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Application of Natural Justice Principles in Workplace Discipline: The Need for Legal Reform in Sri Lanka

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Abstract

Principles of natural justice, including fair hearings and unbiased decision-makers, should apply in employee disciplinary procedures. However, Sri Lankan labor law does not statutorily require employers to conduct domestic inquiries before imposing disciplinary punishments. This study investigated whether courts continue to uphold principles of natural justice in the absence of a legal mandate requiring domestic inquiries, thereby assessing the necessity for legal reforms. Through examining legislation, case law, and academic literature, this study found courts generally only consider if a valid reason exists for the punishment, not whether fair procedures were followed. Further discrimination arises between public and private sector employees in applying natural justice principles. Reforming labor law to mandate domestic inquiries before employee punishment would strengthen natural justice rules and align with international standards like ILO Convention 158. This reform is needed to universally uphold procedural fairness in workplace discipline. Until then, the judiciary cannot fully ensure employees' rights to fair disciplinary procedures are protected. Courts have upheld natural justice primarily under writ or fundamental rights jurisdiction, mainly benefiting public sector employees. Private sector employees lack that protection. Requiring domestic inquiries before punishment through amending the Industrial Disputes Act would fill this gap. This suggested legal reform would bolster the rule of law in Sri Lanka's employment relations. As the law stands, employers currently have full discretion on disciplinary procedures. Statutorily mandating domestic inquiries would check that unilateral authority. This study demonstrates the need to embed fair process requirements into labor legislation to fully realize principles of natural justice.

Keywords: Disciplinary punishments, Domestic inquiry, Labor law, Natural justice.

Introduction

This article aims to examine the importance of adhering to principles of natural justice in workplace disciplinary procedure and highlight the need for legal reforms in Sri Lanka to ensure compliance with these principles. Though industrial harmony is essential for a country's economic stability and development, the state's responsibility to maintain industrial harmony cannot be separated from its duty to uphold the rule of law. Principles of natural justice, which include fairness, unbiased decision-making, and due process, are a significant element of the rule of law that must be respected in employment relations (Jayasuriya, 2013).

Within the employer-employee relationship, principles of natural justice demand that fair procedures be followed before taking actions that negatively impact an employee's status, such as discipline or dismissal. The imposition of punishments or changes to employment status without adherence to natural justice principles threatens industrial harmony and undermines the employment relationship based on trust, good faith and fair dealing.

In particular, while preserving industry and employer prerogatives may provide justification for status changes in non-disciplinary situations such as restructuring, strong union demands or economic necessity, disciplinary actions specifically warrant compliance with natural justice and due process. Allowing punitive consequences for alleged misconduct without fair inquiry and response opportunities goes against modern employment standards. However, in the labor law regime of Sri Lanka, there is no

explicit statutory requirement stipulating that a domestic inquiry must be conducted before imposing disciplinary punishments on employees (De Silva, 2004). The Industrial Disputes Act No. 43 of 1950 does not mandate disciplinary procedures. Neither does the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 nor the Shop and Office Employees Act No. 19 of 1954 address disciplinary inquiries.

This contrasts with international standards such as ILO Convention 158 and the labor laws of many countries which clearly establish procedural fairness protections. The Sri Lankan approach affords employers full discretion in whether to hold domestic inquiries, unless specifically required by individual contracts or organizational policies.

Therefore, the critical responsibility to uphold principles of natural justice and the rule of law in workplace disciplinary matters lies solely with the judiciary of Sri Lanka. This study will examine whether the judiciary has effectively fulfilled this responsibility given the lack of clear legislative support for fair domestic inquiries.

Materials and Methods

This research employed the doctrinal legal research methodology and utilized a qualitative approach to comprehensively evaluate Sri Lanka's labor law framework regarding employee discipline. Primary sources analyzed included the country's main labor legislation, the Industrial Disputes Act, as well as the Government Establishments

Code and University Establishments Code containing disciplinary procedures. Key precedent cases from the Supreme Court, Court of Appeal, and Labor Tribunals were reviewed to determine how Sri Lankan courts have addressed domestic inquiry issues and applied natural justice principles.

In addition, ILO Convention 158 which is an international labor standard that establishes procedural fairness requirements for termination of employment, and academic books/articles on labor law were examined as secondary sources to contextualize the domestic inquiry concept and compare with global practices. Through deductive analysis and synthesis of these primary and secondary sources, the adequacy of existing labor law to protect employees' procedural fairness rights was critically assessed. Gaps identified then informed suggested reforms to mandate domestic inquiries before punishments, bringing Sri Lankan workplace discipline into closer alignment with natural justice ideals.

Results and Discussion

International standards on procedural fairness

The duty for administrative authorities to act judicially when dealing with people's rights was emphasized in the seminal UK case of *Ridge vs. Baldwin* (1964) AC 40, which stated that natural justice requires both substantive and procedural fairness. Procedural fairness classically entails allowing an individual to be heard before a decision is made against them, and having the decision made by an impartial decision-maker. An emerging third component of natural justice is the right to be provided

reasons for the decision, since without this the person cannot effectively exercise appeal rights (Gomez, 2011).

