

The Need of Judicial Reviews on Military Justice System in Sri Lanka: A Comparative Study with United Kingdom and United States

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Introduction

“Just as military society has been a society apart from civilian society, so military law is a jurisprudence which exist separate and apart from the law which governs in (our federal) judicial establishment”, In *Parker vs Levy* (Parker Vs Levy, 1974). “The military” can be defined as ‘a group of individuals, who are usually trained and equipped to perform national security tasks in unique and often chaotic and trauma field situations’. Hence to ensure the national security all states are keeping and maintaining military forces. “The military law” is the law which controls the military persons and military laws are percept that sanctions the behavior of military personnel. However to maintain the discipline of military personnel there must be a separate judicial system since military is a society apart from civilian life which requires different legal standards. **“The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military...”** (Shanor A. Charles, 1980)

In military context, similar to civilian context there are lots of disputes, mal practices and bad behaviors’ incidents among members of the military as they are also natural human being. In military law when military person commit an offence there is a specified procedure to punish that person.

- Basic Investigation
- Preliminary Investigation
- Board of inquiry or Court of Inquiry
- Summary of evidence
- Summary Trial or court Martial

Hence, to maintain discipline among the members in military there is a specific military justice system in Sri Lanka. Therefore it is very much essential to discuss on military

justice system according to the particular forces named, Sri Lanka Army, Sri Lanka Navy and Sri Lanka Air force under

- Sri Lanka Army Act 1949
- Sri Lanka Navy Act and Regulations and 1950
- Sri Lanka Air Force Act 1949

According to the above Acts and its amendments it can be noticed that there are two separate methods to resolve disputes, adjudicate matters and punish them under military justice system in Sri Lanka

Summary Trial

Summary trial procedure consists in Tri Forces Acts of Sri Lanka; Army Act Section 42-44, Navy Act Section 28-32 and Air Force Act Section 42- 44.

Court Martial

Court martial is a mechanism that keeps military justice system operational to maintain good order and discipline as well as a method to upholds the rule of law in military context. Under Tri forces Act there are sections on Court Martial; Army Act Section 45-76, Navy Act Section 33-53 and Air Force Act Section 45-76.

In civil law context it can be seen that there is an appeal process to be taken by the party which not satisfied with the decision of the lower courts. As military personal also natural human beings they also should have amenities to access apex courts to get relief. But in Sri Lankan military context it is a lacuna on this area. Thus it is essential to discuss the position of judicial review in Sri Lankan military context.

In the case *Marbury vs. Madison* the Supreme Court of the United States stated that **“Judicial review is the power of a court to decide whether a law or decision by the government is constitutional.”**

In Sri Lanka there can be noticed that only one section on judicial review consist in each tri forces Act. Sri Lanka Army Act, Section 79, Sri Lanka Navy Act, Section 132 and Sri Lanka Air Force Act, Section 79 stated that, **judicial reviews by Court of Appeal through Writs of Mandamus Certiorari and prohibition in respect of any court martial or any military authority exercising judicial functions according to the Article 140 of the Constitution.**

According to that it can be identified that there is no separate appeal procedure or judicial review system in Sri Lanka Military personal.

But in United Kingdom (UK) it can be seen that **“in addition to separating court-martial functions at trial, the British also civilianized military appellate functions. Following a trial, the convening commander consults with the JAG office on whether the charges were proper, the evidence sufficient, and the sentence legal.”** (Edward F. Sherman, 1973) According to the Sherman, most important feature is that, after doing this review if the accused is still not satisfied, he may petition for an appeal to the Courts-Martial Appeal Court.

Not only the UK but also United States (US) is the best example for judicial review and after the **Marbury vs Madison** Decision US Supreme court can review constitutionality of the laws in US. McLean pointed out that “[t]he Supreme Court has adjudicated constitutional issues arising in connection with our military forces since the earliest days of our nation.” (Ridley McLean, Historical Sketch of Military Law.1917) According to that in US it can be identified that court structure is designed to make an appeal and to facilitate to the judicial review. Then there is a separate court, U.S Court of Appeals for Armed Forces. Finally US Supreme Court has exclusive authority to review all other judicial decisions.

But in Sri Lanka only remedy can get is Writ of Mandamus, Certiorari and prohibition from Court of Appeal. There is no separate appeal system or Appeal court on military personals matters. Hence judicial review and appeal system of Sri Lanka is far behind to other countries.

Research Problem

When compare the military justice systems of UK and US there can be identified that separate appeal system and judicial review principle. But in Sri Lankan military law context there is no separate appeal system or judicial review to get relief to the accused military personal. Hence, “not having separate appeal system and judicial review in Sri Lankan military justice system caused to violate rights of Sri Lankan military personal” was the research problem of this research.

Objectives

- To identify Sri Lankan military justice system under the Army, Navy and Air Force Acts
- To examine the appeal system and judicial review in Sri Lankan military justice system
- To find out the United Kingdom and United States military justice system and its position of appeal and judicial review.
- To compare the Sri Lankan military justice system with United Kingdom and United States military justice system.
- To suggest well developed military justice system with judicial review in Sri Lankan military context.

Theoretical Underpinning

In this research researchers attempted to find out the rationale behind the military law. Hence, military personal are also natural human being and they are engage in various mal practices and behave in bad manner. Thus it must have laws to maintain discipline among members. But military justice system also should be based on the notions of justice and fairness. According to the ‘Negative Re-enforcement Theory’, punishment use to socialize the offenders. Hence theory of justice is the base of this research.

Methodology

This is a desk research and research is purely based on literature. Books, Conventions, Declarations, Acts, Internet articles and case law jurisprudence were used to collect secondary data. Analytical method used to analyze and review the data.

Findings, Conclusion and Recommendations

Military law is more important to safeguard sovereignty of the country and uphold the discipline among the members of the military. Military justice system has developed as a separate judicial system since it different from civilian context. There are specific laws to regulate military personal, especially Sri Lanka Army act, Navy Act and Air Force Act. According to the Sri Lankan Military justice system summary trial and the court martial are two different methods to conduct prosecutions on accused military personals. Judicial review and appeal system is most significant factors to gain justice in military law. In UK, US and India, there is developed military justice system comparatively Sri Lankan military justice system. Hence it can be noticed some weakness of Sri Lankan Military Justice System. Hence to develop better military justice system in Sri Lanka it should take into consideration example from other developed system. Especially it must incorporate a separate appeal system and notion of judicial review to create balanced and well-structured military justice system in Sri Lanka.

Keywords: Appeal Court; Court Martial; Judicial Review; Military Justice System; Summary Trial

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