in the Negombo known as the little Rome and Catholic areas in the vicinity.”

The article further says, that, some leftist Catholics and some Catholic teachers who claimed that they were victimized by the Church formed an organization

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<sup>10</sup> [Schools take over, attempted 1962 coup | Sri Lanka Guardian](#)

‘National Education Protection Front in Catholic areas.’ The Catholic Church that got excited over these developments also formed an organization called ‘The Catholic Education Protection Front.’ The Catholic parents who realised that the education of their children by the closure of schools would be adversely affected began to support the move.

**(iv) The advice of Cardinal Graciano:**

The article further says, that,

**“In this background Cardinal Graciano of India who came to Sri Lanka as special envoy to study the Schools Takeover issue, advised the Catholic Church in Sri Lanka to give up the struggle and the Church retreated.** In the process it managed to get permission to continue some elite schools like St Joseph’s and St Peter’s colleges as non-fee levying private schools. In the Schools Takeover issue Badiuddin Mahamud as the Education Minister at the time tactfully dealt with the situation without leaving any room for bloodshed”.

“Although Prime Minister Sirimavo Bandaranaike was educated at St Bridget’s Convent, a leading Catholic Convent she stood firm and never yielded to any pressure from the Catholic Church. She always spoke with pride over the Schools Takeover until her death in 2000”.

It is also to be noted in the above article where it says,

“Towards the end of January an attempted coup by the high-ranking officers of the Army and the Police was discovered. The Leftist parties condemned it and the MEP and the CP called off the strike as a show of goodwill to the Government even without informing the LSSP. (Prof Y Ranjith Amarasinghe; Revolutionary Idealism and Parliamentary Politics (2000) - page 147)”.

**(v) The Compromises: An instance of Force; Counter Force and Prudence:**

All major incidents, that has shaped human history, could be explained by the principle of force; counter force and prudence. According to the Stoic, Carneades law is a social convention generally beneficial supported by prudence but not justice.

**The process of taking over Assisted Schools in Ceylon in 1961, reflects a pivotal moment in the educational landscape of Ceylon during that era.** The transition from private or assisted schools to government administration often involved **complex negotiations, legal considerations, and community sentiments.**

**There is no doubt, that, the above provision of religious ratios, sometimes Clause 4:2, at other times Clause 3:2 or even under some other number, is the lasting monument that represents everything that happened in this regard within those 150 years, that is, from 1811 (the arrival of missions) to 1961 (the school's take over). It is a lone sentinel of that one and half a century of history who while preserving the past values, looks forward to an uncertain future.**

Rousseau<sup>11</sup> says in chapter III of Social Contract, under 'The Right of the Strongest',

'The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty...Force is a physical power, and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will - at the most, an act of prudence...'

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<sup>11</sup> Jean-Jacques Rousseau (UK: /'ru:sɒ/, US: /ru:'sɒ/[1][2] French: [ʒɑ̃ ʒak ʁuso]; 28 June 1712 – 2 July 1778) was a Genevan philosopher (philosophe), writer, and composer. His political philosophy influenced the progress of the Age of Enlightenment throughout Europe, as well as aspects of the French Revolution and the development of modern political, economic, and educational thought.

Incidentally, Rousseau considered his most important work to be not “Social Contract” but “**Emile or on Education**<sup>12</sup>” published in 1762.

Almost all human phenomena could be explained by force; counter force and prudence. The scourge of a world war born due to the force of German aggression in September 1939, defeated in May 1945 by the counter force of allied forces, did not raise its ugly head for the last 79 years, one reason being the prudence that created mass scale organisations such as the United Nations.

It was the same principle of force; counter force and prudence that brought the clause on religious ratios to its place.

**Hence it is in this spirit, that, the Clause on religious ratios must be considered and implemented.**

In the feature article, “**Prof. J.E. Jayasuriya Visionary educationist and ideal teacher**,” published in the Daily Mirror of 14th February 2018, Prof. Marie Perera says,

“The first National Education Commission ever to be appointed, in 1961/62 of which Prof. Jayasuriya was the Chairman, proposed far-reaching reforms in many areas of education<sup>13</sup>”.

Prof. J. E. Jayasuriya, who was a well respected and well known figure of Ceylonese Education, who was engaged in a “Fast unto Death<sup>14</sup>” in 1956, to force Bandaranaike government to implement the Sinhala as the only State language,

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<sup>12</sup> Emile or On Education (Émile ou de l'éducation), 1762 (includes "The Creed of a Savoyard Priest")

<sup>13</sup> [Prof. J.E. Jayasuriya Visionary educationist and ideal teacher - News Features | Daily Mirror](#)

<sup>14</sup> J. Krishnamoorthy in the article “History of ‘Fasts-unto-death’” published in the Daily News of 05<sup>th</sup> June 2019 says,

“Threats and intimidation to end their lives if the demands are not met is nothing new to Sri Lanka. Fasting unto death by politicians and ultra-nationalists during the ‘Sinhala Only in 24 hours’ of the Bandaranaike days of 1950s when lawyer politician K. M. P. Rajaratne, and Prof J. E. Jayasuriya, a Peradeniya University Don, both extremist Sinhala Only campaigners went on hunger strikes or fast unto death demanding drafting of legislation for Sinhala Only with no concessionary clauses for use of Tamil language even in Tamil speaking regions”. [History of ‘Fasts-unto-death’ | Daily News](#)



yet preferred, or had to, maintain this religious ratio, since 150 years of culture, history and social values could not have been simply forgotten.

“Jayasuriya's father was a postmaster and the family moved when he was transferred from post office to post office. He received his education at **Nawalapitiya Anuruddha Vidyalaya, Dharmasoka College, Ambalangoda and at Wesley College, Colombo.** In 1933, he came third in the British Empire at the Cambridge Senior Examination gaining a scholarship to the University College, Colombo and graduated in 1939 with a first class in mathematics<sup>15</sup>”.

**(vi) Other historic landmarks in the history of this country similar on principle to the religious compromise between the Buddhist majority and the Christian minority in 1961:**

It was seen, above, as to how a situation that could have been provoked to spark destruction and even bloodshed (those what one of the main objectives of education is to prevent) was averted due to the acts of prudence of people such as Cardinal Graciano and Badiuddin Mahamud.

The retention of religious ratios despite the end of the Denominational System is similar to the British having to reintroduce the Roman Dutch common law in 1799 (the Proclamation of 23<sup>rd</sup> September 1799) due to a revolt that took place in Trincomalee in 1797. This is narrated by none other than by William John Kenneth Diplock, Baron Diplock, PC (Privy Counsellor) (8 December 1907 – 14 October 1985) in yet another historic judgment from a case in Ceylon, also on a language right, **Chellaiah Kodeeswaran vs. The Attorney General**, 11<sup>th</sup> December 1969, Privy Council, reported at 72 NLR page 337, saying,

“The words of the Proclamation must be understood in the meaning attaching to them in the closing years of the eighteenth century and in the

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<sup>15</sup> Kumarasinghe, S.H. "Prof. J. E. Jayasuriya: the epitome of Sri Lankan Education Philosophy". Sunday Times. Retrieved 9 May 2023.

light of the historical circumstances in which the Proclamation was made. The East India Company which captured Trincomalee and Colombo from the Dutch in 1795 abolished the existing system of administration through local officials. This led to a revolt in 1797. Governor North was sent out from England and the Proclamation marks his restoration of the old system of civil administration.” (page 340)

**The same thing Lord Diplock said in 1969 regarding the Proclamation of 1799 could be said about the provision regarding religious ratios**, he clause pertaining to which is repeated from 1961, for half a century and a decade, in circular after circular. It will read, as follows, [The quotation from Baron Diplock modified]

“The words of the Circular pertaining to religious ratios must be understood in the meaning attaching to them in the opening years of 1960s and in the light of the historical circumstances in which the take over of Assisted Schools was made. The Act No. 05 of 1960 which vested the Assisted Schools in the Crown from the Church in 1960 abolished the existing system of education through denominational bodies. This led to an uprising in 1960s. Saner counsel of the likes of Badiuddin Mahamud the Education Minister and Cardinal Graciano of India prevailed and the retention of religious ratios at the time of the vesting marks a part restoration of the old system of qualifications to enter into a school”. (page 340)

A similar instance, in which, the historical context of a statement (provision) was taken to gauge its effect and importance, was, the case of **Environmental Foundation Ltd. vs. Urban Development Authority decided on 28.11.2005**, decided by **Chief Justice Sarath Nanda Silva**. In that case the Supreme Court prevented “**a landmark in the history of our nation**” being destroyed by the pale of commercial exploitation. The statement (provision) was an engraving upon a stone plaque made by **Governor Sir Henry Ward**, a long dead

representative of the British Crown in Ceylon. His Lordship the Chief Justice said,

“...the establishment and development of the Galle Face Green are firmly engraved on a rock tablet and a plaque, found at the sea-ward edge and at the Galle Road end, respectively of the Green... The rock tablet at the sea-ward edge of the ‘walk’ marks the commencement of the Galle Face Green and has a legal significance, that we have to take note of”... The rock tablet, well preserved up to date, has the following inscription –

**“GALLE FACE WALK**

**Commenced by**

**Sir Henry Ward**

**1856**

**Completed 1859”.**

**“...The “recommendation to his successors’ by the Governor, which would include the Government of the Republic of Sri Lanka, ascribes to it the character of a dedication in perpetuity... and it is the duty of the Government of Sri Lanka to maintain the Galle Face Green in the manner as laid down by Sir Henry Ward... “...The location of the Galle Face Hotel constructed in 1864, effectively prevents the construction of any road, highway or rail track across the Green and removed it from the pale of commercial exploitation. The cherished dedication of Sir Henry Ward has held sway for nearly 150 years until the arrangement being the subject of this application was made,...”**

Great, as that judgment of the Supreme Court, pronounced almost twenty years ago, was, the “dedication in perpetuity” thus made by Sir Henry Ward and preserved by the Court was for the “Ladies and Children of Colombo.” That was what the plaque said.

