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Proportionality as a Separate Ground of Judicial Review: A Myth or Reality in United Kingdom and Sri Lanka

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Abstract— Administrative Law (AL), is the law which controls the governmental power that is exercised by the Administrative Authorities (AAs). The major purpose of AL is to retain the governmental power within their legal boundaries with prima facie intention of upholding the rule of law and to protect the citizens against the abuse of such power. Under Judicial Review (JR), the court exercises its inherent power to determine whether the actions taken by the AAs are lawful or unlawful and to award suitable remedy. The Doctrine of Ultra Vires is considered to be the central principle of AL. However, with the developments in relation to current changing patterns of the field of AL, courts have identified other grounds of JR such as Unreasonableness, Irrationality, Proportionality, Legitimate Expectation and Public Trust Doctrine in order to challenge the decisions of the AAs. Nevertheless, some arguethattheseidentifications unnecessarily expand the boundaries of JR. Especially with regard to Unreasonableness and Proportionality, some scholars argue that these two grounds are identical and identificationofproportionalityasa separategroundisanunnecessary expansion of the boundaries of JR. On the other hand, some argue that these grounds havetheiruniquefeaturesand proportionality provides a better protection in safeguarding individual rights. Therefore, in the presentt context the problem is whether the application of proportionality in order to challenge the decisions of the AAs is a myth or reality. In this regard, this paper will provide a comparative analysis *about position of unreasonableness, irrationality and proportionality in United Kingdom (UK) and Sri Lanka (SL)* to identify *whether the* application of proportionality in above jurisdictions is a myth or reality. Also this paper will discuss the importance of identifying new grounds of JR while emphasizing the significance of proportionality as a ground which does not expand the boundaries of JR. In carrying out the research, author uses both primary and secondary sources which include statutes, case laws, books, journal articles, websites and internet articles.

Keywords — Administrative Law, Judicial Review,Unresonableness, Proportionality

I. INTRODUCTION

In the modern society, complications between the AAs and the citizens have become a common issue. In order to govern these complicated relationships, AL has becomeanecessarymechanism.

Traditionally,AAs havemainlyreceived their powers by Parliamentary Acts and their responsibilityistoexercise their powers within the four corners of the Act. In addition to statutory power, AAs exercise discretionary powers since, in a welfare society AAs must necessarily take decisions to face different circumstances. Therefore, the main objectiveofAListokeep the governmental power within their frontiers and to protect the common citizens from any abuse of governmental power exercised by the AAs (Talagala, 2011).

The ultimate remedy of AL is to achieve administrative fairness by seeking a writ. To seek a writ there must be a ground of JR which

has recognized by the courts. The Doctrine of *ultra vires* is considered to be "the central principle of AL". Moreover, the principles of natural justice also can be identified as a well-established ground of JR. "Though the doctrine of *ultra vires* was considered as 'the central principle of AL' it has moved from *ultra vires* rule to concern for the protection of individuals and for the control of power rather than powers or vires" (Oliver, 2000, p.543). As a result, judiciary has recognized several grounds of JR to be compatible with emerging situations in order to promote good administration.

The analysis of unreasonableness and proportionality under UK Human Rights Act 1998 has a long history of scholarly debate and judicialarguments.Itisarguedthat proportionality review in the context of the European Convention on Human Rights (ECHR) goesmuchfurtherthanWednesbury Unreasonableness (WU) in requiring the court to consider whether a 'fair balance' has been struck as between the rights of an individual and the interest of the community (Srirangam, 2016). Therefore, it is important to analyze these two concepts comparatively to identify whether the recognitionofmoreEuropeanfriendly proportionalitytestwouldbean unnecessary expansion of the frontiers of JR and whether it is a myth or reality in the present context.

Inthispaper,SectionIIprovidesthe methodology and Section III and IV respectively explains the origin and development of the WU and Irrationality in the context of UK and SL, as WU and Irrationality are necessary to explain the concept of Proportionality. Further, Section V discusses the origin and development of the proportionality in the context of UK and SL and Section VI explores the comparative analysis between UK and SL in relation to status of these two concepts while focusing to answer to the questions of "Has the unreasonableness been replaced by the proportionality?" and 'Whether the concept of proportionality is a myth or reality?" by giving special reference to UK and SL. Section VII suggests recommendations and finally Section VIII provides the conclusion.

