LST REVIEW

Volume 19 Issue 259 May 2009

VALIDITY OF JUDICIAL INTERVENTIONS RESTRAINING POLICE ABUSE

THE RULE OF LAW AND LABOUR ADJUDICATION

LAW & SOCIETY TRUST

CONTENTS

LST Review Volume 19 Issue 259 May 2009

Law & Society Trust
3 Kynsey Terrace, Colombo 8, Sri Lanka
(+94)11-2691228, 2684845 | fax: 2686843
lst@eureka.lk
www.lawandsocietytrust.org

ISSN 1391 - 5770

Editor's Note ... ...

Continuing from the theme of several previous Reviews highlighting the state of policing in Sri Lanka, this Issue discusses the impact of judicial checks and balances on police abuse. This discussion is most opportune in the context of the ongoing public outcry in regard to the increasing number of instances recently where police officers have emerged as the abusers rather than the protectors of rights in this country.

M.D. Nandapala* v. *Sergeant Sunil (R11834) and others (SC(FR) Application No.224/2006, SCM 27.04.2009, judgment of Justice Shiranee Tillekewardene) exemplifies a situation where a victim's complaint of police abuse had been brushed aside at successive levels of the internal disciplinary process within the Police Department. Failure to take mandatory steps in terms of the Establishment Code, namely presentation of charge sheets against the accused officer, the opportunity for the accused officer to submit a reply, and the execution of a final panel inquiry was manifested. The National Police Commission (NPC) was severely faulted by Court in failing, on its own part, to take appropriate disciplinary action.

An interesting facet of the judgment concerns the demonstrated continuance of a police officer in service even after he was found to be evidently unsuitable for this purpose on previous occasions. In this case, the relevant service record showed the police officer to be one (in the language of Court), 'who by any expected standard of the Police Force was clearly unfit to continue as an officer' but was 'ultimately and inexplicably promoted'. Political patronage had ensured his continuance in service. The Court issues a number of directions, the implementation of which is however left in doubt given past practice. In this instance case, the impact of the directions is further negated by the fact that the National Police Commission is no longer in existence.

Judgments of this nature emanating from the Supreme Court in the exercise of its fundamental rights jurisdiction have been many during past decades. These decisions have contributed to a formidable body of jurisprudence which has laid down the parameters within which police action may be considered as constitutionally permissible.

However, this jurisprudence has also been critiqued on the basis that judicial review of police action, do not tend to take sufficiently into account, the manifold problems under which a police officer acts in a particular context

and specifically so in situations of emergency. One recent critical publication of this nature is *'Police Decision In Action – A Profile In Legal Review'* authored by former Inspector General of Police ***Frank de Silva***. The LST Review is pleased to publish a review of this publication by former Attorney General of Sri Lanka ***Sunil de Silva*** which examines the several critiques put forward by the author and evaluates the applicability of such critiques to the question of judicial restraint of police behaviour.

Whatever may be the countervailing points of view in this regard, there is common ground at least that severe dysfunction is manifested in the systems of policing today in Sri Lanka, much of which is due to the command structures of the police being subverted by political power to the extent that police officers no longer adhere to directions issued by their superior officers when they know that they are safeguarded by a political authority. In that regard, apart from judicial directions being routinely disregarded, a somewhat little discussed fact is that internal police Departmental Orders are also bypassed as a matter of fact in police practice today.

For example, Police Departmental Order No. A.20 directs in Section 2 that arrests will be made as far as possible without violence and that only that amount of absolutely essential force should be used in order to bring a violent person under control. By Departmental Order No. A.3, an officer-in-charge is expected to daily inspect the station lock-up barracks and other places and make an entry to that purpose and also to provide facilities for members of the public who are desirous of lodging any complaint. Such complaints must be attended to as expeditiously as possible. Many of these Orders are not however being followed.

Even during the time that the NPC was functioning, its impact (particularly during its second term after the Commissioners were unconstitutionally appointed by the President) was minimal. The Public Complaints Procedures put into place by the NPC in its second term bore no perceptible fruit. This situation is now aggravated with the NPC itself ceasing to exist while public funds continue to be spent on the maintenance of the NPC office.

As a closing contribution, the Review also publishes a paper by retired judge of the Court of Appeal, ***Justice P.H.K. Kulatilaka*** on *'Rule of Law, Justice and Equity – Discussing a Humane Approach to Labour Adjudication and the concept of a 'just and equitable' order.'*

Kishali Pinto-Jayawardena

M.D. NANDAPALA v. *SERGEANT SUNIL (R11834) AND OTHERS*
SC (FR) APPLICATION NO.224/2006

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under and in terms of Article 126
read with Article 17 of the Constitution –
SC (FR) Application No.224/2006.

M.D. Nandapala
No.541 Hendrick Pieris Mawatha
Pallimulla
Panadura

Petitioner

v.

1. Sergeant Sunil (R11834)
   Police Sergeant
   Police Station
   Homagama

2 P.K.K. Kumara Rathna (40156)
   Police Constable
   Police Station
   Homagama

3 A.R. Kumara Rajabandara (20912)
   Police Sergeant
   Police Station
   Homagama

4 Officer-in-Charge
   Police Station
   Homagama

5 The Inspector General of Police
   Police Headquarters
   Colombo 1

6 Hon. Attorney General
   Attorney General's Department
   Colombo 12

Respondents

BEFORE	:	S.N. Silva, CJ. Ms. Shiranee Tilakawardane, J. and P.A. Ratnayake, J.
COUNSEL	:	Sharmaine Gunaratne for the Petitioner Saliya Peiris.and Rukshana Nanayakkara for 1st Resp. Uditha Egalahewa for the 2nd and 3rd Respondents K.A.P. Ranasinghe, SSC, for 4th to 6th Respondents.
ARGUED ON	:	8.10.2008
WRITTEN SUBMISSIONS TENDERED ON	:	3.12.2008 and 11.11.2008
DECIDED ON	:	27.04.2009

Ms. Shiranee Tilakawardane, J.

The Petitioner was granted leave to proceed on 8th September 2006, on alleged violations of Article 11, Article 12(1), and Article 13(1) of the Constitution. Leave was granted, taking into consideration the gravity and seriousness of the allegations directed against members of the Police Force of Sri Lanka and as previously observed by this Court in *V.I.S. Rodrigo* v. *Imalka and seven others*, SC(FR) 297/2007, on the fact that such allegations are indicative of the increasingly typical hardships suffered by the people of this country while engaged in their lawful pursuit of travel on our public roads in the exercise of their fundamental right to freedom of movement and thereby denying the citizenry their equal protection under the law and their freedom from arbitrary arrest and detention as guaranteed by Article 12(1) and Articles 13(1) and 13(2), respectively. The facts material to this case are briefly stated as follows.

At approximately 10 o'clock in the evening of 24th May 2006, the Petitioner's van was stopped at the Godagama checkpoint by one member of the group of three police and two army officers on duty at the time, to conduct a search of the vehicle and an interrogation of the vehicle's occupants. Consequent to the passenger interrogation and vehicle search, the Petitioner and the other vehicle occupants were all taken into police custody and brought to the Homagama Police Station.

The Petitioner alleges that after being brought to the Homagama Police Station, he was taken to a place immediately outside the Station and brutally assaulted by the 1st and 2nd Respondents and an unidentified third officer, with repeated blows from a hose pipe and club delivered to his back, lower abdomen and buttocks. The Petitioner further alleges that his wife, who had been informed of the arrest, arrived at the Station the following morning with his nephew, spoke to the 4th Respondent and obtained the release of the Petitioner and his companions by posting bail at the police station.

On or about 5th June 2006, the Petitioner had gone to the Homagama Police Station to meet the 1st Respondent to retrieve his driving license, as it had not been given back to him at the time of his release. The Petitioner alleges that the 1st Respondent advised the Petitioner to falsely lodge a complaint stating that he had lost the driving license. The Petitioner further asserts that, at this instance, the 1st Respondent whispered to the 3rd Respondent who, apparently in tacit agreement with the ruse, recorded a fabricated statement in which the Petitioner claimed to have lost his driving license. The Petitioner emphatically alleges that he did not provide such a statement and, in fact, at this time informed the 3rd Respondent that the license was missing due to its continued detention by the 1st Respondent and not because he had lost it. This declaration, according to the Petitioner, was curtly dismissed by the 3rd Respondent.

Aggrieved by the alleged conduct of the law enforcement officers, the Petitioner lodged a complaint regarding the aforesaid arrest and the subsequent incidents of impropriety, with the SSP of Nugegoda, one Mr. K. Udayapala, who in turn referred the matter to Mr. Wickrema Perera, the then Superintendent of Police of the Homagama Police Station (hereinafter referred to as the "SP of Homagama") on 29th May 2006, submitted in terms of Part II, Subsection 2 of Police Departmental Order No.A7. The Petitioner subsequently filed this fundamental rights application in this Court on 23rd June 2006. In response to the complaint Mr. Perera held a preliminary fact-finding investigation through an Inquiry held on 30th May 2006 in accordance with Part II of the aforementioned Departmental Order (*vide* Petitioner's Petition at page 5). This Inquiry was conducted by Mr. Perera promptly, incisively and with great competence and stands as an example of an adherence to the highest standards, accountability and expectations of a public officer, as required by both the Doctrine of Public Trust and the Rule of Law.

In the present case, the Petitioner alleges that at the time of arrest the 1st Respondent had assaulted him on the neck subsequent to an accusation that he and his companions were returning after a robbery. This accusation of robbery was made, according to the Petitioner, on the basis of the 1st Respondent's alleged discovery of: (i) a small, 3½ inch knife hidden in the Petitioner's waist and, (ii) a sum of Rs.25,000/-.

Notably, the 1st Respondent defends his decision to arrest the Petitioner on several more grounds in addition to the abovementioned ones:

1. The answers given by the Petitioner and his companions when asked about their whereabouts and the source of the money were contradictory,

2. A bribe of Rs.1,500/- was offered to the 1st Respondent at the time of arrest (for (i) and (ii) *vide* 1st Respondent's Affidavit, dated 13th July 2007),

3. The Petitioner did not possess a driving license (*vide* the evidence given by the 1st Respondent at the Inquiry held by the SP of Homagama).

The Petitioner denies all the aforesaid allegations upon which the 1st Respondent based his arrest and avers to Court that the arrest was an illegal one, in contravention of the right

provided by Article 13(1) of the Constitution that "no person shall be arrested except according to procedure established by law". The evidence presented to this Court lends much credence to the Petitioner's view of the events in as much a review of the facts disclose several instances that serve to severely undermine the testimonial creditworthiness of the 1st Respondent. The voluntary statement made by the Petitioner contemporaneous to the time of the incident, exhibits a consistency of chronology and content with the details of the facts of the incident that have been later reiterated by him in the various pleadings and documents he has subsequently submitted before this Court. Such consistency, *per se*, lends credence in establishing the probative quality of the evidence and the testimonial reliability of the version of the incident as disclosed by the Petitioner. Likewise, the Petitioner's credibility is further established as his statements also fully accord with: (i) the contemporaneous statements made by his companions affording supporting evidence, as well as (ii) the testimony of Police Constable Herath, testimony which has importantly not since been recanted or qualified. This *inter se* consistency gives added conformity and exactitude to the version of the Petitioner and further establishes his testimonial creditworthiness.

The Petitioner states that the knife was never hidden in his waist but was kept in the cubby-hole of the van, and was used for cutting polythene sheets that cover the steel furniture he is in the business of selling. This statement was corroborated by Corporal Wanipurage Wimalaratne (00113), an officer present at the arrest scene who stated at the end of his version of evidence recorded at the Inquiry held by the SP of Homagama, that the knife was recovered from the cubby-hole and not from the waist of the Petitioner as was claimed by the 1st Respondent.

After a perusal of the Affidavit made by the 1st Respondent and dated 13th July 2007, it is clear that a case had been filed in the Magistrate's Court of Homagama, bearing number 82545, charging the Petitioner for being in possession of a prohibited knife in terms of Section 3 of the Knives (Amendment) Act, No.1 of 1983. In response to this charge, the Petitioner stated in his Written Submissions, dated 11th November 2008 (*vide* page 9) that he was unaware of such a prosecution against him, and that the summons for such a case, if one exists, had not been served on him to date. On further investigation to clarify this matter, this Court informed the Registrar to call for information relating to the proceedings of the Magistrate's Court case, bearing number 82545. Accordingly, the Supreme Court found information and supporting evidence which revealed facts that substantiate the version of the Petitioner, establishing further his credibility in this Court:

1. The case bearing number 82545 of the Magistrate's Court of Homagama had been filed on 6th July 2006 against the suspect Petitioner, for having been in possession of the knife, and that the said case had, apparently, been fixed for 11th December 2006 and had later been called on 12th March 2007.