**(vii) A dedication in perpetuity and the clause preserved by the Constitution:**

But, in the case of religious ratios, it is a “dedication in perpetuity” made in the name of religious faith, history and culture. It is the considered opinion of this Court, that, the said provision pertaining to religious ratios continuing to be found in the Circulars with regard to Admission of Children to Grade 1 in Schools is preserved under Article 167 of the Constitution of Sri Lanka (1978) which says,

**“167. All rights and all duties or obligations, however arising, of the Government of Sri Lanka and subsisting immediately prior to the commencement of the Constitution shall be rights, duties and obligations of the Government of the Republic of Sri Lanka under the Constitution”.**

Furthermore, article 168 says,

“168. (1) Unless Parliament otherwise provides, all laws, written laws and unwritten laws, in force immediately before the commencement of the Constitution, shall, mutatis mutandis and except as otherwise expressly provided in the Constitution, continue in force”.

**(D) The application of religious ratios:**

**(i) The provision in the circular:**

It is, based on the above principles and in the context arising out of that backdrop, the provisions of the Circular pertaining to religious ratios, must be applied.

Clause No. 3:0 of the circular bearing No. 22/2017 dated 30.05.2017 gives six categories under which children will be selected for admission to a school. Clause 4:0 gives seven factors that must be taken into account (which is applicable for all categories under Clause 3:0 in making selections. Clause 4:2 is the provision

with regard to religious ratios. It must be applied keeping in mind about its religious, historical and cultural significance.

The requirements under the Clause on Religious ratios are as follows,

- (i) **the proportion of children belonging to different religions at the time of vesting the school to the government must be taken into consideration**
- (ii) **the number of vacancies in the said school shall be accordingly divided among different religions and categories.**
- (iii) **When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion.** [This shows the importance given to the religious factor]
- (iv) **When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions** [This also shows the importance given to the religious factor which at this stage goes out of the particular religion but remain within other religions]

**(ii) The Methodist Church Synod held at Scott Hall, Colpetty in January 1961:**

At the oral hearing it was said on behalf of the petitioner that at the time of vesting in the Crown the Girls' High School, Kandy had 968 students out of which 81 belonged to the Methodist denomination. The other denominations had 292 students.

The document "P.16" is the returns of schools that belonged to the Methodist Church in Ceylon on 31<sup>st</sup> July 1960.

P. 16 is referred to in paragraph 26 of the petition dated 21.05.2018. In the statement of objections dated 11<sup>th</sup> of December 2018 of 01<sup>st</sup> 03<sup>rd</sup> and 05<sup>th</sup> respondents it is said at paragraph 14, that,

“Answering the averments contained in paragraph 23,24,25,26,28,29,30,31,32, 33 (a) (b) (c) and (d) of the petition the respondents state that when the Kandy Girls’ High School was vested in the state under Assisted Schools and Training Schools [it should be “Training Colleges”] (Special Provisions) Act of 1960 as amended, the total number of students studying in the Kandy Girls’ High School according to the information contained in the Methodist Synod<sup>16</sup> marked as P.16 was 968. Out of the aforesaid 968 students, 81 students had belonged to the religion (sic) category of Christian Methodist. The proportion of the students who belonged to different religion categories as depicted in the schools enumerated in the Methodist Synod marked as P.16 would be taken as the bench mark to calculate the percentage of students to be admitted to each of the schools enumerated in the Synod marked as P.16 under each religion (sic) category. According to the percentage of the total number of students to be admitted under the Methodist religion (sic) category to the Kandy Girls’ High School was 8.36%...”

Hence P. 16 is admitted and accepted by the respondents. Not only that, they say, that, it is the “bench mark.” That word means “a standard or point of reference against which things may be compared.” While that could be one aspect of the religious ratios, there is, as per what was discussed above, more to it.

But the outcome of the paragraphs 26 of the petition and 14 of the statement of objections is, that, the numbers of students belonging to each category in P.16

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<sup>16</sup> An assembly of the clergy and sometimes also the laity in a diocese or other division of a particular Church.

could be accepted, relied upon and taken as the basis for the determination of denominations.

It is as follows with percentages, out of a total of 968 students,

<b>Religion or Denomination</b>	<b>Number of Students at the time of vesting in the Crown</b>	<b>Percentage</b>
Methodist	81	8.36%
Other denominations of Christian faith	292	30.10%
Hindu	57	5.88%
Buddhist	467	48.20%
Muslim	71	7.33%
Total	968	99.87%

How does the religious ratio provision work?

As it will be referred to in due course, the respondents have stated, that, there were 190 places (on the basis of 05 class rooms having 38 students in each) and 05 places in each class should be reserved for the children of parents who are in armed forces. As a percentage for the school in question, this is, 13.15%.  $(25/190 \times 100)$

If it is assumed, for convenience of calculation and picturing an image, that, there are 226 places, 26 will go to armed forces. The balance number of places is 200.

Clause 3:0 of the circular No. 22/2017 must be read with its Clause 7:1. That gives the percentage to be selected from each of the six categories in Clause 3:0. The category in (i) “proximity to school” calls for an allocation of 50% of places. Hence, in the above example, out of 200 students, 100 must be on the basis of

proximity. **Then 08 students must be on Methodist denomination and 30 on other denominations of the Christian faith. That means, that, out of that 100 (on proximity) 38 students should come under the umbrella of Christian faith out of which 08 shall be on Methodist denomination.** Then it must be remembered, that, there is a balance of 100 places, in this example, which is to be allocated on the categories of (ii) old girl 25% (iii) sister 15% (iv) Ministry of Education 5% (v) transfers on exigencies of service 4% and (vi) coming from overseas 1% and in respect of those categories too the places must be allocated to have 08 Methodist children and 38 children of Christian faith which includes those 08 children.

We will now go back to 100 places on proximity. There are 08 places for Methodist denomination. If there are only 05 of them the other 03 must go to other denominations of the Christian faith. If there are only two children of this category, the remaining 01 place should go to another religion. It must be remembered, that, out of these 100 places on proximity, 48 must be Buddhists, 30 other denominations of Christian faith other than Methodist denomination, 07 Muslim and 05 Hindu.

Hence the statement of Justice Aluvihare in SC Application No. 459/2017 (FR), that,

“The religious quota is a special factor for consideration—and not a separate tier of admission,”

must not be understood, whether it was intended that way or not, as the religious ratio is in anyway inferior to the six categories mentioned under Clauses 3:0 and 7:1 of that circular.

The category of religion is operating within the categories of proximity, etc. and subject to the condition that religious ratios shall be same as that prevailed at the time of vesting.



**(iii) The vacancies that were there in the school in question:**

In written submissions of the respondents dated 05.10.2020 at page 07 it is stated, that,

“It is admitted that for the year of admission 2018 a total of 190 students were admitted to five Grade 1 class rooms of the school. Out of these five class rooms four class rooms Sinhala Medium Class Rooms and other being a Tamil Medium class room.

The maximum number of students to be admitted to each class room as per the circular of 22/2017 is 38 students. Out of which 05 students should be reserved for the children of Military personnel. Hence the applications for admission had been called to fill 165 vacancies for the five Grade 01 class rooms of Girls’ High School, Kandy”.

Now, according to Clause 3:0 the 165 places must be allocated as follows,

- (i) Proximity - 50% - 82.5
- (ii) Old girl - 25% - 41.25
- (iii) Sister -15% - 24.75
- (iv) Ministry of Education – 5% - 8.25
- (v) Transfers on exigencies of service – 4% - 6.6
- (vi) Overseas - 1% - 1.65

**Hence in each category under (i) to (vi) the religious ratio must be maintained. The “religious quota” is not only a special factor but a separate tier of admission which has an overarching effect on categories (i) to (vi).**

Hence further when the percentage for all students of Christian faith is 38.46%,

Then, in (i)  $82.5 \times 38\% = 31.35$  must be of Christian faith.

As, it was seen, in the discussion with regard to the history, Girls’ High School, Kandy was founded in 1879 by Wesleyan Methodist missionaries.

That is why the Methodist denomination is considered at first. But when that reservation for Methodist denomination (8.36%) and other denominations of the Christian faith (30.10%) which were the ratios at the time of vesting in the Crown came to be included as a provision in the circular, the said provision (which was reproduced twice above having broken down to clearly show its conditions) does not have the term “Methodist denomination” or “Methodist category.” It refers to a religion and to categories of that religion. Taking Christianity as the religion, the categories are Roman Catholic, Anglican, Baptist, Methodist, etc., etc. Hence it operates both ways. If a child is a Methodist, the rest under other denominations includes Roman Catholic, Anglican, Baptist, etc. If a child is Roman Catholic, the rest under other denominations shall include Methodist, Anglican, Baptist, etc.

**When one is taken the other is another.**

The circular does not (in relation to Girls’ High School, Kandy) allow a place that comes under the said 38.46% to go to another religion, unless there is no child belonging to any category of Christian faith

This is not only in respect of the Christian faith. This provision of the circular also does not allow a place that comes under the 48.20% allocated for the Buddhist faith to go to another religion, unless there is no child of Buddhist religion. It is so for Muslims and Hindus too.

