

Exploration on Principles of Uniformity, Impartiality and Relevancy Based on the Applicability of Law of Evidence within the Process of Administration of Justice in Sri Lanka

DND Kannangara# and BANM Balachandra

Faculty of Law, General Sir John Kotelawala Defence University, Kandawala Estate, Ratmalana, Sri Lanka

#navo.devindi@gmail.com

Abstract - The system of administration of justice in Sri Lanka remains deeply problematic due to the complexity of issues which arise through the limited incorporation of the principles of uniformity, impartiality and relevance based on law of evidence. Further, it has been observed that the absence of incorporation of the aforementioned principles threaten the independence of judiciary creating room for arbitrary or discretionary judicial decisions. This results in the disappearance of impartiality paving way for biased decisions within the robe of justice. Here, the element of subjectivity hinder the public trust and loyalty towards the system of administration of justice leading the general public to question whether the treatment of judiciary is common for every citizen or not. Though the legal framework emphasizes on the spectrum of natural justice together with the concepts of “Audi Altrem Partem” and “Nemo Judex Causa Sua”, the discrepancy between the legal framework and its practical application remains steady. Thus, it is necessary to initiate a dialogue which envisages and explores the complexities of pursuing the system of justice. This research is entirely based on the considerations over the Evidence Ordinance No.14 of 1895 which is the primary legislative enactment which directly addresses the right of considering the existence or the non-existence of facts in issue based on the principle of relevancy. Furthermore, the entire research is blended with slight references towards foreign jurisdictions. Therefore, it is pertinent that the exploration of the incorporation of principles of uniformity, impartiality and relevance based on the applicability of law of evidence within the process of administration of justice is of extreme importance.

Keywords: *administration of justice, uniformity, impartiality, relevance*

I. INTRODUCTION

In the process of administration of justice, the law of evidence plays a vital role and legal history itself

functions as a better evidence which demonstrates numerous approaches of different legal systems and further investigations on relevant approaches highlight how administration of justice functions according to the requirements of uniformity, impartiality and relevance. When focusing on the legal arena of administration of, it is obvious that it depicts the right and fair treatment and this particular concept has been originated through the concept of natural justice. Moreover, justice cannot be administered in absence of its requirements and this article emphasizes how law of evidence provides uniform and comprehensive criteria in regard to the reception of evidence and standards of proof in different categories of actions. Furthermore, the article provides a systematic framework for judicial inquiries reducing the opportunity for arbitrary administration of justice through strengthening the requirements of uniformity, impartiality and relevancy based on the the Second Republic Constitution of 1978, Evidence Ordinance No 14 of 1895, Code of Criminal Procedure Act No. 15 of 1979 of Sri Lanka together with slight reference towards South African, Canadian and United Kingdom jurisdictions basically shedding light on the process of administration of justice with the need of accomplishing the objective of improving Sri Lankan legal framework on system of justice in a wider sense.

II. METHODOLOGY

The discrepancy between legal framework and its practical application was identified as the major research problem embedded within the incorporation of principles of uniformity, impartiality and relevancy. This identification lead to its exploration via black letter approach together with slight reference towards foreign jurisdictions. The Evidence Ordinance No.14 of 1895 which is the primary legislative enactment of the Government of Sri Lanka functions as the basis of the research study. Apart from that the provisions embedded within the Second Republic Constitution of 1978 and Code of

Criminal Procedure Act No. 15 of 1979 will be incorporated within the discussion based on necessity. The qualitative data has been gathered referring scholarly articles, books, reports, statutes and documents. In order to prove the theoretical aspects in a more practical basis, the opinions and judgements of International Academics will be quoted. Additionally, the process of interpretation of data is based on “Grounded theory” which provide explanations for existing law leading to the formulation new rules and regulations enriching the practical application of legal framework advancing the system of justice while providing innovative recommendations. It is pertinent to note that this particular research study also refers to sources of law including decided cases and opinions of jurists which will be cited with the objective of preserving the authenticity and credibility of research.

III. DISCUSSION

The applicability of law of evidence within the system of justice has acquired a vital concern in 21st century due to the complexity of issues which arise within the system of administration of justice. Here, it has been observed that the independence of the judiciary has been challenged due to socio-political interferences leading to discretionary, biased and subjective decisions and this consists of the adverse effect of loosing the public trust and respect over the system of justice. This study addresses the need of exploration of the principles of uniformity, impartiality and relevancy together with the spectrum of natural justice which directly impacts on the system of administration of justice within Sri Lankan judicial system. Equal protection before the legal system without being subjected to any kind of discrimination based on race, religion, language, cast, sex, political opinion or birth place has already been guaranteed through Article 12 of the Second Republic Constitution of 1978 ensuring the necessity of strengthening the system of justice. Thus, the equality guaranteed through the Second Republic Constitution of 1978 can be administered through proper adherence to the principles of natural justice which ensure the enthronement of supremacy of law.

