The Singarasa Case: An Analysis of the Sri Lankan Supreme Court's Verdict of 'NO RIGHT'

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Abstract

Nallaratnam Singarasa v Attorney General is a black chapter in the judicial history of Sri Lanka. This paper raises the question, "did the decision of Singarasa create a situation of 'no right'?" This paper depicts that the denial of Singarasa's 'right to fair trial' actually created a state with a potential status of 'lawlessness.' Based on an appreciation of different international instruments, Sri Lanka's domestic legislation, and state practices prevailing in different countries, this article argues that the Sri Lankan Supreme Court, by its mechanical judgment, has essentially created a situation of 'NO RIGHT' for Singarasa.

Introduction

Nallaratnam Singarasa vs. *Attorney General*[1] is a much-debated case in the legal arena. The judgment is much questioned because there are allegations of non-compliance with the international law (IL) principles. Again, the judges are also alleged to have not followed the international standard of code of conduct, leading to judicial 'arbitrariness.'[2] This article explores and analyzes the Singarasa judgment and argues that instead of ensuring justice, creates a judge-made artificial gap between domestic law and international law. 'No Right' is a situation where a person's legal entitlement is curtailed by using legal tools. It takes the form of oppression through state machinery.

Dualism as the name suggests considers 'municipal law' and 'Inernational law' are of two separate and independent systems where the validity of international law is grounded on the rule of domestic law permitting the application of that international norm.[3] Strict dualism, as opposed to moderate dualism, may not be welcome and practiced in many countries to value the norms of international law.[4] In the case of Singarasa, however, the Lankan SC, in the name of going for

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[1] Nallaratnam Singarasa v Attorney General (2006) SC Spl (LA) No 182/99, (2006) ILDC 518 (LK) (Sri Lanka).

[2] To see more on 'judicial arbitrariness' please see, W Decock, '*The Judge's Conscience and the Protection of the Criminal Defendant. Moral Safeguards Against Judicial Arbitrariness'* in Georges Martyn and others (eds.) From the Judge's Arbitrium to the Legality Principle (Duncker & Humblot, 2013) 69; Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, (Irwin Law Inc. 2017) <https://www.irwinlaw.com/cold/arbitrariness> accessed on the 15 Nov 2019; Kent Roach, *Criminal Law*, (Irwin Law Inc. 2018) <https://www.irwinlaw.com/cold/arbitrariness> accessed 15 Nov 2019; Raoul Berger, Administrative Arbitrariness: A Synthesis (1969) 78 The Yale L J 965-1006.

[3] Madelaine Chiam, *Monism and Dualism in International Law,* (Oxford Bibliographies, 27 June 2018) <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0168.xml#:~:text=A%20dualist%20system%20treats%20the,application%20of%20that%20international%20norm> accessed 15 Mar 2021.

[4] Jonathan Turley, 'Dualistic Values in the Age of International Legisprudence' (1992) 44 *Hastings LJ* 185.

the so-called 'limited human rights' concept, adopted 'strict dualism.'[5] It obstructed a pathway of citizen's human rights by dishonoring the decision of the Human Rights Committee (HRC) of the Optional Protocol. Thus, the decision of the Lankan top court is nothing but a blockade for demanding justice-a situation of 'No Right' for poor Singarasa.