In 2017 admissions, taking the available places (after allocating to Armed forces) 165 and on proximity, the number of places being 82.5, the number of Buddhist children (on proximity only) must be,

$$82.5 \times 48.20\% = 39.76\%$$

Incidentally, S. C. F. R. 459/2017, the judgment in the Supreme Court given by Justice Aluvihare in 2018, as it was said in this judgment earlier too, was in respect of same school, same year of admission and a child of the same denomination of Christian faith. Hence the following may be noted, **[Beginning of the Quotation]**

“The Petitioner’s argument proceeds on the basic premise that for the purposes of clause 3.2, the School must allocate the vacancies taking Christianity as the only basis and not its different denominations. However, as stated, the School has allocated seats giving due recognition to this distinction. This distinction is also reflected in P14—the document relied on by the Petitioner. For the year 2018, the 1st Respondent has already admitted 12 students although the allocated number of seats were only 7. **As to how the 1st Respondent admitted 5 students in excess of the quota reserved for the proximity category has not been explained by the 1st Respondent.** Nevertheless, that alone cannot compel this Court to make a finding that the school has proceeded on the basis of Christianity and not on the denominations. The excess of 5 seats could also have been the result of residual seats being proportionately divided among the categories due to lack of applicants in some other category. Since there is no evidence nor any allegation disputing that the 1st Respondent has adopted an inaccurate classification, I am of the view that the School’s allocation of seats to Methodist students for 2018 is correct. Consequently, this means that the Girls’ High School, Kandy, by admitting 12 Methodist students under the proximity category (for reasons undisclosed and unchallenged) has already exceeded the quota for that category for the relevant year”. (page 06) **[End of Quotation]**

Since that passage speaks of the number of students admitted too, it is pertinent to refer to the following passage from the respondent’s above written submission, page 09, **[Beginning of the Quotation]**

“Accordingly, for the year of admission of 2018 for Grade 1, the Kandy Girls’ High School had admitted a total of 13 students for all five class rooms under the Christian Methodist Religion Category in proportion to the Methodist Synod marked as P.16. These students have been admitted under the Methodist denomination of the Christian Category from amongst those students who applied from the proximity and sibling categories as 12 from proximity category and 01 from the sibling category. There had been no applicants from the other categories for the Methodist religion denomination for the year 2018. As such, it is respectfully submitted by the respondents that

*when the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion”. [Emphasis in the original]*

**[End of Quotation]**

When this judgment initially reproduced Clause 3:2 of the circular No. 22/2017, it was done by copying what is stated in paragraph 25 of the petition. When the said provision was reproduced twice thereafter, in this judgment, on the broken down version ((i) to (iv)) too, the initial reproduction from paragraph 25 of the petition was followed.

**There is a slight, but an important change, in the way the said provision was reproduced at page 08 of the respondent’s written submission, which this Court observes.** The said reproduction reads, **[Beginning of the Quotation]**

“In filling vacancies in (a) school vested to the government under Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961, (i) the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and (ii) the number of vacancies in the said school shall be accordingly divided among different religions and categories. (iii) When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. (iv) When there are no applicants from a religion or when the number of applications from a religion is less than the number of vacancies set apart for that religion, **such applicants will all be admitted** and the remaining vacancies **shall then (and only then)** be proportionately divided among religions.” **[End of Quotation]**

This cannot be a mistake made by the respondents in copying it from the circular to their written submissions. One reason for this is the words in the parenthesis (and only then) which is found in the altered version, which emphasizes the meaning of the words before that cannot find its place by mistake. The other reason is that in the judgment S. C. F. R. 459/2017 Justice Aluvihare too followed the same version of the circular having the above words “**such applicants will all be admitted**” and the words “**then (and only then)**” as per page 05 of the judgment is not a mistake.

To compare part (iv) in both versions, it is as follows,

**“Version (a)”**

(iv) When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions.

**“Version (b)”**

(iv) When there are no applicants from a religion or when the number of applications from a religion is less than the number of vacancies set apart for that religion, **such applicants will all be admitted and the remaining vacancies shall then (and only then) be proportionately divided among other religions.**

However in most circulars the “version (a)” appears and not the “version (b)”. About this it will be said in detail later.

**(v) The number of Christian students that must be taken for all categories (such as “proximity”) that come under clause 3:0 and clause 7:1 of the circular:**

Now, it was said, that, out of 82.5 places set apart on proximity, 38.46% must be children of Christian faith. The number is 31.72.

The following table shows the number of students in each category, (not religious categories or denominations) categories under Clause 3:2 who must be Christians.

<b>Category under Clause 3:2</b>	<b>Percentage under Clause 7:1</b>	<b>Total number of places for the Category in Column one of this table</b>	<b>Number of places for Christian students</b>
(i) Proximity	50%	$165 \times 50 / 100 = 82.5$	$82.5 \times 38.46 / 100 = 31.84$
(ii) Old girl	25%	$165 \times 25 / 100 = 41.25$	$41.25 \times 38.46 / 100 = 15.86$
(iii) Sister	15%	$165 \times 15 / 100 = 24.75$	$24.75 \times 38.46 / 100 = 9.52$
(iv) Ministry of Education employees	05%	$165 \times 5 / 100 = 8.25$	$8.25 \times 38.46 / 100 = 3.17$
(v) Transfers on exigencies of service	04%	$165 \times 4 / 100 = 6.6$	$6.6 \times 38.46 / 100 = 2.54$

(vi) Overseas	01%	$165 \times 01 / 100 = 1.65$	$1.65 \times 38.46 / 100 = 0.63$
Total	100%	165	63.56

Hence in all categories under (i) to (vi) under Clause 3:0 there must be 63.56 Christian students. Since it is 63.56 (a number, not a percentage) and there cannot be a decimal number of students as the decimal number is higher than 0.50, the places available for all Christian students is 64.

The respondents, in their above written submissions, at page 09 says, that,

“These students have been admitted under the Methodist denomination of the Christian Category from amongst those students who applied from the proximity and sibling categories as 12 from proximity category and 01 from the sibling category. There had been no applicants from the other **categories** for the Methodist religion denomination for the year 2018”.

The word “categories” in the last sentence signifies categories under (i) to (vi) in Clause 3:0 but not religious categories.

The aforequoted passage from respondent’s written submissions, at page 09, says, at least, two things, which are as follows,

- (a) there are 13 of Methodist denomination under categories of “proximity” and “sister” (sibling) and
- (b) in regard to other **categories**, there are no applicants under Methodist denomination

Now, the entire number of Christian students (in terms of the proportions at the time of the vesting of the Assisted School in the Crown) calculated under the circular bearing No. 22/2017 is 64. Already there are 13 students of Methodist denomination. The balance is  $64 - 13 = 51$ . According to the part quoted above from respondent’s

written submissions at page 09, there are no students of Methodist denomination among this number of 51.

But, this number of 51, which came after deducting 13 from 64, was calculated on the basis of 38.46% for all denominations of Christian faith, which includes Methodist denomination.

The prescribed proportion of Methodist denomination to all Christians in Girls' High School, Kandy is as follows,

<b>Religion Denomination</b>	<b>or Number of Students at the time of vesting in the Crown</b>	<b>Percentage</b>
Methodist	81	8.36%
Other denominations of Christian faith	292	30.10%
Total	373	38.46%

Hence according to the proportions that prevailed at the time of vesting in the Crown and in terms of the circular, the proportion of the students of Methodist denomination to all Christian students is,

$$8.36/38.46 \times 100 = 21.73$$

Therefore 21.73% students of 64 must be student of Methodist denomination.

This is,

$$64 \times 21.73/100 = 13.91 = 14$$

**Admittedly, the school has taken only 13 students of Methodist denomination.**

**Hence it can take one more student of Methodist denomination; and that is this student.**



This so happens, partly due to the fact that Girls' High School was founded by Wesleyan Methodists, because, that is how the provision with regard to religious ratios in the circular and the proportions come; and partly due to statistics (in 1961 and in 2018) The rest is arithmetic.

In C. A. Writ 183/2019 relied upon by the petitioner although the Court of Appeal granted relief to the petitioner, it has been said at page 06 of the judgment, that, under Clause 4:2 vacancies in the school shall be divided among different religions and categories and the word “categories” refer to those under Clause 3:0 (that is, under (i) to (vi) “proximity”, etc.) **This is not correct.** The “categories” referred to in Clause 4:2 are not “proximity”, “old girl”, “sister”, etc., but the denominations within a religion. To say no is the ignorance of the historical context discussed above. In Clause 4:2 (at times Clause 3:2) the term “categories” refer to a denomination within a religion. It is because, the provision in Clause 4:2 originated due to the historical and religious context referred to above in this judgment long before the criteria such as proximity, etc., came in. The third limb of that provision, which says, (iii) “When the number of applications is less than the number of vacancies set apart **for a given category of a religion**, remaining vacancies shall be proportionately divided among other categories of the same religion, also makes this fact clear in the term “**for a given category of a religion.**” **But, as said in this judgment above, Clause 3:0 is regulated by Clause 4:2. The categories of “proximity”, “old girl”, etc., are subject to the religious ratios. Therefore the vacancies must be divided according to categories in Clause 3:0 and religions and religious categories mentioned in Clause 4:2, as it was shown above by example, in this judgment.**

What was said in the case cited at page 08, in C. A. Writ 189/2019, that is, case No. **S. C. F. R. 335/2016 dated 31.10.2017, B. M. Asiri Tharanga, Thyagarajah Mahendra vs. Principal Kingswood College, Kandy and others** decided by Eva Wanasundara J., that, [Beginning of the Quotation]

“anyhow when a Christian child has applied to be admitted to Kingswood College Kandy, under any category, if the documents show that he is a Christian and if the number of Christian children already admitted are not above the allowed percentage of 20% intake under the religion category, then that child has a right to be admitted under clause 3.2 of the circular”, [End of Quotation]

is mostly correct.

