



# A comparative study of the Vevalkatiya stone inscription from the perspectives of criminal law in Sri Lanka

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**ABSTRACT:** This paper examines the above named stone inscription in order to understand the ancient legal theory and practice in Sri Lanka from comparative perspectives. It contains the ancient penal laws and the system of administration of criminal justice in Sri Lanka. It is similar to the modern penal code. The concepts of crime and punishment have been in existence since the dawn of the human civilization. Sri Lanka is not an exception. The rich history of Sri Lanka spanning more than two thousand five hundred years of written records provide a plenty of information on the penal laws and punishments methods applied in the ancient times. The *Vevalkatiya* stone inscription contains legal rules regarding all aspects of administration of criminal justice, such as classification of crimes, conducting prosecutions and finally imposition of punishments. This study compares those ancient penal laws with the contemporary laws of Sri Lanka

**KEYWORDS:** Crimes, Punishments, Justice, Ancient, Sri Lanka, Stone Inscription

## I. Introduction

### *Vevalkatiya Slab Inscription (VSI)*<sup>1</sup>

This lithic record containing penal laws was enacted by King *Mahinda IV* during his reign from 954-970 C E<sup>2</sup>. After 16 years of rule, he died a natural death. According to the chronological order of the monarchical rule, *VSI* belongs to the period of 703 C E to 1073 CE. A total of 265 inscriptions have been identified as belonging to this entire period of 370 years of the Sri Lankan history.

Other inscriptions that *Mahinda IV* has installed covering various matters include two *Jetavanarama* slab inscriptions and *Mihintale* tablets etc. Those inscriptions describe in details his political, economic, and charitable services that he has rendered to the country during his 16 year rule<sup>3</sup>. For example, *Jetavanarama* Slab Inscription No.1 line 05 refers to the crushing defeat *Chola* king *Vallabha* faced at the hand of *Mahinda IV*<sup>4</sup>.

The political situation nearly 50 years before King *Mahinda IV* was full of turmoil and instability. For example, *Rajanendra Choladeva I* from southern India invaded the Island between 1015 and 1018 CE during the reign of *Udaya III* who ruled nearly 20 years. In these circumstances, *Mahinda IV* seems to have carried on his responsibility to re-establish law and order by making those penal laws.

### 1.1. The Basic Characteristics of *VSI*

The table given below provides the basic information such as physical features of this epigraph.

Monarch	Reign	Seat of reign	Location of VSI	Dimension	Width	Height	Font type	Font size	No. of Lines
King <i>Mahinda IV</i>	From 954-970 CE	<i>Polonnaruwa</i>	In a small village in <i>Pahala Kanda Tulana</i> in <i>Kanda Korale</i> -About 21 miles to the northeast of <i>Anuradhapura</i> -	Rectangular	1 ft and 5 inches	6 ft	Sinhalese alphabet of between 10 and 11 <sup>th</sup> centuries	Varies from 10/3 to 5/4 of an inch	45 lines

Table 1: *Vevalkatiya Slab Inscription*

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As per the details in the table, penal laws in the *VSI* have been laid down by King *Mahinda IV*. He is the 122<sup>nd</sup> monarch in the list of monarchs and he ruled Sri Lanka nearly 16 years. His predecessor was *Sena IV* who is his brother and he could rule 3 years only. King *Mahinda's* son *Sena V* became his successor who ruled nearly 10 years.

## II. Legal Status of VSI

It is a Royal Proclamation or Charter of Justice explaining which laws should be applied with regard to the offences stipulated in the edict. In other words, it is a Royal Edict or Order issued by the king to his subjects at *Dasa gam* - ten villages of his kingdom. Four members of the Royal Council-*Raja Sabha*- have promulgated the rules in *VSI* on the orders of the king. They are;

- (a) *Goluggamu Raksaim Kudasenu*
- (b) *Meykappar Kuburugamu Lokohi,*
- (c) *Katiri Agbohi* and
- (d) *Kundasala Arayan.*

The relevant lines in the *VSI* are 41-45 are as follows;

"...van ke...kava) tna kot vajala ek- tan samiye- n a raj-sabhaye hindna Goluggama Ra (k) sa (im), Kuda-senu isa Meykappar Kuburugamu Lok(o) hi isa Katiri Agbhohi isa Kundasala Arya atulava metuvak sam-daruwan-visn me vavastha karanu ladi. "

### Subject-matter of VSI

The central theme of *VSI* is administration of criminal justice of the *ten-villages-dasagama*<sup>5</sup> of *Kibi-nilam* district in *Amagam-Kuliya* in the northern quarter. So, *VSI* contains unique details on the classification of crimes, judicial system and punishment methods that was in force some 980 years ago in Sri Lanka. It is 857 years before the British colonial rulers introduced the first Penal Code in 1883. In this sense, *VSI* can be considered as one of the living 'penal codes' of ancient Sri Lanka.

## III. Administration of Criminal Justice under the VSI

In any civilized society or state, there should be a system for the administration of justice without which human society cannot sustain and develop. The administration of justice has two facets;

- Administration of civil justice
  - Administration of criminal justice
- A criminal justice system refers to the system that encompasses all laws and procedures dealing with investigation, prosecutions, conducting trials against offenders and carrying out of sanctions against offenders. So, any criminal justice system should basically address the following matters;
- i. Identification of certain acts and omissions as crimes/offences
  - ii. Definition and categorization of offences according to gravity of the harm caused to the victim and the society.
  - iii. Existence of procedures for the investigation of such crimes.
  - iv. Appointment of officers with the investigative powers to maintain law and order.
  - v. A judicial system to conduct trials against the offenders together with appeal system.
  - vi. A mechanism to carry out punishments pronounced by the courts including the reforming of offenders as well

## IV. Comparison of Crimes in the VSI with the Present Penal Code and Other Penal Statutes

*VSI* refers to a series of grave and minor crimes. The classification of the offences seems to have followed the modern juridical thinking viz. crimes against the human body, property, animals, etc.