A. *Need of adherence to the principles of natural justice.*

In the process of Administration of Justice, the legal arena of Natural Justice directly relates the process of incorporation of the principles of Uniformity, Impartiality and Relevance. In the past Natural Justice principles applied only to the acts that could be

classified as judicial or quasi - judicial. Afterwards, it was expanded up to administrative actions. In the case of *Sarath Nanayakkara v University of Peradeniya* a decision made by the committee was challenged for not giving him a fair hearing. There natural justice principle have been identified relating to a administrative action. But initially Natural Justice principles were under Judiciary and with the passage of time the ambit of application of Natural Justice principle widened in scope. Mainly, it was divided in to two categories as *Audi Alteram Partem* which means listening to both parties and *Nemo Judex Causa Sua* which means the rule against biasness. These two legal concepts functions as the basis of administration of justice based on legal spectrum of natural justice.

In *Audi Alteram Partem* there are certain aspects which are considered as main elements of this rule. One aspect is Right to have notice of the charges and it is pertinent that sufficient time should be given to get ready for the inquiry. Without knowing the charges against a person, he is not entitled to answer such claim and due to that courts follow this procedure at the beginning of the trials. In order to ensure impartiality, both parties should be treated equally. Further consideration on the Right to cross examine witnesses is quite important and this particular aspect can be seen where there is a breach of administrative action. Apart from that, the right to legal representation has attracted a vital attention in the process of administration of justice. However, in the recent history the applicability of these principles has been challenged paving way for a discrepancy between the legal framework and practical application of such legal procedures enacted with the objective of administering justice. Further, whether the existing legal framework is uniform, impartial or relevant has been subjected to vital discussion leading to rethink on the measures which should be adhered to ensure the prevalence of administration of justice within the society.

Further observations on legal proceedings clearly denotes the right of oral hearing of the adverse parties. Though it isn't mandatory it depends on the circumstantial evidences. In the case of *Thabrew v Yatawara* it was held by Palle J. “In my opinion, when the petitioner made the request to be heard, he was entitled to a hearing before the order was made against him. In the context under discussion, “hearing” means in my opinion must be an oral hearing by the registrar”.

The considerations over the concept of *Nemo Judex Causa Sua* which means “No man shall be the judge of his own case” is directly relevant for assuring the principle of impartiality with the system of administration of justice. Therefore, any officer or tribunal exercising quasi-judicial powers must be free from biasness. When the judge or the committee has a connection with parties of the case, there exists the of arriving at bias decisions and this clearly highlights the lacuna within the practical application of legal framework leading to the breakdown of the consistency of adhering to the principles of uniformity, impartiality and relevance within the system of justice.

B. Incorporation of principle of Uniformity within the system of justice

The principle of uniformity, deals with the process of administration of justice which should be a uniform process for the commencement of actions in all courts of law despite its existing drawbacks in practical approach. According to Sri Lankan jurisdiction, the process of administration of justice is mainly based on the law of evidence and section 3 of the Evidence Ordinance No 14 of 1895 clearly interprets the terms “court” and “fact”. It clearly denotes that “court” includes all judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence. Defining the term “fact” as anything, state of things or relation of things capable of being perceived by the senses ensuring the foundation for the requirement of uniformity addressing the primary issue of people are being punished in front of system of justice based on factual evidence in a wider sense. However, in practicality it has been observed that the delays associated with the system of justice exhausts the litigants’ financial resources at well as valuable time due to lack for uniformity within the system of justice leading to brutal consequences threatening the supremacy of law.

Withstanding the principle of uniformity, section 33 of the Evidence Ordinance No 14 of 1895 deals proceeding with issues with regard to former judicial, and the particular section that the evidence given by a witness in a judicial proceeding, or before any person authorized by law for the purpose of proving the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case the court considers

unreasonable and this depicts the fact that the purpose should be crucial and it should be given before any person authorized by law, former witnesses should be dead or cannot be found and the admissibility of evidence should satisfy the accepted criteria. In the case of *S.S. Fernando v Queen*, Rose C J stated that “The statement made by witnesses before the magistrate could have been proved at the trial on for the purpose of contradicting him, but the statement itself could not have been used as substantive evidence” Moreover, judgements of courts of justice are considered in case of deciding the requirement of uniformity.