However, in doing as Justice Wanasundara decided too, it must be borne in mind, that, as far as Kingswood College, Kandy is concerned also, what is material initially is in respect of the children belonging to Methodist denomination and the rest of the Christians has to be considered as “other denominations” although the percentage of the former is less than that of the latter. The school was founded by Louis Edmund Blaze on 4 May 1891, with eleven students at a site on Pavilion Street in Kandy. Later, the school was moved to Randles Hill at Mulgampola. This is also one of the schools founded in Ceylon by the Wesleyan Methodist Church such as Newstead Girls College<sup>17</sup>, in Negombo, the oldest existing girls' college and the third oldest public school in Sri Lanka, founded in 1815-1816. According to the same P.16 in this case, in 1960 there were 71 children of Methodist denomination in Kingswood College along with 107 students belonging to other denominations of the Christian faith<sup>18</sup>. The total number of students was 898. As the total number of Christian students were (71+107) 178, the percentage of Christian students was  $(178/898 \times 100)$  19.82%. That is why in the above case Wanasundara J., said that the percentage of Christian students is 20%.

In C. A. Writ 183/2019 the Court of Appeal also referred to at page 13 to the judgment of Justice Dr. Shirani Bandaranayake (later Chief Justice) in **M. K.**

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<sup>17</sup> The Methodist Church of Sri Lanka (Sinhala: ශ්‍රී ලංකා මෙතොදිස්ත සභාව, Tamil: இலங்கை மெதடிஸ்த திருச்சபை) is a Protestant Christian denomination in Sri Lanka. It was established on June 29, 1814, with its headquarters in Colombo. Thomas Coke, a close associate of the Reverend John Wesley, played a pivotal role in launching the overseas mission to Ceylon (now Sri Lanka). The mission set sail from Portsmouth harbor on December 30, 1813.

<sup>18</sup> There were 15 Hindu, 499 Buddhist and 206 Muslim children.

**Wijetunga and others vs. The Principal, Southland College, Galle and others, S. C. F. R. application No. 612/2004 decided on 07.11.2005.** It was said, in the Court of Appeal case referring to the judgment of Justice Dr. Bandaranayake, that, she decided, that, it is mandatory that the religious percentages that prevailed in 1961/1962 to be continued and the applicants who claim that they are Christians had to be considered on that background.

**(vi) The lackadaisical attitude of certain public officers to implement the clause pertaining to religious ratios:**

In S. C. F. R. 612/2004 the school in question was the Southland College, Galle. It was submitted by the learned counsel who appeared in that case for the **petitioners** (the admission was refused of two twin daughters) that at the time that school was vested there were 53 students of Christian faith out of a total number of 760. Hence the percentage was  $(53/760 \times 100)$  6.97%. The school administration, however, had informed the parents, that, they can admit only 2% of Christian students. As Justice Dr. Bandaranayake observed in that case, [Beginning of the Quotation]

“When this application was taken for hearing on 15.06.2005, the question as to the religious percentages that prevailed at the time of vesting of Southlands College arose and **the Court indicated to the learned State Counsel the necessity to obtain the relevant information from the Ministry of Education. Learned State Counsel however was not in a position to produce the necessary information.** At that stage learned counsel for the petitioners informed Court that he is in possession of a document prepared by the Methodist Church in Sri Lanka for the year 1961, which he had annexed to the petition. Learned State Counsel thereafter moved for time to file relevant documents, if any, within a period of two weeks. While granting time for that purpose, we indicated to the learned State Counsel that in the event the Ministry of Education or Southland College was not in a position to produce the relevant documents, that this Court would take into account the information produced by the learned Counsel for the petitioners”.

**“When this matter was resumed on 14.07.2005 learned State Counsel for the respondents informed Court that he could not obtain the required information from the Ministry of Education as the said information is not available with them.** In the circumstances we have taken into consideration the material submitted by the learned counsel for the petitioners in relation to the percentages based on religion at the time the school was vested in the government. Accordingly, in terms of the extracts of proceedings of the Methodist Church Synod held at Scott Hall, Colpetty in January 1961, out of the total of 760 students, there had been 53 Christian. Therefore the percentage of Christians at Southlands as at 1961 was not 2% as claimed by the respondents, but 6.9% as stated by the petitioners”. [End of Quotation]

In the case before Justice Eva Wanasundara too, the question related to the Guidelines issued to the parents for admissions to Grade 1 in 2017 (what is filed in this Court by the petitioner is the circular No. 22/2017) is that which has the provision relating to religious ratios at Clause 3:2.

It must be observed, that, Justice Wanasundara said at page 03 of the judgment as follows,

**“Kingswood College, Kandy is a Government National School which was vested in the Government in terms of the aforementioned Act No. 5 of 1960 and Act No. 8 of 1961. That is an accepted fact. However paragraph 14 of the affidavit filed by the Deputy Principal on behalf of all the Respondents states that in the absence of confirmed statistics relating to the religious composition of students enrolled at Kingswood College in the year 1961, the school is unable to implement Clause 3.2 of the School Admission Circular marked R1”.**

This Court reiterated above the significance of the agreement between the government of Ceylon and the Christian Church reached in 1961, which made the continues inclusion of that provision. As this Court observed above, this is an agreement preserved by Article 167 of the present Constitution. Hence it

cannot be altered, unless by way of a Constitutional amendment. Therefore it is the duty of all public officers to implement those provisions to the letter. It is no excuse for them to say, that, they are unable to find the relevant statistics. If any public officer swears or affirms so in an affidavit, that itself will amount to proof of dereliction of duty which warrants the taking of severe disciplinary action.

The agreement between the Christian Church and the government of Ceylon could also be regarded as an “unwritten law.” Article 16(1) of the Constitution says,

“16. (1) All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.”

Hence the religious ratios will be a qualification to the provisions of Article 12(2) of the Constitution.

In S. C. F. R. 612/2004 too, in the Supreme Court, Justice Dr. Bandaranayake considered Article 12 and her ladyship said, [Beginning of the Quotation]

“The doctrine of equality before the law is a guarantee of impartial generality, which confers on every person an equal right in matters affecting their lives and includes the guarantee of having equal opportunities in matters relating to educational facilities. The guarantee of equal protection laid down in Article 12 could be regarded as a pledge for the application among equals, equal laws without any discrimination”.

“The application of the principle of equal treatment was stated quite clearly in *Yick Wo vs. Hopkins* (118 U. S. 356). **It implies that there should not be any discrimination between two persons who are similarly circumstanced and clearly implies that equals should be treated equally. However, equal protection of the laws does not require all the enacted laws to be universal in their application and it clearly permits classification of individuals.** Such classification and their applicability within the framework of

the constitutional provisions is vividly described in the well known decision of Shri Ram Krishna Dalmia vs. Justice S. R. Tendolkar ([1959] A. I. R. S. C. 284) which states as follows,

- (a) It must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group and
- (b) The differentia must have a rational relation to the object sought to be achieved by the statute in question.” [End of Quotation]

What Justice Eva Wanasundara observed in the Supreme Court in regard to this, which is at page 05 of the above judgment is not only important, but also a pronouncement of the apex court of this country in this respect. Her ladyship said, [Beginning of the Quotation]

“Nobody can ignore the law provided by two Statutes of Parliament, namely, Act No. 5 of 1960 and Act No. 9 of 1961. **The school authorities and the Ministry of Education cannot turn a blind eye to the provisions of law already in force.** The Respondents who are objecting to the fundamental rights application filed by a Christian parent who is trying hard to get the child admitted to such a school should have at least tried to find out from the documents available with the government in regard to this particular contention which has kept on coming up in this Apex Court in the Country regularly in the recent years. The People of this country have a right to canvass their fundamental right before the Supreme Court but the question which cannot be answered is ‘how many of them can afford to come to the Supreme Court’? **Moreover, when the authorities are ignoring what is laid down as the law of the country, how can the people be expected to get their rights?**” [End of Quotation]

The significance and the truth of the above pronouncement, will be more illuminative, looked at the historical context examined by this Court. As the successor to the Dominion of Ceylon, the Republic of Sri Lanka and its officers and citizens are bound by the agreement pertaining to religious ratios. It must be observed, that, not only the schools that belonged to the Christian Church

but those that belonged to the Buddhist Theosophical Society too were vested in 1961 and they also received the right to maintain their religious ratios with a higher percentage of children of Buddhist faith.

As the Girls' High School of Kandy which was founded by Wesleyan missionaries, Dharmaraja College, Kandy, the leading Buddhist high school in Kandy [initially called the Kandy Buddhist High School] for boys was founded by the Buddhist Theosophical Society in 1887. It is said about that school,

"S.W.R.D. Bandaranaike started off his victorious campaign for the Parliamentary election of 1956, by an alms giving held at the Dharmaraja Primary School hall, which was known as a "Jayabima<sup>19</sup>". In 1957, the "Kandy Education Front", which led the movement of persuading the Ceylonese government to take over assisted schools around the country, was established at the Dharmaraja Primary School Hall under the Chairmanship of Sir Bennet Soysa, a distinguished Old Rajan".

"In 1960 Dharmaraja<sup>20</sup>, along with Ananda, was taken over by the Government, which was a result of [a] strong campaign led by Thewarapperuma (the Principal at that time) and others. This meant that

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1. 19 *"Kandy in 1940s and 50s..."* Daily News. 2009. Archived from [the original](#) on 17 January 2011. Retrieved 14 January 2011.