The table given below provides a comparison of the offences in the *VSI* with that of the Penal Code and other penal statutes which are the primary and secondary sources of criminal law in Sri Lanka.

Comparison of Crime Classification of VSI with Present Penal System		Comparative Observations
Offences in the Ancient <i>Vealkatiya</i> Slab-inscription (VSI)	Similar Offences in the Present Penal Code (PC) and Other Penal Statutes	
1. <i>Mara ke(tuva)- urd flgqjd</i> - Hacking to death or killing by hacking with offensive weapons (VSI Line 9). 1.1. The word <i>ke(tuva)- flgqjd</i> implies that killing has to be done with	1. Murder- Section 294, Culpable Homicide-Section 293, Culpable Homicide Not amounting to Murder- section 297.	1. As per PC, there are three types of unlawful homicides of which murder is the gravest of all. It is seen that similar juridical thinking has prevailed in ancient time by



<p><b>the use of offensive weapons or similar instruments.</b></p>	<p>1.1. As per the provisions of the Dangerous Knives Ordinance No. 28 of 1906, it is an offence to keeping possession dangerous knives or similar instruments.</p>	<p>recognizing unlawful killing as the gravest offence that can be committed against human life. So, <i>mara ke(tuwa)</i> seems to include all those three types of unlawful homicides as defined in the present penal laws. Also, it is implicit in this categorization that ancient law-makers too would have paid due attention not only to the <i>actus reus</i> (guilty act) but also the <i>mens-rea</i> (guilty mind) of the culprit in deciding the criminal liability<sup>6</sup>. Also, it becomes clearer from the phrases in this inscription such as “<i>hinda vichara</i>= to enquire having sat – that the investigations and prosecutions have been held in sessions</p>
<p><b>2. Sora-kam kala-(VSI Line 10)- Stealing</b></p>	<p>2. Section 366 -Theft- The aggravated forms of thefts include stealing in building, vessels, tents, theft by clerks, servants, -Sections 369, 370 of PC etc</p>	<p>2. This is one of the most common offences committed against movable properties. It seems that this offense would have been more prevalent during this period, so that king proclaimed it as a severe offence. It is seen from this the similarity between jurisprudential philosophy which prevailed about 1020 years ago and that of today. The only difference is phraseology.</p>
<p><b>3.No-mara ketuwa - (VSI Lines18-19)- Causing severe injuries without killing or aggravated form of grievous hurt</b> <b>In this offense too, the word <i>ke(tuwa)</i> implies that injury has to be caused with the use of offensive weapons or similar instruments</b></p>	<p>3. Causing Grievous Hurts- Section 311. Section 315 refers to the aggravated form of grievous hurts such as causing severe injuries by cutting or stabbing weapons etc. As per the provisions of the Dangerous Knives Ordinance No. 28 of 1906, it is an offence to keep in possession dangerous knives or similar instruments</p>	<p>3. There are nine types of grievous hurts as per PC. In the <i>VSI No-mara ke(tuwa)</i> implies causing severe injuries by using heavy force with weapons, clubs etc. Section 315 refers to causing injuries of this nature.</p>
<p><b>4. Geri-gon eluvan maruavan - (VSI Lines25-26)- killing cows, buffaloes, bulls and goats.</b> <b>In an agricultural economy, those animals are of great importance to peasants as production of rice and other agricultural crops mostly depends on those animals. Therefore,</b></p>	<p>4. Sections 411 and 412 of PC prohibit killing or rendering useless any animals including buffalos, bulls, ox, cows etc by poisoning, maiming or otherwise. Section 2 of Animals Act No.29 of 1958 prohibits</p>	<p>4. It is no surprise to prohibit killing of those animals which are of great importance to agricultural economy that Sri Lanka has been pursuing since her early beginning. Specially, Polonnaruwa being one of the most paddy producing districts in</p>



<p><b>it is the responsibility of the ruler to protect by declaring that killing of those animals as a punishable offence.</b></p>	<p>slaughtering of cows or cow-calves, Section 12 Fauna and Flora Protection Act No.2 of 1937 prohibits killing, hunting, shooting of animals including buffaloes, elephants in nature parks &amp;C etc. Also, Section of 2 Prevention of Cruelty to animals Ordinance prohibits all sorts of cruel and ill- treatments to animals.</p>	<p>the country, during the reign of king <i>Mahinda IV</i> too, that economic situation seems to be the more less the same. So, before the British colonial ruler has introduced those offences through the PC in 1883, it is quite clear that Sinhalese monarchs had entertained similar juridical thoughts as to the protection of those animals.</p>
<p><b>5. ...<i>Nomara sora gena giya</i> - (VSI Lines26-27)- Stealing cows, buffaloes, bulls and goats etc without killing them.</b></p>	<p>5 Section 368 of PC- Stealing bull, cow, steer, buffalo, heifer, calf and Section 397 of PC- Receiving stolen cattle-</p>	<p>5. Stealing agricultural animals is common even today. PC has explicit provisions not only for stealing but also receiving stolen animals. However, VSI makes stealing of those animals a punishable offence only. But no mention of the receiving stolen animals being declared as an offense.</p>
<p><b>6.1 If the offence committed against buffalos, oxen, goats cannot be determined-VSI Lines 25-30</b></p> <p><b>6.2.<i>Baharin ara vikunana .. geri gon eluwan</i> - (VSI Lines29-30)- Bringing cattle, bulls and goats from outside for sale without due identification and security is given. In this section “baharin” seems to imply beyond the limits of <i>Dasagam</i> of (ten villages) of <i>Amgam Kuliya</i></b></p>	<p>6.1 Section 490- Attempt to commit offense. This section provides that where there is no express provisions in the PC regarding an act committed as an offense, and then it should be considered as an attempt.</p> <p>6.2. Sections 7 and 8 of Animals Act (previously Cattle Ordinance) provide for issuing of cattle vouchers, branding, sale and transport of cattle &amp;c. Those provisions clearly mention that without permission being obtained and all details of that animal being entered in the vouchers, transport or sale is prohibited.</p>	<p>6. 1.It is seen that both VSI and PC recognizes the fact that there may be situations where the harmful act committed may not have been declared as an offense under the relevant law. In such situation PC declares it should be considered as an attempt but VSI recognizes it s an offense.</p> <p>6.2. The purpose of those contemporary laws prohibiting transport and sale of cattle without voucher seems to protect those animals and owners as well. VSI too declares the similar prohibition with one exception, that if castles are to be brought from an outside district, a security should be kept for that purpose. Also, VSI and current laws provides for identification of cattle by branding as a legal requirement.</p>
<p><b>7... <i>me dasa-gamat (vavastha) kala tannin (ekeka) avud (vun) ku(di) kenekun ata handina a (pa) gena hindvanu kot isa no yedenna kot va n kenekun apa gata – da...-(VSI Lines34-37)- If there is a villager who has come from outside</i></b></p>	<p>7. Article 14 of the Constitution of Sri Lanka guarantees the right of movement of citizens in and out of the boundaries of Sri Lanka. However, Section 16 of</p>	<p>7. It is a universal legal practice in both developed and developing states to ensure freedom of movements subject to multiple restrictions as the particular circumstances require in order</p>



