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Transferability of Comparative Laws: Some Insights for Sri Lanka

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ABSTRACT

This article critically examines the transferability of legal norms, institutions, and practices through the lens of comparative legal research, with a particular focus on Sri Lanka's experience as a post-colonial, legally pluralistic jurisdiction. Drawing on theoretical debates between functionalist and culturalist schools most notably the Watson–Legrand exchange, it argues that successful legal transplantation requires more than technical compatibility; it demands congruence with the recipient state's constitutional values, cultural norms, institutional capacity, and socio-political realities. Through detailed case studies in constitutional borrowing, commercial law reform, and criminal justice innovation, the analysis exposes both the potential and the pitfalls of adopting foreign legal models, showing how direct transplants often falter without adaptation to local conditions. The study advances a critical methodological framework for Sri Lanka's law reform process grounded in three pillars: rigorous cultural impact assessment, realistic institutional capacity analysis, and systematic strategies for adaptation and indigenization. It contends that legal borrowing must be selective, context-sensitive, and participatory, leveraging global best practices while preserving and integrating domestic legal traditions. Ultimately, the article calls for a cautious yet open engagement with foreign legal experience, rejecting both uncritical adoption and wholesale rejection, and advocating instead for a nuanced, evidence-based approach that seeks to craft hybrid legal solutions capable of delivering justice, legitimacy, and effectiveness within Sri Lanka's distinctive legal and social landscape.

Keywords: *Legal Transplantation, Comparative Legal Research, Legal Research Methodology and Legal Pluralism*

I. INTRODUCTION

The transferability of legal norms, institutions, and practices across jurisdictions has emerged as one of the most contentious and theoretically complex issues in comparative legal research. As P. Ishwara Bhat aptly observes, comparative legal research (CLR) operates as "a logical and inductive method of reasoning that enables objective identification of merits and demerits

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of any norm, practice, system, procedure or institution as compared to that of others."[3] However, the mere identification of superior legal solutions in foreign jurisdictions does not automatically guarantee their successful transplantation into different legal, cultural, and socio-economic contexts. Sri Lanka, with its unique position as a post-colonial jurisdiction characterized by legal pluralism, diverse religious communities, and a complex constitutional framework, presents a particularly compelling case study for examining the challenges and opportunities inherent in legal transplantation. The country's legal system reflects layers of influence from Roman-Dutch law, English common law, customary laws, and indigenous legal traditions, creating a heterogeneous legal landscape that both facilitates and complicates the adoption of foreign legal solutions.[4]

This article examines the methodological foundations of comparative legal research with specific reference to the transferability of laws, offering critical insights relevant to Sri Lanka's legal development. While acknowledging the potential benefits of legal borrowing, this analysis adopts a skeptical stance towards uncritical transplantation, arguing instead for a nuanced, contextually sensitive approach to comparative law methodology. The central thesis maintains that successful legal transplantation requires not merely technical compatibility but fundamental congruence with the recipient jurisdiction's constitutional values, cultural norms, and institutional capabilities.

II. THEORETICAL FOUNDATIONS OF COMPARATIVE LEGAL METHODOLOGY

A. The Nature and Scope of Comparative Legal Research

Comparative legal research, as defined by contemporary scholarship, encompasses "a systematic exposition of the rules, institutions and procedures or their application prevalent in one or more legal systems or their sub-systems with a comparative evaluation after objective estimation of their similarities and differences and their implications."[5] This definition emphasizes the analytical rather than merely descriptive character of genuine comparative inquiry, distinguishing it from superficial juxtaposition of legal rules. The methodological sophistication required for effective comparative legal research extends beyond simple rule comparison to encompass what Zweigert and Kotz describe as "an intellectual activity with law as its objects and comparison as its process."[6] This approach necessarily involves understanding the functional role of legal institutions within their broader social, economic,

[3] P Ishwara Bhat, 'Comparative Method of Legal Research: Nature, Process and Potentiality' (2015) 57(2) Journal of the Indian Law Institute 147, 148.
[4] ibid, 150.
[5] ibid, 149.
[6] K Zweigert and H Kotz, Introduction to Comparative Law (3rd edn, OUP 1998) 2.

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and cultural contexts, rather than treating legal rules as autonomous technical constructs capable of universal application.