According to section 44 of the Evidence Ordinance No 14 of 1895, the existence of any judgement, order or decree which by law prevents any court from taking cognizable of a suit or holding a trial, is a relevant fact, when the question is whether such court ought to take cognizable of such suit or to hold such trial” The purpose of this doctrine is to prevent multiplicity of actions confirming requirement of uniformity with in the process of administration of justice within Sri Lankan jurisdiction despite its exiting practical drawbacks.

The drawbacks within the pillar of Uniformity within the system of administration of justice in Sri Lanka is well evident from the discrepancies in law related to marriage and divorce of muslims included in Muslim Marriage and Divorce Act No.13 of 1951 restricts the rights and equal protection rendered upon female muslim community within Sri Lanka. As per General Marriage Registration Ordinance No.19 of 1907, both parties of the marriage are required to sign and register the marriage if not it is considered to be invalid. However, as per the Section 17 of the Muslim Marriage and Divorce Act No.13 of 1951 only the bridegroom receives an opportunity to sign at the marriage registration and it clearly denotes the female party even deprived of expressing her legal consent for marriage via signing. This deprivation clearly hints out the lack of uniformity within the system of justice based on gender. Thus, ensuring Uniformity within the system of administration of justice is of vital importance.

Considerations on South African legal arena with regard to the concept of uniformity highlights the fact that there exist provisions with regard to recognition and enforcement of foreign judgments under the common law and it further mentions that Legislation is necessary to indicate that the original cause of action is extinguished and merged with the foreign

judgment, thereby preventing judgment creditors from suing either on the former or the latter at their option. Moreover, for purposes of the common law, a foreign judgment should be defined as 'a judicial determination of a civil or commercial claim, however labelled, in adversarial proceedings. If a foreign judgment conflicts with another judgment between the same parties on the same cause of action, whether given in South Africa or elsewhere, legislation is needed to indicate which judgment should prevail. Comment would be appreciated on whether preference should be given to the earlier or later judgment. If a foreign judgment was given in a foreign currency, which must then be converted into rands, the forum should be given a discretion in determining the date for conversion. Legislation is needed to indicate that South African courts may depart from the common-law rule that the date for converting is the date of payment. This depicts the requirement of uniformity maintained through South African jurisdiction being a country just as Sri Lanka which executes common law legal framework within the process of administration of justice highlighting the necessity of enthrone rule of law in case of incorporating the principle of Uniformity in rendering justice

C. Incorporation of principle of Impartiality within the system of justice

The requirement of impartiality is one of the most important principles of judicial evidence and this particular principle means that the judge is not prejudiced in his consideration of the case parties to the dispute at the expense of the other party, and this is imposed on him *ex officio*. Under this principle, the judge is limited to forming his opinion and building his judgment on what the litigants give him.

Furthermore, the evidence in accordance with the law, shall adjudicate in the case brought against him according to what he concluded during his assessment of the evidence submitted and as provided by law. Moreover, Judicial impartiality is recognized as a fundamental component of justice and Judges are expected to be impartial arbitrators and legal disputes should be decided according to the law free from the influence of biasness, prejudice, or political pressure.

When referring to the requirement of impartiality in the process of administration of justice within Sri Lankan jurisdiction, it is evident Ordinance that chapter 12 of the Evidence Ordinance No 14 of 1895 establishes the provisions with regard to the

requirement of impartiality through the process of examination of witnesses. According to section 135, the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively and in the absence of any such law, by the discretion of the court. Moreover, section 136 highlights that judge owns the discretion of admissibility of evidence and section 137 deals with provisions with regard to cross-examination and re-examination of witnesses confirming the importance of the requirement of impartiality in the process of administration of justice and section 149 of the Evidence Ordinance No 14 of 1895 provides that questions cannot be raised in cross examination of witnesses without reasonable grounds and if such a question is raised, section 150 provides the procedure to be followed. It hints out idea that the questions should be raised within the trial only based on facts in issue which means its totally based on the principle of relevancy in order to assure that the particular judgement which will be issued by the court law is impartial. The Evidence Ordinance No 14 of 1895 also assures that court shall forbid any question which is intended to insult or annoyed through section 152 further ensuring the requirement of impartiality. Despite the above legal protection which needs to be incorporated under the rule of law there exists certain discrepancies within the system of administration of justice render based on other legislative enactments which directly impact on litigation process.