<p>staying in the village without identification and security is given. However, after taking the security he shall be allowed to stay.</p>	<p>the Public Security Ordinance No.25 of 1947 confers sweeping powers to the Head of the state to restrict public movements by imposing curfew in an emergency situation.        Also, there are numerous Regulations issued from time to time restricting peoples' movement within districts and out of districts.        Also, Section 81 of the Code of Criminal Procedure Act No.15 of 1979 empowers the Magistrates to require from persons who are likely to cause breach of peace to execute a bond with or without sureties for keeping peace for a period not exceeding two years.        Section 83 applies to habitual offenders.        Also, under section 426 of PC, any person going into another person's property without the consent of the owners amounts the offense of criminal trespass.</p>	<p>preserving law and order. In the VSI offense, King Mahinda has followed the similar line of conceptual perception by declaring this as an offense. It serves many purposes such as safeguarding the security of other persons and the offender. This VSI offense seems to relate to run-away offenders. So, if such an offender enters a village, there is great likelihood of breach of peace. So as in Section 81 of present Criminal Procedure Code VSI requires such persons to provide security ensuring abide by law.</p>
<p><b>8. kanda pala sorakam kala - (VSI Line10)- Stealing after slitting body. This offense seems to imply that sever violence needs to be excreted on the victim before stealing takes place.</b></p>	<p>8. Section 379 of the PC-Robbery- According to this section robbery is a composite offense consisting of theft and extortion. In other words, theft and extortion can be turned into robbery. For that more additional violent acts should be committed by the offender while doing the theft or extortion. For example causing severe bodily injuries or fear of instant death or instant grievous hurts should be present for theft o become robbery.</p>	<p>8. The VSI offense of <b>-kanda pala sorakam kala</b> -is clearly equal in notion and elements to robbery except that as per PC extortion too can be turned into robbery but VSI mentions only theft becoming robbery. The phrase <b>kanda pala- splitting body</b> – implies the gravity of violence that the offender commits in doing this offense. In the same vein, Section 379 provides that causing grievous hurts which consists of nine types such as breaking bones, teeth, and injuries to the cranial, abdomen and thoracic cavities etc.</p>
<p><b>9.1 ana makava - (VSI Lines31-36)- Erasure of brand marks. EZ says this offence probably relates to the erasure of brand marks of cows.</b></p> <p><b>9.2. However, when other lines immediate next to those lines are read</b></p>	<p>9.1 This offence relates to the erasure of brand marks of cows by the offenders. Section 5 of the Animal Act No. 29 of 1958 provides that cows over the age of eighteen months should be branded. However due to animal welfare laws branding</p>	<p>9.1 It is seen that both VSI and the current animal laws until 2017 prescribe banding of cows for identification of ownership of animals. Hot-iron- branding was banned in 2017 due to animal welfare legislation<sup>7</sup>.</p>