Facts and Backgrounds of the Case

Nallaratnam Singarasa was charged, under the Emergency Regulations and the Prevention of Terrorism (Temporary Provisions) Act of 1979, for attacking army camps and conspiring to overthrow the lawfully elected government. After arrest, he was severely tortured, including tying the hands together, hanging from a mango tree, pushed into the water tank and holding under it and many more folded; and thereby, his confessional statement was alleged to have taken forcibly. After trial, the High Court convicted him on all the charges and sentenced him to terms of 10 years in each head. Singarasa then appealed to the Court of Appeal, which was dismissed subject to a reduction of sentence on each charge to 7 years rigorous imprisonment (RI), which was ordered to run consecutively. Singarasa then sought a Special Leave from the judgment of the Court of Appeal, which was also refused. In consequence of the rejection of leave to appeal by the SC, Singarasa lodged a formal complaint to the HRC under the Optional Protocol (OP) to the ICCPR.[6] The HRC, by its analysis, found that the conviction and sentence imposed on the Singarasa are in violation of some provisions of the ICCPR. HRC observed that Sri Lanka, as a signatory to ICCPR and OP, is 'under an obligation to provide the petitioner (Singarasa) with an effective and appropriate remedy including release or retrial and compensation.' Subsequently, a petition for revision and/or review was filed before the SC on behalf of Singarasa to set aside the conviction and sentence, but the same was also rejected, ignoring the recommendation of the HRC.

Arguments from Both the Sides

Nallaratnam Singarasa, all through the case, claimed that he is innocent and not involved in the alleged incidence of attacking the army camp; that he was arrested along with almost 150 other villagers; that he was illegally detained and tortured; that he was produced before the Assistant Superintendent of Police where his confessional statement was illegally taken in a typed statement written in Sinhalese (which Singarasa did not understand) which prosecution subsequently produced as evidence of confession based on which Singarasa was convicted.

From the respondent (Attorney General), it was argued that the confession was admissible, pursuant to section 16(1)(2) of the Prevention of Terrorism Act, which renders admissible any statement made before a police officer and puts the burden of proof on the accused-petitioner to prove of its illegality; that the confessional statement was not irrelevant under section 24 of the Evidence Ordinance; that the HC and the Court of Appeal both found no illegality in the alleged conviction. The Respondent Attorney General, in further submission, asserted that the

[5] Klaus Vogel, *The domestic law perspective*, (2006) 2 Tax Treaties and Domestic Law, EC and International Tax Law Series. <https://www.ibfd.org/sites/ibfd.org/files/content/pdf/TaxTreatiesAndDomesticLaw_sample.pdf> accessed 30 Aug 2020.

[6] Nallaratnam Singarasa v Sri Lanka (2004) Communication No. 1033/2001 UN Doc. CCPR/C/81/D/1033/2001 (2004) (Complaint to HRC).

petitioner's argument tantamount to the 'interference with the independence of the judiciary' and a 'violation of the sovereignty of the people.'[7]

Decision of the Supreem Court and Analysis

From Singarasa's side, it was contended, *inter alia*, that i) the alleged involuntary confessional statement is inadmissible; ii) the recommendation of HRC is worthy of consideration by Lankan SC; iii) International Human Rights Law and instruments have the binding character in domestic court, especially in aid to its domestic legislative interpretation; iv) ICCPR or other international instruments are liable to be incorporated into the domestic legal system as Sri Lanka is a signatory to ICCPR and OP thereunder. However, the Lankan SC did not take all those questions in their consideration. The court rather dismissed Singarasa's appeal holding that the 'rights under the covenant are not rights under the law of Sri Lanka' because the covenant has not been enacted nor incorporated into the domestic law. In many respects, the Lankan SC is seen to have played a double standard. For example, the Lankan SC, as in many previous cases, accepted the quasi-monism[8] view, whereas, in Singarasa's case, the SC was reluctant to apply the above mentioned international human rights standard.

Strict v. Moderate Dualism: Could the Sri Lankan Supreme Court Ignore the International Human Rights Law altogether?

Justice is the ultimate goal of the law, where the judiciary plays a vital role in achieving the same.[9] Under the constitutional scheme of Sri Lanka, the state is bound to respect, secure, and advance Fundamental Rights (FR) by all organs of the government.[10] Likewise, it will be a state's duty 'to foster respect for international law and treaty obligations.'[11] But Sri Lankan's executive does not seem to have complied with it, nor its judiciary appears to have effectively

[7] The written submissions of the Respondent may be found in *Home for Human Rights* (2006) 4(2) BEYOND THE WALL-Q J 26-31. Also see Nigel Rodley, The Singarasa Case: Quis Custodiet…? A Test for the Bangalore Principles of Judicial Conduct (2008) 41 ISR L REV 504.