When referring to criminal justice, it is evident that earlier all trials before the Supreme Court under the provisions of the Criminal Procedure Code Ordinance No. 15 of 1898 were trials held by jury before a judge. And the Trials before the High Court under the Administration of Justice Law No. 44 of 1973 were also held by jury before a judge. Further, non-jury trials before the High Court on indictment was first introduced by the Code of Criminal Procedure Act No. 15 of 1979. Subsequently, the provisions were introduced through the Code of Criminal Procedure (amendment) Act No. 11 of 1988, and such provisions provided the accused with the option of a trial by jury or trial by judge, where the offence was one triable by jury. Nowadays, such jury trials before the High Courts are hardly seen. In the case of *Sumanasena v Attorney General* it was held that observing the demeanour and deportment of witnesses is an important function of a judge. But it is observed that recently, cases go through many judges and

prosecutors before it is finally concluded and due to that the judge, who delivers the verdict has never got the opportunity of observing the demeanour of witnesses. As a result, there can be biased verdicts delivered by the judges. In order to prevent this kind of setup a re-introduction of the jury system will be much more effective and would serve the best interest of the criminal justice system preserving the principle of impartiality.

Further, the principle of burden of proof too goes in par with the requirement of impartiality and this can be considered as a rule of cardinal importance where proof of a particular fact constitutes a condition precedent of validity of plaintiff's claim, the plaintiff cannot be considered to have discharged his overall burden, unless the existence of the fact in question is proved by him. In the case *Davoodbhoy v. Farook and others* the plaintiffs admittedly had no right to be declared entitled to the land in question unless they could prove that Jaleel is dead. Since the circumstance of Jaleel's death formed a vital element of the plaintiff's case, it was an inseparable part of the plaintiff's overall burden of proof that they should establish by affirmative evidence that Jaleel's death had taken place. This particular case clearly portrays how the courts admitted the requirement of impartiality in the process of administration of justice. Also, in the case of *King v. Balakariya* it was held that burden of proof doesn't shift to the alleged. Because in the offence of rape one of the ingredients is the aspect of in spite of consent. So, the prosecution is responsible for proving that particular crime has been committed by the accused despite the consent of the victim. But, as per the legal proceedings, if the prosecution fails to prove that particular fact the burden will be lifted. Here, the manner of shifting the burden of proof between the both parties appear to be subjective leaving the tendency for impartiality within the treatment of justice.

Further, it is evident that each jurisdiction in Canada has a judicial council that is responsible for promoting and administering professional standards and conduct and based on the Canadian jurisdiction provincially and territorially appointed judges, each province or territory has a judicial council. Its members include judges, lawyers, and members of the general public. Judicial councils develop policies and codes of conduct to provide guidance for judges. Moreover, The Canadian Judicial Council (CJC) is responsible for the federal appointment of judges. It consists of the chief justices and associate chief justices of all of the federal courts and provincial and

territorial superior courts while promoting the efficiency, consistency, and quality judicial service within the court system. Here, it is pertinent that the major task of this particular Council was to investigate complaints and allegations of misconduct of federally appointed judges. Further, the CJC has also developed a set of Ethical Principles for Judges and the sole purpose is none other than ensuring independence, integrity, and impartiality in the process of administration of justice. If it finds evidence of serious misconduct, the CJC may recommend to the Minister of Justice that the judge be removed from office. The Minister of Justice may then seek the necessary approval of both the House of Commons and the Senate to have the judge removed from office. The removal processes for provincial or territorial judges vary from jurisdiction to jurisdiction, but are similarly developed to protect judicial independence and ensure that the process of administration of justice along with the requirement of impartiality. Thus, it is important to mention that such developed legal proceedings can be incorporated towards national jurisdiction in order to prevent the existing threat towards the independence of judiciary in Sri Lankan domain.

D. Incorporation of principle of Relevancy within the system of justice

The requirement of relevancy in case of administration of justice, under Sri Lankan jurisdiction, it is evident that Chapter 2 of the Evidence Ordinance No 14 of 1895 deals with the "Relevancy of Facts" and furthermore it expresses a logical relation between two or more things; but a fact which is logically relevant may be legally inadmissible in evidence for reasons of policy. Thus, opinion, bad character and similar conduct on other occasions are matters in regard to which evidence, even though it may be logically relevant, cannot be presented in a court of law except in circumstances where these matters are specifically treated as admissible by the provisions of Evidence Ordinance No 14 of 1895.