In employment contexts, adherence to natural justice principles generally requires that both a valid reason and a degree of procedural fairness exist for any dismissal or discipline to be considered substantively and procedurally fair (Orr & Tham, 2023). The mere existence of a valid reason connected to capacity, conduct or redundancy is not by itself sufficient justification for termination or discipline if proper procedural fairness has not been followed in the process leading to the employer's decision (Orr & Tham, 2023).

In Australia's employment law regime, the Fair Work Act 2009 defines unfair dismissal as a dismissal that is deemed "harsh, unjust or unreasonable." The Act sets out 8 specific criteria that must be considered in evaluating whether a dismissal meets this threshold, 4 of which directly pertain to procedural fairness. These criteria include: whether the person was notified of the reasons for dismissal; whether the person was provided an opportunity to respond to the allegations against them; whether the person was unreasonably refused the right to have a support person present at disciplinary discussions; and for performance-related terminations, whether previous warnings or opportunities for improvement were given (Fair Work Act 2009 (Australia), ss 385-387).

The ACAS Code of Practice on disciplinary and grievance procedures, issued under the UK's Trade Union and Labour Relations (Consolidation) Act 1992, requires employers to institute fair procedures for disciplinary

matters. Elements of fairness include dealing with issues promptly, conducting necessary investigations to establish the facts of the case, informing the employee of the problem and allowing them to respond at a disciplinary hearing, allowing the employee to be accompanied at the formal hearing, and providing appeal rights against formal disciplinary decisions (ACAS, 'Code of Practice on Disciplinary and Grievance Procedures', 2015).

Employment law scholars analyzing UK case law, which is a common law jurisdiction with significant influence on Sri Lankan labor law jurisdiction, have concluded that the reasonableness of an employer's actions can be evaluated on three main criteria - first, whether there were valid grounds for discipline or dismissal; second, whether the employer adopted fair and reasonable procedures in coming to their decision; and third, looking at the overall merits of the case. Procedural omissions or poor process will not automatically mean a finding of unfair dismissal in every case, but disciplinary processes that no reasonable employer would have adopted can justify a verdict of unfairness on their own when weighing the reasonableness of the employer's approach (Anderman, 1978). For instance, in *Chrystie v Rolls Royce* [1976] IRLR 336, not making sufficient effort to ascertain why an employee failed to attend an investigatory meeting was deemed unreasonable, making the subsequent dismissal unfair even though grounds for discipline existed.

International labor standards upholding procedural fairness

The Termination of Employment Convention 158 of the International Labor Organization (ILO) provides specific standards for both substantive and procedural fairness in termination of employment. It stipulates that termination must be based on a valid reason connected to the capacity or conduct of the employee, or based on the operational requirements of the enterprise (Article 4). Importantly, the convention also sets procedural fairness standards by requiring employers to provide an opportunity for employees to defend themselves against allegations prior to termination (Article 7), as well as providing appeal rights to an impartial body against terminations that are challenged (Article 8).

The ILO has also issued guidelines specifically focused on appropriate disciplinary and dismissal processes. These guidelines emphasize the right of employees to fully understand charges against them, access relevant evidence, have representation, respond to allegations, call and question witnesses, and receive appeal opportunities in disciplinary proceedings.¹ Therefore, it is evident that international labor standards overwhelmingly recognize that procedural fairness in disciplinary actions and dismissal is a crucial area for statutory regulation. The explicit establishment of just cause requirements and due process guarantees aims to ensure employers adhere to natural justice principles and do not take adverse actions against employees arbitrarily.

¹International Labour Organization (ILO), 'Guidelines for fair disciplinary and dismissal procedures' (Geneva ILO 1995).

Contrasting approaches in Sri Lanka's domestic labor law context

In comparison to the international consensus, within the Sri Lankan labor law regime there is a noticeable lack of clear statutory stipulation mandating the conducting of a domestic inquiry prior to imposing disciplinary punishments on employees (De Silva, 2004). Neither the Industrial Disputes Act No. 43 of 1950, Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 nor other labor regulations directly address domestic inquiries in discipline.

However, legal experts emphasize that while not strictly required under legislation, domestic inquiries are highly desirable and represent sound practice to uphold natural justice principles in Sri Lankan workplaces. Policies instituting fair disciplinary proceedings can ensure fairness and reasonableness even without explicit legal mandates (Adikaram, 2017). For public sector employees, the Government's Establishments Code contains comprehensive procedures for conducting domestic inquiries, involving preliminary investigations and formal inquiries with charges, evidence, defenses and appeals. Specific acts of misconduct warranting discipline are also enumerated (Establishments Code Sri Lanka). Some of the state corporations have also developed their own disciplinary codes modelled on the Government's Establishments Code (Universities' Establishments Code).

