

# **The Judiciary as a resource in promoting Demosprudence: Assessing the role of ordinary people in the law making process in Sri Lanka**

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Democratic constitutions are aimed at establishing a system of governance that function entirely on behalf of the people and which are accountable to the people. The Constitution, is expected to ensure democratic values and it's become meaningless unless they can be enforced at law through an independent judiciary. In the recent past, it appears that the Sri Lankan Judiciary has turned a dissension into a serious crisis that alters the balance of power vested in the Executive, the Legislature and the Judiciary. This situation has been reflected in several recent appellate court decisions. It is argued that the role of the Sri Lankan judiciary should be more inventive towards building up the trust of the general public. This argument is supported by the concept of 'Demosprudence'. 'Demosprudence' is an emergent term in United States Constitutional theory which focuses 'dialogic relationship between the courts and the people' and focuses on the ways that ongoing collective action by ordinary people can permanently alter the practices of democracy by changing the people who make the law and the landscape in which that law is made. (Guinier, 2008)

In this backdrop, the central research problem is: to what extent, the judiciary has promoted civic engagement in adjudicative process and making policies by utilizing the tool of Public Interest Litigation (PIL). Therefore, the objective of this study is to assess the role of the judiciary in promoting civic engagement in the law making process in the light of 'Demosprudence', to identify drawbacks and to make suggestions to enhance the democratic values of the Constitution.

A qualitative approach is employed in this research. In order to make an in-depth analysis, it is expected to mainly refer to the decisions of the appellate courts. Secondary sources such as textbooks, journal articles and internet resources are used to gather information about the concept and its relationship with particular area. Judicial decisions will be reviewed with a view to setting the background of the research and substantiating the argument raised.

The study found that Appellate Courts of Sri Lanka are reflecting the fact that case law has not fully embraced the Guinier's concept of demosprudence. Further, interpretation of the Constitutional Provisions and judicial reasoning vary on the personality of the judge and sometimes it leads to create drawbacks. In addition, it was observed that the continuous civic engagement is limited to taking actions of claiming their rights actively and collectively.

**Key words:** *Demosprudence, Judiciary, Civic Engagement, Public Interest Litigation*

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