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Case Review: J. A. S. Priyadharshani Silva v University Grants Commission and Others (Ragging Case, 2025)

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Introduction

Ragging has entrenched itself as a long-standing practice within Sri Lanka's public universities (Rag Relief Committee, 2020), where its persistence continues to undermine student wellbeing (UNICEF, 2022). In this context, *J. A. S. Priyadharshani Silva v University Grants Commission and others* (2025) (hereinafter the Judgment), assumes significance as the Supreme Court makes judicial policy recommendations to prevent ragging. The Judgment was the result of a fundamental rights petition filed on behalf of a victim of ragging, which named the University Grants Commission and the University of Sri Jayewardenepura as respondents i.e. the institutions required to respond to the petition. As part of the relief sought by the petitioners, under prayer (e) (the section of the petition outlining the relief sought from the Court), the petitioners requested the Supreme Court to “Declare through order of Your Lordships’ Court guidelines to be implemented and enforced through the 1st Respondent Commission to all National State Universities...” (*Ragging Case*, 2025, p. 11). Subsequently, the Supreme Court issued directions to the Attorney General to “review all existing guidelines and..., to tender to Court consolidated and comprehensive guidelines [hereinafter the Guidelines] to deal with ragging efficiently and effectively” (*Ragging Case*, 2025, p. 20). The consequent Guidelines issued by Court, at first glance, forms a comprehensive, victim-centered, preventive and accountability-oriented framework that aims not only to respond to incidents of ragging but also to transform institutional culture into one that prioritizes dignity, inclusivity, and mutual respect of students, through a coordinated national effort. The Judgment’s focus on prayer (e) therefore becomes central to the Court’s approach, giving rise to the doctrinal and institutional concerns addressed in this commentary.

In the sections that follow, firstly, I briefly lay out the factual background of the Judgment. Secondly, I question the Court’s power to grant relief under its fundamental rights jurisdiction in the absence of an explicit finding of an infringement of a fundamental right. Thirdly, I explore the expanding scope of ‘just and equitable’ relief and the Court’s seeming evolution from the role of an

adjudicator to that of a policymaker, and fourthly, I provide a brief overview of the Guidelines forming part of the Judgment. I conclude that while the Judgment raises significant questions regarding the fundamental rights jurisdiction of the Supreme Court (S.L. Const. Art. 126) and its role thereunder, it nonetheless establishes a comprehensive framework whose effectiveness will ultimately hinge on the genuine engagement with the Guidelines by the actors within the university system, rather than on judicial pronouncements. Such an active commitment by all relevant stakeholders is especially pertinent given that the normative proliferation of anti-ragging mechanisms has failed to yield results thus far.

Factual Background

On 6th March 2020, senior students of the Faculty of Management Studies and Commerce of the University of Jayewardenepura organized an event to mark the conclusion of the ‘Ragging Period’ – the early phase of university life in Sri Lankan public universities during which senior students impose initiation practices on newly admitted students, often amounting to bullying or harassment (Rag Relief Committee, 2020; UNICEF, 2022). At this event, some of the senior students rolled a large backhoe tyre down a flight of stairs. The tyre struck the 2nd Petitioner (Pasindu Silva). He suffered severe injuries, including a fracture in his skull. He further sustained brain trauma leading to retrograde amnesia and partial paralysis. The resultant injuries left Pasindu completely incapacitated, prompting the 1st Petitioner (sister of Pasindu Silva), to file a fundamental rights petition (No 216/2020) on his behalf. The petition alleges that the University administration failed to ensure adequate oversight of the event because they purportedly failed to enforce the alcohol ban and the 10.00 pm curfew stipulated as conditions of approval for the night’s celebrations. The petitioners alleged that this failure directly contributed to the aforementioned ragging incident. On this basis, the petitioners invoked the fundamental rights jurisdiction of the Supreme Court on 13th July 2020, alleging the infringement of Article 12(1) of the Constitution of 1978, by the negligent inaction of the respondent University. Article 12(1) of the Constitution provides that all persons are equal before the law and are entitled to equal protection of the law.