<p>as full paragraph this may also mean the erasure of brand marks by run-away offenders as mentioned in offense No.10 below.</p>	<p>of animals has now been banned. 9.2. Also, if this offense means offenders who run-away after erasing their band- marks, Section 35 of the Criminal Procedure Act No. 15 of 1979 empowers any private person to arrest any run-away offenders, proclaimed offenders or any person who commits grave offences in his presence.</p>	<p>9.2. Under criminal law, branding of convicted criminal was a practice in the western countries. In slave trades too inhuman branding practices were carried out by western countries. All those practices have been now disallowed by law. Instead, Section 44 of the Prisons Act No. 10 of 1948 and the Regulations made under this law provides for the other measures to be taken for the identification of prisoners.</p>
<p>10. " ... <i>dasa –gama attan pansalisa davesakin soya gena pat vanu kot isa soya no gata dasagamin ek siya pas visi kalandak ran radolat denu ....</i>" - (VSI Lines16-17)- <b>Villagers not being able to detect offenders within forty five days,such <i>dasa-gam</i> shall pay 125 <i>kalandas</i> weight of gold to the state. It is clear from these lines that apprehension of offenders has been made a community responsibility.</b></p>	<p>10. Sections 19-21 of CPC declares that public has a legal obligation to assist magistrates, police officers and provide information regarding commission offenses against the state, murder, property etc Also, Section 35 of the Criminal Procedure Act No. 15 of 1979 empowers any private person to arrest any run-away offenders, proclaimed offenders or any person who commits grave offences in his presence.</p>	<p>10. Administration of criminal justice is a team work for which community support is largely needed. It is a well recognized criminological concept in the contemporary world that community has a bigger role in crime- prevention. It is observed that similar criminological concept has been prevalent in the ancient Sri Lanka more than a thousand years ago as per those lines of VSI.</p>
<p>11.<i>Me dasa-gamat (vasatha)-kala tannin (ekeka) avud(vun) ku(di)-kenekun ata handina a(apa) gena apa hidavanu kot isa no yedennak kot van kenekun apa gata-da palamu-vu agam(attan)patvannat harna kot...</i> VSI Line 34-38 <b>If there is any person who has entered these villages after committing an improper act, though security is taken, inhabitants of the village in which such person has first resided; shall be permitted to impose punishments.</b></p>	<p>11. Section 80 of CPC declares that if any person is convicted of any offense such as breach of peace, criminal intimidation by threatening injury to body or property or being a member of an unlawful assembly, court may require such person to execute a bond for peace keeping with or without sureties.</p>	<p>11. It is clear that the notion of peace keeping in the civil society and for that purpose restriction of any potential breach of peace by convicted person entering peaceful villages has been viewed as an act that should be legally controlled both in the VSI and CPC.</p>

**Table 1: Comparison of Offences in the VSI with Penal code and Other Penal Statutes**

**V. Methods of Punishment in the VSI**

VSI having recognized the crimes against human body, property and animals, etc., then declares the punishments. It seems that punishment has been determined on the gravity of the offence. When 10<sup>th</sup> century Sri Lankan punishment methods compared with that of the corresponding British methods, a striking similarity can be seen. The Britain during the 9<sup>th</sup> century before Norman Conquest that occurred in 1066 C E was called

Anglo-Saxon and their punishment for murder was blood feud or death. This has been the practice of most of the western countries at that age. In the same manner, VSI prescribes death penalty for murder.

The table below provides a comprehensive comparison of punishments in the VSI with that of Penal Code and Selected Penal Statutes.



Comparison of Punishments in the VSI with Penal Code and Other Penal Statues				Observations of the Researcher
VSI Offence	VSI Punishment	PC & Other Penal laws Offense	PC & Selected Penal Laws Punishment	
<b>1.Mara ke(tuva)-(VSI Lines 6-14)</b>	1.Elvanu-Hanging/Death Penalty	1.Section 293-Culpable Homicide, Section 297-Culpable Homicide Not Amounting To Murder (CHNAM) & Section 294 of PC- Murder	1.Section 296-Murder- Death Penalty, Section 297- CHNAM- 20 years rigorous imprisonment	1. It is observed that both VSI and PC prescribe death penalty for the offense of murder.  However, the difference between PC and VSI is that PC recognizes lesser degree of homicide for which maximum punishment is 20 years rigorous imprisonment.
<b>2.Sora-kam kala - (VSI Lines 6-14)- Theft or stealing</b>	2.Elvanu- Death Penalty	2.Section 366-Theft	2. Section 367- 3 years' rigorous/simple imprisonment and fine or both. For aggravated theft such as stealing cows, agricultural products, stealing in dwelling house etc carries additional punishments up to seven years imprisonment	2. It is observed that VSI prescribes heavier punishments for stealing while PC stipulates only imprisonment and fine.
<b>3.No-mara ketuwa - (VSI Lines18-19)- Causing severe injuries without killing or aggravated form of grievous hurt</b>	3. A weight of 50 kalandas of gold to the victim as <i>Div-mila</i> or life price.  If it is not possible, <i>ge-dad</i> fine should be paid. <i>Ge-dad</i> means "household fine"	3. Causing Grievous Hurts-Section 311. Section 315 refers to the aggravated form of grievous hurts such as causing severe injuries by cutting or stabbing weapons etc.	3. Section 315-3 years' rigorous/simple imprisonment and fine.  Section 317-If the victim is a woman or child, 10 years' rigorous/simple imprisonment and fine.	3. It is observed that there is a vast difference in terms of punishments for theft under VSI and PC.  However, one striking similarity is that both VSI and PC prescribe compensation for victims. In other words, the concept of victimology has been prevalent at that time in Sri Lanka, whereas in modern Sri Lankan laws it was formally recognized only in 2015 via Victim and Witness Protection Laws.



				<p>VSI prescribes 50 <i>kalandas</i> of gold. I <i>kalandas</i> is equal to 5grams. So, 50 <i>kalandas</i>=250 grams. 1 grams of 22 carat is worth Rs. 21,000 today. So, the total compensation VSI prescribes amounts to Rs. 5, 250, 000 in the current exchange rate.</p>
				<p>However, as per Code Criminal Procedure Act, a Magistrate is empowered to impose a fine of maximum Rs, 1500 only.</p> <p>Also, Section 28 of the assistance and Protection to Victim and Witness Protection Act No. 04 of 2015 a magistrate or a high court judge is empowered to order accused person to pay the victim a sum of Rs. 1million maximum or 20% of the fine prescribed for that crime.</p> <p>So, it is seen the value of compensation recommended by PC is far below the value of 50 <i>Kalandas</i> of gold in current monetary value</p>
<p><b>4. Geri-gon eluvan maruavan - (VSI Lines25-26)- killing cows, buffaloes, bulls and goats.</b></p>	<p>4. Death Penalty- VSI Lines25-26)-</p>	<p>4. Sections 412 of PC prohibits killing or rendering useless any animals including buffalos, bulls, ox, cows etc by poisoning, maiming etc</p>	<p>4. Section 412of PC- 5 years' of rigorous/simple imprisonment and fine or both</p>	<p>4. It is observed that harsher punishments have been prescribed by VSI whereas PC stipulates only lighter punishments</p>
<p><b>5. ...Nomara sora gena giya - (VSI Lines26-27)- Stealing cows, buffaloes, bulls</b></p>	<p>5. Branding under the armpit-</p>	<p>5.Section 368 of PC- Stealing bull, cow, steer, buffalo, heifer,</p>	<p>5. Section 368 of PC- 3 year imprisonment of</p>	<p>5. It is observed that harsher punishments have been prescribed by VSI</p>