[8] For example, Sepala Ekanayake on June 30, 1982 committed the offence of hijacking in Sri Lanka but Sri Lanka had no law against hijacking but legal proceedings were resorted to on the basis of international law based on the ground that skyjacking an aircraft was an international crime and was an offence under international customary law. Sri Lankan Parliament on 26th July 1982 passed a law thereafter making skyjacking an offence with retroactive effect saying that "Nothing in this article shall prejudice the trial or punishment of a person for any act or omission which at the time it was committed was criminal according to the general principles of law recommended by the community of nations". Though there was an ambiguity in Fundamental Rights legislation, the Lankan Courts upheld Ekanayke's conviction. For more details, see Rajan Hoole, Prison Massacre And The Alitalia Hijacker Sepala Ekanayake, *THE COLOMBO TELEGRAPH* (Colombo, 21 Sept 2013), available at <https ://www.colombotelegraph.com/index.php/prison-massacre-and-the-alitalia-hijacker-sepala-ekanayake/> accessed 10 Nov 2019. Likewise, in Weerawansa v AG (2000) 1 SRI LR 387, the SC of Sri Lanka relied on art 27 (15) of the Constitution of Sri Lanka and held that the Sri Lanka should respect IL and treaty obligations in dealing with its own citizenship, particularly when there is question of rights and liberty involved. Again, in Bulankulama and others v. Secretary, Ministry of Industrial Development and Others (Eppawala Case) (2000) 3 SRI LR 243, same view was expressed holding that Lankan Courts cannot ignore the international instruments.'

[9] Chathurika Akurugoda, *Using International Law as an Aid to Construction in order to Protect the Rights of the People: A Sri Lankan Perspective*. Available at https://www.academia.edu/33812903/ accessed 19 Nov 2019.

[10] The Constitution of Socialist Republic of Sri Lanka, 1978 art. 4(d).

[11] *ibid*, art 27(15).

used International L as an aid to the construction of her domestic legislation, at least as it appears from the Singarasa case, to protect the rights of her citizen.[12]

Where the world is moving towards a moderate dualism[13], especially in the Human Rights issue, by using IL in constructing domestic legislation, Sri Lankan SC went one step backward by curtailing the rights of the country's own nationals. As said earlier, for example, the top Australian court takes the view in *Teoh*[14] that the spirit of art. 3(1) of the Convention on the Rights of the Child, 1989 should be respected though there is no specific domestic legislation in support of it. A similar view was also taken in *Re Minister for Immigration and Multicultural Affairs*, ex parte Lam[15] where it is said that the act of ratification of an international instrument gives rise to legitimate expectation. More legitimate expectation examples can be given invoking the jurisdiction of New Zealand in *Tavita* and *R* v. *Uxbridge Magistrate's Court* in the United Kingdom perspective in United Nations Convention Relating to the Status of Refugee, 1951. Based on the application of legitimate expectation practice around the world, it can be opined that in *Singarasa,* the Lanka SC miserably fails to uphold the international standard.

In human rights and fundamental rights jurisprudence, it is apparent that many courts of the world use International Law as the method of constructing their constitution and other right-based domestic legislations. For example, in the case of *Al-Kateb v. Goodwin*,[16] it was held that in today's world, the complete isolation of constitutional law from IL is neither possible nor desirable. That is why it is the duty of the national courts to interpret the human rights texts in harmony with the basic principles of IL. Bangalore Principles also reiterate the same view holding that while dealing with human rights issues, national courts have regard to international obligations in interpreting constitutional text whether or not they have been incorporated into the domestic law.[17] Even the HRC itself has accepted that states are not required to incorporate the ICCPR provisions into their municipal legislation so as to enforce them or give them enforcement through their domestic judicial mechanism.[18] But Lankan SC irrationally purports to deprive the citizen's right of submitting petitions to the HRC in the form of 'communication' interpreting strict dualism[19] ignoring the settled general principle of IL that the accession to a human rights treaty suggests 'a positive statement by the government of a country to the world and to the people (of the country) that the executive and its agencies will act in accordance with the convention.'[20]