<sup>20</sup> Kandy was originally known as Senkadagala pura after a hermit named Senkada who lived there. The royal palace in Senkadagala was built by King Vikramabahu the 3rd of Gampola on the advice of a Brahmin who selected the site as a lucky ground for a Capital city. (The Legend is that the Brahmin saw, somewhere close to the "Bo Tree" in the Dharmaraja Primary School premises (belonging to Natha Devale, Kandy) a hair being chased by a jackal. At the Bo Tree the hair turned back and faced the jackal and (undoubtedly because of the shock and surprise caused by this unexpected gesture) the jackal started to run. [This sometimes happen, when the hunted, in sheer desperation, summons all its courage and confront the hunter] The first king to ascended the throne of Senkadagala was Sena Sammata Wickramabahu. [Perhaps the Christian missionaries being confronted by the underprivileged is a story similar to the above, of the Jackal and the hair] The information in this footnote except about the legend and those within parentheses taken from [https://mysrilanka.com/travel/lanka/history/senkadagala\\_era.htm#:~:text=Kandy%20was%20originally%20known%20as%20Senkadagala%20pura%20after,derived%20from%20the%20Word%20Kanda%2C%20which%20means%20mountain.](https://mysrilanka.com/travel/lanka/history/senkadagala_era.htm#:~:text=Kandy%20was%20originally%20known%20as%20Senkadagala%20pura%20after,derived%20from%20the%20Word%20Kanda%2C%20which%20means%20mountain.)

further development and improvement of the school's resources could now be done without the cost burdening the school board.”

The book of **Stanley de Smith, in its 07th Edition** (South Asian Edition 2015) referring to the Human Rights Act of 1998 of Britain, under the sub heading “The right to education” says at page 747

“Article 02 also requires the state to respect the right of parents to ensure that their children’s education is in conformity with their own religious and philosophical convictions. This does not prevent the state from teaching religious or philosophical matters so long as the instruction is objective, critical and pluralistic and does not constitute indoctrination. The obligation extends beyond the curriculum to organization and finance and school discipline.”

Justice Dr. Bandaranayake further said, in S. C. F. R. 612/2004, that,  
[Beginning of the Quotation]

**“In fact in my view, paragraph 5(a) [of the circular] has no ambiguities and clearly indicates the objective of the government as to maintain the composition of the students based on their religion that was present at the time of vesting. In such circumstances, would it be possible to agree with the contention of the learned State Counsel for the respondents that students cannot be admitted to a school which was vested such as Southlands College, purely on the basis of their religion? My answer to the question is in the negative and for the reasons that I have stated below”.** [End of Quotation]

The learned counsel for the petitioner in this case submitted, that, the school or any person concerned cannot arbitrarily fix a “cut off” mark. It was already said in this judgment, that, the religious ratios are an overarching requirement. The above decision of the Supreme Court in 2004 confirms this position. It is a must to maintain the religious ratios as per the agreement referred to in this judgment and the consideration of a “cut off” mark is superficial. In any event, as far as



such a mark affects a mandatory requirement under the religious ratios, it will be ultra vires.

**(vii) Confusion created in regard to religious ratios due to what could be a surreptitious suppression of the real provision that is material:**

This requires us to go back to the example of 226 places in school where the religious ratios are similar to that of the Girls' High School, Kandy. When 26 places are set apart for armed forces there remains 200 places. Under the provisions of the material circular No. 22/2017, the children to be taken on categories of (i) proximity, etc., under Clause 3.0 and Clause 7.1 of the circular according to the religious ratios in P.16 in terms of Clause 4.2 of the circular, if we consider the first two categories, ("proximity" and "old girl") will be as follows,

<b>Category under Clause 3.0</b>	<b>Total number of places</b>	<b>Christians (38.46%)</b>	<b>Buddhists (48.20%)</b>	<b>Hindus (5.88%)</b>	<b>Muslims (7.33%)</b>	<b>Total (100%)</b>
Proximity (50%)	<b>100</b>	38	48	06	08	100
Old girl (25%)	<b>50</b>	19	24	03	04	50

**Table 01**

If the number of students under each category on the column to the left hand side are taken according to the religious ratios on the first row, leaving no vacancies, then the figures shown in the Table 01 are the number of students under each category and each religion.

Now let us consider what is below, the Table 02.

<b>Category under Clause 3.0</b>	<b>Total number of places</b>	<b>Christians (38.46%)</b>	<b>Buddhists (48.20%)</b>	<b>Hindus (5.88%)</b>	<b>Muslims (7.33%)</b>	<b>Total (100%)</b>
Proximity (50%)	<b>100</b>	38	48	06	08	100
Old girl (25%)	<b>50</b>	18 (less 01 than allocation)	24	03	04	49
Sister (15%)	<b>30</b>	11.53 = 12	14.46 = 14	1.76 = 2	2.19 = 2	30

**Table 02**

Now for Christians under Old girl category there is one student less. (18 instead of 19)

**This is, as this Court sees, what was envisaged by what this Court says is the correct version of limb (iv) of the religious ratio provision in the circular.**

**It is the one reproduced by Justice Aluvihare in S. C. F. R. 459/2017 at page 05.**

**It is the one<sup>21</sup>, the respondents in this case quoted in their written submissions, at page 08 and page 09.**

It says,

“(iv) When there are no applicants from a religion or when the number of applications from a religion is less than the number of vacancies set apart for that religion, **such applicants will all be admitted** and the remaining

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<sup>21</sup> Perhaps due to a twist of fate

**vacancies shall then (and only then) be proportionately divided among other religions.”**

What does “(a) **When there are no applicants from a religion** or (b) **when the number of applications from a religion is less than the number of vacancies set apart for that religion**” mean?

It means, it is submitted, a situation as in Table 02 in respect of Christians under the category “Old girl”.

When there are 19 places for Christians under that category, there is only 18, hence there is 01 vacancy.

Then, what to do?

**“such applicants will all be admitted”**

Now, the first part of this limb says two things under (a) and (b).

(a) **When there are no applicants from a religion** and

(b) When the number of applications from a religion is less than the number of vacancies set apart for that religion

So under (a) if there are “no applicants from a religion” what does the second part of this limb, “such applicants will **all** be admitted” mean?

The words “such applicants will **all** be admitted” is common to (a) as well as (b).

If there are no applicants from a religion how could not only “such” applicants, but also, “**all**” of them be admitted?

“Such” means the applicants from that religion who have applied under another category of Clause 3.0. “All” signifies that the whole number of them, in as much as there are vacant places for that religion in the category in question (in this example “Old girl” category) must be taken.

Hence, if in Table 02, there is a 39th Christian student under proximity category (who cannot be admitted as that category has only 38 places) that student (despite not having

applied under “old girl” category) can be taken to make that number 18, number 19 and thus help preserve the religious ratio.

**This is the only meaning the words of the above provision could have.**

Then the last part of limb (iv).

**“and the remaining vacancies shall then (and only then) be proportionately divided among other religions”.**

If in the above example, the number of Christian students under Old girl category were 17 (instead of 18 as in Table 02) and if there were 39 Christian students coming under the proximity category, the excess 01 student from there having been admitted for a vacancy under Old girl category (as there are 02 vacancies) another 01 vacancy remains. The words in the last part “then (**and only then**)” now comes into play. That vacancy can go to a Hindu a Muslim or a Buddhist. The circular does not say (as the sacred agreement referred to above did not say) in which order the “other” religion should be chosen. Here the law ends and policy begins. And therefore, I do not say from what religion a student for that vacancy must to be taken first.

The word “**all**” in the words “such applicants will **all** be admitted” and the words “then (**and only then**)” in the last part show, that,

- (i) this is the only way the religious ratios could be preserved according to what prevailed at the time of vesting and
- (ii) this is the only way the circular must be understood

As the sub heading of this part signifies, the rare appearance, so to say, of this correct version of (the limb (iv)) of the religious ratio provision could be due to an intentional suppression. On the other hand, it could be, an “unfortunate correction” made by the printer, who could not have understood the meaning

and the significance of limb (iv). Glanville Williams<sup>22</sup> in his renowned book “Learning the Law” refers to an incident where a judge said Pollock’s writings have “fortunately” not yet become authorities<sup>23</sup> (on the principle that the writings of a dead text book writer would assume a sanctity which it did not have when he was alive – the reasoning being that when still alive he can change what he said) and the printer, thinking that the use of the word “fortunately” was by mistake “corrected” it as “unfortunately”.

In the meaning given to the correct version of limb (iv) in the religious ratio provision by this Court (which is the only meaningful way it could be understood; and it is clear by the use of the words “**all**” and “then (**and only then**)” that it was introduced not due to a mistake) there is no possibility of a Buddhist child applied under proximity category be taken under old girl category, so to say, because the majority citizens are Buddhists. In 1960s the percentage of Buddhists in the country was 64% and 2012 it was 70.2% and now even higher. If we consider the Table 02 above, when there are 48 Buddhist students under proximity category and if there are 23 Buddhist students under old girl category, [the allocation is for 24] it is not only highly unlikely but also practically impossible, that, there is no one more Buddhist child under the old girl category. However, if there arises such an instance, the 49th Buddhist student under the proximity category, or for that matter (as there will be 30 places – for the whole school - on sister category in the above example (at the rate of 15% of 200) and as  $30 \times 48.20/100 = 14.46 = 14$  places for Buddhist students under sister category, if there are 15 Buddhist students under that category, either that 49th Buddhist student or that 15th Buddhist student, whoever is more qualified on other requirements, could be taken under the above limb (iv). It is because the 49th and 15th students in that example both being Buddhists are in equal position as far as the religious requirement is concerned (one cannot be more

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<sup>22</sup> QC, LL.D., F.B.A. Honorary and Emeritus Fellow of Jesus College, Cambridge: Honorary Bencher of the Middle Temple: formerly Professor of Public Law and Quain Professor of Jurisprudence in the University of London, and Rouse Ball Professor of English Law in the University of Cambridge

<sup>23</sup> “Fortunately” as Pollock was alive

Buddhist than the other, at least in law) they could be differentiated on other requirements. Such an instance would be very rare. That provision, therefore, is not only **the** most important provision that preserves the required religious percentages, but also **a** provision, that, protects the rights of religious minorities.