and goats etc without killing them.		calf and Section 397 of PC- Receiving stolen cattle-	either description	whereas PC stipulates only lighter punishments
<b>6.1. If the offence committed against buffalos, oxen, goats cannot be determined-VSI Lines 25-30</b>	6.1. Culprits should be beating – VSI Lines 25-30	6.1. Section 490- Attempt to commit offense. This section provides that where there is no express provisions in the PC regarding an act committed as an offense, and then it should be considered as an attempt. 6.2. Sections 7, 8 and 9 of Animals Act	6.1. One half of the longest term of imprisonment provided for the offense should be given as punishment.	6.1. Both VSI and PC recognize the fact that there may be situations where the relevant act has not been expressly declared as an offense.  In such situation PC declares that it should be taken as an attempt but VSI considers it as a full offense. The punishment too varies in VSI and PC vastly.
<b>6.2. Baharin ara vikunana .. geri gon eluwan - (VSI Lines 29-30)- Bringing cattle, bulls and goats from outside for sale without due identification and security is given.</b>	6.2. No punishment has not been prescribed but it says due identification should be done and security should be given	(Previously Cattle Ordinance) provide for issuing of cattle vouchers, branding, sale and transport of cattle &c. 7. As mentioned in the previous table, under numerous laws, peoples' movements can be restricted such as Public security Ordinance and Regulations made under it, PC, CPC etc.	6.2. Section 37 of Animals Act prescribes one month's simple imprisonment or fine of Rs. 50 or both. 7. If those laws are violated numerous punishments can be imposed including imprisonment as well.	6.2. It is seen that both VIS and Animals Act prescribe lighter punishments for similar offenses.  7. It is seen that the concept of restricting public movements and ordering to give security for keeping peace has been long recognized legally in Sri Lanka before it is introduced via modern penal laws.
<b>7... me dasa-gamat (vavastha) kala tannin (eeka) avud (vun) ku(di) kenekun ata handina a (pa) gena hindvanu kot isa no yedenna kot va n kenekun apa gata – da...-(VSI Lines 34-37)- If there is a villager who has come from outside staying in the village without identification and security is given. However, after taking the security he shall be allowed to stay.</b>	7. No punishment has been prescribed but it says after taking the security the person shall be allowed to stay.			
<b>8. Kanda pala sorakam kala - (VSI</b>	8. Death	8. Section 379 of	8. Section 383 of	8. In this offense too VSI



<p><b>Lines10-17)- Stealing after slitting body. This offense seems to imply that severe violence needs to be inflicted on the victim before stealing takes place.</b></p>	<p>Penalty and the property robbed should be restored back to owners- VSI Line12-14- <i>kanda-pala sorun-gat ayatiyen niyata-kalak ayatiya (hi) mi hat gena di..</i></p>	<p>the PC- Robbery- According to this section robbery is a composite offense consisting of theft and extortion. In other words, theft and extortion can be turned into robbery. For that more additional violent acts should be committed by the offender while doing the theft or extortion. For example causing severe bodily injuries or fear of instant death or instant grievous hurts should be present for theft to become robbery.</p>	<p>PC prescribes 20 years of rigorous imprisonment.</p>	<p>has imposed harsher punishment whereas PC prescribes only 20 years of imprisonment.</p>
<p><b>9.1 ana makava - (VSI Lines31-36)- Erasure of brand marks. EZ says this offence probably relates to the erasure of brand marks of cows.</b></p> <p><b>9.2. However, when other lines immediate next to those lines and the offense No. 10 below are read as a full paragraph this may</b></p>	<p>9. 1. Standing on red-hot iron sandals- VSI Lines-20 -</p> <p>9.2.Standing on red-hot iron sandals- VSI Lines-20</p>	<p>9. 1. This offence relates to the erasure of brand marks of cows by the offenders. Section 5 of the Animal Act No. 29 of 1958 provides that cows over the age of eighteen months should be branded. However due to animal welfare laws branding of animals has now been banned.</p>	<p>9. 1. Section 37 of Animals Act prescribes one month's simple imprisonment.</p> <p>9.2 As per Section 35 of CPC, if the run-away offender has committed a non-cognizable</p>	<p>For this offense too VSI imposes harsher punishments, whereas the contemporary relevant statutes impose lighter penal sanctions i.e. Section 37 of Animals Act prescribes one month's simple imprisonment</p> <p>9.2. It is observed that run-away offenders being</p>