2. On 12th March 2007 the case had been dismissed because summons had not been duly served. Later, a fresh plaint had been filed on 30th August 2007, under case number 88011 and thereafter been fixed for 22nd November 2008.

3. Subsequently, this case had yet again been dismissed, due to the suspect purportedly being unavailable at the given address.

4. Furthermore, according to the records of the Magistrate's Court the production, namely the knife purportedly "recovered from the Petitioner's possession", was never even handed over to the Magistrate's Court of Homagama.

The Petitioner rejects the basis of arrest stating that he clearly explained to the 1st Respondent at the time of arrest that he had earned the money from his furniture business and that he, along with his companions, were returning after engaging in their furniture business. The Petitioner also asserted that his version of the events was corroborated by all three persons who had accompanied him, and they too had given the same explanation relating to the money. The Petitioner also emphatically stated that he had never offered a bribe to the 1st Respondent (*vide*, Counter Affidavit dated 19th October 2007).

Indeed, had a bribe been so offered, as alleged by the 1st Respondent, surely this would have been the primary charge against the Petitioner. The absurdity of the situation, is that instead of the issuance of the obvious charge warranted by the facts of the 1st Respondent's version of the event, the Petitioner alone was charged under an obscure ordinance carrying a maximum sentence of one month's imprisonment and a Rs.50/- fine. This was the only charge against the Petitioner. It is to be noted that the possession of this knife is not a cognizable offence under the Code of Criminal Procedure Act, No.15 of 1979, and therefore the Petitioner could not have been arrested without a Warrant nor detained at the police station until the next day, as was done. At most, the Petitioner could have been warned to appear in Court, in the same manner and procedure followed in the detection of a basic traffic offence.

To substantiate the Petitioner's version of events, the Petitioner has produced Affidavits of each of his three companions, made at the time of arrest: (i) Steven Koralage Piyasoma (annexed as P1A to the Petitioner's Petition dated 23rd June 2006), (ii) Adambarage Tharaka Malith Alwis (annexed as P1B to the Petition) and (iii) Pathirage Don Dinesh Asanka (annexed as PIC to the Petition). Their versions of the incident were consistent and corroborated in detail the version of the Petitioner.

Significantly, at the Inquiry held by the SP of Homagama shortly after the incident, one of the officers on duty and present at the time of the arrest, Herath (9751), a Constable attached to the Nikaweratiya Police Station also gave evidence. Constable Herath, in a statement made by him and recorded contemporaneously, volunteered information that the Petitioner and his companions: (i) had behaved respectfully at all times during the 1st Respondent's interrogation, referring to the 1st Respondent as "Sir", (ii) had respectfully explained that they were returning after a day's work in the furniture business, and (iii) had stated that the Petitioner was ill. From Constable Herath's evidence, it is also clear that: (iv) the Petitioner had been slapped by the 1st Respondent at the time of the interrogation without any provocation whatsoever, (v.) the Petitioner had in his possession at the time of arrest a valid driving license and all other legally necessary documents, (vi) no instance of a bribe being offered was heard or observed by Constable Herath and (vii) the 1st Respondent refused to

release the Petitioner and his companions though Constable Herath and two other officers had urged him to do so.

Recognizing the significance of the findings of the Inquiry in ascertaining the culpability of the Respondents, this Court directed its Registrar to request the Director of the Police Legal Division for a report in relation to what transpired after the recording of the evidence at the Inquiry and the *status quo* of the aforesaid Inquiry as to date. The Registrar sent a letter dated 3rd February 2009 to the Director of the Police Legal Division requesting the same. On receiving the Report the Court discovered that the 2nd Respondent had deliberately submitted an incomplete Report of the proceedings of the aforesaid Inquiry, despite the availability of a complete Report at the time of the objections, obviously in order to render nugatory certain evidence and findings against the 1st and 2nd Respondents that were contained in the Report.

The Complete Report ultimately received by this Court included the evidence of witnesses as well as several observations and valid and salient conclusions made by the SP of Homagama. More specifically, after recording witness evidence of the Petitioner, his Companions, the wife of the Petitioner (Mrs. Weralage Irin Pathmalatha), Constable Herath, the other police constable present at the time of arrest (Mr. Samaranayake Shelton), and the 1st, 2nd and 3rd Respondents, the aforesaid SP of Homagama had made the following observations and findings:

1. On the basis of the evidence given by the 1st Respondent, the 1st Respondent had undertaken to stop the Petitioner's van and arrested the Petitioner and his companions.

2. It was blatantly clear from the recorded evidence that sufficient information existed to convince the 1st Respondent that the Petitioner and his companions were returning from a legal vocation, with legally earned money.

3. The 1st Respondent had assaulted the Petitioner for no valid reason and thereafter falsely accused the Petitioner of being in possession of an unlawful knife in order to justify his unwarranted conduct.

4. Based on the evidence given by Constable Herath, it is clear that the Petitioner had all the requisite documentation to both prove his identity as well as the validity of his vehicle license.

5. The 1st Respondent had forced the Petitioner to later falsely claim the loss of his licence in order to obtain a new licence because the 1st Respondent refused to return the licence at the time of arrest and either lost it after taking it into his possession or simply wanted to inconvenience the Petitioner.

6. In light of the evidence given by the companions accompanying the Petitioner and Constable Herath, it is abundantly clear that at the time of the arrest the van had initially been released by Constable Herath who had been satisfied that the Petitioner had possessed all the

requisite legal documentation, only to be later stopped again by the 1st Respondent without a valid cause.

In light of the above observations and acknowledgements based on the evidence given at the inquiry, the SP of Homagama issued the following conclusions:

1. On 24th May 2006, the 1st Respondent: (a) unlawfully arrested the Petitioner and his companions, (b) unduly assaulted the Petitioner and (c) improperly treated the Petitioner and his companions by retaining them at the checkpoint from 7:30 PM to 12:00 midnight. For these reasons the SP of Homagama found the 1st Respondent liable for disciplinary action.

2. On 5th June 2006, the 3rd Respondent, in order to cover up the inconvenience caused to the Petitioner, knowingly recorded a false complaint by the Petitioner, which read that the Petitioner had lost his driving license. For this reason, the SP of Homagama found the 3rd Respondent liable for disciplinary action.

3. Given the fact that it has been proved by the recorded evidence that the knife discovered at the time of arrest was used by the Petitioner as a tool of trade, it is clear that the allegations made by the 1st Respondent regarding the knife, were part of a ruse to cover up the improper conduct of the accused police officers. Accordingly, SP of Homagama found that the case filed in the Magistrate's Court on this issue should be dismissed on the next Court date.

This Court has emphatically held on several instances that for an arrest to be a valid one, there must be a reasonable suspicion for arrest at the time of arrest (*vide*, *Namasivayam* v. *Gunawardene* (1989) 1 SLR 394; *Piyasiri* v. *Fernando, ASP* (1988) 1 SLR 173). In *Elasinghe* v. *Wijewickrema and others* (1993) 1 SLR 163, Kulatunga, J. clearly enumerated the established principles applicable to arrest as follows:

(A) Lawful arrest:

1. It is not the duty of the Court to determine whether on the available material the arrest should have been made or not. The question for the Court is whether there was material for a reasonable offence to cause the arrest (*vide*, *Withanachchi* v. *Heart* (1988) II CALR 170).

2. Proof of the commission of the offence (or a *prima facie* case for conviction) is not required; a reasonable suspicion or a reasonable complaint of the commission of an offence suffices. The test is an objective one (*vide*, *Joseph Perera* v. *Attorney-General* (1992) 1 SLR 199, *Dumbell* v. *Roberts* (1944) 1 AllER 326, *Gunasekera* v. *Fonseka* (1972) 75 NLR 246).

3. A suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's knowledge or on the statements made by other persons in a way which justify him giving them credit (*vide*, *Muttusamy* v. *Kannangara* 52 NLR 324, *Yapa* v. *Bandaranayake* (1988) SLR 63).

4. During a period of emergency a wider discretion is vested in the police in the matter of arrest. As Wanasundera, J. said in *Joseph Perera* (*supra*): "This wider discretion vested in the police is logical and is necessary for the proper performance of the functions of the police and for the maintenance of the law and order in the country".

(B) Duty to inform the reason for arrest:

This duty which was established by common law and recognized by statute is now a fundamental right. In *Mallawarachchi* v. *Seneviratne* it was held: "The obligation is to give the reason at the moment of arrest or where it is, in the circumstances excused, at the first reasonable opportunity".

In considering the question of whether the Petitioner's arrest was based on the presence of a reasonable suspicion as provided in *Elasinghe* (*supra*), one must take into account the manner in which the Courts have sought to interpret this requirement in the past. The case of *Premalal De Silva* v. *Inspector Rodrigo and others* (1991) 2 SLR 307, aptly illustrates the bounds set for an arrest. In *Premalal*, the Petitioner was arrested without a warrant by the Panadura Police in the course of investigations into a robbery which took place at a cigarette agency. Here, the accused police officer who had effected the arrest had represented to Court that the Petitioner was suspected of a series of robberies in the Panadura area and therefore the Petitioner was required for questioning. However, as no material had been placed before the Court to justify such a suspicion or, more importantly, a suspicion that the Petitioner was involved in the robbery under investigation, the Court held that the arrest of the Petitioner failed to satisfy the requirements of Section 32(1)(b) of the Code of Criminal Procedure Act as was not based on a reasonable suspicion.

It appears to be the Counsel's submission that if it is proved that the police did in fact entertain a suspicion on the basis of information in their possession, this Court must uphold the arrest in the interests of investigation. I cannot agree with this submission.

In the case of *Piyasiri* v. *Fernando* (1988) 1 SLR 173, where 14 Customs Officers were stopped, arrested and taken to the Police Station in relation to an investigation by the Bribery Commission, the learned H.A.G. De Silva, J. said, with respect to the issue of whether there was in fact a reasonable suspicion, that:

> *It was a general allegation of bribery and as such under Section 32(1)(b) of the Code of Criminal Procedure Act, not one of the Petitioners could have been arrested unless all or any of them were actually seen committing such an offence or there was definite information that any or all the Petitioners were concerned in the commission of such offences. The arrest of the Petitioners in my view was highly speculative and was for the purpose of ascertaining whether any of them could be detected to have committed a bribery offence. No Police Officer has the right to arrest a person on vague general suspicion, not knowing the precise crime suspected by hoping to obtain evidence of the commission of some crime for which they have the*

power to arrest. Even if such evidence comes to light the arrest will be illegal because there will have been no proper communication of the reason for the arrest to the accused at the time of the arrest (emphasis added).

While we do not go so far as the learned judge in *Piyasiri* in saying that the information that prompts reasonable suspicion should be "definite", as we believe the police in discharging their duties and investigations cannot of course be expected to only respond to public complaints that have the support of concrete evidence, we fully concur with the learned judge's holding that "vague", "general" and nebulous information is insufficient to serve as the sole basis for a reasonable suspicion and that no police officer has the right to arrest a person "...not knowing the precise crime suspected by hoping to obtain evidence of the commission of some crime for which they have the power to arrest". As the learned judge stated, even if such evidence eventually does come "to light the arrest will be illegal because there will have been no proper communication of the reason for the arrest to the accused at the time of the arrest". Observably, Gratien, J. in *Muttusamy* (*supra*) states that the arresting officer cannot arrest a person in the course of a voyage of discovery, unsupported by cogent evidence. That the Courts have been unwilling to allow the power of arrest to devolve into a glorified fact finding tool is due to the recognition of the importance placed on human rights and individual liberties in our legal system. Time and time again, the learned judges of our Courts have interpreted "reasonable suspicion" restrictively, in order to protect and promote the rights and freedom of the people of Sri Lanka. "Reasonable suspicion" is certainly not a fanciful, illogical, irrational, or nebulous suspicion, but rather, one based on a reasonable interpretation of the facts and circumstances of the case, at the relevant time.

While there is consensus that suspicion of a reasonable nature can only be spurred by cogent evidence, there is predictably given the fact sensitive nature of this issue, no "hard and fast rule" so to speak, as to the nature and extent of what constitutes such cogency. Nevertheless, there is ample common law authority suggesting that: (i) location, (ii) appearance of the Petitioner, (iii) demeanour of the Petitioner; and (iv) past conduct and past convictions of the Petitioner (*vide*, *Piyasiri* v. *Fernando* (1988) 1 SLR 173, *Muttusamy* v. *Kannangara* 52 NLR 324, *Yapa* v. *Bandaranayake* (1988) SLR 63, *Elasinghe* v. *Wijewickrema and others* (1993) 1 SLR 163) are all useful characteristics though by no means an exhaustive list of them, that should be taken into account by this court in deciding whether the facts of the case satisfy the requisite cogency of evidence.