Relief Absent a Determination of Infringement of Fundamental Rights

The first point of discussion arising from the Judgment is whether relief under the fundamental rights jurisdiction can be granted without an explicit determination of an infringement of a fundamental right. Paragraph 21 of the Judgement recounts how the Petitioner is not seeking a declaration on the violation of his rights, seemingly providing the impetus for the Court to solely focus on prayer (e) of the petition, instead of first inquiring into whether a right has been violated. Consequently, the Court proceeds to rely on Article 126(4) of the Constitution “so that effective

remedies can be considered and appropriate orders made” (*Ragging Case*, 2025, p. 10). The Court, then, directs the addition of further respondents to facilitate prayer (e) i.e. the Vice Chancellors of 16 other state universities, the Minister of Education and the Inspector General of the Sri Lanka Police. At no point in the Judgment has any attempt been made to determine, on the merits of the case, whether the purported negligence of the respondents and the ensuing incident of ragging amount to a violation of the Petitioner’s rights under Article 12(1) of the Constitution. The Court does not assess whether the failure to enforce the 10.00 pm curfew and the ban on alcohol amounts to executive or administrative action (S.L. Const. Art. 17, S.L. Const. Art. 126(1)). Nor does the court evaluate whether such failure amounts to a failure in equal protection before the law – a protection, arguably granted under any existing statutes such as the Universities Act No. 16 of 1978 (as amended) and the Prohibition of Ragging and other Forms of Violence in Educational Institutions Act No. 20 of 1998. It could have been argued that the respondents were negligent of their statutory obligations owed towards the petitioners, thereby infringing upon their rights under Article 12(1).

At this juncture, it is important to characterize the Universities Act and the Prohibition of Ragging Act as statutes that fall within the meaning of “law” stipulated in Article 12. Article 170 of the Constitution reads “law” to mean “any Act of Parliament, and any law enacted by any legislation....”, thereby forming the statutory basis upon which the petitioner is claiming relief (*Robert v Rathnayake*, 1986). In any event, the Supreme Court has accepted and acknowledged the right to education through Article 12(1) (*Z Score Case*, 2012), where an argument can be made that through the respondent’s negligent inaction, the petitioner’s right to education has been infringed upon – yet another avenue through which the Court could have assessed whether a right has been infringed by the alleged incident of ragging.

Moreover, the Sri Lankan Constitution provides a remedy for the violation of fundamental rights by executive or administrative action (S. L. Const. art 17) or executive or administrative inaction (*Faiz v AG*, 1995), or omission (*Wijenaike v Air Lanka*, 1990; *Demuni v Dharmasena*, 2018; *Jegan v IGP*, 2009). As such, the facts of the instant case (wherein the Petitioners alleged the Respondent’s negligent inaction), could have been evaluated through the approach adopted in previous case law.

In any event, before a remedy is granted under the fundamental rights jurisdiction, a violation must be established. This is supported by *Ganeshanthan v Vivienne* (1984), where Chief Justice N. Samarakoon held that, under Article 126 of the Constitution, the Court is required to make a “dual finding, viz., (1) [w]hether there is an infringement or threatened infringement of a fundamental right, and (2) [w]hether such infringement or threat is by executive or administrative action” (p.

330). Similarly, the Supreme Court has held that, “in the exercise of its jurisdiction in terms of Article 126 of the Constitution, the Court is determining whether those rights of individuals which have been declared and guaranteed by the Constitution have been denied by a failure on the part of the *State* to discharge its complementary obligations” [emphasis as in original text] (*Samanthilaka v Perera*, 1990, p. 324, citing *Saman v. Leeladasa and Another*, 1989).