The SC of Sri Lanka, ignoring the comment and recommendation of the HRC, held that it was not bound by it. From an international law perspective, when a country enters into any international instrument, be it incorporated through domestic legislation or not, it creates a legitimate expectation. Disregarding any such treaty obligation can give rise to state

[12] *Supra Note* 9
[13] For more details, please see Denza, 'The Relationship between International and National Law' in Evans, MD (ed.) *International Law* (OUP 2006) 429.
[14] Re Toeh (n 22).
[15] (2003) 195 ALR 502.
[16] (2004) HCA 37 (Kirby J).
[17] Bangalore Principle (n 17) Principle 4.
[18] Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 13 UN Doc CCPR/C/21/Rev 1/Add 13 (2004).
[19] *Supra Note* 7, 501.
[20] Chathurika Akurugoda (n 9).

responsibility.[21] In Australia, in the case of *Teoh v. Minister for Immigration, Local Government and Ethnic Affairs*,[22] it is found that in the dualist system, the mere ratification of an international treaty does not automatically come into play to the domestic atmosphere by way of incorporation,[23] yet the ratification of a treaty by the executive is a positive statement to the world and to its own citizen that the government is willing to act in consistency with the convention.[24] New Zealand is found to have followed the pathway of Australia and is seen to have valued the international instrument 'to be the positive statement,' which carries legitimate expectations as well.[25] The position of the United Kingdom is not much different from that of in Australia and in New Zealand. The UK courts are found to respect and promote human rights and fundamental freedoms based on international instruments though the UK has an unwritten constitution or there is no incorporated domestic legislation in support.[26] For example, the UK court took the liberal view on refugee issues[27] where the court held that though there was no formal legislation in the UK incorporating refugee rights. But the United Kingdom being a signatory to the refugee convention, is under an obligation to protect them.[28] In line with the world practice, it may be argued that Sri Lanka being a signatory to the ICCPR and the OP thereunder, had an international obligation, which led to a legitimate expectation for Singarasa that the decision of the HRC would be honored and enforced by the Lankan SC. But the Lankan top court miserably failed to consider the same on the silly ground that the ICCPR and OP were not adopted through domestic legislation.[29]

The question may arise after the SC declares that acceding to Optional Protocol by the President of Sri Lanka is unconstitutional, does the accession render itself a nullity? Under both customary international law and the relevant provision of the Vienna Convention on the Law of Treaties, the answer is negative.[30] Under the Vienna Convention on the Law of Treaties (VCLT),[31] Sri Lanka is bound by the protocol as it may not be allowed to invoke its domestic law for violating the provision of OP under ICCPR[32] because, in international law plane, Sri Lanka as a state party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'[33] and in case of her doing so will incur state responsibilities. It may be argued that when the President of a country signs and ratifies an instrument, especially human rights instruments, it carries with the legitimate expectation that its mandate shall be carried out by the state through

[21] Shivaji Felix, Human Rights Treaties and Claims Based on Legitimate Expectations: The Implications of Singarasa v. Attorney General (2006) 18 Sri Lanka J Int' L 460.
[22] [1994] 121 ALR 436.
[23] See e.g., DJ Harris, *Cases and Materials on International Law*, (4th edn, Sweet and Maxwell,1991) 69-72 also at *Supra Note* 21, 462.
[24] *ibid* 463.
[25] In the case of *Tavita* v. *Minister of Immigration* (1994) 2 NZLR 257, P Cooke J says that, '[A] failure to give practical effect to international instruments to which New Zealand is a party may attract criticism.' See also, Felix (n 21) 466.
[26] For more details, please see *R v Secretary of State for the Home Department*, ex parte Leech (1993) 4 All ER 539.
[27] *R v Uxbridge Magistrates' Court*, exparte Adimi (1999) 4 All ER 520.
[28] *Supra Note* 21, 467.
[29] Re Singarasa's Complaint to HRC (n 1); Felix (n 21) 468.
[30] *Supra Note 7*, 506.
[31] Vienna Convention on the Law of The Treaties, May 23, 1969, 1155 UNTS 331, reprinted in 8 ILM 679, entered into force Jan.27, 1980.
[32] *ibid* art 46.
[33] *ibid* art 27.