<p><b>also mean offenders who run-away after erasing their branding marks.</b></p>		<p>9.2. Also, if this offense means offenders who run-away after erasing their band- marks, Section 35 of the Criminal Procedure Act No. 15 of 1979 empowers any private person to arrest any run-away offenders, proclaimed offenders or any person who commits grave offences in his presence</p>	<p>offense, he should be handed over to the police and on production to magistrate, such offender should be remanded.  As per Section 33 of CPC such run-away offender has committed cognizable offense, magistrate can release him on his executing a bond for his appearance before magistrate.</p>	<p>considered as a threat to society in both VSI and CPC. So, both VSI and CPC prescribe punishments.</p>
<p><b>10. " ... dasa –gama attan pansalisa davesa kin soya gena pat vanu kot isa ..soya no gata dasa gamin ek siya pas visi kalandak ran radolat denu ...." - (VSI Lines16-17)- Villagers not being able to detect offenders within forty five days, such dasa-gam shall pay 125 kalandas weight of gold to the state.</b></p>	<p>10. 125 Kalandas weight of gold to be paid to the state</p>	<p>10. Sections 19-21 of CPC declares that public has a legal obligation to assist magistrates, police officers and provide information regarding commission offenses against the state, murder, property etc  Also, Section 35 of the Criminal Procedure Act No. 15 of 1979 empowers any private person to arrest any run-away offenders, proclaimed offenders or any person who commits grave offences in his presence</p>	<p>10. No penal sanction is imposed on the private person or the community who fails to arrest run-away offenders.</p>	<p>10. However, the difference between VSI and CPC is that VSI imposes heavier punishments on the community who fails to apprehend run-away offenders by ordering to pay a huge amount of fine which in today's monetary value amounts approximately to (i.e. 125x5=625 grams of gold, 652x21000=13,125,000) more than Rs. 13 million.</p>
<p><b>11.Me dasa-gamat (vasatha)-kala tannin</b></p>	<p>11. Village</p>	<p>11. Section 80 of</p>	<p>11. Section 80-</p>	<p>11. The similarity in the</p>



<p><i>(ekeka) avud(vun) ku(di)-kenekun ata handina a(apa) gena apa hidavanu kot isa no yedennak kot van kenekun apa gata-da palamu-vu agam(attan)patvannat harna kot... VSI Line 34-38</i> <b>If there is any person who has entered these villages after committing an improper act, though security is taken, inhabitants of the village in which such person has first resided; shall be permitted to impose punishments.</b></p>	<p>inhabitants have been vested with power to impose punishments</p>	<p>CPC- that if any person is convicted of breach of peace, criminal intimidation by threatening injury to body or property or being a member of an unlawful assembly, court may require such person to execute a bond for peace keeping with or without sureties.</p>	<p>CPC requires execution of bond for peace keeping.  Section 89 provides that if security is not given one year imprisonment by magistrate court or two year imprisonment by high court.</p>	<p>VSI and CPC is that both require convicted person to enter into bond for peace keeping as such person is viewed as potential threat for peace in the society.  The striking difference between CPC and VSI is that CPC does not impose any punishment but VSI gives powers to the village inhabitants to impose punishments on such person.</p>
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Table 2: Comparison of Punishments in the VSI with Penal Code

It is interesting to observe that VSI contains direction as to how the proceeds of fines to be divided among the householders of villages (*gam laddan*)<sup>8</sup>. Accordingly, it should be divided in accordance with former usage or *pera sirith*. This is similar to the current practice of rewarding law enforcement officers out of the fines collected by them under laws relating to customs, police and excise departments.

## VI. The Court System in the VSI

The administration of justice needs three essential requirements, i.e. legal system, court system and law enforcement system. Also, adjudication of disputes consists of three stages, i.e. investigation, trial and imposition of punishment. VSI refers to all those aspect of justice administration. In other words, VSI legal procedures (legal rules) relating to crime investigation, judicial functions, and law-enforcement that prevailed during the 10<sup>th</sup> century C E. Accordingly, VSI mentions three types of adjudication.

- (a) Community Court (Village Court)
- (b) Householders' Adjudication and
- (c) Royal Judicial Officers Hearing Cases on Circuit

### 6.1. Community Courts (CC)

The concept of 'community court' can be traced in the history of several countries albeit the form,

structure and the functioning are different substantially from one another. In early England the most common form of justice was carried out by the tribe or the community<sup>9</sup>. However, in the USA, community court movement has come a long way since the first court opened in midtown Manhattan in 1993<sup>10</sup>.

In ancient India, there had been three types of community courts such as, the "*Kula*" or a group of elderly educated members of family clan collectively settle disputes of that family or clan, "*Gana*" or gathering of knowledgeable elders in a village trying disputes in that village, and the "*Shreni*" or a group of knowledgeable traders and craftsmen settle disputes arising in their respective communities<sup>11</sup>.

In Sri Lanka, history of CC can be traced to 425 BCE, when Sri Lanka was ruled by monarchs, village councils, presided over by village elders or minor officials, heard and resolved disputes among neighbors<sup>12</sup>. Other than VSI, several epigraphic records provide evidence of the existence of CC in Sri Lanka<sup>13</sup>.

The VSI stipulates CC for two grave offences only i.e. murder *-kuhi vaku mara ke(tuwa)- someone being hacked to death* - (VSI Line 6) and robbery



with violence-*kanda pala sorakam kala* – stealing with slitting body(VSI Line 10).

The table below summarizes the jurisdictional and procedural aspects of CC as prescribed by VSI.

Name of the Court	Presiding Officers	Jurisdiction and Offense	Procedure to be Adopted	Comparative Observations
Community Court	Village Headman- <i>dasa-gamat ekeka nayakayan- VSI Lines7-8</i>	Criminal Jurisdiction-  1.Murder- <i>kuhiwaku mara ke(tuwa)-VSI Lines-9</i>	The following steps should be followed;  (a) Firstly, CC should ascertain the place where, within the district that murder or robbery has been committed.- <i>kuhiwaku mara ke(tuwa) kanada pala sorakam kala tira kota gena – VSI lines-9-10</i>  (b) Thereafter, they shall sit in sessions and inquire- <i>...hinda vichara...- VSI Line 11.</i>  (c) The proceedings shall be recorded as much as possible-.. <i>haki se liya taba...- VSI Lines- 11</i>  (d) Then the murderer should be punished with death- .. <i>Maruwehi mara patwanu kot isa –VSI Line-12 and</i>  (e) In the case of robbery, having restored the property to the owner, culprit should be hanged – <i>kanada papa soru gat aeithyen niyata kalak ayithiya himi hat gena di..elvanu- VSI Lines-12-13.</i>	It is quite surprising to see how much of advanced juridical thinking, strong sense of impartiality and justice that King <i>Mahinda IV</i> has demonstrated through those rules in the VSI when it is compared with the modern procedure given in the CPC.  Chapters 13-24 of the CPC deals with these aspects in detail. Although the details are substantially different the fundamental principles, concepts are very much the same in the VSI and the CPC.  As per these provisions of CPC, when an information regarding commission of murder or robbery is received by peace officer (police officer) an investigation has to be conducted and having verified, it should be reported to the magistrate's court and then if the offense is summarily triable by magistrate's
	Householders- <i>dasa agama attan VSI Line-10</i>	2. Robbery- <i>kanda pala sorakam kala- VSI Line-10</i>		



				court it should be tried and punishment should be imposed etc.
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**Table 3: Community Court System in the VSI and Its Jurisdiction**

