

ABSTRACT

Right to Appeal is a fundamental norm in the IHRL regime as evidenced by the **ICCPR Article 14(5), ECHR Article 2 of the Protocol Number 7 and ACHR Article 8(2) (h)**. This fundamental international norm has been incorporated into the domestic law via Section 4(2) of the ICCPR Act Number 56 of 2007. Armed Forces exist on a rigid disciplinary code and a Court Martial is the key institute that helps to maintain discipline. Although the procedural safeguards available under the Army Act and the Court Martial Regulations for servicemen on trial by Court Martial are on par with IHRL standards, yet strangely, the right to appeal is not adequately addressed. Analyzing the applicable provisions in the Army Act and the Court Martial Regulations, this thesis is aimed to find out the key issue namely, whether a person convicted by a Court Martial in Sri Lanka has a right of appeal to a higher forum and secondly, whether such appeal conforms to the standards envisaged by the IHRL. This research is a library research based on the qualitative approach in which a comparative analysis was carried out with the appellate system of the US Armed Forces. USA has been selected since it has a well-developed military appellate system. This thesis concludes that in the present form for a convicted accused only an ex-parte appeal to the Commander of the Army and externally, a writ is available to the Court of Appeal and by IHRL standards, both remedies are far below the envisaged standards. In the circumstances the writer argues firstly, the JAG should play more active role like the JAG in US armed forces and secondly, where the sentence is death or imprisonment, a direct appeal should be available to the Court of Appeal instead of a writ which has only a limited scope.

Key Words : Court Martial, Right to appeal, Convening Authority, Confirming Authority, Internal Appellate Procedure, Writ Jurisdiction.