Yet, in the present case, the Court proceeds directly to the question of relief without inquiring whether an infringement of a fundamental right has in fact occurred. It is noteworthy that the sole explanation offered for this deliberate omission by the Court, is the Petitioner’s explicit request. However, as this commentary will uncover, such an omission could, arguably amount to a lost opportunity for the development of fundamental rights jurisprudence. Even where a petitioner may waive a formal declaration of infringement, it may be desirable for the Court to inquire into and determine whether a fundamental right has been violated. Ideally, the question of relief would follow an explicit determination of a fundamental rights infringement.

Had the Judgment delved into the question of infringement in the impugned incident, it could have potentially clarified the standard of care and diligence required to be exercised towards the student community by institutions of higher education. It could have also built upon and enhanced the jurisprudence surrounding Article 12 in educational contexts, particularly in relation to safeguarding students against ragging and strengthening institutional accountability for acts of ragging within the university system. It is noteworthy that much of the Article 12(1) jurisprudence relating to higher educational contexts emanating from the Supreme Court thus far, focuses on challenging policy decisions related to university admissions or university employment (*Rienzie v UGC*, 1978-79-80; *Ramupillai v Perera*, 1991; *Pathirana v UGC*, 2003).

From Adjudication to Policymaking and the Reach of “Just and Equitable” Relief

The Court is empowered to grant relief or make directions “as it may deem just and equitable” within its jurisdiction on fundamental rights (S. L. Const. art. 126(4)). This section argues that the Judgment has used this mandate to expand its jurisdiction beyond the adjudication of fundamental rights violations to policymaking by way of directing the formulation of and adoption of guidelines to counter ragging.

By expanding the list of respondents to cover the entire public university system (*Ragging Case*, 2025, p. 11), the Court enables a broad, system-wide approach to granting relief, beyond the fundamental rights violation suffered by the petitioner. Contrast this with *Samanthilaka v Perera* (1990) where the addition of respondents in a fundamental rights case was to “identify those who could help the Court in the exercise of its inquisitorial functions in clarifying disputed facts... [or]

to facilitate proof that the act in question was an executive or administrative act...” (*Samanthilaka v Perera*, 1990). While the case of *Samanthilaka* is by no means an exhaustive exposition of instances in which respondents may be added, it signals how such addition was limited to facilitate an adjudicatory or inquisitorial exercise of the Court’s fundamental rights jurisdiction, as opposed to one of policymaking.

Instead, the Judgment appears to move beyond adjudication of the conduct of a single university by extending the list of respondents to encompass all universities, the Minister of Education, and the Sri Lanka Police, thereby venturing into policymaking for the entire higher education system of Sri Lanka. This is evident from the Court’s direction to the Attorney General to assemble representatives from the University Grants Commission (UGC), the respondent universities, and law enforcement to jointly review and consolidate existing anti-ragging measures, with mandatory participation from all respondents, and to present unified guidelines to Court (*Ragging Case*, 2025, p. 20). In this way, the Court directed the formulation of “Guidelines to Combat Ragging in Higher Educational Institutions” (previously and hereafter referred to as the Guidelines) which ultimately formed part of the Judgement as an Annexure (an unusual feature in judgements under Article 126). By the stipulation of specific measures, the Guidelines aim to operationalize existing norms established under the jurisprudence related to freedom from torture (S.L. Const. art. 11) and the Anti Ragging Act. Through this operationalization, the Guidelines essentially dictate conduct applicable across all institutions and govern their future conduct – a characteristic of policymaking traditionally reserved for the Executive (Rose-Ackerman, 2022). This raises an immediate doctrinal question concerning separation of powers, enshrined in Article 4 read with Article 3 of the Constitution of Sri Lanka (*Jathika Sevaka Sangamaya vs. Sri Lanka Hadabima Authority*, 2015). The doctrine of separation of powers dictates that public power should be divided among three distinct branches - legislative, executive, and judicial - so that no single branch can dominate or misuse power (*Jathika Sevaka Sangamaya vs. Sri Lanka Hadabima Authority*, 2015). The jurisdiction granted to the Supreme Court under Article 126 allows for the scrutiny of executive or administrative action and mandates the judiciary to adjudicate and determine whether executive or administrative actions have caused an infringement of fundamental rights. Arguably, this context of checks and balances between the organs of State dictates the parameters within which relief under Article 126(4) may be fashioned. As such, the doctrine of separation of powers ought to be one of the indispensable guiding principles of the “just and equitable” standard enshrined in Article 126(4).