B. The Tertium Comparationis Problem

Central to any comparative legal analysis is the selection of appropriate criteria for comparison what scholars term the *tertium comparationis*.[7] As Nils Jansen observes, comparison involves "the construction of relations of similarity or dissimilarity between different matters of fact,"[8] but this construction is neither neutral nor objective. The choice of comparison criteria inevitably reflects the researcher's assumptions about which aspects of legal systems merit attention and how legal effectiveness should be measured. For jurisdictions like Sri Lanka contemplating legal reform through comparative study, the selection of *tertium comparationis* becomes particularly crucial. Should comparison focus on formal legal structures, practical outcomes, democratic legitimacy, economic efficiency, or cultural authenticity? The answer to this question fundamentally shapes both the methodology employed and the conclusions reached about transferability.

C. Functionalist Approaches and Their Limitations

The functionalist school, as exemplified by Ernst Rabel's influential work, advocates focusing on the functions served by legal institutions rather than their formal characteristics.[9] Ralf Michaels describes functionalist comparative law as "factual; it focuses not on rules but on their effects, not on doctrines or structural arguments, but on events."[10] This approach ostensibly offers a more sophisticated basis for assessing transferability by examining whether foreign legal solutions effectively address similar social problems. However, functionalist methodology faces significant theoretical and practical challenges. The assumption that legal systems across different societies address fundamentally similar problems may obscure important variations in how societies construct and priorities legal issues. Moreover, the functionalist presumption of similarity (*presumptio similitudinis*) may systematically underestimate the significance of cultural, institutional, and historical differences that affect legal effectiveness.[11] Pierre Legrand's critique of functionalist presumptions offers a salutary reminder that "comparison involves identification of diversity in law" and that legal systems

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[7] Bhat (n 1) 148.
[8] Nils Jansen, 'Comparative Law and Comparative Knowledge' in Mathias Reimann and Reinhard Zimmerman (eds), The Oxford Handbook of Comparative Law (OUP 2006).
[9] Bhat (n 1) 153.
10 Ralf Michaels, 'The Functional Method of Comparative Law' in Reimann and Zimmerman (n 6) 342.
11 Bhat (n 1) 160.

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may differ in fundamental ways that resist functional equivalence.[12] For Sri Lankan legal reformers, this suggests the need for careful attention to the distinctive features of the local legal and social context rather than assuming that successful foreign solutions will translate directly.

III. THE LEGAL TRANSPLANT DEBATE: WATSON VS. LEGRAND

A. Watson's Transplant Thesis

Alan Watson's influential work on legal transplants posits that legal rules and institutions can be successfully transferred between jurisdictions with relative ease, driven primarily by the autonomous logic of legal development rather than social pressures.[13] Watson's thesis, supported by extensive historical analysis of legal borrowing, suggests that legal systems regularly and successfully incorporate foreign elements, often with minimal adaptation to local conditions. From Watson's perspective, the transplantation process operates largely independently of broader social, economic, or cultural factors. Legal rules possess a certain technical autonomy that enables their effective operation across different jurisdictional contexts, provided basic institutional prerequisites exist. This optimistic view of transferability has influenced numerous law reform initiatives, particularly in developing jurisdictions seeking to modernize their legal systems through selective borrowing from more developed legal systems.

B. Legrand's Cultural Critique

Pierre Legrand's sustained critique of the transplant thesis offers a fundamentally different perspective on legal transferability. Legrand argues that "legal texts are not to be treated as objects in themselves things capable for example of being transplanted from one system to another but as signifiers of something culturally more profound about the 'other.'[14] This cultural understanding of law emphasizes that legal rules derive their meaning and effectiveness from their embeddedness in particular cultural contexts. According to Legrand, successful legal transplantation is impossible because legal rules cannot be separated from their cultural contexts without losing their essential character. Even when identical legal texts are adopted across jurisdictions, they operate differently due to variations in interpretive traditions, institutional cultures, and social expectations. This "impossibility thesis" suggests

12 Pierre Legrand, 'The Same and the Different' in P Legrand and Munday (eds), Comparative Legal Studies: Traditions and Transitions (CUP 2003) 240.

13 Bhat (n 1) 152.

14 Geoffrey Samuel, 'Comparative Law and its Methodology' in Dawn Watkins and Mandy Burton (eds), Research Methods in Law (Routledge 2013) 103.

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that apparent legal transplants are actually instances of legal transformation, where foreign rules are fundamentally altered through their incorporation into new contexts.[15]

C. Implications for Sri Lankan Legal Development

The Watson-Legrand debate carries significant implications for Sri Lankan approaches to legal reform. Watson's optimistic view might support ambitious programmes of legal modernization through selective borrowing from successful foreign models, particularly in areas like commercial law, intellectual property, or administrative procedure where technical considerations predominate. The relative success of Sri Lanka's adoption of certain English commercial law principles during the colonial period might be cited as evidence supporting Watson's thesis. Conversely, Legrand's cultural critique suggests greater caution in legal transplantation, particularly in areas touching on constitutional values, family relationships, or community governance where cultural factors play decisive roles. Sri Lanka's experience with attempts to implement uniform civil codes or standardized administrative procedures across ethnically and religiously diverse communities illustrates the practical force of Legrand's concerns about cultural compatibility.