Taking into consideration the Affidavits of the companions, the evidence given by Constable Herath at the said Inquiry and the findings of the complete Report, we find that the Petitioner has proved with a high degree of probability that no reasonable suspicion could have arisen under the circumstances to warrant an arrest of the Petitioner. Assuming, without conceding that the money and the knife caused some measure of suspicion as averred by the 1st Respondent, his failure to charge all the persons travelling in the van with charges relating to suspected theft or robbery in itself militates further against the 1st Respondent's version of the incident. Given the mitigating facts explained clearly by all those travelling in the van, and the other facts and circumstances disclosed through the Inquiry held by the SP of Homagama, the facts disclosed simply do not suffice as evidence cogent enough to prompt a reasonable

suspicion of the commission of any crime. Additionally, the proceedings before the Magistrate's Court reveal that the police officers had not shown any attempt to pursue the matter in the Courts, a fact which further evidences a high degree of probability that the Petitioner and his companions had been falsely implicated (by the abuse of the police powers entrusted to the 1st, 2nd and 3rd Respondents) in a case merely to justify the action taken against the Petitioner. It is also clear that the possession of the small knife and money was incidental to their furniture business, a completely legitimate vocation. Accordingly, we find that the 1st Respondent's arrest and detention of the Petitioner and his three companions were unlawful and in contravention of Article 13(1).

Before fully disposing of this issue, however, I find it important to advert to the fact that the Petitioner had not disputed the 1st Respondent's allegation that the Petitioner and his companions were intoxicated at the time of arrest. This is indeed an important fact for this Court to address as it is a factor that would, if true, give unequivocal reason for the 1st Respondent to arrest the Petitioner. This is so because Section 151(1) of the Sri Lankan Motor Traffic Act (as amended) specifically prohibits any person from driving "a motor vehicle on a highway after he has consumed alcohol or any drug". The aforesaid Section authorises a police officer who suspects that a driver is intoxicated to require such a person to submit to a breath test or, in the case of suspected drug intoxication, to produce a driver before a government Medical Officer for examination. This Court, however, has not received any evidence from any authority, a Government Medical Officer or otherwise, to suggest that the Petitioner or any of his companions were intoxicated at the time of arrest. Moreover, the evidence given by Constable Herath at the inquiry before the SP of Homagama corroborates the Petitioner's claim that he was, in fact ill. Had the 1st Respondent suspected that the Petitioner was driving under the influence of liquor, his failure to charge the Petitioner with drunken driving after having produced him before the Medical Officer and obtaining a medical report is an inexplicable absence of action that fails to accord with, and is inimical to, the position taken up by the 1st Respondent.

The next matter to be considered in this case is the alleged cruel, inhuman, and degrading treatment of the Petitioner by the 1st and 2nd Respondents after he was arrested. The Petitioner alleges that subsequent to the search and the interrogation at the Godagama checkpoint the Petitioner and his companions were arrested and taken to the Homagama Police Station. Thereafter; the Petitioner alleged that he was kept out of a cell while his companions were put into one. The Petitioner alleged that he was then taken by the 2nd Respondent to a place outside the Police Station and the 1st and 2nd Respondents, along with another unnamed officer, brutally assaulted him with a hose pipe and a club on his back, head, lower abdomen and buttocks, after which he was placed into a cell. The 1st and 2nd Respondents categorically deny the aforesaid allegations.

The Petitioner further narrates that after being bailed out of prison, he was admitted to the Panadura Base Hospital on 25th May 2006 around 7 PM complaining of severe body pain and immobility due to the severe ache in his lower abdomen. The Petitioner further states that he was discharged on 27th May 2006 after being examined by the Hospital's Judicial-Medical Officer and having been administered treatment.

The judicial examination of the 1st Respondent on 27th May 2006, the report of which was produced to Court, revealed the existence of a contusion 3cm x 4cm in size, situated in the left back chest of the Petitioner. This injury is further corroborated by the Hospital's Diagnosis Card, marked P2 in the Petitioner's Petition, dated 25th May 2006 and time stamped at 9:30 PM.

Apart from the above-stated injury, P2 however also details several other injuries of significance and that one of the general observations stated in the medical report is the existence of "a soft tissue injury all over the body". Also noted are contusions over the back of the chest, tenderness over abdomen, both buttocks and left forearm, all injuries consistent with the claim of the Petitioner as to the manner of the assault and the areas of his body which had been affected by the several blows that were dealt to him, and also fully consistent with his claim that he was hit with a blunt instrument. There has also been some injury to the thigh. Further, the Petitioner's complaint of assault to the lower abdomen is corroborated by the doctor's observation of "tenderness over the abdomen". Furthermore, the SP of Homagama has also noted in his inquiry that he did, in fact, observe injuries on the Petitioner's back that appeared to be injuries due to the assault.

Noticeably, these injuries have curiously not been reported in the Medico-Legal Report. Nevertheless, given the fact that the judicial medical examination took place a full two days after the first medical examination and the duration of 48 hours may have provided the chance for the injuries to disappear by the time of the second medical report, we are of the opinion that the injuries noted in the Hospital's Diagnosis Card occurred during the assault at the police station. In *Medico-Legal Perspectives of Torture*, Dr. Niriellage Chandrasiri and Dr. U.C.P. Perera, 1st Edition (2003), state that it should be "taken into consideration that the final position and shape of bruises bear no relationship to the original trauma and that some lesions may have faded by the time of re-examination" (page 75). In any case, the veracity of the details of neither medical report has been disputed by any of the Respondents.

According to the Medico-Legal Report, the Petitioner was admitted to the Panadura Base Hospital exactly one day after the Respondents themselves admit to having arrested the Petitioner. Given the nature and size of the wounds sustained by the Petitioner, a police officer of even minimal competence would have directed such person for immediate medical attention. The fact that this was not done indicates to this Court that such severe injuries had necessarily been sustained after arrest and not beforehand. Having established the time of injury in relation to the arrest we can further logically infer its source as described by the Petitioner. The accuracy of this deduction is set out in the judgment of *Amal Sudath* v. *Kodithuwakku* (1982) 2 SLR 119 where this Court held that "the only reasonable inference" of the source of injuries caused while the petitioner was in the custody of the officers, was that they were caused by such officers. This Court also held in *Pitakandaiage Gamini Jayasinghe* v. *P.C. Samarawickrama and others* (SC Application 157/1991, SCM 12.01.1994) that "it is to be noted that at the time the Petitioner was handed over to that police, he had no injuries and was in perfect health. But when he was admitted to the hospital he was a physical wreck and almost comatose. I therefore hold the allegation of torture to be established". It is important to note that medical evidence inherently carries with it the fact of

independent expert evidence based on scientific observations. Given the nature of medical evidence, this Court observes that such evidence corroborates the version of the Petitioner and proves with a high degree of probability the facts as alleged by the Petitioner thereby satisfying the evidentiary burden of the Petitioner.

Though it is clear to this Court that the 1st Respondent's unlawful arrest and unwarranted assault of the Petitioner revealed him unfit to serve as a member of the Police Force, the Court also found that despite the strong findings of the report of the SP of Homagama: (1) Mr. K. Udayapala, the SSP of Nugegoda who had been initially forwarded the report had failed to subsequently take any action whatsoever on the recommendations of the SP of Homagama from the time he received the SP's Report till his retirement from police service on 21st August 2007 and, (2) the subsequently appointed SP, Mr. Deshabandu Tennakoon did the same. Lest it be suggested that Mr Tennakoon's culpability is somehow limited by the fact that the Report was received before his tenure as SP of Nugegoda began, it is important to note that pursuant to Part III of Police Departmental Order No. A14, the Police Office is to "be inspected by the Officer-in-Charge of the District once a month and by the Officer-in-Charge of the Province or Division once every half year". Furthermore, Section 7 of Part III of the aforementioned Order provides that in connection with the Office inspection, the inspecting officer is to consider the following:

1. Actions Papers:
    a. Number of action papers at the time of inspection
    b. Are any papers more than 3 days old and, if so, how many and how long are they delayed?
    c. What is the Officer's explanation for the arrears?

2. Pending Papers:
    a. Are papers arranged in chronological order of dates, pages numbered, and call-up dates noted in officer papers? Test six cases and give numbers.
    b. Are cases booked in call-up diary?
    c. Has the call-up diary been checked regularly and action taken up to call attention to overdue replies? If not, how many days entries remain unchecked?

Given that the "Officer-in-Charge" of a Division is the SSP, it was patently incumbent on Mr. Tennakoon upon his appointment as SSP of Nugegoda to both survey the existing registers and to take "action" on any cases that had so far not yet been pursued. As the SP of Homagama having conducted his Inquiry and concluding the unlawfulness of the arrest and the unprovoked assault, actions that would clearly constitute "Schedule A" offenses under Section 24(3) of the Establishment Code, and duly reported the matter to the SSP of Nugegoda in accordance with Police Departmental Order protocol, the next steps in terms of the Establishment Code were mandatory and should have been the presentation of charge sheets against the accused officer, afforded the opportunity for the accused officers to submit a reply, and the execution of a final panel inquiry. This was not, however, done.

In *V.I.S. Rodrigo* (*supra*) it was found that the Petitioner had been inappropriately stopped by several members of the Police Force at a checkpoint. Like in the present case, the petitioner had been repeatedly harassed about genuine legal documents, unjustifiably accused of wrongdoing and ultimately arrested, kept in custody and later remanded despite having committed no cognizable offence whatsoever. In a strong refutation of the malfeasances committed in that case, His Lordship Chief Justice Sarath N. Silva remarked that the tragic incident evinced "a clear instance of the abuse of power, rampant dishonesty and corruption and also misuse of the process of law that take place at 'Check Points' that have sprouted up. The tragedy is that a multitude of offences have been committed by Police officers whose duty it is to use their best endeavours and ability to prevent "all crime, offences and public nuisances". Given the misbehaviour in the instant case, it appears that the Police have failed to heed the words of the Chief Justice, and continued to act with a level of impunity that has continued to the serious detriment of the public.

In order to analyze the failure of existing procedural safeguards used by the Police in their self-regulation and determine what allowed the SSP of Nugegoda's failure to take action on the complaint lodged by the Petitioner, an omission which amounted to a blatant and unacceptable disregard of the informed recommendations of Senior Officers on a serious case of officer misconduct, the personal file of the 1st Respondent was called for and examined by this Court. It appears that the 1st Respondent joined the Police as a reserve officer on 12th May 1986, and shortly thereafter, his lack of fitness to serve as an officer quickly manifested itself. On the 17th July 1988, only 2 years after enlistment the 1st Respondent was demobilized on orders of the then Deputy Inspector General of Colombo, a fate resulting, in part, from an altercation with a superior officer, one SP Jinasena. In response to a Memo from one Mr. D.D.W. Abeywardhena, Director of Personnel of the Sri Lanka Police Reserve Headquarters, a letter dated 23rd August 1988 was sent by one Mr. Godfrey Gunesekera, the then Superintendent of Police, Colombo Fraud Investigation Bureau, describing the lack of merit to the 1st Respondent's claim of assault, and in doing so, took opportunity to chronicle the 1st Respondent's insubordination and eventual demobilization:

> *At this stage, Mr. Jinasena cautioned the RPC to do his duties properly. On hearing the loud tone of Mr. Jinasena, OIC-CFIB CI Reggie Silva went to the room of Mr. Jinasena. Subsequently, Mr Jinasena questioned the CI as to why this RPC was still working in spite of .the adverse report sent against him to SLPR Headquarters regarding his work and conduct. An inquiry was held into this allegation made by the RPC. Statements of several officers were recorded and there was no evidence forthcoming to substantiate the alleged assault. The work and conduct of the above said RPC has been very unsatisfactory from the time he was posted to my Bureau. A report was forwarded to Commandant SLPR some time both recommending his demobilization or to be transferred out of my Bureau. On the day of this alleged incident this RPC reported for duty and was found resting in the Rest Room. It was clear that the RPC for fear of losing his job when Mr. Jinasena questioned the OIC-CFIB as to why he was still performing his duties in spite of the adverse report, he would have brought this false allegation against Mr.*

Jinasena. As the continued service of this RPC would not be in the best interests of the Service, he was demobilized from the Service on orders of DIG Colombo (emphasis added).

In response to his demobilization, the 1st Respondent submitted an appeal, annexed with a recommendation letter to Mr. A.C.A. Gaffoor, the then Deputy Inspector General of Police, by one Mr. Abeyratne Pilapitiya, the then Chief Minister of the Sabaragamuwa Province, recommending that "suitable action" be taken with respect to the appeal of the 1st Respondent, based on a letter by K.A.K. Jinadasa, Secretary to the Ministry of Policy Planning and Implementation, it appears that the matter had purportedly been looked into by Mr. Gaffoor who appears to have, despite the strong findings of fact and corroborative independent medical evidence contained in the report dated 23rd August 1988 against the 1st Respondent, recommended redress for him. Though the contents of the appeal by the 1st Respondent for reinstatement contained a complete distortion of the facts and serious, unfounded aspersions against his senior officers, an action which itself warrants a separate investigation, the only "punishment" given to the 1st Respondent for this reprehensible behaviour was a full reinstatement to the Reserve Force, effective 1st November 1990 (*vide*, letter dated 20th October 1990 by D.D.W. Abeywardhena, the Director of Human Resources, Sri Lanka Police Reserve).