its action. When some rights, on the basis of which, are conferred to a citizen, as is happened in the case of Nallaratnam Singasara by HRC through its decision, it should be honored by the executive.[34]

Judicial Behavior in Singarasa Case: A Test under International Norms

It is alleged that the SC of Sri Lanka acted in an overly executive-mind, especially in regards to the terrorism issue, most probably because the Sri Lankan state suffered a lot for it.[35] On the international plane, the Bangalore Principles of Judicial Conduct[36] stipulates the criteria that may be followed for a sound and sustainable judicial decision making. The guidance sets few determining factors by which the assessment can be made to value the judiciary as an institution. The independence of judiciary is the guiding light. Apart from it, the other factors or criteria are impartiality, integrity, propriety, competence, and diligence.[37]The Bangalore Principles articulated that a judge shall be free from any inappropriate influence of the executive and legislative branches of the government.[38] He must be independent and should thereby discharge his duties 'free from extraneous inducement, pressures, threats or interference, direct or indirect, from any quarter or for any reason.[39] It is mentionable here that law and principles cast responsibility on other organs of the government also to assist the judiciary so that it can uphold its independence. For example, UN Basic Principles on the Independence of Judiciary[40] states that it shall be 'the duty of all governmental and other institutions to respect and observe the independence of the judiciary.'[41]

A close scrutiny of the Singarasa case shows that the SC of Sri Lanka had some apathy in giving fair opportunity to Nallaratnam for defending himself. Even the path of deviation from the law as adopted by the Lankan top court put it under challenge whether it fulfills all the criteria as an institution of justice delivery mechanism. Following the above discussion, it appears that the normative judicial behavior in Singara Case is not found to be *at par* with international standards.

Does the Sri Lankan SC Create a 'No Right' Situation for Mr. Singarasa?

[34] *Supra Note* 21, 459-460.
[35] *Supra Note* 7, 512.
[36] Bangalore Principles are the efforts made by a Judicial Group consisting of Common Law Judges and the UN Commission Human Rights Special Rapporteur on the necessity of the identification of a code of conduct by which a judicial officer may be measured and on the Strengthening of the Judicial Integrity convened by the UN Centre for International Crime Prevention. Its first meeting was held in 2000 in Vienna in connection with the UN Congress on the Prevention of Crime and the Treatment of the Offenders. The 2001 Bangalore draft code for judicial officers measurement was adopted in 2002 at the Peace Palace, The Heague by the group where a number of judges from different corners of the world including a number of judges from the International Court of Justice participated. See Report of the Special Rapporteur on the Independence of Judges and Lawyers, 26-29, Annex, Explanatory Note, U.N. Doc. E/CN.4/2003/65 (14 Jan 2003) (Prepared by Dato Param Cumaraswamy)
[37] Supra Note 7, 515.
[38] The Bangalore Principle, 2002 Principle 1.3.
[39] *ibid* Principle 1.1.
[40] Adopted by the Seventh UN Congress of the Prevention of Crime and the Treatment of Offenders in 1985 and endorsed by GA Res No 40/32. (UN Basic Principles).
[41] UN Basic Principles, ibid, Principle 1.

A 'No right situation' may arise from various factors that are not possible to bring in one frame at one time. However, major causes leading to a man's 'no right' may include the 'oppression by the state machinery' by which his right to representation is curtailed or threatened. Again, 'arbitrariness' in the judicial process or 'denial of justice' either by way of short-trial or keeping a person under custody without trial are few examples of a citizen's no right position.