IV. METHODOLOGICAL CHALLENGES IN COMPARATIVE LEGAL RESEARCH

A. The Problem of Context

Effective comparative legal research requires sophisticated understanding of the social, economic, political, and cultural contexts within which legal systems operate. As Roger Cotterrell observes, culture functions as "a kind of lens through which all aspects of law must be perceived, or a gateway of understanding through which every comparatist must pass so as to have any genuine access to the meaning of foreign law."[16] This cultural dimension of legal analysis presents particular challenges for researchers working across significantly different social contexts. For Sri Lankan scholars and policymakers, adequate contextual understanding requires not only mastery of foreign legal systems but also deep appreciation of how those systems function within their specific social environments. The apparent success of particular legal institutions in developed Western democracies, for example, may depend on background conditions such as high levels of institutional trust, robust civil society organisations, or particular economic structures that do not exist in Sri Lanka.

15 Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) Maastricht Journal of European and Comparative Law 120.
16 Roger Cotterrell, 'Comparative Law and Legal Culture' in Reimann and Zimmerman (n 6) 711.

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B. Language and Translation Issues

Language barriers present both practical and theoretical challenges for comparative legal research. As Bankim Chandra Chatterji noted, "you can translate a word by a word, but behind the word is an idea, the thing which the word denotes, and this idea you cannot translate if it does not exist among the people in whose language you are translating."[17] Legal concepts often embody particular cultural understandings that resist direct translation. The dominance of English as the international language of legal scholarship creates additional complexities for jurisdictions like Sri Lanka where multiple languages (Sinhala, Tamil, English) have official or working status in the legal system. Legal transplants mediated through English translation may lose important nuances present in the original legal cultures, while the privileged position of English-language legal scholarship may systematically bias comparative analysis towards Common Law solutions.

C. Selection Bias and Comparative Methodology

The selection of jurisdictions and legal systems for comparative analysis involves inevitable choices that may introduce systematic bias into research conclusions. Ran Hirschl's application of J.S. Mill's experimental methods to comparative constitutional research offers useful guidance, particularly his distinction between "most similar" and "most different" case selection strategies.[18] However, the application of these methods requires careful attention to the research questions being addressed and the causal mechanisms being investigated. For Sri Lankan comparative legal research, the natural tendency to focus on other Common Law jurisdictions, former British colonies, or South Asian legal systems may obscure potentially valuable insights from Civil Law traditions, Islamic legal systems, or indigenous legal orders. Conversely, excessive attention to exotic or innovative foreign legal solutions may lead to unrealistic assessments of transferability to Sri Lankan conditions.

V. CRITICAL ANALYSIS OF LEGAL TRANSFERABILITY

A. The Limits of Functional Equivalence

The assumption that legal institutions serving similar functions can be readily transplanted across jurisdictions faces several fundamental challenges. First, the identification of functional equivalence often depends on superficial similarity in formal objectives rather than deeper analysis of how institutions actually operate within different contexts. Legal institutions that

17 Cited in Bhat (n 1) 169.
18 Ran Hirschl, 'On the blurred methodological matrix of comparative constitutional law' in Sujit Choudhry (ed), The Migration of Constitutional Ideas (CUP 2006) 48.

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appear functionally equivalent may rely on different mechanisms, assume different background conditions, or produce different secondary effects. Second, the functional approach may systematically underestimate the importance of procedural and institutional culture in determining legal effectiveness. As Jaakko Husa observes, successful legal operation depends not only on formal rules but on "ways of thinking about law" that may vary significantly across jurisdictions.[19] These cognitive and cultural dimensions of legal practice resist easy transplantation even when formal legal structures appear compatible.

B. Constitutional and Institutional Constraints

Legal transplantation occurs within existing constitutional and institutional frameworks that may limit the effective operation of foreign legal solutions. Sri Lanka's constitutional structure, with its distinctive features including the executive presidency, proportional representation electoral system, and provisions for language and religious minorities, creates a particular institutional environment that affects how imported legal institutions function. Moreover, constitutional values and principles may conflict with the underlying assumptions of foreign legal institutions. The Sri Lankan Constitution's emphasis on Buddhism while guaranteeing religious equality, for example, creates a unique normative environment that may be incompatible with legal solutions developed in more secular contexts or those assuming different relationships between religion and state.