Despite such a chequered performance by the 1st Respondent in his short career, on 26th February 1997, a letter had been sent by one Mr. Upali Kodikara, the then Provincial Councillor of the Western Province, recommending the 1st Respondent for promotion to the post of Police Reserve Sergeant. One Mr. Asoka Jayawardena, then the Chief Organizer for a prominent political party, had also recommended the 1st Respondent for promotion by a letter dated February 1997. The 1st Respondent who by any expected standard of the Police Force was clearly unfit to continue as an officer, was ultimately and inexplicably promoted on 3rd March 2004 to the post of Police Reserve Sergeant.

It appears that a year before this promotion, the 1st Respondent having been ordered to transfer from the Homagama Police Station to Batticaloa, made a direct appeal by letter dated 10th February 2003 to one Mr. John Amaratunga, then Minister of the Interior and member of another prominent political party, seeking cancellation of the transfer. Apparently in response, Mr. K. Udayapala, at that time a Director attached to the Personnel Division of the Sri Lanka Reserve Police Headquarters handling the transfers of reserve police, had deferred the transfer.

In 2006, the 1st Respondent made an appeal to be absorbed into the Regular Service. Interestingly, his own superior officer, the HQI of Homagama had submitted a report to the SP of Homagarna on 15th March 2006, stating the 1st Respondent's poor attendance record, though curiously recommending the application:

1. The 1st Respondent had failed to regularly report for duty and did not report for duty for the entirety of 1988, having been demobilized as described *supra* for part of the year.

2. The 1st Respondent managed to obtain 32 days of unpaid leave in 2001, 41 days of unpaid leave in 2002, 90 days of unpaid leave in 2003, 16 days of unpaid leave in 2004, and 33 days of unpaid leave in 2005, resulting, in other words, of over 7 months of leave in the prior 5 years.

In 2006, on a single, inclusive order given by the Cabinet, all reserve officers who (i) served a minimum of 8 years of service or (ii) had the minimum educational qualification for his/her respective rank was absorbed into the Regular Police Force. It appears that it is under this protocol that the 1st Respondent was absorbed into the Regular Police Force on 24th February 2006 as a Police Sergeant.

That to this day, the 1st Respondent is serving as a Police Sergeant in Maharagama and no action has been taken with respect to any of his transgressions is a testament to the systematic failure of the Police Force to police themselves. It is readily inferable from the above episodes in the 1st Respondent's career that due punishment for the 1st Respondent's incompetence and was either neglected or avoided by (i) his reliance on Political recommendations, (ii) the fear of, and or allegiance to, the Politicians and political parties behind these recommendations by the Senior Officers in charge of evaluating him, and (iii) a systemic failure in the Police Force with respect of self regulation. It is simply inexplicable to this Court how Mr. K. Udayapala and Mr. A.C.A. Gaffoor, the SSP of Nugegoda and Deputy Inspector General of Police, respectively, despite being literally handed the evidence of insubordination and impropriety of the 1st Respondent, either blindly followed the dictates of political recommendation without properly evaluating the matter at hand ("Gaffoor failed to take any action at all" – Udayapala).

Even the slightest perusal of the material set before them would have made it patently obvious to both Senior Officers that the 1st Respondent needed to be urgently dealt with and suitable punishment immediately imposed. It is important to note that the Appeal delivered to Mr. Gaffoor by the 1st Respondent was a blatant distortion of the facts of the case and that the political recommendation annexed to, therefore, must itself have been issued without any appropriate inquiry into the merit of the 1st Respondent's claim. Had there been any attempt to preserve the autonomy expected of Mr. Gaffoor and the Police, his response to the situation simply could not have been what it was, given the totality of the facts and the fact that a preliminary inquiry was held and conclusions adverse to the Respondent were made.

While it is surprising that the Superior Officers of the 1st Respondent failed to address such an obvious and visible problem, such supervisory failure is an inevitable result of the lack of practical, effective guidelines and safeguards to regulate the upper echelons of the Police Force. The National Police Commission's own failure to investigate this matter, a copy of the Petition dated 31st June 2006 and marked as P3 had been sent to the National Police Commission nearly two months after the appointment of the present Commission, cannot however be explained in the same manner.

With the passage of the 17th Amendment to the Constitution, more specifically under paragraph (1)(a) of Article 155G, the disciplinary control of the Police was vested with the

Commission. In furtherance of this vesting, the Commission promulgated the Rules of Procedure (Public Complaints) 2007, as required under paragraph (2) of the same Article, to provide itself with a protocol to deal with public complaints that, in relevant part, requires all received complaints to be investigated at various timeframes based on their categorization:

> 5. The Deputy Director and the Provincial Directors shall categorize the complaints into appropriate segments in Schedule 1 to these rules and cause forthwith an investigation made thereon. He shall ensure investigations under Segment A of Schedule 1 are completed within thirty days and investigations under Segments B and C are completed within sixty days of the receipt of complaint.

It is inexplicable to this Court, given their receipt of a copy of the Petition and the existence of this self-imposed mandate to investigate all such complaints, why the National Police Commission failed to appoint an independent inquiring officer to investigate this case. This failure on the part of the Commission, the ultimate disciplinary authority of the Police, is an unacceptable abdication of responsibility which leads us to repeat Juvenal's timeless question: "*Quis custodiet ipsos custodes?*" or, "Who will guard the guardians?"

There are both direct and indirect consequences to the Police, to Society and, ultimately, to the Rule of Law, that result from these systematic failures within the Police Service.

On a direct level, we see a staggering loss to the Government in the form of compensation payments to those who have been ill-treated by police officers, with statistics revealing the payment of approximately Rs.6,017,331/- in compensation for the years 2004-2008 to victims of Police abuse and impropriety paid as a consequence of findings by the Supreme Court against police officers in Fundamental Rights Applications. We see violence, like that which was apparent in the present case, perpetrated with total impunity by certain police officers against civilians, to secure bribes, to exact public punishment for private dispute, or often, for seemingly no reason at all other than to taunt and harass the public with "a show" of their unchecked police powers, such power ultimately blinding them to their own corruption. Powers that were vested in them by the donning of uniforms to separate them and identify them as upholders of the Rule of Law are sadly used instead to subdue and pervert it. We see the loss of their valuable service and an erosion of their standards, steering them further towards a life of privilege and favour through compromised integrity, rather than one of discipline and honour.

On an indirect level we see the growing loss of faith by the public in a force that has come to be seen as an organization to be feared due to the aberrant behaviour of a small minority of police officers, rather than a supportive service for which they can look for protection and help. We see the growing feeling of impunity inculcated by those officers, such as the 1st Respondent in this case, that repeatedly get away with inappropriate behaviour, recognizing that their actions will be protected due to political patronage and favour and are likely to receive no disciplinary repercussions at all.

Perhaps the most affected by the slow breakdown of the Police force are the officers and rankers, the distinct majority of the Police Force, it is to be proudly stated, who operate with integrity and honesty and who easily stand among the best officers of any nation. Some of these loyal officers inevitably find themselves perturbed and discouraged at a system that marginalizes their legitimate successes and dismisses their attempts at honouring their professionalism and character, in favour of crafted and nurtured political affiliations. They undoubtedly watch with apprehension, discouragement and frustration as more and more of their peers begin to deviate from the standards once held, feeling that there are no other paths to advancement beside the crooked ones used by some who rise to the top or at the least get away with behaviour that should result in their removal or imprisonment. It is no surprise when some of them eventually follow the same fate. This slow erosion leads to nothing other than a decline of the standards of the Police Force, creating an unhappy and disgruntled lot of officers which will eventually destroy itself by compromising its own integrity and thereby eroding the confidence reposed in them by the public. Total breakdown of law and order is the end result with irreparable and irremediable consequences to society and economy. This cannot be allowed to happen.

Those who have undertaken the commitment to become enforcers of the law must come to recognize, if they haven't already, that such enforcement is crucial to the maintenance and attainment of domestic peace and harmony and, ultimately, it is these traits that are the bedrocks of a sustainable economy that assures prosperity for all. Only through the enforcement of law and order can a nation ultimately come to respect the rule of its laws. Without law and order anarchy, or at least a slow devolution towards it, is the inevitable and fatal result.

On the basis of the aforesaid findings, I declare that the 1st Respondent committed an unlawful arrest and unlawful assault of the Petitioner and grant to the Petitioners the declaration prayed for, that their fundamental right to equality before the law and freedom from arrest by undue process as guaranteed under Article 11, Article 12(1) and Article 13(1) of the Constitution has been infringed. Given this finding and the evidence that has come to light of the several instances of negligence regarding the oversight of the 1st Respondent by the Superior Officers charged with such responsibilities, this Court makes the following further orders and declarations:

1. An inquiry is to be held by an independent inquiring officer of the National Police Commission as to why both Mr. K. Udayapala and Mr. Deshabandu Tennakoon failed to take any action regarding the recommendations of the SP of Homagama in accordance with the Departmental Police Orders binding upon them. This Court notes that such an inquiry is as important in establishing the culpability of the offenders as it is in exonerating superior officers who may currently be clouded by perceptions of impropriety regarding this matter.

2. The 2nd Respondent who filed a copy of the Inquiry report from which the findings of the SP Homagama had been deliberately removed, is to report to Court within two months of the delivery of this Judgment to explain why he chose to submit a fraudulent document and why he should not be dealt with for Contempt of this Court. The case is to be mentioned for

hearing in one month from the delivery of this Judgment and the 2nd Respondent is to be noticed accordingly.

3. The Attorney General will consider pursuing an indictment of the 3rd Respondent for knowingly and voluntarily recording a fabricated statement of the Petitioner regarding his driver's license.

4. In recognition of the lack of effective self-governance with respect to superior officers as evidenced by the present case, the National Police Commission is to publicly set forth effective, practical procedures that provide for supervision of police officers of all ranks. Attention should be sought to enlist retired officers or other persons who have no personal benefit to gain through patronage of those with financial and political power to enforce such procedures. Further, the National Police Commission is to amend the existing scheme for promotions to explicitly counter political and financial influence, through the issuance of a set of specific, determined, pre-specified rules which specifically disallow the consideration of recommendations given by those not within the police force, or which have not been earned through specific duties of excellence as assessed by their superiors in the police force and with a provision to appeal against any partiality of superior officers. The issuance of such objective criteria and the resulting transparency in the promotion process, this Court believes, will legitimise the process in the eyes of Police Officers and will no doubt reduce the desire to deviate from a path of integrity and honour.

5. The National Police Commission is to create awareness and training programs that will sensitize officers to the importance of their duties. In light of the currently centralized nature of Police training, special focus is to be made to conduct such training programs in outstation posts.

6. It is strongly suggested to the National Police Commission that a division within the Police Force, known in other jurisdictions as a division of "internal affairs", be created to solely investigate and speedily review suspicions of professional misconduct by members of any rank of the Police Force.

Compensation in a total sum of Rs.100,000/- is to be paid by the 1st, 2nd and 3rd Respondents to the Petitioner. The 1st Respondent, the primary wrongdoer in this incident, is ordered to personally pay a sum of Rs.75,000/- and the balance is to be paid by the 2nd and 3rd Respondents in equal amounts.

The application is allowed. Costs to be paid to the Petitioner by Respondents in a sum of Rs.10,000/- each.

POLICE DECISION *IN* ACTION – By *Frank de Silva*[*]
(A PROFILE IN LEGAL REVIEW)

Reviewed by Sunil de Silva[#]

A commentary

This publication is an overview of *'the police function within the law enforcement task of government by an officer with considerable experience of its working over the years since independence in Sri Lanka'.*

The Police Service

The Police service is obligated to provide a safe and peaceful environment for the society that places them in a position of authority to use coercive powers and even lethal force in the proper execution of their duties. Their master is 'the society' and not the particular group of persons who are in control of the government at any given time.

Police decision and action

While a part of police action is investigatory after the commission of an offence, a significant part of such action involves is preventive action, especially in respect of imminent breaches of the public peace. The author's primary focus is on the argument that *post-event* scrutiny of police action should take cognisance of *the circumstances as the officer perceived them to be*, at the time he took the impugned action. Urgent and immediate response to avert the perceived threat may on *subsequent scrutiny*—with the benefit of hindsight in an atmosphere conducive to calm reflection—appear *unwarranted or excessive*.

The author makes the point that *unfair criticism* which does not make allowance for *bona fide* mistakes of assessment of the threat or the legality of the response, may result in the *dangerous consequence* of an officer being hesitant to act, and such inaction may prove even more harmful.