As per the above table, firstly, when those two offences are alleged to have been committed in those villages- *dasa gam*-, village headmen and householders are required to ascertain the facts which means investigation in the modern sense of criminal procedure.

Secondly, they should sit in sessions and inquire from the inhabitants of the ten villages in regard to the commission of the alleged offence.

Thirdly, proceedings should be recorded and produced for the sessions

Finally, if they found the offender was guilty, death penalty could be imposed. The relevant lines of VSI are as follows;

"..... *kuhi vaku marake(tuwa) kanda pala sora-kam kala tira kota gena dasa gam attan hinda vichara.....haki seliya thaba.....elvanu kota - VSI Lines 6-14.*

The 10<sup>th</sup> century Sinhalese words such as "*hinda*= having sat, *vichara*= inquire, *haki se liyathaba*= written down as much as possible and *elvanu*= hang " which has the same meaning as today; leave no doubts as to the proper meaning of this section.

This system is very much similar to the '*tithing*' and '*folk moot*'<sup>14</sup> system that prevailed in the UK during the Anglo-Saxon period that corresponds to the period in the VSI. "Tithing" means a group of ten householders who are responsible for their behavior and if someone commits a wrong-doing, community court presided over by a village lord heard the case and pronounce punishment.

#### 7. Adjudication by individual householders

It seems that this adjudication method was available for minor offences such as when a person enters those villages having committed an improper act outside, punishment can be imposed on him by the inhabitant at whose house the offender first resided. This is similar to the current practice of punishing an offender who has committed an offence outside the jurisdiction of the relevant court.

### VII. Royal Judicial Officers Hearing Cases On Circuit

VSI further provides that jurisdiction is vested with the Royal Officials who visit villages on annual

circuit to hear case relating to the violations of the laws mentioned in the VSI. Thus, it is clear that three tier adjudication systems had been in force during the period mentioned in the VSI.

### VIII. Discussion

Sri Lanka's two and half millennial long recorded history recounts many foreign invasions, chief of which are the three European invasions from 1505 CE to 1972 CE by the Portuguese, Dutch and the British respectively.

Portuguese and Dutch ruled Maritime Provinces from 1505 CE to 1796 CE. During this period, Sinhalese Kings ruled rest of the country. So, it is obvious that dual legal system would have operated for civil and criminal justice administration in this period; i.e. Sinhalese custom-based criminal and civil laws operated in the vast areas controlled by local monarchs and the Roman-Dutch law operated in the maritime provinces that came under Dutch rule. However, since Portuguese did not introduce any legal system during their colonial period, a mixed legal system would have operated in that period too.

This situation changed drastically after the British invasion of the *Kandyan* kingdom in 1815 C E. The entire Island came under the British rule and continued until Sri Lanka regained her freedom on becoming an Independent Sovereign Republic in 1972.

During the British invasive colonial rule, criminal and civil legal systems that prevailed previously in the Maritime Provinces and the *Kandyan* provinces were changed substantially. Some of the key changes are as follows;

- Three years after capturing Maritime Provinces, the British introduced a Supreme Court with criminal jurisdiction by Proclamation of 14, October 1799.
- Fiscal courts were established by Proclamation of 30, July 1801.
- A complete procedure code for criminal justice administration was introduced as Criminal Procedure Code No. 15 of 1898.
- A comprehensive penal law was introduced through the Penal Code No. 2 of 1883etc.



However, it is surprising to see how the Victorian Penal Code of 1883<sup>15</sup> match with *VSI* enacted by *Mahinda IV* in terms of legal concepts (principles) and procedural principles laid down in 1026 C E Those conceptual and procedural similarities can be briefly stated as follows;

- a) The prevalence of the notion "crimes and wrongs- *crimina and delicta*."
- b) Enactment of laws by the king and delegation of his legislative powers to royal judicial officers to promulgate and implement laws.
- c) Classification of criminal conduct (deviant behaviors) as 'offences'
- d) Investigation of crimes by community based assemblies.
- e) Community based administration of criminal and civil justice with community court.
- f) Royal Judicial Officers visiting on yearly circuits to promulgate laws and settle dispute.
- g) Imposition of corporeal punishments and pecuniary fines on the offenders.
- h) System of compensation to victims.
- i) Requiring bond with surety for keeping good behavior

As a whole, *VSI* provides firm evidence that 10<sup>th</sup> century Sri Lankan society had a strong notion about '*crimina and delicta*' and they recognized that deviant behaviors or conduct should be condemned with punishments.

In other words, any positive act or omission that would cause harms to others has been recognized as deviant behaviors. The Sinhalese terms used in the *VSI* strongly support this argument, e.g. *marake(tuva)*-killing(*VSI Line 9*), *kanda pala sora-kam kala*-robbery, *sora-kam kala*-stealing(*VSI Line 10*), *no maraketuwa*-causing hurt without killing (*VSI Lines 18*), etc.