What constitutes 'arbitrariness' leading to a 'no right' situation? To answer the question, we may refer to a law or a situation that infringes a right but bears an insufficient relationship with the state interest that lies behind the legislation.[42] In other words, despite having legislation approved by the parliament, a situation creating oppression to a particular group of people may arbitrarily lead to a situation of 'no right.' 'Arbitrariness' can again be described as a principle against fundamental justice.[43]. It may arise from one's personal characteristics or his belonging to a particular community. The concept of judicial arbitrariness is not a myth but a reality. Non-arbitrariness, on the other hand, is one of the principles of Bangalore Principles of Judicial Conduct. From in Sri Lankan perspective, *Anthony Fernando v. Sri Lanka*[44] may be cited where judicial arbitrariness was also said to have been found. There, because of filing petition in the SC, the accused was leveled a charged of contempt, and he was sentenced to one-year rigorous imprisonment. This case perhaps suggests that judicial arbitrariness may also arise from a court judgement.[45]

Citizen's 'No Right' situation may also arise from 'denial of justice,' the term which essentially suggests as 'the adversary composition of judicial process defeats the goal of fairness and justice.' During emergency and martial law period when actually there is almost no rule of law, the court's denial to act as per the constitution may give rise to a denial of justice, resulting in 'no right' for the citizen.[46] Even after the change in the political regime, when the political leaders are brutally killed, but the way to get justice is blocked by the 'indemnity law' promulgated by the parliament, it is the best example of creating no right for the victim's family.[47]

If we peruse Singarasa's judgment, we will find that the award of the sentence was irrational and procedural fairness was not maintained; rather, there was a deviation of law.[48] Above all, the law

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[42] Robert J Sharpe & Kent Roach (n 2); Raoul Berger (n 2) 965.
[43] *Supra Note*, 2
[44] Anthony Fernando v Sri Lanka (2005) Communication NO. 1189/2003, UN Doc CCPR/C/83/D/1189/2003.
[45] Definition from *Nolo's Plain-English Law Dictionary*< https://www.law.cornell.edu/wex/arbitrary> accessed 15 Nov 2019.
[46] For example, see, State v Joynul Abedin (1980) 32 DLR (AD) 110 (Bangladesh), where during martial law, making the constitution sub-ordinate to martial law and the suspension of certain fundamental rights were held to be not illegal by the top court of Bangladesh. Similar view was taken in many more cases in this sub-continent where martial law was supported under the veil of 'doctrine of necessity'. See, State v Dosso (1958) PLD SC 553 (Pakistan). Similar case in Indian Jurisdiction may be cited as *ADM Jabalpur v SK Shukla* (*1976) AIR SC 1, 207(India).*
[47] For example, 'Indemnity Ordinance, 1975' [Ordinance No 50 of 1975] was adopted by Bangladesh exempting the assassinators of its Father of the Nation Bangabandhu Sheikh Mujibur Rahman from the liability of the killing as well as creating legal bar in taking any action in connection with this coup. The impugned indemnity law was scrapped by the parliament on 12 November, 1996 by 'The Indemnity (Repeal) Act, 1996 [Act No 21 of 1996] (Act of Bangladesh).
[48] Though section 127 of the Criminal Procedure Code and section 8 of the Prevention of Terrorism (Temporary Provision) Act, 1979 warrant that any confessional statement to be true and voluntary but in Singarasa case, the

on which he was convicted shifts the burden of proof to the accused in respect of confession[49] , which is another deviation of the general principles of the law of procedure of criminal law. Moreover, the Lankan SC appears to have denied Singarasa's legitimate expectation of the right to a fair trial in a formalistic[50] way, ignoring the decision of the HRC.

