

Does the constitution of Sri Lanka empower the administration of justice?

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a) Background

There is widespread opinion that courts in Sri Lanka decide cases according to law in preference to justice. Therefore, it is important to find out to what extent the Constitution empowers justice to be administered by the courts established for such administration of justice. It is also important to identify how the courts interpret the said articles of the Constitution relating to justice. The research also proposes to identify the constraints to justice if any, within the Constitution and its interpretation by the courts. The research attempts to focus the attention of the judiciary to justice by focusing on the provisions of the Constitution that empower the administration of justice in lieu of its apparent focus on the administration of the laws.

b) Research Problem

The administration of justice in Sri Lanka has received a severe beating during recent times. The black marks in the administration of justice are most highlighted and are in the forefront of legal and public thought rather than the ideals of administering justice, as empowered by the Constitution. The legal fraternity is presently of the mindset that justice takes a backseat, to the administration of the letter of the law. The members of the judiciary give forth the impression that their hands are tied to the implementation of the letter of the law. If the courts constituted for the administration of justice are to in fact, administer justice, a close look at the relevant articles which empower the courts to, in fact, administer justice, is warranted.

c) Objectives

Main objectives

- (i) To find out if the articles of the Constitution empower the courts established for the administration of justice to in fact administer justice or to administer law.
- (ii) To identify how article 4C read with article 3 of the Constitution of Sri Lanka impacts on the administration of Justice.

Other objectives

- (iii) To identify the provisions of the Constitution of Sri Lanka which empower the administration of justice.
- (iv) To identify the constraints to justice contained within the Constitution of Sri Lanka.
- (v) To identify the provisions of the Constitution which empower the Judiciary to deal with instances of conflict between the administration of justice and the administration of law.

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d) Research Methodology

A longitudinal study of case law on the interpretation of the constitution is intended, together with an extensive analysis of the constitutional provisions pertaining to justice. The constitutions of US, India, Canada, and South Africa would be analysed. The study would be qualitative and would consist of an analysis of the articles of the constitution pertaining to justice as well as analysis of case law interpreting the constitution from the framework of religious jurisprudence.

e) Key Findings

Amendment to the Constitution is necessary in order to ensure the smooth administration of justice. Acts which are inconsistent with the Constitution may be passed as law and therefore the Courts would be required to administer laws which are not in accordance with the Constitution as well as laws which are unjust. No provision prevails in the Constitution other than the fact that courts are established for the administration of justice which permit the judiciary to administer justice when the application of the prevailing law would be unjust.

f) Conclusions

It is essential that the articles of the constitution be given an interpretation which enables the administration of justice and which does not constrain justice. In order to satisfy the legal community as well as the general public that the courts, in fact, administer justice it is necessary to develop and extend the methods of interpretation that are currently undertaken by the Supreme Court. Further amendment to the constitution is necessary in relation to articles empowering the administration of justice. The present dissatisfaction with the administration of justice is also due to the courts being focused on administering laws and such laws being in themselves unjust and with no requirement to conform to justice. Therefore, the courts in administering laws which are not necessarily just cannot administer justice to the satisfaction of the people.

g) References

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