

Abstract

International conventions and domestic law enshrine that everyone convicted of a crime has a right to his conviction and sentence being reviewed by a higher tribunal according to law. The Judicature Act of Sri Lanka guarantees right to appeal in criminal cases. The Constitution of the Democratic Socialist Republic of Sri Lanka enshrines that all persons are equal before the law and are entitled to the equal protection of the law. This study highlights the lacuna in the military justice system of Sri Lanka where there is no power expressly given under the Army Act for the right to appeal. Before the eyes of the law an appeal does not lie unless expressly given by the statute. The researcher comparatively analyses three military jurisdictions viz: UK, USA and India for justification of rectifying this legal lacuna of military justice system of Sri Lanka on the footing that civilians recruited to the military as soldiers are also citizens of the country who are entitled to equal justice.

This comparative analysis emphasizes that in other military justice systems right to appeal has thrived on the fertile soil of human rights. In *Lt. Col. Preethipal Singh's case* Indian Supreme court held that "we therefore, hope and believe that the changes all over the English-speaking democracies will awaken our parliament to the changed value system. In this behalf we would like to draw our pointed attention to the Courts Martial do not even write a brief reasoned order in support of their conclusions, even in cases in which they enforce the death sentence. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fair play is denied to it". It is the conviction of the researcher that this Supreme Court judgments of India encapsulates Sri Lankan scenario.

Sri Lankan legislature Act No56 of 2007 gives effect to international covenant on civil and political rights. Section 4 (2) of the Act No 56 of 2007 enshrines that "every person convicted of a criminal offence under any written law, shall have the right to appeal to higher court against such conviction and any sentence imposed".

As the law stands an appeal is a statutory right and must be expressly created and granted by the statute. Though the Army Act of Sri Lanka provides for issue of writs of Mandamus, certiorari and Prohibition in respect of Courts Martial the contention of the thesis is that despite the fact that right of appeal has been recognized in other military justice systems subject to this comparative analysis, military personnel subject to military justice system of Sri Lanka have no access to any judicial forum where the aggrieved party can appeal against the final order passed by a Court Martial. This is a glaring lacuna in the military justice system of Sri Lanka.

Recommendations of the thesis are to remedy this fundamental error considering the changed values of other democracies and rewrite military justice of Sri Lanka.