II. METHODOLOGY

For the purpose of this research qualitative data collection methods were used and a library based research was also conducted for further information. In order to collect primary data, statues and number of case laws in UK and SL were used. The data gathered from books, journal articles, blogs and internet articles were used as secondary sources to enrich this research.

Moreover, a comparative analysis was conducted between UK and SL, to evaluate theapplicationoftheprincipleof unreasonableness and proportionality as grounds of JR in each judicial system and to examine whether the unreasonable has been replaced by the proportionality.

III. WEDNESBURY UNREASONABLENESS

The principle of unreasonableness as a ground of JR was emerged in the case *of Associated ProvincialPictureHousesvWednesbury Corporation* (1948). Corporation was acting under the Sunday Entertainment Act's authority and accordingly Corporation may allow the opening of cinemas on Sundays subject to conditions as the authority thinks fit. Provincial Picture Houses have been granted a license to operate a cinema subject to the condition that no children under 15 years of age are allowed. The court held that the Corporation had made an unreasonable decision and no reasonable authority could have come to take such decision. When giving the judgment Lord Greene defined unreasonableness as "a general description of things that must not bedone".Thereaftertheconceptof unreasonablenesswasknownas Wednesbury Unreasonableness.

When a decision taken by the AA is not reasonable, the court can challenge the decision based on unreasonableness. In order to determine whether a decision is reasonable, the court will consider whether the decision is within the range of reasonable responses that the decision-makermighthavehadinthe circumstances (Law Wales, 2016).

After the introduction of WU English courts have referred to this principal when giving judgments. In the case of West Glamorgan County Council v Rafferty (1987), under Caravan Sites Act the council had a duty to provide camping sites for gypsies. However, a group of gypsies was being evicted by the council from council land without providing an alternative and adequate accommodation. Lord Gibson stated that "that the council decision was not a decision a reasonable council could reach". Moreover, in Regina v Newham London Borough Council, ex parte Sacupima and others (2001), the council was under a statutory obligation to provide temporary houses for homeless families. To fulfill this obligation some of the homeless families were sent to different seaside towns. Those towns were nearly 100 miles far from London city and exceptions were made only when such a move would seriously threaten the health of a person. Lord Latham stated that "the council's rigid policy, which took no account of the effect on an adultperson'semployment,achild's education, or a person's ongoing medical care, was WU". From above cases it can be concludedthatEnglishcourtshave recognized Unreasonableness as a ground of JR.

Also Dr. Shivaji Felix (2006) states that Wednesbury principle has become one of the most acceptable principles in English law (EL).

Since Sri Lankan legal system greatly influenced bytheEnglishALdevelopments,when discussingabouttheapplicationof unreasonableness in SL, eventually courts have referred to this principle when giving decisions and it can be proved through several case laws. Inthecaseof*Gooneratneandothers v CommissionerofElection* (1987) the Commissioner refused to register the Eksath Lanka Janatha Pakshaya (ELJP) as a recognized political party. The plaintiff argued that the decision given by the Commissioner is unreasonable and his right under Article 12 of theConstitutionwasinfringed.Justice Sharvananda stated that the Commissioner was wrong and unreasonably refused ELJP registration as a political party. Further, in *Flying Officer Ratnayake v Commander of the Air Force and others* (2008) the petitioner was a flying officer of Air Force and he argued that he was dismissed without being convicted by a Court Martial. According to Air Force Act the dismissal of an officer from the Air Force can be done only upon a conviction by a Court Martial. While citing the Lord Greenes' explanation on how to exercise discretion reasonably? In Wednesbury case, Abrew J. stated that the decision of the respondent is unreasonable.

Analyzing above cases it can be said that, when giving the judgment not only in past in recent time also Sri Lankan courts have recognized unreasonableness as a ground of JR. As a result, an aggrieved party was able to rely on unreasonableness and prove that the decision taken by the AA is not reasonable. Further, it has allowed judiciary to create standards in accordance with current trends.

Althoughjudiciaryhasrecognized unreasonableness as a ground of JR it raises issues concerning certainty or clarity. This is because unreasonableness as a ground of JR is very ambiguous and broad concept. Thus, many scholars (Peiris, Zamir) have defined unreasonableness in their own ways.

For instance, Professor G.L. Peiris (1987) states,unreasonableness,"isa comprehensive term which embraces a wide variety of defects including misdirection, improper purpose, disregard of relevant considerationsandadvertenceto immaterial factors". Accordingly if the decisions taken by the AAs are based on above four factors the judiciary can quash the decision based on unreasonableness.