From a jurisprudential perspective, it is also clear that the Singarasa Judgment actually created a 'No Right' situation for poor Nallaratnam Singarasa. He was palpably seen to be defeated by the mighty state machinery and forces. The history of the evolution of law suggests that under natural law to modern law principles, the prime concern is to render justice to the people as it being their inalienable rights.[51] Likewise, today's world is witnessing 'moderate dualism' that concentrates on upholding people's human rights also.[52] In realism, as a contradistinction to formalism, the focus is much paid on the judge-centric discussion i.e. the judges must put the reality in context while delivering their judgment.[53] Whatever is said by prosecution or police in a criminal case should not be relied on blindly while rendering justice- but unfortunately, that happens with Singarasa-resulted him '*No Actual Right to Defence*.'

Concluding Remarks

Judiciary is said to be the people's last resort to seek justice, but it may have some black chapters too. The verdict passed by the top court of a country is obligatory to maintain, but it is not always error-free; political reason, deep state factors, and other reasons work, in many cases, as the catalyst to pass an order.[54] History suggests that judicial killings also happened through the hands of the judiciary.[55] Singarsa's case is dubious as his conviction was sustained based on such silly grounds that it may be treated as a violation of the principle of justice. International Human rights treaties create some legitimate expectations which the domestic court should observe but the Singarasa Judgment failed to consider those legitimate expectations; rather ignores the opinion of the Human Rights Committee. Thus, the way the SC of Sri Lanka refuses to consider the HRC's decision is quite unprecedented. It is said that judicial independence is the value that lies at the center of the rule of law. And people's credence and reliance are the force and source

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evidence shows that Singarasa's statement was taken forcibly in presence of Senior Police Officer and in a different language which was not known to him. All the anomalies are found in the evidence but Singarasa was unfortunately convicted largely based on that faulty so-called confessional statement.

[49] The Prevention of Terrorism (Temporary Provision) Act, 1979 s 16(2).

[50] Formalism, as against realism, suggests that the judges work mechanically without considering the accused's background, intention or the socio-cultural aspect. In other words, ends of justice is not paramount consideration in formalism rather an emphasis is given on what the prosecution story and mere black and white words of law. For more details please see Suri Ratnapala, *Jurisprudence* (CUP 2009) 94.

[51] Suri Ratnapala, *ibid*, 318-322.

[52] Noel Dias and Roger Gamble, *Nallaratnam Singarasa v Attorney General: The Supreme Court of Sri Lanka Confirms limited human rights protection for Sri Lankan Cictizens* (2006) 18 Sri Lanka J Int' Law 451-453.

[53] Jerome Frank, *Law and Modern Mind* (1949) (English edn), reproduced in Michael DA Freeman, *Lloyd's Introduction to Jurisprudence* (9th edn, Sweet & Maxwell 2014) 841. Also in Suri Ratnapala, (n 50) 96-100.

[54] The realists' critique, for example, argues that the judges may have biasness due to political-social phenomenon. Even corruption inside the judiciary may have another reason of not having a fair judgment. For more details, please see 'Legal Realism and the Realist Critique', *The Bridge*, <https://cyber.harvard.edu/bridge/LegalRealism/essay2.htm> accessed 13Nov 2019.

[55] For example, the first victim of judicial killing in this sub-continent is Raja Nanda Kumar. For more details, please see Rohit Kumar, 'The Trial and Hanging of Raja Nand Kumar: First Judicial Murder in British India' *The Hindustan* (New Delhi, 6 Aug 2018) <https://thearticle.in/hindustan/judicial-murder-rajanad-bengal/> accessed 18 Nov 2019.

of all power of it. If a litigant's case is not decided by an honest assessment of the facts and sound reasoning of the law but by an unencumbered by extraneous influences, then the verdict will simply be a decision for the sake of the decision; having nothing to do with the law and in contradistinction to the concept of the rule of law.[56] The Singarasa judgment is a classic one and is always relevant because 'an injustice to anywhere is a threat to justice everywhere.' If a continuous international 'pen protest' can prevent the other potential Singarasa's decision for the future, it will be a success, for history teaches us from its experience and shows the light for the future!

[56] *Supra Note* 512.