ABSTRACT

The Right to a Fair Trial traces its genesis to the Law of 12 Tables (*lex duodecimo tabularam*) circa 455 BC and developed through the **Magna Carta Liberetum, UDHR, ECHR, ICCPR and ACHR.** Today, according to most authorities the Right to a Fair Trial has reached almost *Jus Cogen* status and in any case it is part of the customary international law.

Every state has an interant right to protect itself from external and internal aggressions and to achieve this end, it has a right to maintain armed forces. Time and again apex courts in advanced democracies like USA and UK have emphasized that military discipline is an area in which the courts is least qualified to make pronouncement. However in the celebrated words of Lord Mansfield *"a British citizen does not cease to be citizen for the mere fact the he has done the uniform"*. Thus while a soldier may be denied of most of the civil and political rights that are available to a police constable, yet he is not totally shorn off of all the Human Rights. In the words of the US Supreme Court even an alien or enemy combatant is entitled to a right to a Fair Trial or Due process Rights (DPRs). Hence it follows that a soldier on trial by court martial is equally entitled to DPRs.

The very word Court Martial has been a dreaded word through centuries and courts martial have been perceived an anomaly in the context of Human Rights and democratic traditions. In the early years courts martial were virtually devoid of any DPRs and military justice was swift and harsh. Courts Martials were epitomes of the words of Voltaire *'pour encourager les autres' (to encourage the others to follow the rule);*

However the Army is a sub-group of the society and it cannot be aloof to the Human Rights developments that place in the world around them. Besides Courts Martial are under the jurisdiction of the apex court of the state. Hence the development of Human Rights through the instruments like UDHR, ECHR, ICCPR and ACHR have been felt in the military judicial system too since a state cannot be totally divorced from its obligations under the international law as it has been reiterated in **Article 27 (15)** of the Sri Lanka Constitution.

In Sri Lanka, trial by Courts Martial is provided by the Army Act (1949) and Courts Martial as institutes administering justice have been recognized by the Supreme Law; vide Article 142(i) of the Constitution. The Ceylon Army Act (1949) is a virtual replica of the British Army Act (1881) and procedural safeguards are generally well covered. Although the UK Army Act has undergone radical changes in two occasions, 1954 and 2006, the local Act has not undergone any major amendment since its enactment.

In this Thesis the author argues that Sri Lankan Courts Martial procedures are on par with the US and UK procedures and certainly ahead of Indian procedures and in areas like total exclusion of confessions and right to be defended by counsel of one's choice, Sri Lanka is ahead of the USA. Yet there are areas such as 'Right to an Appeal to the apex court' and 'sentence should be announced in public' that need to be incorporated into the Army Act to ensure total transparency and also to bring the local Act on par with the US and UK Acts.