However, the child must have at least one of the requirements under Clause 3:0 of circular No. 22/2017 as a minimum requirement. The child in this case has established her proximity of residence although at first there seems to have been a question about the ownership of the house in which she resides. It is sufficient that she has permanent residency there although it does not belong to her according to the laws of property. It is not only the people who own the immovable property on which they live that can send their children to schools. The school had, in its own admission had taken 13 students. But as per the calculations made above in this judgment, they must admit 14 students of Methodist denomination. There is no other student who claims. Hence not only that there is no impediment whatsoever to take this child to the appropriate grade but also she has a right to get herself so admitted.

It is apt to have in mind, the following observations too, made by Justice Dr. Bandaranayake in the above case, [Beginning of the Quotation]

“Similarly paragraph 5(a) of the circular also refers to a separate category of students that should be admitted to government schools, based on the religious percentage that was in existence at the time such schools were vested. Such category should be treated separately and admission of students must be made strictly in compliance with the instructions given in paragraph 5(a) of the circular. The aforesaid paragraphs as referred to earlier states that percentages should be decided on the basis of the number of children who attended school at the time of the vesting depending on their different religions and that should be further divided in accordance with the different categories laid down in terms of paragraph 5(b) of the circular. **It is to be borne in mind that, paragraph 5(a) is specific that the numbers so specified in terms of the percentages that**

**prevailed prior to the vesting of the said schools have to be maintained continuously.** Accordingly paragraph 5(a) of the circular categorically states that it is necessary to ensure **that such number of students belonging to each religious category should be selected without leaving any vacancies.** The instruction of the circular thus was to maintain the religious percentages that prevailed at the time of the vesting and this position is clearly indicated in paragraph 5(a) where it is stated that in the event that there are not sufficient numbers of applicants, then it would be necessary to divide those vacancies among the other religions in terms of the relevant percentages. In other words, it is mandatory that the religious percentages that prevailed in 1961/1962 to be continued and the applicants who claim that they are Christians have to be considered in that background”. [End of Quotation]

Justice Dr. Bandaranayake says, “**without leaving any vacancies**” in regard to the religious categories. Justice S. Eva Wanasundara P. C. J., said, “...when a Christian child has applied to be admitted to Kingswood College Kandy **under any category**, if the documents show that he is a Christian and **if the number of Christian children already admitted are not above the allowed percentage** of 20%<sup>24</sup> intake under the religion category, then the child has a right to be admitted under Clause 3.2 of the circular”. What Justice Wanasundara said was the same as what this Court decided under this part of this judgment in terms of the correct limb (iv) of the circular. It must be noted, that, even when the diluted and wrong limb (iv) of the circular was shown to court<sup>25</sup> Wanasundara J., said as above. Her ladyship’s above statement shows, that, when the religion becomes material in order to maintain the percentages, the category (under Clause 3.0 of the circular) becomes immaterial, in so far as it was explained in this part of the present judgment.

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<sup>24</sup> As it was earlier said in regard to Kingswood College Kandy the Christian percentage is 20% whereas in regard to Girls’ High School Kandy the same is 38.46%

<sup>25</sup> As evident from page 02 and page 03 of Justice Wanasundara’s judgment

Despite the correct version of limb (iv) was cited to Justice Aluvihare in S. C. F. R. 459/2017 since His Lordship distinguished Justice Wanasundara's judgment, that, in that case the child had fulfilled the requirement of residence but in the case before His Lordship it was not so, there was no adjudication on the application let alone the interpretation of the relevant circular.

The respondents in their written submissions at page 06 states, that, in **Menura Nanwidu Rambukkanage and another vs. B. A. Abeyrathne and another S. C. F. R. 62/2018 dated 12.12.2018** her ladyship Justice Murdu Fernando has said, that, there are three hurdles that a prospective applicant should necessarily overcome in order to become eligible for admission to Grade 1 of a school.

Firstly, her ladyship did not say that when an applicant accomplishes the religious requirement and comes under any category mentioned under Clause 3.0 (in circular No. 22/2017 or any other corresponding Clause in any other circular) and if the Assisted School's quota for that particular religion has not been exceeded, the availability of vacancies not within the category (under Clause 3.0) under which the application was made, but in another category (under Clause 3.0), is a hurdle.

Secondly, that case is about a Grade 1 admission to the Royal College of Colombo 07. As it was said in this judgment earlier, the Colombo Academy (what later became the Royal College, Colombo 07) was started according to a recommendation of the Colebrook Cameron Commission appointed in 1833 as a Royal Commission of Eastern Inquiry. This is different to the Assisted Schools, Kingswood College, Kandy which was the school in the case decided by Justice Wanasundara and Southlands College, Galle in the case decided by Justice Dr. Bandaranayake.

There was no religious quota question, whatsoever, in the case decided by Justice Murdu Fernando. It was a case where the application was made under the Brother category. The question was, that, on refusing to give marks in respect of a last will which was produced to establish ownership to the residence, the



interview panel, contrary to the circular and other relevant letters considered in that case, failed to allocate marks for the fact that the applicant already had an elder brother as a student in the school and for his performance, since he was in Grade 10 and was a junior prefect. The judgment said, that, the non allocation of marks (although the rejection of the last will – since it is a contingent right – was accepted) in respect of other heads those were material except the residence is wrong. The school was directed to take the child in question either to its Grade 1 or an appropriate grade.

Therefore, although there is no direct relevancy of that case decided by Justice Murdu Fernando to this case, because it was not on the question of religious ratios, there are certain peripheral matters which will be relevant to this case too, which the Supreme Court in that case, through the judgment of Justice Murdu Fernando, with the concurrence of H. N. J. Perera, Chief Justice and Wanasundara J., said.

At page 05 of the judgment, it is said, that, although the 01<sup>st</sup> respondent (the Principal of Royal College) before the Human Rights Commission moved time to consider marks and documents pertaining to brother category and residence category did not tender the same to the Human Rights Commission until the Fundamental Rights application was filed before the Supreme Court. It may be recalled, that, in the case before Justice Eva Wanasundara the Deputy Principal had given an affidavit that he is unable to find statistics pertaining to religious percentages. In the case before Justice Dr. Bandaranayake the learned state counsel although moved time to file that information later stated that neither the Ministry of Education nor the Southlands College were in a position to produce the same. It may also be recalled, that, Justice Wanasundara observed, at page 05 of her ladyship's judgment, that, although the people of this country have a right to canvass their fundamental rights before the Supreme Court the question is "how many of them can afford to come to the Supreme Court?" Justice Aluvihare observed at page 06 of His Lordship's judgment, that, it has not been

explained by the 01<sup>st</sup> respondent (the principal of Girls' High School, Kandy) as to how she admitted 05 students in excess of the quota reserved for the proximity category. However, His Lordship did not venture to inquire into it on the basis, that, there is no allegation in respect of the same.

A reluctance to produce particulars pertaining to the processing of information upon which the decisions either to admit or refuse to admit students to Grade 1, the lack of transparency and a lackadaisical attitude even to look at (let alone, to consider) the religious quotas are evident. This could be the “tip of the iceberg” of a bigger question of perpetrating injustice.

In respect of the question, in the case decided by Justice Murdu Fernando, whether the school authorities took cognizance of the clarification made by the 12<sup>th</sup> respondent (The Secretary to the Ministry of Education) that a repeal of a provision of the circular did not necessarily mean that the application should be rejected in toto on the basis that marks cannot be awarded under one part of a particular category, **the response of the respondents had been that doing so would have led to an overhaul of the entire evaluation process in respect of all applicants whose applications had been rejected on the same premise** (page 06 of the judgment) **This is a seemingly “harmless” way of saying, that, the wrong done to A cannot be redressed since if it is done the same wrong committed in respect of B, C and D also will have to be corrected.** What principle of law, justice or common sense would support such a proposition is a matter that needs to be pondered, especially on the basis, that, this is a question of the entitlement of the citizen for education.

Her ladyship Justice Murdu Fernando observed, at page 13 of the judgment, that, [Beginning of the Quotation]

“...I cannot accept the reasons given by the respondents in not re evaluating the applications in the best interests of the child as contemplated by the letter of the Secretary, Ministry of Education...” [End of Quotation]

In regard to the “Rights of the Child”, it is pertinent to refer to the United Nations document titled “Convention on the Rights of the Child, Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Combined fifth and sixth periodic reports of States parties due in 2015, Sri Lanka<sup>26</sup>”.

Paragraph 17 of the report dated 08<sup>th</sup> June 2016 says,

“Following the Presidential election in January 2015, the office of a State Minister for Child Affairs was created. This decision was reaffirmed after the parliamentary election in August 2015, as the Ministry of Women and Child Affairs (MWCA) and the State Ministry of Child Affairs are mandated to formulate and implement national policies on children...”

Paragraph 18 says,

“The MWCA is at the apex of governing children’s issues and the implementation of the Convention. The overall responsibility for coordinating the implementation of the Convention and the Optional Protocols including the submission of this report is with the MWCA...”