Penal Code of 1883 states similar idea under section 2 - "every person shall be liable to punishment under this Code and not otherwise for every act or omissions of which he shall be guilty within Ceylon....." Sections 293, 294, 310, 311 and 366 of the Penal Code define offences of culpable homicide, murder, causing simple and grievous hurts and theft and also prescribe the punishment.

So, it is clear that the Victorian Penal Code of the 19<sup>th</sup> century and the King *Mahinda's VSI* (Penal Code in the 10<sup>th</sup> century) embodies the similar conceptual framework as to the criminal conduct.

In the modern context, the laws are enacted by the legislature (parliament) but their

implementation is entrusted to different bodies. So, the implementation of the penal laws in the Penal Code and other statutes is entrusted with the different officers at varying levels. For example, the police is empowered to conduct investigations into crimes and the judicial officers from lower magistrate's court to higher courts are empowered to conduct trials and pronounce judgments of guilty or not guilty and impose punishment on those found guilty after a proper trial.

An analogous scheme of delegation of King's legislative and the judicial functions to royal judicial officers can be seen in the *VSI* as well. For example, *VSI Lines 41-45* states that;

**"ek-tan samiyen a raj- sbhaye hinda Goluggamu Ra(k) sa(im), Ku(da) – senu isa Meykappar Kuburugamu Lok(o)hi, Katiri Agbohi isa Kundasala Ara(yan) atulava methuwak sam-daruwan visin me vavastha karanu ladi" - VSI Lines 41-45**

The meaning of above paragraph is that "*Goluggamu Ra(k) sa(im), Ku(da) - senu, Meykappar Kuburugamu Lok(o)hi, Katiri Agbohi, and Kundasala Ara(yan); all these lords who sit in the Royal Council and who have come together in accordance with the mandate delivered by the King in Council have promulgated these statutes*".

Also, the classification of deviant behaviors on their gravity and making them distinct offences are one of the common features in the modern criminal laws. Similar line of thinking can be seen applied in the *VSI* as well. *VSI* recognizes 12 grave and minor offences affecting human body, property, animals etc.

## IX. Conclusions

It is observed from the foregoing analysis that;

- a) During monarchical rule in the medieval period in Sri Lanka's, there has been a legal system for the administration of criminal justice.
- b) Also, under that criminal justice system, identification of criminal acts and classification of crimes against human body and property has been well recognized
- c) The classification of the crimes has been done on the basis of the gravity of injuries which is very much in line with the contemporary juridical thinking
- d) Also, there has been a penal system as well.
- e) The determinant factor on imposing lighter or harsher punishments has been the gravity of the injury in the case of crimes against human body and the value of the property or damage in the case of offences against the property.



f)  
It can be concluded on the foregoing discussion that Sri Lanka has had an elaborate legal theory and practice in the 10<sup>th</sup> century under the reign of King *Mahinda IV* as evinced in the *VSI*; the Penal Code

enacted by him. It is also seen that King *Mahinda IV* has enacted advanced laws and procedures for the administration of criminal justice in Sri Lanka embodying modern concepts of

### End Notes

<sup>1</sup>Epigraphia Zeylanica Vol. 1, p. 241.

<sup>2</sup> E Z Vol. III, p 20. As per History of Ceylon, University of Ceylon, Vol. I, Part II, this period is 956-972 CE

<sup>3</sup> Anuradhapura Buddhist Railing Slab Inscription concerning rules relating to the residential facilities at *Pan Madiya* (Water Pavilion), E Z, Vol. III. 226

<sup>4</sup> E Z, Vol.1, PP 213-229

<sup>5</sup> Some speculate that '*dasa-gam*' means "slave village" or village for "servants", but when the relevant lines before and after this phrase is read in conjunction with the context, it is more likely that *dasa gama* refers to ten villages of this district. In Great Britain too, during the same period as that of *VSI* there existed this system called "tithing" which means 10 householders taking responsibility for their behavior.

<sup>6</sup> Wijayatunga, H., (2008), Legal Philosophy in Medieval Sinhale, Godage International Publishers (Pvt.) Ltd.

<sup>7</sup> Adcock, S., Tucker, C., Weerasinghe, G., & Rajapaksha, E. (2018), Branding Practices on Four Dairies in Kantale, Sri Lanka. *Animals*, 8(8), p.137. Retrieved from <http://dx.doi.org/10.3390/ani8080137>

<sup>8</sup> *VSI* Line 21-25, EZ Vol. 1, P.250

<sup>9</sup> Legal History: Origins of the Public Trial, (1960), *Indiana Law Journal*: Vol. 35: Iss. 2, Article Available at: <https://www.repository.law.indiana.edu/ilj/vol35/iss2/8>

<sup>10</sup> Reno, J., et al, Community Court, An Evolving Model, US Department of Justice, 2000

<sup>11</sup> Kumar, D., Ancient Judicial System: Historical Evolution of the Indian Legal System, University of Patna, Patna, Dhavan, S.S., Available at [https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem\\_SSDhavan.pdf](https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf)

<sup>12</sup> Heart, P.B., *Community-Based Dispute Resolution in Sri Lanka*, Forum, (Winter-1993), PP 33-37

<sup>13</sup> EZ, Vol. 1. P.41- Slab Inscription of King *Kassapa V*

<sup>14</sup> Barron, Caroline M., 'The City Courts', *London in the Later Middle Ages: Government and People 1200-1500*. (Oxford,2004;online edn, Oxford Academic, 1 Jan. 2010), <https://doi.org/10.1093/acprof:oso/9780199257775.003.06>, Gomme, G. L., Folk- Moot or Open –Air Assemblies in Britain, (1880) Sampson Law; available at <https://historyofeconomicthought.mcmaster.ca/gomme/PrimitiveFolkMoots.pdf>. Accessed 30.12. 2022.

<sup>15</sup> . Penal Code No.02 of 1883