C. Capacity and Resource Constraints

Successful legal transplantation often requires institutional capacity and resources that may not exist in the recipient jurisdiction. Legal institutions that function effectively in well-resourced legal systems with highly trained personnel, adequate funding, and sophisticated support systems may fail when transplanted to contexts lacking these prerequisites. Sri Lanka's experience with various law reform initiatives illustrates the practical importance of capacity constraints. The establishment of specialised courts, implementation of new procedural systems, or adoption of complex regulatory frameworks may founder on inadequate human resources, insufficient funding, or lack of technical expertise, regardless of their theoretical merits or success in other jurisdictions.

19 Jaakko Husa, 'Comparative Law, Legal Linguistics and Methodology of Legal Doctrine' in Mark Van Hoecke (ed), Methodologies of Legal Research (Hart 2013) 214.

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VI. CASE STUDIES: LESSONS FROM SRI LANKAN EXPERIENCE

A. Constitutional Borrowing and Adaptation

Sri Lanka's constitutional development provides instructive illustrations of both the potential and the pitfalls of **legal transplantation** the process of borrowing legal and institutional models from foreign jurisdictions. A prominent example is the **1978 Constitution's adoption of the French executive presidency model**. Under the French Fifth Republic, established in 1958, the semi-presidential system combines a directly elected President, who wields considerable authority, with a Prime Minister responsible to Parliament. This arrangement was intended to provide strong executive leadership while maintaining a degree of parliamentary accountability, striking a balance between stability and democratic oversight.

When Sri Lanka adopted this model in 1978 under President J. R. Jayewardene, the expectation was that a strong executive presidency would overcome the perceived inefficiencies and instability of the Westminster-style parliamentary system, which had characterized governance since independence. In France, the system operated in the context of a mature political culture with robust party structures, a history of republican constitutionalism, and mechanisms such as "cohabitation" that moderated presidential dominance when the parliamentary majority belonged to an opposing party. In Sri Lanka, however, the transplantation interacted with a very different political and electoral environment. The proportional representation system introduced alongside the presidency reduced the likelihood of a single party gaining a two-thirds parliamentary majority, but in practice, the President often commanded overwhelming legislative control through party dominance and coalition-building. Without the moderating effect of genuine cohabitation or entrenched checks and balances, the presidency in Sri Lanka became **far more dominant** than in France, leading to accusations of **authoritarian drift**, politicization of state institutions, and weakening of parliamentary oversight. For example, under the 18th Amendment (2010), presidential term limits were removed, a move unthinkable in France without substantial political backlash, reflecting how institutional safeguards embedded in the original French model did not translate effectively into the Sri Lankan political context.

Another significant arena of constitutional borrowing is the **treatment of language rights**. Following independence, language policy became one of the most contentious issues in Sri Lanka, particularly after the enactment of the **Official Language Act No. 33 of 1956** (the "Sinhala Only Act"), which declared Sinhala the sole official language, marginalizing the Tamil-speaking minority. In addressing the resulting ethnic tensions, constitutional reformers

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looked abroad for models. The **Canadian model**, particularly the constitutional recognition of English and French as official languages under the Official Languages Act 1969 and Section 16 of the Canadian Charter of Rights and Freedoms, was one potential source of inspiration. Similarly, India's linguistic framework under Articles 343–351 of the Constitution, which recognised Hindi and English while protecting regional languages, offered another reference point.

However, direct transplantation proved challenging. Canada's bilingualism was underpinned by a federal system allowing provinces like Quebec to exercise significant autonomy in language policy, supported by a strong rights culture and judicial enforcement via the Supreme Court of Canada. India's arrangement operated in a vast and linguistically plural society where language recognition was intertwined with state boundaries and political compromise. Sri Lanka's **unitary state structure**, coupled with deep historical grievances stemming from post-independence language policies and violent ethnic conflict, created a far more volatile environment. The **13th Amendment to the Constitution (1987)**, enacted under the Indo–Lanka Accord, attempted to constitutionalize Tamil as an official language alongside Sinhala and English as a "link language." Yet, implementation was inconsistent, and public administration often failed to ensure equal access to services in Tamil, highlighting the difficulty of operationalizing a rights-based language regime in a context where institutional capacity, political will, and inter-ethnic trust were limited.

Ultimately, the constitutional settlement on language rights in Sri Lanka reflects **significant adaptation** rather than **direct transplantation**. While the formal recognition of multiple languages mirrors aspects of the Canadian and Indian frameworks, the Sri Lankan approach embeds these rights within a unitary framework with limited devolution, requiring constant negotiation between constitutional principle and political reality. This underscores a broader truth about legal transplantation: successful borrowing depends not merely on replicating institutional blueprints but on aligning them with **local political culture, historical context, and administrative capacity**.