The perils of “judicial overreach” (Jayesh Subhas Rathor & Bhavesh H. Bharad, 2025) can be illustrated by the *Fuel Pricing Case* (2008). Here, the Supreme Court arguably departed from the doctrine of separation of powers by issuing temporary orders suspending payments under a sovereign Hedging Agreement with

Deutsche Bank while attempting to mandate a new domestic fuel pricing formula (Deutsche Bank v SL, 2012, p. 3). This intervention triggered a constitutional deadlock: where the Executive refused to implement the court's pricing formula to protect national revenue (Asia Human Rights Commission, 2008), and the Central Bank - bound by the judicial order - halted contractual payments. Though the Court eventually vacated its orders due to executive non-compliance (Deutsche Bank v SL, 2012. P. 11), the damage was irreversible. The resulting breach of contract led to an arbitration in the International Centre for Settlement of Investment Disputes, where the tribunal found that the state's judicial and regulatory actions violated the "fair and equitable treatment" standard of the relevant Bilateral Investment Treaty between Sri Lanka and Germany (Deutsche Bank v SL, 2012, p. 108). Consequently, the judiciary's venture into complex macroeconomic policy resulted in a burdensome USD 60 million compensation award against Sri Lanka.

On the other hand, an alternative reading of the Judgment is also possible. The Judgment signals the evolving role of the Supreme Court as an enforcer of fundamental rights, with wide and unencumbered powers under Article 126(4) to grant relief for violations of fundamental rights. To that effect, there are previous instances of the Supreme Court sitting in exercise of its fundamental rights jurisdiction, and issuing directions for the formulation of guidelines (*L. I. Anjali v Bogahawatte*, 2019). As such, it may be argued that, through the addition of the respondents and the resultant formulation of guidelines, the Court not only underscores the importance of a concerted and collaborative effort by all relevant stakeholders in combating ragging but also characterizes its mandate as one that reinforces accountability through proactive administrative governance. This characterization of the Judgment finds further support in the fact that the petitioners have come to Court as a last resort due to the failure of university administration to curb ragging, whose (in)action can be attributed to the Executive.

Moreover, the Court's approach could be characterized as a creative way to inject new meaning to Article 4(d) of the Constitution which stipulates that "the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government." In any event, this is by no means the first instance in which the fundamental rights jurisdiction, especially the language of Article 126, has been interpreted to extend beyond the black letter of the law (*Sriyani Silva v Iddamalgoda*, 2003; *Eppawala Case*, 2000; *Chunnakam Case*, 2019).

The Gains and Gaps in the Guidelines

The Judgment places on record the institutional responses to ragging submitted by the respondents and reveals a fragmented and uneven landscape of anti-ragging measures across Sri Lanka's higher education system. While some institutions

such as the universities of Kelaniya, Moratuwa, Peradeniya, Rajarata and Ruhuna demonstrate relatively structured, multi-layered approaches integrating surveillance, counselling, and faculty-level oversight, others adopt more modest or compliance-driven measures with limited components of prevention or accountability. Several universities, including Sri Jayewardenepura, Jaffna and Sabaragamuwa, provide only minimal or incident-focused mechanisms. Against this backdrop of irregular and often inadequate institutional responses towards curbing ragging in the higher education sector, the Court's direction to the respondents to formulate Guidelines is a noteworthy attempt to remedy the systemic weakness revealed through the submissions made by the respondents themselves.