ProfessorZamir(1992)defines, "Unreasonableness is different from other

grounds for the review of administrative discretion,notably,irrelevant considerationsandimproperpurposes. Irrelevantconsiderationsandimproper purposesexaminetheadministrative process…Ontheotherhand, unreasonableness,accordingtothe traditional view, does not seem to examine the process, but rather the end product". Accordingly, he completely distinguishes unreasonablenessfromirrelevant considerationandimproperpurpose. However,ProfessorPeirisconcludes unreasonablenessincludesabovetwo factors as well. Likewise, many scholars have defined unreasonableness in different ways as there are no rigid and coherent standards toshowcasewhattheprincipleof unreasonableness is. What was reasonable before 50 years ago might not be reasonable today and also what is reasonable today might not reasonable after 50 years of time (Marked by Teachers). Moreover, it can be said that the principle of unreasonableness gives judiciary an unnecessary power to interfere with administration decisions and judges tend to apply subjective approach when deciding cases. As a result, the tendency towards increasing uncertainty in the law has become major issue.

Furthermore, this principle has been misused in many courts, Paul Craig (2010) declares analyzing 200 cases, and the court cites Wednesbury principle but in fact applies a more lenient test. Some cases deploy terms such as 'higher scrutiny' or 'anxious scrutiny' without precisely elaborating the meaning of these terms. According to Craig, in many cases courts have applied different terms without mentioning the termunreasonablenessbutappliedsame principles of unreasonableness. He argues that by way of higher scrutiny or anxious scrutiny courts have referred to the same principle of unreasonableness. Also some cases merely conclude that a decision is or is not reasonable, does or does not defy logic, was or was not a decision that a reasonable authority could have made without reasoning their conclusion. Sometime courts have quashed the decisions by just saying unreasonable without giving proper reasoning.

As a result of these disadvantages and broadness of the principle of unreasonableness, courts had to find alternatives and they introduced two aspectsknownasirrationalityand proportionalitywhichareevolvedfrom unresonableness.

IV. IRRATIONALITY

The concept of irrationality arises from the case of *Council of Civil Service Union v Minister of Civil Service* (1984) (GCHQ case). In this case Lord Diplock has referred to irrationality rather than unreasonableness. He explained that, "it applies toadecisionwhichis sooutrageousinits defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". Further he stated that, "irrationality by now canstandonits'ownfeetasanacceptable ground on which a decision may be attacked by JR".

By analyzing the decision in GCHQ case, some scholarsarguedthatthisisstill unreasonableness, in contrast, some scholars argued that it is a separate ground of JR.

For instance, Dr. Felix (2006) states that "since then the Wednesbury principle has moved on to become one of the major grounds of review in English AL and the principle has been equated with irrationality". Alsohehascited,"the Wednesbury principle, commonly regarded as a synonymforjudicialreviewengaging irrationality, was subsequently to become one of the most widely accepted principles of English AL" (Forsyth & Hare, 1998). However Wade and Forsyth argue the interpretation in irrationality is different from WU and this is also known as anxious scrutiny.

The significance of recognizing irrationality as a separate ground of JR is that, petitioners can rely upon irrationality and prove that the decision taken by the AA is not rational and seek a writ. Both English courts and Sri Lankan courts have recognized irrationality as a ground of JR. In recent case of Obar Camden Limited v The London Borough of Camden (2015) Camden Borough Council had granted full

permission to convert a public house into residential flats subject to several conditions. The plaintiff argued that the decision of the council was irrational. The court submitted the decision in favor of the plaintiff and quashed the decision of the Council.

Further,inSesadiSubasinghe(appearing through her next friend) v Principal, Vishaka Vidyalaya and 12 others (2011), the father of the petitioner complained that his child was initially selected to the Visakha Vidyalaya yet later rejected from the final list by the panel. The court held that the rejection of the child was highly unreasonableandirrational. Whengivingthejudgmentjustice Gooneratne stated that, "irrationality is one ofthecommonlawgroundsofJRof administrative action. It is presumed that public authorities are never empowered to exercise their powers irrationally therefore irrational action byapublicauthority is considered to be ultra vires".

From above two recent cases it is clear that irrationalityasagroundofJRisstill recognized by the English and Sri Lankan courts.