B. Commercial Law and Economic Development

Sri Lanka's adoption of various **commercial law instruments**, particularly in the realms of **intellectual property**, **banking regulation**, and **foreign investment**, offers a nuanced case study of how legal transplantation can influence economic development. These experiences reveal both the **promises** and **limitations** of borrowing legal frameworks from foreign jurisdictions or international standards.

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In the field of **intellectual property (IP)**, Sri Lanka has largely aligned its domestic law with international conventions such as the **Berne Convention for the Protection of Literary and Artistic Works,** the **Paris Convention for the Protection of Industrial Property**, and the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** under the WTO framework. The **Intellectual Property Act, No. 36 of 2003**, which repealed the **Code of Intellectual Property Act, No. 52 of 1979**, incorporates modern protections for copyrights, patents, trademarks, industrial designs, and geographical indications, drawing heavily from models developed in jurisdictions with sophisticated IP regimes. Because intellectual property rights operate in a largely technical and globally standardized domain where the norms are embedded in international treaties and the subject matter (e.g., inventions, artistic works, brands) is less influenced by local cultural variations the transplantation process proved relatively smooth. For instance, Sri Lanka's adoption of trademark protection standards in line with TRIPS facilitated foreign brand registration and helped integrate the country into global trade networks. This reflects how **technical legal areas**, especially those driven by harmonized international norms, are often more amenable to direct transplantation without significant conflict with local traditions or practices.

However, the transplantation experience in **banking regulation** presents a more complex picture. In the late 20th and early 21st centuries, Sri Lanka introduced reforms modelled on regulatory frameworks from developed economies, including elements inspired by the **Basel Accords** on banking supervision, capital adequacy, and risk management. The core domestic regulatory framework rests on the Central Bank of Sri Lanka Act, No. 16 of 2023, which establishes the Central Bank of Sri Lanka repealing the Monetary Law Act (Chapter 422), and the **Banking Act, No. 30 of 1988** (as amended), which governs licensing, supervision, and prudential requirements for banks. While these reforms were intended to strengthen financial stability and attract foreign investment, their effectiveness was constrained by **institutional context**. For example, whereas advanced economies implemented Basel standards within mature regulatory environments with strong enforcement mechanisms, Sri Lanka's supervisory institutions faced resource limitations, skills gaps, and political influence. This occasionally resulted in **regulatory forbearance** or inconsistent application of prudential norms, as seen in responses to banking sector distress where political considerations overrode strict enforcement. Supplementary legislation such as the **Finance Business Act, No. 42 of 2011**, the **Payment and Settlement Systems Act, No. 28 of 2005**, and the **Electronic Transactions Act, No. 19 of 2006** (as amended) sought to address specific gaps in the financial and commercial regulatory framework, including the facilitation of secure electronic

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communications and transactions. However, the overall process demonstrated that legal transplantation without corresponding institutional strengthening risks resulting in only partial or ineffective implementation.

Similarly, in **foreign investment law**, Sri Lanka drew on models from jurisdictions with liberal investment climates, aiming to create an attractive legal environment for global investors. The **Board of Investment of Sri Lanka Law, No. 4 of 1978** (originally enacted as the Greater Colombo Economic Commission Law, No. 4 of 1978, and subsequently amended, notably by Act No. 49 of 1992) provides the principal statutory framework for investment promotion, including tax holidays, duty exemptions, and simplified administrative processes. Sri Lanka's network of **Bilateral Investment Treaties (BITs)** for example, the Sri Lanka-United Kingdom BIT (1980) and the Sri Lanka–Netherlands BIT (1985) offers additional investor protections, such as guarantees for the repatriation of profits and access to international arbitration. The **Arbitration Act, No. 11 of 1995**, which gives effect to the UNCITRAL Model Law on International Commercial Arbitration and implements the **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**, was intended to provide investors with a predictable dispute resolution mechanism. While these provisions mirrored global best practices, their impact on actual investment inflows was mixed. Factors such as political stability, infrastructure quality, and bureaucratic efficiency played decisive roles, meaning that the legal framework alone could not guarantee success. Despite the arbitration-friendly statutory framework, enforcement delays and inconsistent judicial interpretation sometimes undermined investor confidence, illustrating the broader point that **the success of transplanted legal frameworks in economic governance depends not just on legal text but on the surrounding political economy and administrative capacity.**

In sum, Sri Lanka's experience confirms that in **technical and globally standardized areas** such as intellectual property, transplantation can be relatively straightforward and successful. In contrast, in areas like banking regulation and foreign investment where the functioning of the law is deeply intertwined with domestic institutions, market culture, and enforcement capacity direct transplantation often requires **substantial adaptation**, supplementary measures, and long-term institutional reform to achieve its intended developmental goals.