The Guidelines refer to both university level interventions and national level interventions by the UGC. In the case of the latter, the Guidelines establish a central Victim Support Committee under Clause A15 and Victim Support Fund under Clause A18 and introduce a Task Force to conduct periodic anti-ragging programs under Clause A16.

The Guidelines pertaining to universities can be broadly categorized into three areas as institutional changes, disciplinary mechanisms and targeted interventions. This section will comment on these three areas.

Firstly, the institutional changes introduced include the establishment of a Victim Support Committee (VSC) under Clause A1, an Anti-Ragging Committee under Clause A13, and Student Support Groups under Clause A10(f). The clear highlight of the Guidelines is that the VSC's composition and functionality provide comprehensive, victimcentered protection for survivors of ragging. A key aspect is the VSC's role as a facilitator of access to justice for students beyond the university, extending to legal representation, follow-ups with police investigations, and the power to file a complaint with the Inspector General of Police, if a complaint has not been followed through by the Police. Furthermore, the Guidelines acknowledge the impact of ragging on a survivor's academic performance and provides support in that regard. Taken together, these institutional innovations reflect a commendable and holistic approach taken by the Court through the Guidelines, addressing both immediate victim support and the broader structural conditions that enable ragging.

Secondly, disciplinary mechanisms are described in Clauses A2 and A14. In keeping with the recognition that ragging persists as a culture requiring a concerted institutional response, and in keeping with the discretionary powers vested with the universities under the Universities Act, the Guidelines acknowledge liability on both academic and nonacademic staff for omissions in reporting, with such failures constituting grounds for disciplinary inquiry.

Thirdly, the targeted interventions highlight potential risk areas that create conditions in which ragging can flourish. The Guidelines earmark specific aspects of university life, recognizing their correlation with ragging risks. These include

substance abuse in Clause A5, ragging in cyberspace and social media in Clause A9, and student hostels, which are identified as environments that can incentivize ragging in Clause A8. However, the Court's reach in attempting to curb ragging becomes problematic when it extends to measures such as installing CCTV cameras under Clause A4(c) and monitoring social media under Clause A9(c). Such proposals raise serious concerns regarding the freedom of expression and the freedom of peaceful assembly protected under Article 14 of the Constitution as well as considerations of privacy, although not explicitly recognized in the Sri Lankan Constitution. Given that the Supreme Court has issued these Guidelines, a critical question arises - to what extent did the Court assess the compatibility of these Guidelines with the Fundamental Rights Chapter of the Constitution of Sri Lanka?

Conclusion

J. A. S. Priyadharshani Silva v University Grants Commission and others (2025) raises interesting questions about the scope and limits of the fundamental rights jurisdiction as exercised by the Supreme Court of Sri Lanka. Can relief under Article 126(4) be granted by the Supreme Court in the absence of a clear determination of an infringement of fundamental rights? Do the wide powers of relief vested under Article 126(4) in the Supreme Court extend to judicial policymaking? And most importantly, what are the potential effects of the Guidelines issued by the Supreme Court on the enjoyment of fundamental rights more broadly by the members of Sri Lanka's university system?

Despite these questions, the Judgment has delivered a comprehensive framework that ought to be respected and if implemented faithfully, has the potential to tame the scourge of ragging in the higher education sector. Moreover, as parties to a Supreme Court Judgment, the respondents are bound to ensure strict compliance with the Guidelines. Failure to do so may attract the contempt of court jurisdiction of the Supreme Court as per Article 105(3) of the Constitution.

Whether this new set of Guidelines will escape the fate of previous interventions against ragging depends not on the Court, but on the readiness of university actors - administrators, academics, students, and support services - to engage proactively with the framework provided by the Court in the form of the Guidelines and to commit to operationalizing a culture of zero tolerance towards ragging within universities. The problem has never been normative scarcity but the entrenched dissonance between formal frameworks and institutional practice.

Conflict of interest

The author has no conflict of interest to declare.

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