V. PROPORTIONALITY

Proportionalityisaconceptwhich originated and well established in European AL.LordDiplockintroducedthe proportionality into EL in GCHQ case. In this case he has widened the grounds of JR by referring to other grounds as irrationality, illegality and procedural impropriety. The concept of proportionality can be said as an aspect which resulted from WU. Zamir (1992)statesthat,"theconceptof proportionality is a basic element in fair administration.Administrativepower should not be exercised in a manner which inflictsinjuryonprivateinterests unproportionally to public needs".

Basically, proportionality mainly considered about individual rights. The decisions taken by the AA may sometimes impose some obligationsonindividualrightsofthe citizen. In that occasion judiciary examined the proportionality between the decision of the AA and the individual right which has been limited. Further, AAs are always under an obligationtomaintainasenseof proportionandbalancebetweenits decisions and the public interest, so that the authoritywillbeabletoguaranteeits decisions have had minimum impact to the public interest. According to Craig and De Birca (1998), a test with four elements can berecognizedtodeterminethe proportionality of a decision.

Whether,intheapplicable circumstances, the disputed measure is the least restrictive;

Whetherthereiscorrespondence between the importance attached to a particular aim and the means adopted to achieve it and whether such means are necessary for its achievement;

Whether the impugned act is suitable and necessary for the achievement of its objective and whether it does not impose excessive burdens upon the individual; and

Whether there is any balance between the costs and benefits of the measure under challenge.

In the case of Bank Mellat v H M Treasury (2011) Lord Sumption identifies another test for proportionality which commonly used in modern context.

(i) Legitimate aim;

(ii) Suitability (rational connection);

(iii) Necessity;

(iv) Proportionality in the narrow sense.

The position of proportionality as a ground of JR in UK, obtained mixed responses before the enactment of Human Rights Act 1998 (Felix, 2006). Sovereignty of the parliament can be shown as a reason for this situation since proportionality as a ground of JR is much towards judicial activism. However, after the enactment of

Human Rights Act in 1998 (HRA), proportionality has become a valid ground of JR since it specifically deals with individual rights. In the case of R (Daly) vSecretaryofStatefortheHome Department(2001)thesecretaryhas introduced a new policy with regard to searching cells stating that prison officers are empowered to examine the prisoners legal correspondents in the absence of a prisoner concern. HouseofLordsby examining the legality of the new policy stated that excluding prisoners was not proportionatewiththerightsofthe prisoners as the policy infringed a prisoner's common law right under the ECHR. Further, in AvSecretaryofState for the Home Department(2004)applicants were foreigners who had not been subjected to criminal charges, had being imprisoned and kept without a trial. They challenged the lawfulness of their detention on the basis that it was contrary with the terms of ECHR. House of Lords stated that the decision was disproportionate.

From above cases it can be concluded that English courts have challenged the decisions oftheAAbasedonproportionality. Moreover, it can be argued that in every aspect English courts have used this concept with regard to individual rights. Since UK has a separate act which includes human rights, in enforcing those rights, proportionality as a ground of JR has become a useful mechanism. Therefore in present, the court uses the rights based approach and as a result human rights can be empowered by writs.Itisfacilitatedbyunwritten constitutioninUK(Udayanganie,2013). Accordinly, it is evident that application of proportionality is a not a myth in the UK.

In SL, similar to the cases which pointed out under unreasonableness, most of the cases whichrefertoproportionalityareFR petitions. This is mainly because, when interpreting constitutional provisions courts haveutilizedseveraladministrative principlesmostlythenaturaljustice, proportionality, reasonableness and public trust doctrine (Gomez, 2006). In particular, Article 12(1) of the 1978 Constitution which recognizesabroadconstitutionalright namely,"Righttoequality"hasbeen interpretedbycourtsutilizing administrative principles. Therefore, when there is a FR petition, courts tend to utilize administrativeconceptstojustifytheir decisions by following right based approach. It exihibits that there is a mix betweenFRjurisdictionandwrit jurisdiction in Sri Lanka (Gomez, 2006).

In AbeysekaravCompetentAuthority (2000) the claimant challenged the legality ofcertainregulationssorttoimpose censorship of the transmission of sensitive military information. The claimant argued that freedom of expression under Article 14(1)(a) has been violated. Supreme Court heldthat,theregulationswerenot disproportionate. FurtherinIndrajith Rodrigo v CECB (2009) it was based on an application to a Labour Tribunal about a termination of a workman. Court held that, the defendant decision to terminate the plaintiffwasnotdisproportionate.By analysing these cases, it can be said that the conceptofproportionalityhasbeen accepted as a valid ground for JR and it is not a myth but a reality in SL.