C. Criminal Justice Reform

Sri Lanka's ongoing **criminal justice reforms**, shaped in part by various foreign legal models, illustrate the complexities of **legal transplantation** in the criminal law sphere. Key

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areas of reform have included the introduction of **restorative justice programmes**, the expansion of **alternative dispute resolution (ADR) mechanisms**, and the establishment of **specialised courts** for specific categories of offences. Restorative justice approaches emphasising reconciliation, offender accountability, and victim participation have drawn inspiration from models in **New Zealand, Canada,** and **South Africa**, where such practices are embedded within statutory schemes and supported by community infrastructure. In Sri Lanka, restorative measures have found expression in legislative frameworks such as the **Community Based Corrections Act, No. 46 of 1999** (as amended), which allows sentencing courts to impose non-custodial community-based correction orders for certain offenders, thereby reducing reliance on imprisonment and promoting offender rehabilitation within the community.

The development of ADR mechanisms in criminal justice has also mirrored trends in other Commonwealth jurisdictions. For example, Sri Lanka's adoption of **mediation boards** under the **Mediation Boards Act, No. 72 of 1988** originally designed for civil disputes has, in some instances, been extended to minor criminal matters, inspired by grassroots dispute resolution practices in countries like **India** and **Singapore**. In addition, specialised judicial bodies such as **Children's Magistrates' Courts**, established under the Children's Ordinance No 48. Of 1939 (before **Children and Young Persons Ordinance)**, reflect comparative influences from child justice models in the UK and Australia, which prioritize the best interests of the child in criminal proceedings.

A significant point of comparative borrowing can be seen in the debates surrounding **plea bargaining**. While Sri Lanka has not yet enacted a formal statutory plea bargaining framework, policy discussions have been influenced by the **Law Commission of India's Report No. 142 (1991) on Concessional Treatment for Offenders who on their own initiative choose to plead guilty to offences charged against them**, as well as India's subsequent incorporation of plea bargaining provisions into the **Code of Criminal Procedure, 1973** through the **Criminal Law (Amendment) Act, 2005**. The Indian reforms themselves were informed by comparative research on plea negotiation systems in the **United States, United Kingdom**, and select Asian jurisdictions. In Sri Lanka, academic commentary and reports by the **Law Commission of Sri Lanka** have evaluated the merits of introducing structured plea agreements to reduce case backlogs and improve efficiency, while also noting concerns about possible coercion of accused persons, disparities in bargaining power, and the need to safeguard constitutional guarantees such as the presumption of innocence and the right

to a fair trial under **Article 13 of the Constitution of the Democratic Socialist Republic of Sri Lanka (1978)**.

The variable success of these criminal justice reform initiatives underscores the reality that **effective transplantation** depends on **local legal culture, institutional capacity,** and **societal attitudes** toward justice and punishment. Solutions that appear procedurally efficient or theoretically superior in foreign contexts may prove ineffective, or even counterproductive, if they conflict with deeply held beliefs about appropriate responses to crime or if they presuppose investigative, prosecutorial, and defense capabilities that do not exist in the local environment. For instance, restorative justice programmes require a trained cadre of facilitators, public trust in mediation processes, and victim-offender willingness to engage elements that are unevenly developed across Sri Lanka. Likewise, plea bargaining presupposes a criminal bar equipped to advise clients effectively, prosecutors trained in principled negotiation, and judicial oversight to ensure voluntariness conditions that currently exist only in limited form.

Ultimately, the Sri Lankan experience affirms that **comparative legal research** can play a constructive role in identifying reform options, but its success hinges on **careful adaptation** to domestic conditions, incremental implementation, and sustained investment in the justice sector's human and institutional resources.

VII. TOWARDS A CRITICAL METHODOLOGY FOR LEGAL TRANSPLANTATION

A. Cultural Impact Assessment

Any serious attempt at **legal transplantation** must begin with a **rigorous cultural impact assessment** that goes beyond mere formal compatibility checks. Such an assessment should critically interrogate how proposed reforms will interact with and potentially disrupt existing legal, social, and political cultures. Too often, reform processes import legal models under the assumption that they are culturally neutral or universally applicable, ignoring that legal systems are deeply embedded in societal values, hierarchies, and historical experiences. In Sri Lanka, where law has historically functioned as both an instrument of governance and a site of contestation, cultural impact assessments must not only identify visible conflicts (such as incompatibility with religious norms) but also probe subtler dynamics. These include how legal institutions construct and reinforce social relationships, allocate power and authority, and embody particular visions of justice and order. Without this deeper inquiry, reforms risk reproducing colonial legacies, reinforcing elite dominance, or inadvertently marginalizing communities whose norms and legal practices diverge from the imported model.