Review of Police Action

Traditionally, excesses or illegality in police action usually surface in the course of accused persons seeking to exclude evidence as being 'tainted' and very rarely as a cause of action in itself. The rise of human rights concerns saw the establishment of procedures such as the Fundamental Rights Jurisdiction vested in the Supreme Court in Sri Lanka by the Constitution of 1978. This jurisdiction brought a wide range of executive and administrative action under

---

[*] Former Inspector General of Police, Sri Lanka.

[#] Barrister-at-Law (NSW); BA (Lond.) LLB (Cey.); Crown Prosecutor, New South Wales, Australia; Former Attorney General, Sri Lanka.

the microscope more effectively and certainly more expeditiously than previous judicial review.

The author sets himself the task of examining judicial review of *coercive and administrative action* taken by police officers and points to several deficiencies in the newly founded legal process. He compares the Court's determinations against similar proceedings in the UK and USA. As is to be anticipated, some issues are common to several cases while some cases raise multiple issues. The author would have better projected his message if the facts and details were not repeated *in extenso* in references to the same case in different contexts.

PART I

The Fundamental Rights Jurisdiction

Insufficient adjudication

The Fundamental Rights procedure in terms of Sri Lanka's Constitution was designed to avoid ***delaying tactics*** and ***procedural wrangling*** that often bedevilled access to justice. In pursuance of that objective, an Affidavit procedure and time limits were stipulated in respect of the hearing of the petitions. Unfortunately, as the author questions, *'did we eliminate delay at the expense of justice?'* and *'did we deny'* the Courts the opportunity to conduct a proper examination of issues that involved allegations of serious wrong-doing, which on occasion involved allegations of torture?

i Weakness in reliance on affidavit procedure

Two connected cases are cited by the author, that of *Tissa Kumara* v. *Premalal Silva*,[1] and the *Kalutara High Court* case,[2] to illustrate the danger of adopting ***abridged*** procedures.

The petitioner successfully claimed that he had suffered torture at the hands of the police in the procedure before the Supreme Court in its Fundamental Rights jurisdiction. The matter was then adjudicated before the High Court, where the evidence and the witnesses speaking to the torture were found ***'unreliable and untrustworthy'***. The author relies on the *Tissa Kumara* case also to point out that the Supreme Court did not adequately examine whether the injuries which were alleged as 'torture' were in fact occasioned by the arresting officer exercising his own right to use force in defence of himself, when arresting a suspect who was armed with a grenade.

The author points out that the different results reflected the need for ***more extensive scrutiny*** in the hearing of Fundamental Rights cases particularly as ***quasi criminal*** findings were handed down on some occasions. He observes that findings appear more consistent with being on a ***balance of probability than satisfaction beyond reasonable doubt.***

---

[1] SC(FR) Application No.121/2004 of 17.02.2006.
[2] No.444/2005 of 19.10.2006.

The author also cites the cases of *Gunewardena* v. *Perera*,[3] and the related matter of *Ganeshanantham*[4] to highlight and illustrate the consequences of insufficient adjudication through want of adequate procedure.

In the *Gunewardena* case the petitioner's affidavit and the supporting affidavits centred on the allegation that the nominated respondent Inspector Perera, had made an unlawful arrest at the Kollupitiya Police Station and then subjected the petitioner to cruel and degrading treatment. The response was by way of counter affidavits including one from Ganeshanantham which disputed the allegation that *Perera* had made the arrest in the manner stated. The Court determined the issue without calling for further evidence.

ii The adoption of an *inquisitorial* procedure to make a determination against a person who was not a party to the application

The Rules provide that a petitioner had to allege the right that was infringed and the instrument of State that was responsible. Also, the Attorney General must be made a necessary party, thus providing an avenue where the identity of the particular officer is not known or ascertainable, for the petitioner to seek relief against the State.

In the *Gunewardena* case, the petitioner claimed that she was subjected to *an illegal arrest, and cruel and degrading treatment* thereafter by Inspector Hector Perera, OIC of the Kollupitiya Police Station. The Attorney General declined to represent Inspector Perera, who then retained eminent Counsel from the private Bar. The Attorney General was a party as representing the State, but ***not the particular officer nominated.***

The Court declined to hold with the petitioner on that allegation. Had it been an *inter partes adversarial* hearing, the matter would have ended by a dismissal of the application.

The Court proceeded to examine whether *Ganeshanantham* who filed an affidavit in support of Inspector Perera, had violated a right of the petitioner, namely of *arresting her on the public highway for taking out a procession without a permit.* It is at this stage that the procedure proved ineffective.

Ganeshanantham was not asked to show cause or explain what he had to say in his defence and the Court ruled that *Ganeshanantham* in asking for a 'permit' had *"...no doubt proceeded from a wrong appreciation of the Law, but the infringement remains"* and ordered payment of compensation. *Ganeshanantham* was not a respondent nor was he represented as such. When the Court entertained the view that *Ganeshanantham* appeared to have violated a right of the petitioner, the Court should have noticed *Ganeshanantham* as a *substituted respondent* and *Ganeshanantham* could then have retained his own Counsel.

---

[3] (1983) 1 SLR 306, 319.
[4] (1984) 1 SLR 319.

In such a proceeding *Ganeshanantham* may have been able to satisfy Court, that there was provision under Section 77(1) of the Police Ordinance for six-hours notice to be given of the intention to take out a procession and that when such notice is given, the police may refuse permission, or issue a 'permit' either granting unrestricted approval or placing restrictions on the route of the procession in the interest of avoiding potential conflicts.

The question then arises whether the Constitution intended the Fundamental Rights procedure intended to be Adversarial or Inquisitorial?

Had the legislature intended such procedure it was incumbent on the legislature to make such intention clear and ***to provide safeguards against possible injustice to persons who were not parties***. Inherent in the ruling was a finding that the Court had the power to deal with and 'punish' a person who was not a party to the proceeding, giving ***an inquisitorial role which might have been appropriate if the Court had not proceeded to 'punish' Ganeshanantham without due process***.

Ganeshanantham challenged the determination as *being ex-parte* proceeding by way of revision to a Full Bench of the Supreme Court. The Court found by majority that *'...there was substantial'* compliance with *Ganeshanantham*'s right to be heard. The point that the author makes is not that the ruling was in error, but to show the fact that the standard used was that of ***strict compliance with the recognition of the rights of the petitioner and substantial compliance*** with *Ganeshanantham*'s rights.

The Court also examined the question of the nature and extent of the review of a decision of another panel of the Bench of the same Court.

iii The standard of proof

As the author points out, that in cases where the Court ***goes beyond*** granting relief to a petitioner aggrieved ***by State Action*** by awarding damages ***against the State*** and proceeds to a finding of 'guilt' involving 'punishment' of a respondent *(or quasi respondent)*, such finding ought to be based on ***proof beyond reasonable doubt.***

iv Issues not fully canvassed in the pleadings

The author cites the case of *Athukorale* v. *T.P.F. de Silva, IGP*,[5] where the Court ruled that the respondent had no right to prohibit a procession on grounds of *security, administrative and logistical* concerns, but could have prohibited the procession in the *interest of public order.*

Although the author categorises the decision as reflective of 'artificiality', it may have been illustrative of an inconsistency in the procedure. If the Court ***inquisitorially*** provided the petitioner, such as in the *Gunewardena* case, to urge an infringement not raised in the

[5] (1996) 1 SLR 280.

pleadings, it would have then been apposite for the Court to permit a *respondent* who had acted on a premise that the Court found unacceptable to amplify his averments, without restricting the respondent to the *'four corners of his affidavit'*.

The author quotes the *Channa Pieris* case[6] as further illustrating the *'unfairness'* that arises out of a Court dealing with an issue not raised in the pleadings or canvassed during the proceedings but is raised *ex mero motu* in the course of the Court's findings on questions of fact.

v. Determination at the level of the Supreme Court

The vesting of the Fundamental Rights jurisdiction in the Supreme Court has resulted in the highest Court in the land being both the original and appeal tribunal. However, the Constitution does not provide a clear indication of the scope of review of a determination by the Supreme Court.

"As a superior Court of record the Supreme Court has inherent powers to correct its errors which are demonstrably and manifestly wrong and where it is in the interests of justice. Decisions made *per incuriam* can be corrected".[7]

The Court also determined that *'...These powers are adjuncts to existing jurisdiction to remedy justice—they cannot be made the source of new jurisdictions to revise a judgment rendered by that court"*.[8]

These determinations in the review that *Ganeshanantham* sought before a Full Bench of the Supreme Court, demonstrated that review on grounds *other than a manifest error on the face of the record* was ineffective to correct an *error in the exercise of discretion.*

In this context it is interesting to note that ***if the minority view that Ganeshanantham had been denied, the right of audi alteram partem had prevailed***, there would have been a review of the determination. The outcome of such a review is a matter for conjecture and beyond the scope of a commentary.

vi The need for expert testimony

The author cites the *Tissa Kumara* case[9] and *Senasinghe* v. *Karunatilleke, Senior Superintendent of Police, Nugegoda et al.* (the *Senasinghe* case)[10] to illustrate the fact that when a Court determines issues that involve medical or ballistics evidence, it should obtain expert assistance and not attempt to make findings on its own knowledge of such subjects.

---

[6] *Channa Peiris* v. *AG* (1994) 1 SLR 1.
[7] *Ganeshanantham* case (1984) 1 SLR 319.
[8] *Ibid.*
[9] *Supra*, n.1.
[10] *Senasinghe* v. *Karunatilleke* (2003) 1 SLR 172.

The author cites the Court's reference to effect of using 'rubber bullets' without the assistance of expert guidance on that question as a failure in the procedure adopted in the *Senasinghe* case.

vii 'Minimum force'

Another issue in the two cases was the threshold that the Court utilized to examine *the minimum use of force*. The first point made is that the question whether the force used was *excessive cannot be concluded solely from the nature of the injuries* more so by the Court drawing the conclusion without the assistance of expert testimony.

The second point is that the Court needs to take on board the circumstances, such as an officer seeking to arrest an armed offender having to use more force than if the suspect was unarmed.

viii The Court making a finding of fact on 'judicial notice'

The author canvasses the finding of fact in the *Channa Pieris* case, where the Court concluded *without hearing evidence on the question*, that the Police version of the raid was inherently improbable, using *the Court's conclusions* of probability. The author cites examples and reasons as to why the Police version was credible and argues that the Court had exceeded its jurisdiction by that finding of its motion.

The point is made that if the Court entertained a doubt on a question of fact stated in an affidavit, *based upon the experience of the tribunal* that the doubt should have been voiced and opportunity provided to the deponent of the affidavit to substantiate his version.

ix Agreed Statement of Facts

The author queries whether the Affidavit procedure could be supplemented by an *Agreed Statement of facts*? Such a procedure would be appropriate where the proceedings are *inter partes* but as the *Gunewardena* case illustrated, the Court was adjudicating on an issue that the Counsel for petitioner had raised in the course of argument.

An agreed statement of facts *prior* to the commencement of the hearing would not have covered the situation, but may have left room for an application to place additional material to deal with a question *outside the parameters of the agreed facts*.

x Personal payment of compensation

The author uses the *Ganeshanantham* case to maintain that while it is just and equitable that the victim should be compensated for the consequences flowing from a *bona fide* mistake in executive or administrative action, that the next step of penalising the officer for an honest mistake, sometimes without adequate opportunity to be heard in full, may be unfair by the officer.

It may be true to contend that where a public officer had acted corruptly and collected an illegal reward for his wrongful act, such officer may be ordered to regurgitate his ill-gotten gain, which order may be 'just' in a moral sense. This is more so as the procedure devised takes the matter direct to the final Court of determination.

xi The role of the Attorney General

An area of concern raised in respect of *Athukorale* v. *T.P.F. de Silva IGP*,[11] is the role of the Attorney General in Fundamental Rights cases.

The petition and counter affidavits by or on behalf of the respondent deal with the question whether ***the State*** has been responsible for the violation of the rights of the petitioner and to that extent instructions may have to be taken from the named respondent regarding his exercise of executive powers and functions. The Attorney General has no *lawyer-client relationship* with the respondent ***officer***, and is ***not defense Counsel*** for the respondent. In fact if some aspect of personal wrongdoing is alleged, the Attorney General would decline to act for the respondent and ***it would be appropriate for the officer to*** obtain his own legal advice.

Assuming that an officer has been responsible for beating or torturing a petitioner, the Attorney General would have a role in instituting criminal prosecution. ***It would therefore be totally inappropriate for the Attorney General to obtain instructions from the officer who he may have to prosecute in respect of the same matter.***

Conclusion

The main thrust of the author's argument is that determinations have not been based on a full examination of the issues and are at times inconsistent with each other.

The problems seem to surface from procedural defects in the scheme of the legislation rather than the process of adjudication and the author could have been more circumspect in the assumption of causes for the determination, and more muted in the pungency of the terms of the criticism without losing the primary focus of the publication.