VI.UNREASONABLENESSAND PROPORTIONALITY IN THE UK AND SRI LANKAN CONTEXTS

Even though, Sri Lankan courts have used proportionality in FR petitions it has not become the sole ground for their decisions. The importance of proportionality is whether it has been able to recognize a right, which is not recognized by the Constitution.

Unlike the UK, there is no separate Human Rights Act in SL. However, Chapter III of the 1978 Constitution of Sri Lanka mainly

focuses about FRs of the citizens. According to Article 17 of the constitution, if there is a violationofFRbytheexecutiveor administrative action recognized by the constitution, a person can file an application in the Supreme Court under Article 126. Therefore, it is argued that there is no need to mix wirt jurisdiction and FR jurisdiction with each other since, written constitution in SL helps in laying down the writ jurisdiction and FR jurisdiction as two separate grounds. Therefore, there is no necessity to protect FR through writs (Udayanganie, 2013).

Nevertheless, the question is, whether all FRs of the citizens are recognized by the Constitution or not. The answer is clearly 'NO' because, only a limited number of rights havebeenrecognizedbythe1978 Constitution.Thus,theimportanceof recognition of proportionality comes into force, when a decision of an AA violates individual rights which are not recognized by the Constitution.

For instance, in Bulankulama and Others v. Secretary,MinistryofIndustrial Developmentandothers(2000), AmerasingheJ.states,theproposed agreement for exploration and mining of phosphateislikelytoresultin disproportionatelyandunreasonably damaging the surrounding environment. Further, he identifies the importance of protecting international rights under the Stockholm Declaration on the Human Environment (1972) and the Rio Declaration on Enviroment and Development (1992) in exploiting natural resources. Therefore, it can be said that when recognizing rights which are not identified by the Constitution, proportionality can be used as a useful mechanism to enforce and absorb such rights.

As a result it is argued that, proportionality came forward in the phase of human rights throughEuropeanizationofUKand Internationalization of Sri Lanka. Therefore, limitations on FRs should be proportionate to the value of relevant right (Udayanganie, 2013).

When answering the question "Has the unreasonableisreplacedbythe proportionality?.", there are mixed responses by many scholars (Taggart, Zamir, Felix). In R v Cambridge Health Authority, Ex parte B (1995) court decided proportionality cannot be considered as a separate ground of JR. Furtherheldthat,"Wednesbury reasonableness and proportionality are different tests. The test of proportionality is not needed in the English legal system. Wednesbury test provides a sufficient test". This case was decided before the arrival of HRA and it exhibits that courts have refused to consider proportionality as separate ground of JR. However, even after the arrival of HRA some judges [Smellie CJ., Lord Walker in Pro-Life Alliance (2003), Wild J. in PowercoLtdvCommerce Commission (2005)] refused to recognize proportionality as a separate ground for JR. In R (Pro-Life Alliance) v BBC & Others (2003) Lord Walker stated "Wednesbury test for all its defects had the advantage of simplicity and it might thought unsatisfactory that it must now be replaced by a much more complex and contextually sensitive approach".

Nevertheless, many scholars in the past and presentupheldtheviewthat unreasonableness should be replaced by the proportionality.Forinstance,inR (Alconbury Developments Ltd) v SS for Environment (2001) the court held that even without reference to the 1998 act the time has come to recognize proportionality as a partofEL. "Trying to keep Wednesbury principle and proportionality in separate compartments seems to be unnecessary and confusion". Moreover, in R v Secretary of State for the Home Department (2002) court recognized proportionality as a part of EL.

ReferringtotraditionalWednesbury standards Lord Cook held "I think that the day will come when it will be more widely recognized that the Wednesbury case was an unfortunatelyretrogressivedecisionin English Administrative Law". A modern scholar Gewanter (2017), while agreeing to majorityacademicviewstatesthat proportionality will eventually replace WU. Also he stated that "…what is understood to be proportionality review currently will not be the standard used in future cases. Instead, it will bear the hallmarks of both current Wednesbury and proportionality, becoming a new hybrid doctrine". In recent cases of KennedyvInformationCommissioner (2014) and Pham v Secretary of State for the Home Department(2015)courtshave recognized proportionalityasageneral groundofJRwhichconfirmsthat proportionality has become a reality in the UK.