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For Sri Lankan legal reformers, the challenge is compounded by the country's **multi-ethnic, multi-religious character** and the **pluralistic legal landscape** in which Roman-Dutch private law, English-derived public law, and multiple customary and religious laws coexist. A legal transplant that appears purely technical such as a procedural reform or a new regulatory framework may have **asymmetric effects** across different communities, particularly where it touches on personal law, property rights, or dispute resolution mechanisms. For example, reforms in family law or inheritance rules may differentially affect Sinhala, Tamil, and Muslim communities due to the interplay with Kandyan Law, Thesawalamai, and Muslim Law, potentially upsetting long-standing social arrangements. Moreover, without careful cultural vetting, reforms could undermine vital aspects of **legal pluralism** that provide minority groups with cultural autonomy, thereby intensifying perceptions of legal centralization and state overreach. In this sense, cultural impact assessment is not merely an academic exercise but a safeguard against reforms that, while well-intentioned, may destabilize the delicate balance of Sri Lanka's legal ecosystem.

B. Institutional Capacity Analysis

A **realistic assessment of institutional capacity** should precede any significant legal transplantation initiative, not merely as a procedural step but as a decisive factor in determining feasibility and long-term sustainability. Such an assessment must go beyond a superficial checklist of existing resources and instead critically evaluate the **depth and resilience** of the institutions tasked with implementing and enforcing the transplanted law. This includes examining the adequacy of **human resources** in terms of training, expertise, and retention; the sufficiency of **financial allocations** to support not just initial roll-out but sustained operation; and the state of **technological infrastructure** needed for efficient administration and compliance monitoring. In Sri Lanka's context, where institutional performance often varies between urban and rural settings, such evaluations must also account for **geographical disparities** in capacity. Moreover, feasibility studies should assess whether the required capacity can realistically be developed within an achievable timeframe, or whether the reform risks collapsing under the weight of over-ambitious expectations before it gains traction.

An **institutional capacity analysis** should also include an **opportunity cost dimension**, recognising that resources whether financial, human, or political are finite. Devoting substantial effort to implementing a complex foreign legal model may divert attention from strengthening existing institutions or nurturing **indigenous legal innovations** better suited to local realities. The assumption that foreign legal frameworks are inherently superior to

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domestic alternatives can lead to **misallocation of scarce reform capital**, particularly when imported models demand enforcement mechanisms, bureaucratic procedures, or technological systems that exceed the current institutional reach. In such cases, the pursuit of transplantation may result in **partial, uneven, or symbolic implementation**, where the law exists on paper but is functionally ineffective. A critical institutional audit before transplantation is therefore not merely advisable but essential to avoid reforms that are ill-fitted to the country's operational capacity and that undermine public confidence in both the law and the institutions that administer it.

C. Adaptation and Indigenization Strategies

Rather than engaging in **direct transplantation** of foreign legal models, reform initiatives should adopt **systematic strategies of adaptation and indigenization** that consciously bridge the gap between imported legal concepts and the local socio-legal environment. This process should begin with the identification of the **core functional requirements** the reform seeks to address whether efficiency, accountability, fairness, or access and then proceed to evaluate how these objectives might be achieved within **existing institutional, cultural, and procedural frameworks**. By isolating the essential functions rather than blindly replicating foreign forms, reformers can design **hybrid legal solutions** that integrate global best practices with domestic legal traditions such as Roman-Dutch private law, English-derived public law, and recognised customary systems like Kandyan Law, Thesawalamai, and Muslim Law. Such hybridization avoids the pitfalls of imposing alien structures that fail to resonate with local legal actors or the communities they serve, instead fostering legitimacy and ownership of the reformed system.

Adaptation strategies must also focus on the **procedural and implementation dimensions** of legal reform, recognising that **institutional culture and established practices** often pose greater resistance to change than the mere amendment of formal legal texts. In Sri Lanka, for example, procedural norms in court administration, bureaucratic hierarchies, and long-entrenched litigation habits may persist despite new statutory frameworks unless reform is accompanied by **capacity building, targeted training, and gradual transition mechanisms**. Effective adaptation therefore demands **extensive consultation** with affected communities, the practicing legal profession, civil society, and other stakeholders. Such engagement not only ensures that proposed changes are **practically workable** but also helps anticipate unintended consequences and resistance points. By embedding reforms in **participatory processes** and grounding them in the lived experiences of those who will use and operate the

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law, legal institutions stand a far greater chance of achieving **sustained practical effectiveness** within the local context.

