

ABSTRACT

There is a long felt need to fulfill the gaps and lapses of the existing summary trial procedure of the Military Justice System of Sri Lanka, if critically analyze the military justice system of Sri Lanka. There is a clear cut fact to say that the court martial and court of inquiry, which are the other tribunals go parallel to the summary trial procedure which is very much consist with relevant legal provisions and process, because all that tribunals were established and legally framed by ministerial regulation, which were passed by the parliament. As examples:

- 1) Court Martial Regulation (General and District)
- 2) Court of Inquiry Regulation 1952.

The burning issue on summary trail procedure in military justice system is lacuna of a proper regulation. There are provisions in main act to pass new regulations for a real necessity; Sect 155 of AA No 17 of 1949 provides the necessary provisions to prepare a new regulation for the summary trial procedure.

Sec 155(1) says "Subject to the provisions of subsection (2) of this section, the Minister may make regulations in respect of all or any of the following".

Therefore under subsection (c) of the sect 155(1), there are provisions to prepare regulations on subsection (c) says "the discipline of members of the army".

With the said regulations, there's a possibility to introduce more effective and fair norms to the Summary Trail Procedure with positive tendencies, like reasonableness, unbiased, proportionate, a procedure with more natural justice concepts and human right values also can be added and the process can be converted to more effective mechanism of Summary Trial Procedure, which is introduced by this study as "Regimental Courts".

Through this process and the recommendations of this study, the Summary Trial Procedure can be converted to more effective and most important military tribunal of military justice system and by these new recommendations, this procedure can be upgraded to more fair, effective and successful results of these “Regimental Courts” in military justice system, which can be accepted by all.

The constitution of the Democratic Socialist Republic of Sri Lanka enshrines that “*all persons are equal before the law*” and “*all persons are entitled to equal protection of the law*”. So this study highlights the gaps and lapses of summary trial procedure in the military justice system, where there is no proper legal provisions as regulations and many more issues, which has to be addressed to establish more effective and uncontestable process. To prove above said requirement, this study and facts finding mission did a comparative analyses viz: UK, USA, Canada and India for justification of rectifying this gaps and lapses of military justice system of Sri Lanka. On that base, the members of our very own society recruited to the military as soldiers are also citizens of the country, who are entitled to equal justice as per the above said constitutional provisions.

The Comparative analysis done by this study emphasizes, that in other military justice systems, basically direct the Summary Trial Procedure.

- Should operate quickly
- Should be as simple as possible
- Should be capable of proper ,fair and correct application by persons who do not possess legal qualification
- Should support commander’s roles
- The summary authority should not biased
- Should preserve the Natural Justice concepts
- Should protect the Human Right norms
- Punishment should be reasonable and proportionate

- Should be an appellate procedure or reviewing method

With all these positive points of the domestic Summary Trial Procedure also can be converted in to more successful and more effective Military Tribunal.

A famous Indian supreme court decision of Lt Col Preethipal Singh's case stated that *"we therefore hope and believe that the change all over the English democracies will awaken our parliament to the changed value system, in this behalf, we would like to draw our pointed attention to the summary trial procedure as well as the CM. The discipline authorities enforce the various punishments including death sentence. This must be remedied in order to ensure, that a disciplined and dedicated Indian army may not nurse a grievance that the substance of justice and fair play is denied to it"*. It is the conviction of the person who doing this study, that this Supreme Court judgment of India encapsulates Lankan scenario of Summary Trial Procedure.

The reviewing process or appellate mechanism in Summary Trial Procedure further emphasized by international convention on civil and political rights; sect 4 (2) of the Act no 56 of 2007 enshrines, that *"every person convicted in any court or tribunal under any written law, shall have the right to appeal or review by higher court / tribunal or reviewing body"*

So by this study the researcher recognized the facts, that mainly important for existing Summary Trial Procedure of military justice system, to update as a recognized, effective, unbiased, reasonable, proportionate, as well as the process fulfilled the requirements of Natural Justice Concepts and Human Right norms.

The above said idea of this study completed by introducing the new "Regiment Courts" for the purpose of dealt summarily the persons who subjected to military law and initiate the new proposals and process to update the existing summary trial procedure. The new legal provisions consist with collection of all those proposals of process and the procedure and passed by the parliament as a new regulation in relevant to the summary trial as a Summary Trial Regulation.