Paragraph 22 speaks of a Five Year Plan from 2016 to 2020 developed by the Ministry of Women and Child Affairs, which focuses, among other things, of “Access, quality and relevance in Education;...”

**Hence, the observation of Justice Murdu Fernando, that, her ladyship cannot accept the reluctance of the respondents to re evaluate the applications in the best interests of the child assumes, with respect, high significance on the face of the treaty obligations of Sri Lanka, the adherence to which is one of the duties of the officers of the republic.** Even though Article 27(2)(h) of the Constitution, that comes under the Chapter for the

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<sup>26</sup> [CRC-4.pdf \(mfa.gov.lk\)](#)

**Directive Principles of State Policy and Fundamental Duties** which says, that,

“the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels”,

does not impose legal rights and obligations, not enforceable before any court or tribunal and a question of inconsistency with such provisions cannot be raised before any court or tribunal, the state and its officers are bound by the Convention on the Rights of the Child adopted on 20<sup>th</sup> November 1989 by the General Assembly resolution 44/25<sup>27</sup>, which says,

“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;...”

It is in this spirit, that, re evaluation, even if it requires an overhaul of the entire evaluation process must be done.

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<sup>27</sup> [Convention on the Rights of the Child | OHCHR](#)

It is also observed, although no party raised the same before this Court, that, the observation of His Lordship Justice Aluvihare in S. C. F. R. 459/2017 at page 06, to the effect, that, “Since there is no evidence nor any allegation disputing that the 01<sup>st</sup> respondent has adopted an inaccurate classification, I am of the view that the school’s allocation of seats to Methodist students for 2018 is correct”, with the greatest of the respect, would not affect the allocation of seats to Methodist students by this judgment, because,

- (i) The reasoning adopted by this Court especially upon limb (iv) of the correct version of the religious ratios provision in the circular (incidentally, which correct version was also embodied at page 05 in Justice Aluvihare’s judgment) was not employed in that case and
- (ii) As His Lordship Justice Aluvihare himself accepted in the above sentence, there was no evidence as to how the school effected the classification and there was no allegation (in that case) that it was inaccurate and hence, **there was no adjudication on the matter of the correctness of classification and allocation of places in that case,**
- (iii) The decision of Justice Aluvihare in that case, to hold that there was no violation of a fundamental right, was not based on the above statement on the correctness of allocation of places but on the premise, that, the question of residence has not been resolved, in that case, in favour of the petitioner. Hence the above statement is not a part of the ratio decidendi

The book “**Administrative Law**” of **Sir William Wade and Christopher Forsyth (12<sup>th</sup> Edition) 2023** says at page 396, that, “The mere fact that the power affects rights or interests is what makes it “judicial”...” The above statement, which was not the material decision in that case, hence, did not affect the rights or interests of anyone.

**(E) The wrong interpretation by the respondents of the religious ratio  
Clause which amounts to ultra vires is also irrational and  
disproportionate:**

In many jurisdictions it is now accepted that where an administrative decision-maker commits an error of law by interpreting the law incorrectly, a reviewing court may intervene.

**Anisminic v Foreign Compensation Commission [1969] 2 A. C. 147** was a watershed case. A majority of the House of Lords held that an error in interpreting an Order in Council justified judicial intervention, even in the face of a privative clause. As Lord Pearce put it, administrative decision-makers must “confine themselves within the powers specially committed to them on a true construction of the relevant Acts of Parliament.” When courts intervene to keep an administrative decision-maker within boundaries established by legislation, this represents “simply an enforcement of Parliament’s mandate to the tribunal.” That the “very effectiveness” of statute should be ensured by judicial review is underpinned by rule-of-law concerns: **“By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law<sup>28</sup>.”**

The Court of Appeal in England, in **Pearlman vs. Keepers and Governors of Harrow School [1979] Q. B.56**, decided by majority (even where there was a preclusive clause), that certiorari lies and Lord Denning M. R. said,

“The High Court has and should have jurisdiction to control the proceedings of inferior courts and tribunals by way of judicial review. When they go wrong in law, the High Court should have power to put them right. Not only in the instant case to do justice to the complainant. But also as to secure that all courts and tribunals, when faced with the same point of law, should decide it in the same way...The way to get things right

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<sup>28</sup> <https://www.administrativelawmatters.com/blog/2014/07/26/administrative-law-values-v-substantive-review/>  
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is to hold thus: no court or tribunal has any jurisdiction to make an error of law on which the decision of the court depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it. In this case the finding – that the installation of a central heating system was not a “structural alteration” – was an error on which the jurisdiction of the county court depended: and, because of that error, the judge was quite wrong to dismiss the application outright...On these grounds I am of opinion that certiorari lies to quash the determination of the judge, even though it was made by statute “final and conclusive.” (page 70).

What is referred to above is a misconstruction of a provision in a statute. This is not a case which have a preclusive clause. The above dicta shows that certiorari lies when there is misconstruction. The jurisdiction granted under Article 140 extends to any Court of First Instance or tribunal or other institution. Hence the misapplication of the circular in this case is subject to judicial review.

The above principle is applicable not only to a law enacted by the parliament, but to a circular too. The significance of the religious ratio Clause was viewed in this judgment in its historical perspective as a provision that confers rights in perpetuity.

**Simply, the wrong interpretation of the religious ratios Clause amounts to acting in the absence of legal authority and the transgression of the rule of law. It may be appreciated, that, this Court by this judgment does not question policy. On the contrary, its survey on the religious, social and cultural circumstances and the review of the decisions of the respondents would show as to how the policy adopted by the government of Ceylon in 1961 that hardened into a Rule of unwritten law which is even safeguarded by Article 167 of the Constitution is being violated, with impunity, which, to say the least, is ultra vires and has no force or avail in law. It also amount to irrationality and it is a decision that violates the dictates of proportionality.**

Therefore, this Court issues, a writ of Certiorari to quash the rejection letter P.10 and the decision to reject the admission of the child Gnansagarn Thibesha to Girls' High School of Kandy.

This Court also issues a writ of Mandamus to 01<sup>st</sup> to 04<sup>th</sup> respondents directing them, jointly and severally, to admit the child Gnansagarn Thibesha to the presently appropriate grade (and the medium) of Girls' High School, Kandy, forthwith.

A word must be said about the institution, pendency and final determination of this case. It had been instituted by petition dated 12.02.2018 (later an amended petition dated 21.05.2018 has been filed) A previous bench of this Court had issued notice on 26.06.2018. Dates have been given for a possible settlement and written submissions. This case has come before this Bench presided by me with Justice Neil Iddawala for the first time on 03.04.2023. It was argued before that Bench on 29.11.2023. A date for further written submissions was given for 12.01.2024, which was later extended for 19.01.2024. Justice Iddawala left judiciary by 31.12.2023 and from 18.12.2023 I was directed by the learned President of the Court of Appeal to sit as Single Judge. The counsel who appeared on 12.01.2024 in Open Court consented for the judgment being pronounced by me on previous proceedings as Single Judge. The judgment is now being pronounced today, 31<sup>st</sup> January 2024. It was informed, that, the child is presently in Grade 07 (in another school) and will be going to Grade 08 in February 2024.

#### **(F) The concluding remarks:**

As it was said before, in the 1960s, approximately 64% of the population in Sri Lanka identified themselves as Buddhists. Buddhism has a rich history in the country, and it remains the largest and official religion, practiced by 70.2% of the population as of 2012. The majority of Sri Lankan Buddhists are among the



Sinhalese population, but practitioners can also be found among minority ethnic groups. The island has been a center of Buddhist scholarship and practice since the introduction of Buddhism in the 3<sup>rd</sup> century BCE, producing eminent scholars and preserving the vast Pāli Canon. Christianity, Hinduism and Islam too are major world religions that has rich histories and tradition.

It is said, that, “Religion has given us algebra and the Spanish Inquisition, Bach’s<sup>29</sup> cantatas and pogroms. The debate over whether religion lifts humanity higher or brings out our basest instincts is ancient and, in some ways, reassuringly insoluble<sup>30</sup>.” As in the case of law, there is no one definition for religion too. The writer J. Kuruvachira says, in his article, “THE PROBLEM OF DEFINING RELIGION,” that,

“A complementary approach to the definition of religion necessarily calls for an inter-disciplinary approach to the study of religion, where the findings of such disciplines as, philosophy, theology, sociology, anthropology, psychology, politics, economy, phenomenology, etc, are utilised and harmoniously integrated into the understanding of what religion is and what it does for individuals and societies. It will also demand the avoidance of an exclusivist approach in defining religion.”