PART II

Occasions for Police decision and Action

The author makes the point that the most common of the claims of violation of rights flow from police action to prevent public demonstrations, protest marches and publications on the basis either of prohibitions prescribed by law or the emergence of a situation where a breach of the peace appeared imminent.

---

[11] (1996) 1 SLR 280.

This area of the law is fraught with complexity.

i Preservation of public order

It is trite to observe that all democratic governments depend on the support of the majority of the electors. Populist measures that transgress the rights of minorities are often courted for electoral success. This brings in its wake the need for the *'electorally voiceless'* to make public demonstrations demanding vindication of their rights often leading to clashes with rivals and injury to bystanders.

It is equally trite to observe that governments irked by such public demonstrations use or rather abuse the executive arm of the State to repress the freedom of speech, assembly and public protest.

The picture becomes even more opaque when demagogues masquerade as legitimate protestors to project illegal demands. The suppression of such illegal activity is sometimes presented as dictatorial behaviour by the government.

Distinguishing between lawful and justifiable action by the Police to disperse assemblies and restrict freedom of expression for the greater good of the community and the use of the Police by the politicians in power to control legitimate protests, presents an enormous conundrum to judicial tribunals.

Senasinghe v. *Karunatilleke, Senior Superintendent of Police, Nugegoda et al.*[12] is quoted by the author to illustrate the difficulty of evaluating a police reaction to an imminent breach of the peace, in the light of subsequent events. The facts relating to the matter were that a demonstration organised to protest against the call for a Referendum had been dispersed by the Police by the use of force including the firing of tear gas shells and rubber bullets. The Court dealt with the factual aspect as to whether it was the intervention by the police that escalated the situation and whether the use of tear gas and rubber bullets was excessive to control the ensuing breach of the peace.

The author points out that there was no cross-examination of the police nor expert evidence or even a proper evidentiary basis for the Court's conclusions.

ii Power to arrest

The author cites *Channa Pieris, et al.* v. *Attorney General*,[13] *Muttusamy* v. *Kannangara*,[14] as well as the *Gunewardena* case[15] and the *Namasivayam* case[16] to compare the provisions of

---

[12] (2003) 1 SLR 172.
[13] (1994) 1 SLR 3.
[14] (1951) 52 NLR 324.
[15] *Supra*, n.3.
[16] *Namasivayam* v. *Gunewardene* (1989) 1 SLR 394.

Article 13 of the Sri Lanka Constitution and the qualifying provisions of Article 15(7) with the language used in the European Convention on Human Rights.

The author points out that Article 13 of the Sri Lanka Constitution and the qualifying provisions of Article 15(7) make an arrest ***arbitrary*** when it is not authorized by a ***legislative*** authority. He compares the language used in the European Convention on Human Rights (ECHR) where an arrest could be justified on *reasonable suspicion of having committed or preventing commission of or fleeing after committing an offence*. He argues that the ECHR formulation gives better protection for a Police officer having to justify an arrest.

The *'lawfulness'* of an arrest made under the authority of a ***prescribed law*** which is later struck down was considered in the case of *Joseph Perera* v. *AG*[17]. The author cites with approval, the determination of the majority of the Court that though an emergency regulation was *ultra vires* the Constitution, that an arrest made in terms of that regulation could be justified on the basis *that reasonable suspicion of the commission of an offence justified the arrest.*

The Court said *"...no Police Officer can predict the final outcome of a case or how the legal provision would be interpreted by the court..."*.

On the contrary, in the case of *Senasinghe* v. *Karunatilleke, Senior Superintendent of Police, Nugegoda, et al.*[18]; where Police acted to enforce a Regulation promulgated under the law, prohibiting the taking out of processions and rallies pending a Referendum, the police action was held to be unlawful as the Regulation itself was later struck down as *ultra vires*. In comparison, the author cites the cases of *R.* v. *Howell*[19]; *Piddington* v. *Bates*[20] among other cases to illustrate the fact that Courts in the UK and the USA, accept that Police who apprehend breaches of the peace in public order situations *need be empowered to arrest persons who have not yet committed acts of violence to prevent injury to others*.

The author finds support for this proposition in *Bubbins* v. *The United Kingdom,*[21] where a police officer who shot and fatally injured a man who was pointing a replica pistol at him, as having been justified on what the police officer perceived, for his argument to exclude review of *bona fide* mistakes in the exercise of 'Police Decision in Action'.

Exclusion of review of Judicial decision from the Fundamental Rights procedure

In questioning as to why a judicial decision is excluded from the ambit of fundamental rights jurisdiction, the author quotes the case of *Parameswary Jayathevan* v. *AG*[22] where the Court determined that the question whether a judicial tribunal was exercising ***judicial or executive***

---

[17] (1992) 1 SLR 199.
[18] (2003) 1 SLR 172.
[19] (1982) QB 416.
[20] (1961) 1 WLR 80.
[21] 134 of 17.3.2005, Chamber Judgment.
[22] (1992) 2 SLR 356.

power depended not on the status of the institution or of the official but the character of the action.

Practicality of Police Action

The author cites *Piyasiri* v. *Fernando, ASP*[23] and *Namasivayam* v. *Gunewardene*[24] as instances when the Police deliberately avoided arresting Customs officers suspected of an offence ***on grounds of practicality*** but the Court determined that **there in fact was an arrest.** It is clear that where 'Police Decision in Action' may well have been a ***practical decision*** of not making an arrest, the Court can and ***indeed did*** construe that whatever the formulation of the words that 'restricted the freedom of movement' was in fact an arrest and proceeded to draw the distinction between ***an arrest and detention consequent to a need to execute a search of the person.***

I cannot concur with the author's assertion that, *"...Practicality is inherent in such police action. Review of such action on terms other than the practical may have meaning to other legal functionaries from their different perspectives...".*

While the comment may be apposite where the legal process has been *manipulated* to render nugatory a lawful Police action, it would be dangerous to postulate a blanket cover placing Police action outside judicial review.

Some jurisdictions lay down positive *'red lines'* that cannot be crossed under any circumstances, such as the use of torture to extract information and other *'grey areas'* such as arrests or searches that are illegal for their failure to comply with a technical requirement.

The answer may be the training of Police officers in the area of compliance with legally guaranteed rights of the individual without compromising prompt and effective Police action.

Executive and administrative action

The author points out that promotion and protection of fundamental 'human' rights is the sum total of government effort, exercised by the organs of government—the legislature, the executive and the judiciary—functioning both independently and in conjunction.

Obviously, when the Legislature enacts a law, the Executive arm is expected to enforce compliance with the law and the Judiciary to uphold the action, ***except where*** the law is manifestly violative of fundamental human rights or the executive action is neither consonant with nor justified by the powers conferred by legislation. In the case of *Athukorale* v. *T.P.F. de Silva, IGP*[25] the Court ruled that the IGP was wrong when he refused permission to hold a 'Mayday' procession in Kandy on the ground that *'no formal application'* had been made for

---

[23] (1988) 1 SLR 173.
[24] (1983) 1 SLR 305.
[25] (1996) 1 SLR 280.

as a grounds to refuse permission.

It was an ***administrative*** decision by the IGP and the Court ruled that the IGP that though he could have prohibited a 'Mayday' procession in the interests of public order, but the averred reason of absence of an application was not valid in law.

The author argues that *an administrative* determination based on a wrong premise may yet be sustainable if there is power under another provision of law to make the order and repeats the argument that a structural flaw in the procedure denied the IGP the right to place that material before the Court.

The author seeks to distinguish the ruling in the case of *Bandara, et al.* v. *Jagoda Arachchi, et al.*[26] where the Court rejected the allegation that the police had 'fabricated' a disturbance to justify dispersing an assembly that was originally peaceful and later became unlawful, as illustrative of the Court giving heed to the imperatives of public security.

iii Search and entry and violation of rights

The author examines the Court's approach to the power of the police to enter and search a home without a warrant previously obtained and focuses on the Courts placing a higher threshold to justify entry for search of a home than a personal search and a lower hurdle for 'frisk search'.

He examines precedent from UK and USA to illustrate this proposition and quotes a set of guidelines intended to protect members of the public from random, arbitrary and discriminatory searches.

Search and entry in Sri Lanka

The case of *Anura Bandaranayake* v. *W.B. Rajaguru, IGP, et al.*[27] raises an interesting question. The basis of the police action to enter and search was *'intelligence information'* that person wanted as suspects in a murder case were seen to enter the premises of the petitioner. The Police obtained the permission of the petitioner to enter and search but the suspected persons were not within the premises. The Court questioned whether the police had made sufficient inquiries into the reliability of the information before proceeding to act on the information.

The author points out that the Court has misapplied the standard of proof required to establish the commission of an offence in place of the standard of *'reasonable suspicion'* which was applicable to the situation.

The author also points out that the Court has not taken note of the provisions of law that

---

[26] (2000) 1 SLR 225.
[27] (1999) 1 SLR 104.

preclude a police officer being questioned about the source of the information on which the officer acted. The author has not examined the question from the angle of whether the sufficiency of the police checking the information could have been examined without compromising the identity of the informant.

Conclusion

Having provided a prepublication review, I considered the parameters of this article as a commentary post-publication. It is in effect a deeper examination of a publication that deals with a situation of extreme complexity and sensitivity.

The author starts with the inviolability of certain basic human rights of any individual whether he be minor criminal, murderer or terrorist, and counters acts that are the enjoyment of individual rights against permitted inroads in the interest of personal rights of other individuals and collective rights of the community as a whole.

The author makes a comprehensive study of the mechanism for adjudication of alleged infringements of personal rights and the justification of the impugned conduct and argues that the procedure merits review and reformation.

It appears that two remedies are postulated, a reformulation of the Rules of Procedure and amendments to the Constitutional framework of the Fundamental Rights procedure.

As the author states, better understanding of the conditions under which 'Police Decision in Action' is taken and a better training of Police officers in the process of decision taking and appropriate reaction would result in the improved preservation, promotion and protection of the rights of members of the society in which we live.

RULE OF LAW, JUSTICE AND EQUITY – A HUMANE APPROACH TO LABOUR ADJUDICATION AND THE CONCEPT OF A 'JUST AND EQUITABLE' ORDER*

Justice P.H.K. Kulatilaka[*]

We live in a society where an increasing number of people are engaged in the workforce of industry, trade, commerce and other fields. They resort to industrial action to secure relief for their grievances and to better their working conditions. In our legal framework, one of the institutional mechanisms provided by the legislature for the resolution and settlement of disputes as embodied in the Industrial Disputes Act, No.43 of 1950 and its amendments is the Labour Tribunal[1].

Drastic changes have occurred during the last three decades to the spectrum of globalization and liberalization in trade, commerce and industry. These changes have created new forms of employment such as outsourcing, subcontracting and casualization.

On the other hand, the Presidents of the Labour Tribunals need to be conscious of the effect of the Evidence (Special Provisions) Act, No.14 of 1995 and the Electronic Transactions Act, No.19 of 2006. The million dollar question (as commonly termed) would be whether the well crafted and much interpreted concept of a 'just and equitable order' is wide enough to accommodate these concerns.

Chequered History of the Law

The relevant history in this regard is shrouded with controversy, confusion and uncertainty. The focal point remains Section 31c of the Industrial Disputes Act, No.43 of 1950 (as amended (hereafter the Act). To put it in a nutshell, that section stipulates that where an application under Section 31b is made to a Labour Tribunal, it shall be the duty of the Tribunal to make such inquiries into the application and hear all such evidence as the Tribunal may consider necessary and thereafter make such order as may appear to the Tribunal to be just and equitable. Undoubtedly, this is a beautifully crafted piece of legislation.

Section 5 of the Industrial Disputes (Hearing and Determination of Proceeding) (Special Provisions) Act, No.13 of 2003 has introduced two requirements, namely:

1. An order shall be made not later than four months from the date of the making of such application,

2. The order shall be delivered openly.

---

* This paper is based on a presentation delivered by the author at a two day residential workshop organised by the Labour Tribunal Presidents' Association in collaboration with the United Nations Development Programme on 18th and 19th July 2009.

[*] Former judge, Court of Appeal, Sri Lanka; Additional Director, Judges Institute, Sri Lanka.

[1] See, *Bata Shoe Company Ltd.* v. *Jathika Sevaka Sangamaya* (1986) 2 CALR 28.

In fact, had the draftsman who introduced these requirements knew that both those requirements are ensconced in the phrase just and equitable, then the draftsman may have phrased it differently.

The four months period given to the Tribunal to deliver its order is couched in mandatory terms, namely, that such order shall be made not later than four months from the date of the making of such application. It must be noted that justice and equity requires the Tribunal to make its order within a reasonable time.