But for private sector employees covered under the general labor laws, judicial interpretation

demonstrates that in the absence of contractual terms or internal company policies requiring domestic inquiries, principles of natural justice pertaining to procedural fairness are considered legally inapplicable so long as valid substantive reasons for discipline exist.

Judicial interpretation of procedural fairness requirements

Earlier Sri Lankan court decisions appeared to favor the view that dismissing an employee without a domestic inquiry violates natural justice, potentially rendering the termination reviewable and invalid (All Ceylon Commercial and Industrial Workers Union vs. Weerakoon Bros. Ltd (1973) Sri Lanka Gazette No. 19 of 14.12.1973). However, later case law incrementally moved towards the perspective that the absence of a domestic inquiry alone does not make a dismissal unjustifiable so long as valid reasons are shown (All Ceylon National Milk Board Trade Union vs. The Board of Directors of CWE [1983] Gazette 261/10; St Andrews Hotel v CMU [1993] CA 138/85).

In the 2021 case of *Fernando v Union Apparel* SC Appeal 19/2015, (2021), the Supreme Court definitively stated it is a misdirection of law to hold that termination without an inquiry is inherently unfair or unreasonable. The judgment noted that mandating domestic inquiries in all instances would improperly impose an additional burden on employers, particularly when an employee's conduct clearly warrants termination without needing further investigation.

Following from this binding precedent, recent labor cases have continued to assess

the substantive justifications for punishment without intensive focus on procedural fairness. For instance, in the 2022 Brandix dismissal case (SC Appeal 60/2018), the Court confirmed employees have no right to representation at domestic inquiries unless specific internal company rules provide for it. The emphasis remained on whether valid reasons existed, not the process followed. However, a contrasting approach applies for public sector and public corporation sector employees seeking redress under constitutional or administrative law instead of labor law. Despite valid reasons, procedural flaws in domestic inquiries can become grounds to overturn disciplinary charges and dismissals among governmental and semi-governmental institutions.

Administrative law requirements for public corporation sector employees

In SC Appeal 111/2010, *Dr. D Wickramasinghe v University of Ruhuna* (2016), the failure to properly review disciplinary charges before issuance as required by university rules was sufficient reason to quash the charges and void the dismissal under writ jurisdiction, even without a labor law challenge. Similarly, in SC FR 79/2019, *N. K. Sooriyabandara v University of Peradeniya* (2021) charges were deemed a violation of natural justice and necessitated reinstatement despite acknowledging serious misconduct allegations. The University's procedural flaws in the investigation were cited as breaching due process rights.

However, for public corporation employees, labor tribunals have consistently upheld punishments based on substantive justifications without strict emphasis on

procedural adherence if inquiries were initially conducted. The tribunals apply principles similar to private sector labor cases (*R. A. C. R. Perera v Open University of Sri Lanka* [2016] LT Colombo 1/Add/93/2011). Therefore, the emerging discrepancy suggests administrative law requirements enforce stricter procedural fairness for governmental workers, while labor law exempts private employers from similar obligations. Differential access to constitutional remedies also enables public corporation sector forum shopping between labor and administrative jurisdictions.

In summary, the lack of explicit statutory requirements for domestic inquiries in Sri Lankan labor law appears to impede the consistent judicial application of natural justice principles on matters of employee discipline and dismissal. While substantive justifications may be evaluated, gaps in procedural fairness protections emerge particularly in the private sector.

Conclusions

This research demonstrates that principles of natural justice cannot be fully realized in Sri Lankan workplace discipline under the current labor law framework. Without a statutory footing mandating domestic inquiries for punishments, procedural fairness protections remain inconsistent and selective across sectors. Findings confirm the judiciary is hampered in safeguarding employees' rights to fair process without legislative support. While public sector punishments get overturned for inquiry breaches (SC Appeal 111/2010, SC FR 79/2019), private sector workers lack the same remedies for similar violations (All Ceylon National Milk Board

Trade Union vs. The Board of Directors of CWE [1983] Gazette 261/10; St Andrews Hotel v CMU [1993] CA 138/85; SC Appeal 19/2015, Fernando v Union Apparel [2021]; SC Appeal 60/2018, KFR Fernando v Brandix Apparels Solutions Ltd. [2022]).

Fundamentally reforming labor law is imperative to embed binding, just disciplinary procedures aligned with natural justice. Amending the Industrial Disputes Act to require domestic inquiries before punishments would achieve this. Compulsory fair process would check unilateral employer authority over discipline and protect all workers equally. Standardized domestic inquiry rules would also bring Sri Lanka up to speed with international standards in ILO conventions and foreign jurisdictions. Statutorily embedding fair hearing requirements would strengthen the rule of law in employment relations. As it stands, the lack of compulsory domestic inquiry procedures enables arbitrary discipline and selective justice contrary to principles of natural justice. Rectifying this deficiency through legislative reform is essential to uphold Sri Lankan workers' fundamental right to fair disciplinary process.

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