According to the Sociologist, the late Robert Neelly Bellah<sup>31</sup>, “Human religion emerges out of our increased capacity for sociality.” It has been found that food-sharing has been a fundamental aspect of human existence for over 200,000 years and our ancient ancestors, including not only Neanderthals and Homo sapiens<sup>32</sup>, but also chimpanzees and bonobos exhibited food-sharing behaviors within their social groups recognizing the benefits of communal meals. According

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<sup>29</sup> Johann Sebastian Bach, Composer

<sup>30</sup> [Is religion good or bad for humanity? Epic analysis delivers an answer | New Scientist](#)

<sup>31</sup> 1927 – 2013

<sup>32</sup> We are still Homo Sapiens [The name "Homo sapiens" means 'wise man' or 'knowledgeable man' - Spamer EE (1999). "Know Thyself: Responsible Science and the Lectotype of Homo sapiens Linnaeus, 1758". Proceedings of the Academy of Natural Sciences of Philadelphia] but here the term is used for those that existed as foragers before the last 10,000 years – the Agricultural Revolution, which Professor Yuval Noah Harari describes as the “History’s Biggest Fraud”.

to Professor Yuval Noah Harari<sup>33</sup>, with the Cognitive Revolution, around 65,000 years ago, humans found a way to prevent the splitting of their groups when it becomes too large<sup>34</sup>. Homo Sapiens can not only speak about things that do not exist in as much as empirical observation is concerned, but believe them and believe them collectively. These “social constructs<sup>35</sup>” shared by everyone (or the majority) in the group holds it far beyond the natural number of the group determined by biology. This gives rise to cooperation in large numbers. Before humans, this could be done only by ants, bees and wasps. The biologist, Peter Turchin, calling such groups consisting of millions of cooperating ants or bees, “True Society” (since their bondage is biological – they are sisters and brothers of one mother) calls the human groups (based on the “social constructs” such as religions and nations) surpassing the numbers of those true societies as “Ultra Societies<sup>36</sup>.” **For Bellah, ritual is at the core of human social behavior.** In the earliest, simple societies, people engaged in mimetic, wordless ritual. These rituals were fundamental expressions of communal life. Although during the period which marks the culmination of his [Robert Bellah’s] exploration, the ‘axial age’ (mid-first millennium B.C.E.), which is a period of profound change in human societies, in which philosophies such as of Confucius, Plato, Buddha and Zarathustra were born, the mimetic ritual that underlies the human societies still retards rational thinking<sup>37</sup>. However, it was the cooperation of these ultra societies that built the Great Pyramid of Giza, the Hanging Gardens of Babylon,

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<sup>33</sup> Who has a Ph. D. in History from the University of Oxford and lectures at the Hebrew University of Jerusalem.

<sup>34</sup> Sociological research has shown that the maximum “natural” size of a group bonded by gossip – for that is what keeps our bonds (see Dunbar, R. I. M. (Robin Ian MacDonald), 1947- “Grooming, gossip, and the evolution of language - is about 150 individuals. Most people can neither intimately know, nor gossip effectively about more than 150 human beings – Sapiens A Brief History of Humankind, Yuval Noah Harari, Harvill Secker, 2014 at page 29.

<sup>35</sup> According to Harari, “the limited liability company” is a finest “social construct” and he says “Over the last few centuries such companies have become the main players in the economic arena and we have grown so used to them that we forget they exist only in our imagination”, Sapiens page 33. He also says that it is ironical that the origin of the American term for a company “corporation” the root of which is “corpus” in Latin which means “body” because that is the one thing these corporations lack. We have been collectively imagining about “bodies” that do not exist.

<sup>36</sup> The book “Ultra Society” of Peter Turchin – 2016.

<sup>37</sup> So much so that a freethinker is branded a heretic – whereas the scientific method encourages questioning which if not employed would make people similar to Carnegie’s Sheep (See; CA/RII/55/2023 Order dated 26.01.2024) – thus making the world go in rounds and rounds not only on its axis. Vide., foot note at 41 also.

Basilica di Santa Maria Maggiore of Rome,;and Ruwanweliseya in Anuradhapura. Religion, whether one likes it or not, is at the very root of human societies.

Corea says, in “**One Hundred Years of Education in Ceylon,**” 1969, at page 08,

“It is easy to understand the sense of frustration experienced by the Buddhists when it is realized that even as recently as 1958 (after the balance had been somewhat adjusted) only 24 per cent of Buddhist children could find education in Buddhist schools, while 94 per cent of Christian children could be accommodated in Christian schools. If religious teaching is regarded as a valuable component of the educational process, no one can pretend that the Buddhist or the Hindu child received a satisfactory religious education in a State or a Christian school. Besides, in the competition for posts in the public and commercial sectors, the products of the Christian school had a decided advantage.”

It is true that the majority of Buddhists underwent hardship and victimization during the European colonization of this country. Perhaps the lost rights were gained slowly but surely from mid 1950s. The country became a Republic in 1972. A justiciable Chapter on Fundamental Rights was introduced by the Second Republican Constitution in 1978. But due to the short sightedness of the reforms started in mid 1950s the ability to read, write and work in English, especially of Buddhist students in rural areas was adversely affected. As it was observed in this judgment, no one can deny or disregard the fact that English is the Lingua Franca. The works of Oriental philosophy, literature and tradition are second to none. But due to the above reality, they must be taught in the English medium. That makes the new generation in this country having the best of both worlds, oriental and occidental. Such a situation existed before the reforms of mid 1950s. That was how a generation existed which could render unto Sinhala, works such as the epic poem of Homer, Iliad, of the 7th Century BCE written in

the dactylic hexameter containing 15,693 lines (translated as "Ranabima" by David Karunaratne) and the Lost World by Sir Arthur Conan Doyle (published by Hodder & Stoughton 1912 translated by a Buddhist monk as "Sengawunu Lokaya"), in a manner perhaps, surpassing the literary standards of the original. Sir Ponnambalam Arunachalam correctly observed, that, education must be scientifically oriented to harness total resources in men and material in industrial, commercial and agricultural undertakings, to increase the prosperity of the People. A study of the third part of the book **"An Inquiry into the Nature and Causes of Wealth of Nations"** commonly known as "The Wealth of Nations" by **Adam Smith**, under the title, "Of the different Progress of Opulence in different Nations," will be material.

As it was explained, in this judgment, it is the duty of everyone, to preserve the religious ratios, above referred to, which is based on a sacred agreement in perpetuity.

The verse No. 05 of Dhammapada attributed to Buddhist teaching says,

"Na hi verena verani - sammantidha kudacanam - averena ca sammanti  
- esa dhammo sanantano."

Hatred is, indeed, never appeased by hatred in this world. It is  
appeased only by loving kindness<sup>38</sup>. This is an ancient law<sup>39</sup>.

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<sup>38</sup> This verse employed perhaps in the best way it was ever done in 1951 saved Japan from the enormous burden of reparation after the Second World War.

Japan's Ambassador to Sri Lanka Mr. Sugiyama Akira commemorating an anniversary of that reportedly said,

"The spirit of the San Francisco Peace Treaty, that is, reconciliation, fairness, and generosity, was eloquently emphasized by His Excellency Junius Richard Jayewardene, the then Finance Minister representing the Government of Ceylon in his moving speech at the San Francisco Peace Conference on September 6th, 1951. The sonorous speech, that received enthusiastic applaud in the lofty hall of the War Memorial Opera House in San Francisco, continues to ring louder in the hearts of many people, with the eternity of the truth phrased in "Hatred ceases not by hatred, but by love," which was ennobled in the sacred scripture of Dhammapada. With this sacred teaching by the lord Buddha, the Great Teacher, in mind, His Excellency Jayewardene expressed strong support for a free and independent Japan and renounced reparation claims. Thus, His Excellency Jayewardene most effectively solidified the tone of the Peace Conference." Remembering the age-long bonds between Japan and Sri Lanka | Print Edition - The Sunday Times, Sri Lanka

<sup>39</sup> [The Dhammapada: Verses and Stories \(tipitaka.net\)](http://www.tipitaka.net)

It is well to remember, that the Buddha has not approved retaliatory action. If what was achieved by the people of this country in 1972 and 1978 are considered a victory, what **Sir Winston Churchill**, the former British Prime Minister and statesman said at the commencement of his Four Volumes work, “**The Second World War**”, as the “Moral of the Work” would be applicable. He said,

“In War: Resolution, In defeat: Defiance, In Victory: Magnanimity<sup>40</sup> and In Peace: Goodwill.”

The physicist Albert Einstein said,

“Education is not the learning of facts, but the training of the mind to think<sup>41</sup>.”

Writs are issued as stated at page 72. There is no order on costs.

Judge of the Court of Appeal.

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<sup>40</sup> Some of the synonyms of this word are generosity, benevolence, liberality, humanity, nobility, chivalry, altruism and unselfishness.

<sup>41</sup> Einstein compared knowledge to a marble statue standing in the desert, continually threatened by shifting sands. Just as hands must keep the marble shining in the sun, education requires ceaseless effort to maintain and renew knowledge.

Whereas “centric” refers to a circle, “eccentric” refers to an ellipse. It is the latter that looks at a new direction, making discoveries on its way, but never losing the reference to the center. It is said, “Eccentrics, those delightful outliers, whose minds dance to tunes of cosmic jest, they waltz with quarks and tango with quasars, in their peculiar orbits, they find zest... For in their eccentric orbits, they invent, new constellations, stories, and art, they defy gravity, norms, and dissent and stitch the fabric of existence with heart. So yes, my friend, it is the eccentrics who steer, the ship of progress, charting uncharted seas, their kaleidoscope minds, both far and near, paint the canvas of tomorrow with vibrant esprit.” Among some of the famous “eccentrics” given are **Salvador Dali** (Painter, Melting Clocks), **Nikola Tesla** (Serbian – American inventor, wireless energy transmission), **Albert Einstein** (physicist, space time) and **Isadora Duncan** (barefoot dancer who flouted conventions). [Science in perfect harmony with Art] In “Why we need eccentricity” Martin Howard says, “In 1859, the anti-slavery campaigner, women's rights advocate and Liberal MP **John Stuart Mill** wrote in **On Liberty**, “That so few now dare to be eccentric, marks the chief danger of the time.” A man who hated any kind of tyranny, Mill particularly despised the sneering, curtain-twitching, self-elected arbiters of social conformity. For him, they were tyrants responsible for “enslaving the soul.” Instead, Mill saw eccentric behaviour – so long as it harmed no-one – as not only a matter of personal freedom, but a boon to society” -

<https://www.theguardian.com/commentisfree/2010/apr/01/eccentricity-einstein-prince-society>