Linked with the duty to make an order based on justice and equity is the issue as to who has the power to appoint the Presidents of the Labour Tribunals. Initially after the setting up of Labour Tribunal as an institution for the resolution of labour disputes, the power of appointment was given to the Public Services Commission. Controversy arose when the majority judgment in *Walker Sons Co. Ltd.* v. *Fry*[2] delivered by Sansoni CJ after interpreting Section 31C (1) which bestowed power to make just and equitable orders held that, the Labour Tribunals exercise judicial functions or judicial powers and when under Part IV of the Act, they act as holders of judicial office. It further held that the Labour Tribunal has no jurisdiction to exercise judicial power unless it has been appointed by the Judicial Services Commission. Upon that basis, the Supreme Court set aside many orders as being orders made without jurisdiction. Complying with the Supreme Court decision, the power of appointment of the Presidents of the Labour Tribunals was transferred to the Judicial Services Commission.

The matter did not rest there. In the Privy Council case, *The United Engineering Workers Union* v. *Devanayagam*,[3] the majority judgment delivered by Viscount Dilhorne held that the President of the Labour Tribunal does not hold a judicial office in terms of Section 55(5) of the Ceylon (Constitutional) Order in Council 1946 and therefore need not be appointed by the Judicial Services Commission. Interpreting the then controversial Section 31C(1) which gives power to the Labour Tribunal to make such inquiries into the application and hear all such evidence and then make an award which may appear to the Tribunal to be just and equitable, it was pronounced that no other criteria is laid down. They are given an unfettered discretion to do what they think is right and fair.[4]

Viscount Dilhorne went on to say that the Labour Tribunals are intended to exercise wider administrative discretion and to take into consideration not only legal matters and also overriding policy consideration for the purpose of maintaining industrial peace. Complying with the Privy Council decision, the power of appointment was handed back to the Public Services Commission.

With these unforeseen developments, pandemonium set in. Employees and trade unions were frustrated. As a result, Parliament was compelled to step in. To overcome this confusion, Parliament enacted the Industrial Disputes (Special Provisions) Act No.37 of 1968. The

---

[2] 68 NLR 73.
[3] 69 NLR 289.
[4] *Ibid*, page 296.

problem was resolved by the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka by conferring the power of appointment to the Judicial Services Commission by Article 114.

Freedoms afforded to Labour Tribunals

In *Upali Newspapers Ltd.* v. *Kamkaru Sevaka Sangamaya and others,*[5] after considering Articles 114, 170 and 116 and the decided cases, it was made judicially clear in no uncertain terms that the Labour Tribunal Presidents are judicial officers and they perform judicial functions.

The Privy Council's interpretation of 'just and equitable' order however still haunts this discussion. The much talked about pronouncement of Viscount Dilhorne is as follows:

> *"No other criteria are laid down. They are given an unfettered discretion to do what they think is right and fair".*
>
> – *Devanayagam* case[6]

What is interesting is that the *Walker Sons* case[7] which was decided by the Supreme Court foresaw the danger inherent in giving such a liberal and wide interpretation to that phrase and gave a warning that the duty to make just and equitable order does not allow a Labour Tribunal, the freedom of the wild ass. This is indeed a fascinating pronouncement.

What is more fascinating is the manner in which some of the Presidents of the Labour Tribunals had happily embraced the arbitrary powers lavishly offered by the Privy Council. The interpretation given by the Privy Council had given rise to much misunderstanding. Labour Tribunals have sometimes acted arbitrarily in the guise of making a just and equitable order and have taken into consideration irrelevant matters and extraneous issues, in effect dictating to the management of the company as to how a department or corporation should run. This type of approach undoubtedly will destroy the very purpose of the prime duty of making a just and equitable order. Considerations of justice and equity must necessarily act as fetters in the exercise of that discretion.[8]

The misunderstanding caused by the interpretation given by the Privy Council was such that it prompted Weeramantry J. to explain as to why the Privy Council made that assertion in *Ceylon Transport Board v. Gunasinghe.*[9] It was pointed out that the Privy Council made the assertion that the Labour Tribunals are given the unfettered discretion to do what they think is right and fair due to the fact that the Privy Council proceeded on the reasoning that the

---

[5] *Labour Tribunal Journal* 1991, Vol.1, Part 1 (Special leave refused).
[6] *Supra*, n.3, at page 296.
[7] *Supra*, n.2.
[8] See, *Brookbond (Ceylon) Ltd.* v. *Tea, Rubber, Coconut and General Produce Workers Union* 77 NLR 6, at page 8.
[9] 72 NLR 76.

Labour Tribunals, when hearing an application under 31B(1) do not act judicially and they do not hold judicial office. Weeramantry J. further said:

> *"In my view this is the* ratio decidendi *of this case and any attempt to read more into the decision than this underlying principle may well have repercussions which their Lordships did not intend".*

Tools to Implement a Just and Equitable Order

The Act is crafted in such a way that it includes provisions to enable the Tribunal to perform its duty of handing down a just and equitable order. In this regard, the manner in which Section 31B(1) of the Act has been worded is important:

(a) Termination of his services by his employer. The fact that omission of the word 'unlawful' enables the Tribunal to interpret it in such a way to consider relief and redress in cases where the termination was lawful.

This was how the Labour Tribunal which heard *The Caledonian (Ceylon) Tea and Rubber Estates Ltd.* v. *Hillman* case[10] was able to order a 10 year salary as compensation even though it held that the termination was justified. In this case, the estate where the employee was a Superintendent was sold after giving notice to the employee. The company paid him an ex-gratia payment of Rs.21,600/- being one-year salary. The Labour Tribunal was not satisfied with the *ex-gratia* payment and ordered the employer to pay the employee 10 years salary as compensation.

The Supreme Court while affirming the order of compensation held that where the termination of employment was caused solely by the act and will of the employer in pursuance of the desire to sell the estate, the relief of compensation is available to the employee.

It is based on the same section that the Supreme Court in *Sirisena* v. *Samson Silva*[11] held that unpaid wages can be awarded by the Labour Tribunal in its just and equitable order in respect of an application under Section 31b(1) which specifies the specific relief or redress in respect of any of the following matters:

(a) The termination of his services by his employer etc. Referring to that section Rajaratnam J. says: "Section 31b(1) does not say that a workman can apply for relief in respect of wrongful termination of services. It merely says that the employee can make an application in respect of termination of services. The omission of the word 'wrongful' is significant". This principle has been adopted by the

---

[10] 79 [1] NLR 421.
[11] 75 NLR 549.

> Supreme Court in *Saleem* v. *Hatton National Bank.*[12] Even in a case where the termination has been by the workman himself, the Labour Tribunal could entertain such application.[13] In this case De Krester J. held that it is open to workman on termination of his services with the employer for any reason whatsoever to raise the question whether or not in the particular circumstances of that termination it is not just and equitable that a gratuity should be paid to him.

Another section which facilitates the Tribunal in its endeavour to make a just and equitable order is the provision in 31b(4). This section permits the Tribunal to grant any relief or redress notwithstanding anything to the contrary in any contract of service between the employer and employee.[14]

Another important provision giving a free hand to the Labour Tribunal in arriving at a just and equitable order is Section 36(4) which lays down that, in the conduct of proceedings the Labour Tribunal shall not be bound by the provisions of the Evidence Ordinance.[15]

Another vital provision which facilitates the Tribunal in making a just and equitable order is the wide definition given to the word "Employer."

Sometimes even in cases where the employer takes up the position that the applicant is a casual employee, equities of the case would enable the Tribunal to hold otherwise.[16] G.P.S. de Silva CJ went on to say that the label "casual employee" by itself is not sufficient to decide the character of the employment.

Tests to Be Applied

The Supreme Court in *Pedris* v. *Podisinghe*[17] laid down the test that a Labour Tribunal should observe in the following terms; the test of a just and equitable order is that those qualities would be apparent to any fair minded person. This test was followed in the case of *State Bank of India* v. *Edirisinghe.*[18]

In this regard, the Labour Tribunals must be mindful of the observations made by T.S. Fernando J. in an earlier case, namely *Richard Pieris Co. Ltd.* v. *Wijesiriwardene*[19] which is to the following effect 'Justice and equity can be measured not according to the urgings of a kind heart, but only within the framework of the law'. The same view was expressed in

---

12 (1994) 3 SLR 409, at 415.
13 See, *Hatton Transport Agency Ltd.* v. *George* 74 NLR 473.
14 See, *Brookbond (Ceylon) Ltd.* v. *Tea, Rubber, Coconut and General Produce Workers Union* 77 NLR 6.
15 See: (1) *Ceylon Transport Board* 72 NLR 76 and (2) *Makwoods Ltd.* v. *Tea, Rubber, Coconut and General Produce Workers Union* 74 NLR 183, which permitted admission of confessions.
16 See, *Supt. of Pussella Plantations* v. *Sri Lanka Nidahas Sevaka Sangamaya* (1997) 1 SLR 108.
17 78 CLW 46, at page 47.
18 (1987) 1 SLR 395.
19 62 NLR 233.

Arnolda v. *Gopalan*.[20] *The Brookbond (Ceylon) Ltd.*[21] added more colour to this principle when the Supreme Court expressed the view that considerations of justice and equity must necessarily act as fetters on the exercise of that discretion.

Apparently another test has been put forward by the Supreme Court in *Ceylon Tea Plantations Co. Ltd.* v. *Ceylon Estates Staffs Union*.[22] It is as follows: a just and equitable order must be fair by all parties; it never means the safeguarding of workmen alone.

The test of a 'sensible person' was introduced by Dr. Amerasinghe J. in *Jayasuriya* v. *Sri Lanka State Plantations Corporation*[23] which was a case in respect of awarding compensation in lieu of reinstatement. His Lordship held that even where the dismissal was lawful, reinstatement will not invariably be ordered where it is not expedient or where there are unusual features. In such event, an award of compensation instead of reinstatement will meet the ends of justice. Considering the petitioner's uneasy relationship with the trade unions and the likelihood of industrial strife, if he is reinstated and the fact that the employer had alleged a lack of confidence in the employee, it was determined that compensation rather than reinstatement would be the appropriate remedy.

In determining compensation, what is expected is that after weighing the evidence and the probabilities in the case, the Tribunal must form an opinion of the nature and extent of the loss, arriving in the end at an amount that a sensible person would not regard as means or extravagant but rather consider to be just and equitable in all the circumstances of the case.

Amerasinghe J. further stated that it is not satisfactory to simply say that a certain amount is just and equitable. There must be a stated basis for the computation taking the award beyond the realm of mere assurance of fairness.

The Effect of Making a 'Just and Equitable' Order

In making a just and equitable order, it is necessary to consider as to what should be the approach when faced with the demands of the rule of law and the provisions of the Evidence Ordinance. This issue came up for decision in *Ceylon University Clerical and Technical Officers Association, Peradeniya* v. *University of Peradeniya*[24] which was a case where the University after a domestic inquiry against a nurse employed by the University, decided to dismiss her on a charge of moral turpitude, that is, that she had made certain false entries and misappropriated certain funds.

The Tribunal had held that in a case of this nature, the University does not have to prove beyond all reasonable doubt; it may be that the basis is sufficient for a conviction in a

---

[20] 64 NLR 153.
[21] Supra, n.8.
[22] SC 211/1972, SCM 15.5.1974 (unreported).
[23] (1995) 2 SLR 379.
[24] 72 NLR 84.

criminal case, but that the Tribunal had to be satisfied on a balance of evidence that the University was justified in acting on the basis that there had been dishonest conduct.

Wijayatilake J. in this case however held that, where an allegation of misappropriation connected with an allegation of falsification of accounts with the intent to defraud is in issue, the standard of proof should be as in a criminal case and if there is a reasonable doubt, the benefit of that doubt should be given to the accused person. Setting aside the Order of the Tribunal his Lordship made the following observation:

> *"Should the Industrial or the Labour Law of the country adopt a different standard of proof in a case of this nature, a dismissal of this nature would amount to a condemnation for life and to do so when there is a reasonable doubt is neither just nor equitable. It would result in a serious erosion of Criminal Law of the country. Instead of promoting industrial peace it can lead to a difficult situation".*

In the same case, His Lordship tendered the treasured advice that although the Labour Tribunals not bound by the provisions of the Evidence Ordinance, it would be well for them to be conversant with the wisdom enshrined in it as safe guide.

As regards the aforesaid rule of law stipulations, a contrary view was put forward by Vythialingam J. in *Associate Battery Manufacturers Ltd.* v. *United Engineers Workers Union*.[25] His Lordship's view was that in a charge involving moral turpitude, the allegation need not be established by proof beyond reasonable doubt as in a criminal case. Such an allegation has to be decided on a balance of probability. The reasoning given was that the very element of the gravity of the charge becoming a part of the whole range of circumstances which are weighed in the balance as in every other civil proceeding.