Furthermore, Sri Lankan jurisdiction consists of a statutory rule which has been enshrined through section 5 of the Evidence ordinance which declares that "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as hereinafter declared to be relevant and of no others." Moreover, an exception is attached to this rule that "This section shall not enable any person to give evidence of a fact which he is disentitled to prove in any provision of the law for the

time being in force relating to civil procedure. In the case *Sodige Singho Appu*, Basnayake C.J. stated that "The Evidence Ordinance No 14 of 1895 lays down strict limits within which evidence may be given in any suit or proceedings. Evidence may be given of the existence or non-existence of every fact in issue and of such other facts as are declared by the ordinance to be relevant and of no others. Evidence admitted in disregard of Section 5 are considered to be evidence that admitted improperly and a conviction is liable to be quashed if such evidence has resulted in a miscarriage of justice."

In the case, *R v Welgamage Mendias* murder case, the defense objected medical evidence on injuries on other persons apart from the deceased. Trial judge held injuries inflicted on other persons also form part of the same transaction which resulted in the death of the deceased. However, on appeal it was held the fact persons other than deceased received injuries are admissible under section 6, but the precise nature and extent of injuries were not so connected with the fact in issue to form part of the same transaction and therefore not admissible under section. Moreover, in the case of *Aronlis Perera*, the court held that the statement made by victim to daughter was not admissible under section 6 and to admit evidence under Section 6 evidence must be Contemporaneous and spontaneous statements and accompanying acts, declarations substantially contemporaneous with the act, the fact or the act could have occurred at different places and at different times and statements of bystander too become relevant under Sri Lankan jurisdiction.

When referring towards the jurisdiction of United Kingdom with regard to the concept of relevancy, it is evident that evidence may be proved through calling witnesses, producing documentary evidence or through producing real evidence. Furthermore, considerations on evidence needed to ensure conviction under UK jurisdiction concerns relevance, admissibility and weight and it further depicts that Evidence of whatever type must be both relevant and admissible. Evidence is relevant if it logically goes to proving or disproving some fact at issue in the prosecution. It is admissible if it relates to the facts in issue, or to circumstances that make those facts probable or improbable, and has been properly obtained. The prosecution is only required to introduce evidence that proves each element of the offence. For example, for an absolute offence, it is not necessary to introduce evidence as to the defendant's state of mind. This would be irrelevant and

inadmissible. The "weight" of the evidence is the reliance that can properly be placed on it by the court.

The above comparative analysis highlights those current legislative enactments require improvement which means some specific provisions included even within the Evidence Ordinance No 14 of 1895. For example, Section 5 which would sometimes adversely affect the principle of impartiality through limiting the scope of providing evidences required for acquitting the exact criminal can be identified as a consequence which emerge from the exclusion of hearsay evidence within the system of justice leading to disfunctioning of principle of relevancy.

IV. CONCLUSION

The research proved that the Evidence Ordinance of Sri Lanka has provided a strong foundation for the process of administering justice despite its ambiguity in certain circumstances. The instances of socio-political interferences on the system of justice need to be regulated and the research reveals the fact that it is necessary to pay vital concern over exploration of the principles of uniformity, impartiality and relevancy in the process of improving the legal spectrum of Administration of Justice. Thus, it is evident that the system of administration of justice should be strengthened and it is pertinent to ensure the independence of the judiciary confirming justice and fair treatment in front of law for every individual.

V. RECOMMENDATIONS

It is necessary to take strong legal measures to avoid illicit socio-political interferences for the system of administration of justice.

It is necessary to reduce the ambiguousness of the rules and regulations provided in the Evidence Ordinance No 14 of 1895 leaving no room to safeguard the offenders through the robe of justice.

Legal professionals should assure the proper application of rule of law within the system of administration of justice.

It is necessary to implement an action plan on eliminating the undue delay within litigation process in order to achieve uniformity, impartiality and relevancy within the system of justice.

The government should restore administration of justice while restoring the faith in judiciary through enthroning Supremacy of law.

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AUTHOR BIOGRAPHIES



The author is a graduate of law at General Sir John Kotelawala Defense University and a final year undergraduate of Department of English and Linguistics of University of Sri Jayewardenepura. She holds membership in many local and International Associations. This is her second experience in research publication. Her special and interested areas are Labour Law, Law of Evidence, Criminal Law, Human Rights Law and International Humanitarian Law.



The author is a final year undergraduate at faculty of law of General Sir John Kotelawala Defence University. This is her second experience in research publication. Her special and interested research areas are Labour Law, Law of Evidence, International Humanitarian Law, Human Rights Law and Law of Delict.