Not only English scholars but also Sri Lankan scholars(Felix,Peiris)claimedthat unreasonableness must be replaced by proportionality. Dr. Felix (2006) in his article states "Wednesbury standard of review has outlived its utility and is of marginal relevance in contemporary judicial review in Sri Lanka". Further he states, althoughcourtshaverecognized unreasonableness in many cases, when the cases analyzed critically, it exemplify in most ofthecasescourtshaverelied on proportionalityratherthan unreasonableness. Prof. Peiris (1987) also argued, in modern law unreasonableness would certainly acquire less significant than is actually was.

From above scholarly arguments and cases it is evident that in UK, there is a replacement of unreasonableness by proportionality to some degree. However, still proportionality has not been able to completely eliminate unreasonableness because, there's a still room for reasonableness at some point. As mentioned in R v Secretary of State for Foreign and Commonwealth Affairs (2015) "proportionalitychallengewherea fundamental right is not involved". Further, accordingtoTaggart(2008),where administrativedecisionsinvolverights, proportionalityshouldreplacethe unreasonableness test as a distinct head of review. Proportionality involves a more intense analysis of the decision and the merits of a decision will be more relevant. Such an intense analysis is justified when rights are involved. Where rights are not involved, but rather 'public wrongs', the orthodox WU will be the only appropriate head of review as an intense review is not justified (Ferrere, 2007, p.39-40).

In SL, although proportionality acts as an effective mechanism, still there is no evidence to prove that courts have replaced the unreasonableness by proportionality. Even so, sooner proportionality will find its proper place in both UK and SL as Dr. Felix (2006) states it will only be a matter of time. Nonetheless, the proportionality did not completely replace the unreasonabless, from above judicial proceedings and scholarly argumentsitisunarguablethatthe application of proportionality as a separate ground of JR has become a reality in the present conext.

As mentioned earlier unreasonableness is very broad and it's an umbrella term concept which can include many concepts. In this regard proportionality is not a novel concept and it has been already in existence as a part of unreasonableness. Further, it's a well-known fact that it was derived from unreasonableness as a narrowed concept in ordertoavoiddefectsofthe unreasonableness. As both concepts have many similar characteristics Dr. Nehushtan (2017)statesproportionalityand unreasonableness are non-identical twins.

VII. RECOMMENDATIONS

When considering individual rights, it is clear that proportionality provides a more sufficient test than WU. In the Sri Lankan context, courts tend to follow right base approach and in this regard proportionality can be utilized as a useful mechanism in identifying individual rights which are not recognizedbythepresent Constitution. However, when incorporating international rights to domestic legal system, judiciary must be very mindful not to incorporate rights which contradict with the constitutional provisions since, the Constitution is the supreme law of the country.

VIII. CONCLUSION

The ultimate goal of AL is to protect the citizens from abuse of power by the AA and upheld Rule of Law. In order to achieve its goal, courts have recognized new grounds of JR other than traditional grounds. In a modernsociety,introductionofnew grounds of JR is essential because, in some occasions traditional grounds may not be compatible with emerging situations. In every concept there are pros and cons, thus in order to avert negative impacts, new grounds must come into force. That is the only way where the law prevails in a developing society.

It is true that unreasonableness provides a sufficient test to challenge administrative decisions, however when it comes to individualrightsproportionalitymay providemoreadequatetestthan unreasonableness. Especially in a country like SL where there is no separate human rights act, proportionality would be a useful mechanism to enforce and safeguard such rights in case of a violation by the AAs. Therefore, it can be said that, recognition of proportionality as a separate gorund would not be an unnecessary expansion of the frontiers of JR because, itisapart of unreasonableness which acts as a useful mechanism to enforce individual rights.

Moreover, by analysing all the cases and scholaryargumentsitisevidentthat proportionality as a separate ground of JR is not a myth but a reality in both UK and Sri Lankan AL. At the same time it is important to note that the proportionality test should not be a myth in a country like SL, becuase when decisions of the AAs affect the rights of citizens which are not recognized by the Constitution, affected parties must be privileged to challenge such decision and seek a remdy. In this regard proportionality would be an adequate mechanism to fulfil the said requirement.

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