In *Superintendent High Forest Estate* v. *Malapana Sangamaya*[26], T.S. Fernando J. held that no order which is in conflict with the law declared by the Legislature can be just and equitable.

Labour Tribunals Must Follow the Correct Procedure

In its endeavour in making a just and equitable order, the Tribunal must follow the correct procedure. There is a duty cast on the President to make inquiries from both parties to a dispute and not from one party alone. Otherwise, this would be an improper procedure adopted by the Tribunal.

This was a case where the first application filed by the union was withdrawn reserving the liberty to file fresh action. When the second application was filed on the date of filing the answer, the Tribunal dismissed the application after hearing the Counsel for the respondent

---

[25] 77 NLR 541.
[26] 66 NLR 14.

employer without giving an opportunity to file a replication or explain his position to the Tribunal. This in fact was a travesty of justice. The same view was expressed by Rajarathnam J. in the *Somawathie* case.[27] His Lordship said:

> *"The mere inquiry into an allegation of misconduct and inefficiency and the finding whether the allegation is true or not is not a complete finding as required by the Industrial Disputes Act".*

Lackadaisical Approach Frowned Upon by the Appellate Courts

There are instances where the Appellate Courts have commented and showed disapproval in regard to the slow and lackadaisical manner in which a Tribunal had proceeded when hearing a labour dispute. A case in point is the *Brookbond (Ceylon) Ltd.*[28] in which it is mentioned as follows:

> *"Yet the inquiry which commenced about one and half years after the date of filing the application was concluded after many postponements, nine months later. The President took a further six months to make his order."*

His Lordship Sivasupramaniam J. expressed his concern to the following effect:

> *"Although his order covers over eleven typewritten pages, one searches in vain for his findings on the principal issue that was in dispute between the parties or for his reasons for ordering the reinstatement of workmen".*[29]

It may be to prevent unnecessary delay that the Legislature introduced the Industrial Disputes (Hearing and Determination of Proceeding) (Special Provisions) Act, No.13 of 2003.

The Requirement to Follow the Principles of Natural Justice

In Wade's Administrative Law,[30] it is stated that it is fundamental to fair procedure that both sides should be heard. The *audi alteram partem* ('hear both sides') principle should be given special note. This is a most reaching principle of natural justice, since this can embrace almost every question of fair procedure or due process and its implications can be worked out in great detail. It is broad enough to include the rule against bias, since a fair hearing must be an unbiased hearing. The Supreme Court in *Fry*[31] emphasized the requirement of the duty to act judicially while observing the principles of natural justice.

---

27 (79) 1 NLR 204.
28 *Supra*, n.14, at page 6.
29 *Ibid.*
30 6th Edition, at page 497.
31 *Supra*, n.2.

Evidence as the Tribunal May Consider Necessary

Labour Tribunals in making an order based on justice and equity have to adequately consider the evidence led before it. In assessing the evidence of witnesses in order to decide the creditworthiness of the same, knowledge of the law relating to contradictions and omissions may be useful. In this regard, undoubtedly the Evidence Ordinance will offer the best guidelines. It must be kept in mind that there is no equity regarding a finding of fact. Finding of fact is in the Tribunal's domain. The Appellate Courts will not impinge upon this arena and interfere with the findings unless the conclusions on facts are perverse or there are findings for which there is no evidence or contains anything that is bad in law.[32]

Brohier v. *Munidasa*[33] was a case where the facts were simple. The applicant's sole claim in his own words was: "My application is that I be paid three months salary for loss of career. The Tribunal ordered six month's salary for loss of career". While varying the amount, Sirimana J. held that the Tribunal must make its own order on the evidence led and must not go beyond the evidence.

As was pointed out in *Richard Peiris*[34] the Tribunal must not be influenced by the urgings of a kind heart. In order to perform its duty in terms of 31c(1), the Tribunal must consider every material question involved in the dispute and failure to do so would amount to an error of law.[35] It was held in *Ceylon Steel Corporation* v. *National Employees Union*[36] that an order based on an erroneous view that there was evidence while in fact there was no such evidence would result such order being not a just and equitable order. It is the paramount duty of the Tribunal to identify the disputed question fact and resolve it while keeping in mind, the principles of justice and equity.

Duty to Give Reasons

In *Abeysundera* v. *Samel*[37] the Supreme Court held that for an order to be just and equitable, it is not sufficient for such order merely to contain a just and equitable verdict. The reasons for such verdict should be set out to enable the parties to appreciate how just and equitable the order actually is. In the absence of reasons, it would not be a just and equitable order as contemplated by the Act.

This principle was adopted by Dr Amerasinghe J. in *Jayasuriya* v. *Sri Lanka State Plantations Corporation*.[38] His Lordship held that for just and equitable verdict, the reasons must be set out in order to enable the parties to appreciate how just and equitable the verdict

---

[32] See, *Ceylon Cinema and Film Studio Union* (1994) 3 SLR 121 and *The Caledonian (Ceylon) Tea and Rubber Estates Ltd.* (*supra*, n.10).
[33] 73 NLR 17.
[34] 62 NLR 233.
[35] See, *Hayleys Ltd.* v. *De Silva* 64 NLR 139.
[36] 76 CLW 64.
[37] SC 113-123/1967, SCM 6.12.1968.
[38] *Supra*, n.23.

is. Where there is no basis given for the compensation awarded, the order is liable to be set aside.

Human Approach in Labour Disputes

In this regard, the dictum of De Krester J. in *Peiris* v. *Podisingho*[39] laid down the applicable test as involving those qualities that would be apparent to any fair minded person reading that order. A warning was given in *Richard Peiris & Co.* v. *Wijesiriwardena*[40] to the effect that justice and equity can be measured not according to urgings of a king heart but only within the framework of the law.

A most interesting judicial exposition in this regard is found in the judgment of Sharvananda J. in *The Caledonian (Ceylon) Tea and Rubber Estates Ltd.* v. *Hillman.*[41] His Lordship observed as follows:

> *"The old principle of absolute freedom of contract and doctrine of* laissez-faire *have yielded place to new principles of social welfare and social justice. These principles have imparted a new dimension to the concept of justice and equity. The freedom of contract which is fundamental to* laissez-faire *enable an employer to 'hire and fire' the employee according to the dictates of commercial expediency. This exposed the workman to the grave hazard of unemployment. But with the erosion of* laissez-faire *and the emergence of modern concepts of social justice and of Labour Tribunals geared to making just and equitable orders, the reasonably generous employer has been projected as the model employer, and the employee has been assured of a certain measure of job security".*

Elaborating this approach His Lordship went on to say:

> *"Labour Tribunals are free to apply principles of justice and equity keeping in view the fundamental fact that its jurisdictions are involved not for the enforcement of mere contractual rights but to preventing the infliction of social injustice".*

The goals and values to be secured and promoted by Labour Tribunals are social security and social justice. The concept of social justice is an integral part of Industrial Law and the Labour Tribunal cannot ignore its relevance or norms in exercising its just and equitable jurisdiction. In a similarly educative judgment, Kulatunge J. in *Saleem* v. *Hatton National Bank,*[42] the Court, after considering a number of decided cases, stated thus:

---

[39] 78 CLW 46.
[40] 62 NLR 233.
[41] *Supra*, n.10, at page 430.
[42] *Supra*, n.12.

> *"It appears that in each case the court has evolved a formula for making the order which is considered to be consonant with the spirit of Labour Law and practice and social justice. In doing so the court has been guided by three cardinal principles, namely, the jurisdiction of the Labour Tribunal is wide; relief under the Industrial Disputes Act is not limited to granting benefits which are legally due and the duty of the Tribunal is to make order which may appear to be just and equitable".*

In *International Science and Technological Institute* v. *Rasa and Another*,[43] Senanayake J. in the course of his judgment observed as follows:

> *"In the course of adjudication a Tribunal must determine the rights and wrongs of the claims and in doing so it undoubtedly is free to apply principles of social justice and equity keeping in view the fundamental fact that the jurisdiction is to prevent injustice".*

It is clear from the above pronouncements that, in determining 'rights' and 'wrongs' before a Labour Tribunal, the Tribunal must give its mind to the human side of the facts of the case; so that it brings about a just and equitable order and in doing so it must take into consideration the interest of all the parties.[44]

The human approach that is expected from a Labour Tribunal in the exercise of making a just and equitable order is highlighted by Rajaratnam J. in *Somawathie* v. *Backsons Textile Industries Ltd.*[45] In this case, the applicant (a female worker in a garment factory) was alleged to have indulged in gossip about a supervisor and was dismissed on the ground of indiscipline and misconduct. The Labour Tribunal found that the dismissal was justified and dismissed the application. In appeal, even though the Court of Appeal affirmed the dismissal, it was thought that this was a fit case where the Tribunal should have given compensation for the reason that there was evidence to the effect that the employee was a good worker and because of that the cause of termination was not a serious act of misconduct. His Lordship viewed the alleged act as a 'delightful and perfectly feminine pastime'.* The court held that it was perfectly within its jurisdiction in the exercise of just and equitable jurisdiction to grant some relief in the nature of compensation even though the termination was justifiable.

The manner in which a Labour Tribunal should act in furtherance of social justice and the relevant guidelines has been laid down by Rajaratnam J. in *Ceylon Tea Plantations Co. Ltd.* v. *Ceylon Estates Staffs Union*[46] which articulated the principle that a just and equitable order must be fair by all parties and does not mean the safeguarding of the interest of the workmen

---

[43] (1994) 3 SLR 242.

[44] See, *Millers Ltd.* v. *Ceylon Mercantile, Industrial and General Workers' Union* (1993) 1 SLR 179.

[45] (79) 1 NLR 204.

* *Ed. Note: Notwithstanding the 'delightful' nature of this observation, this is perhaps one example of a judicial observation that does not accord well with modern thinking in respect of the principle of gender equality, non-discrimination and non sexist language.*

[46] SC 211/1972, SCM 15.5.1974 (unreported case).

alone. The same principle was applied by Bandaranayake J. in *Millers Ltd.* v. *Ceylon Mercantile, Industrial and General Workers' Union.*[47]

In *Manager, Nakiyadeniya Group* v. *Lanka Estates Workers' Union,*[48] the Supreme Court recognized that the interests of the employees, employer and the wider public interest must be considered as a primary object of social legislation. In *Urban Council, Panadura* v. *Cooray,*[49] the Supreme Court laid down the rule that though a Labour Tribunal should hear an employee's application with sympathy and understanding, it should not in an effort to help the employee, shut its eyes to positive evidence which plainly points to where the fault lies.

It must be noted in conclusion that the jurisdiction and powers given to a Labour Tribunal are ingrained in the statute itself which created these powers. Labour Tribunals need to be guided by the decisions of the Superior Courts which have interpreted the provisions of the statutes.[50]

---

[47] *Supra*, n.44.
[48] 77 CLW 52, at page 54.
[49] 75 NLR 236.
[50] See, the case of *Arnold* v. *Gopalan* 64 NLR 153, which is to the following effect: "the powers as well as jurisdiction has to be looked for within the four corners of the Industrial Disputes Act".

Subscriptions

The annual subscription rates of the LST Review are as follows:

Local:	Rs. 2,000.00 (inclusive of postage)	
Overseas:	South Asia/Middle East	US$ 40
	S.E.Asia/Far East/Australia	US$ 45
	Europe/Africa	US$ 50
	America/Canada/Pacific Countries	US$ 55

Individual copies at Rs.220/- may be obtained from LST, 3 Kynsey Terrace, Colombo 8, and BASL Bookshop 153 , Mihindu Mawatha, Colombo 12.

For further details, please contact;

Law & Society Trust
3 Kynsey Terrace, Colombo 8, Sri Lanka
(+94)-11 2691228 / 2684845 / 2686843
lst@eureka.lk

Now Available

LEGAL DEVELOPMENT, GOOD GOVERNANCE AND THE RULE OF LAW
SRIYAN R. DE SILVA
(LST Occasional Paper Series 2009)

This paper covers some of the critical issues and conditions which underpin the development of an entire legal system. A legal system includes not only the substantive laws themselves but also the system of administration of justice and the enforcement of laws. The xistence of the conditions that should be atisfied to ensure legal development are assumed or taken for granted in countries with advanced legal systems, but in several developing countries there is substantial scope for improvement especially in the area of the Rule of Law. Although legal development is a part of the title, the Paper does not address the subject in relation to particular branches of the law, but the legal system as a whole.

ISBN: 978-955-1302-20-7 | Price: Rs 225.00

New Reprinted Editions

- Fundamental Rights and The Constitution - Case Book I and Case Book II
  - R K W Goonesekere
- Select Laws on State Lands
  - R K W Goonesekere

Law & Society Trust
3 Kynsey Terrace, Colombo 8, Sri Lanka
Tel: (+94)11-2691228, 2684845 | Fax: (+94)11-2686843
Email: lst@eureka.lk | Web: www.lawandsocietytrust.org