VIII. RECOMMENDATIONS FOR SRI LANKAN LEGAL DEVELOPMENT

A. Methodological Recommendations

Sri Lankan comparative legal research should adopt more systematic and theoretically sophisticated methodologies that go beyond superficial rule comparison to examine the functional operation of legal institutions within their broader contexts. This requires investment in research capacity, development of collaborative relationships with foreign legal scholars and institutions, and creation of institutional frameworks supporting sustained comparative analysis. Legal education institutions should strengthen their comparative law curricula to ensure that future legal professionals possess the analytical tools necessary for effective comparative analysis. This education should emphasize critical evaluation of foreign legal solutions rather than uncritical acceptance of apparently superior foreign models.

B. Institutional Recommendations

Sri Lanka should establish systematic mechanisms for evaluating proposed legal reforms, including mandatory impact assessments examining cultural compatibility, institutional capacity requirements, and resource implications. These evaluation processes should involve diverse stakeholders and should be subject to public scrutiny and parliamentary oversight. The establishment of a specialised legal reform commission with specific expertise in comparative legal analysis could provide more systematic and professional approach to law reform initiatives. Such a commission should have adequate resources for thorough comparative research and should be required to provide detailed justifications for recommended legal transplantations.

C. Strategic Recommendations

Sri Lankan legal development strategy should prioritize selective, carefully planned legal transplantation over wholesale adoption of foreign legal models. Priority should be given to areas where foreign solutions address clearly identified deficiencies in current legal arrangements and where institutional capacity exists or can be reasonably developed for effective implementation. Greater attention should be paid to regional comparative analysis, examining legal solutions developed in other South Asian jurisdictions facing similar challenges. This regional focus may identify legal innovations that are more readily adaptable to Sri Lankan conditions than solutions developed in dramatically different contexts.

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IX. CONCLUSION

The transferability of comparative laws presents both significant opportunities and substantial risks for legal development in jurisdictions like Sri Lanka. While comparative legal research can provide valuable insights into alternative approaches to legal problems and can inspire innovative solutions to persistent challenges, uncritical transplantation of foreign legal solutions may prove counterproductive or even harmful. This analysis has argued for a methodologically sophisticated, culturally sensitive approach to comparative legal research that recognises both the potential value and the inherent limitations of legal transplantation. The central insight emerging from this examination is that successful legal transplantation requires not merely technical compatibility but fundamental congruence with the recipient jurisdiction's constitutional values, cultural norms, and institutional capabilities. For Sri Lanka, this suggests the need for a more cautious, selective approach to legal borrowing that prioritizes adaptation and indigenization over direct transplantation. The country's rich legal heritage, combining multiple legal traditions within a complex constitutional framework, provides both challenges and opportunities for legal development that should be recognised and leveraged rather than displaced by wholesale adoption of foreign models. The future of Sri Lankan legal development lies not in choosing between indigenous and foreign legal solutions but in developing sophisticated mechanisms for evaluating, adapting, and integrating foreign legal innovations within the distinctive context of Sri Lankan society and governance. This requires substantial investment in comparative legal scholarship, institutional capacity, and public dialogue about the appropriate direction of legal reform. Ultimately, the test of any legal transplantation initiative is not whether it replicates successful foreign models but whether it contributes to the development of a more just, effective, and legitimate legal system adapted to Sri Lankan conditions and aspirations. This requires a mature, critical approach to comparative legal research that neither rejects foreign experience nor accepts it uncritically but seeks to learn from global legal developments while remaining rooted in local values and conditions. The methodological foundations examined in this analysis including careful attention to cultural context, systematic institutional capacity assessment, and strategies for adaptation and indigenization provide a framework for approaching legal transplantation in a more thoughtful and effective manner. However, the ultimate success of legal reform initiatives will depend on the political will, institutional capacity, and social commitment necessary to implement these methodological insights in practice. As Sri Lanka continues to navigate the challenges of legal development in a globalized world, the insights of comparative legal methodology suggest neither wholesale embrace nor reflexive rejection of

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foreign legal solutions, but rather a careful, contextually sensitive approach that seeks to combine the best of global legal experience with deep appreciation for the distinctive requirements of Sri Lankan society and governance.

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