

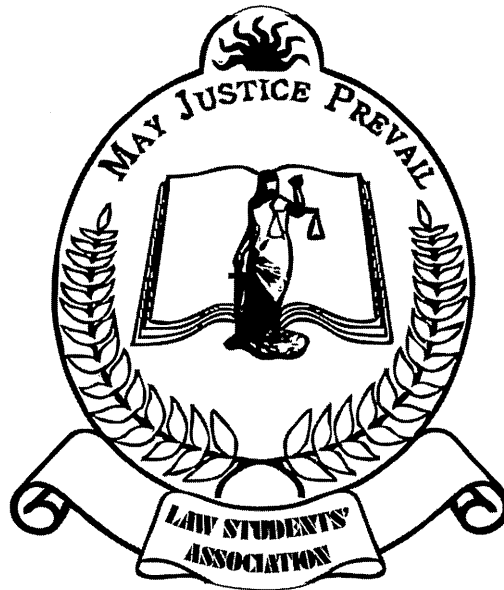
**"May Justice Prevail"**

# **NEETHAM 2018**

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### 1. Introduction

There are fifteen State Universities offering higher education in Sri Lanka. The University Grants Commission is the statutory body administering selection and allocation of students to universities and higher education institutes established under the Universities Act No 16 of 1978. According to the hand book for admissions for academic year 2017/2018, 219 courses are offered by the state universities in Sri Lanka. Admission to state universities is highly competitive in Sri Lanka, in the academic year 2017/2018; only 30,513 students were admitted to different state universities out of 78,883 candidates who were eligible for selection. Since there is a significant gap between the demand and the supply of higher education facilities, the state universities and higher education institutes together with the University Grants Commission have to explore new avenues to enhance students' access to higher education in Sri Lanka.

### 2. Higher Education and Merit Based Admissions

Higher education is the path for upward mobility for youth in general and for the ones who are economically and otherwise underprivileged in particular. With the purely merit based educational system prevailed till 1970, those who excelled in G.C.E (Advanced Level) examination were selected to universities. The Tamils were able to secure greater amount of admissions in Universities, half of the places available for medicine and engineering, the most popular courses of study, were secured by Tamils<sup>1</sup>. Not only the high number of secondary schools with high quality teaching in Jaffna but also the barriers placed by the Official Language Act of 1956 in securing employment in the public

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<sup>1</sup>Samarasinghe. S.W.R.de A, 'Sri Lanka: The Challenge of Postwar Peace Building, State Building, and Nation Building', <https://www.tandfonline.com/doi/abs/10.1080/13537110903393462> ,Published online: 11 Dec 2009, Pages 436-461

service for Tamils made them to focus on education with professional qualification and job guarantees.

### 3. Linguistics Standardization Policy

The university admissions of Tamil youth disproportionate to their population especially in science stream, turned out a political issue. As a result, the education policy was revised and a linguistic standardization was brought in and a district quota system after two years. The standardization policy though it was named as an affirmative or reverse discriminatory action, did not serve such purpose rather resulted in ethnic discrimination and caused the decades prolonged civil war. The linguistic standardization policy is described as a hasty, shortsighted and irrational decision as Sinhala medium students gained privileged admission to universities for medical, engineering and other courses at the expense of Tamil medium students. As per the report of the World Bank, Tamil representation in the science based disciplines fell from 35% in 1970 to 19% in 1975<sup>2</sup>. In general, under a reverse discrimination policy underprivileged will get a step up over the privileged, in Sri Lanka only the reverse took place, for example a child of a Sinhala senior professional studying at a well reputed school secured admission to university while a child of an estate labourer, or slum dweller is denied of such right, purely on the basis of language<sup>3</sup>.

K.M. de Silva describes it as follows: the qualifying mark for admission to the medical faculties was 250 (out of 400) for Tamil students, whereas it was only 229 for the Sinhalese. Worse still, this same pattern of a lower qualifying mark applied even when Sinhalese and Tamil students sat for the examination in English. In short, students sitting for examinations in the same language, but belonging to two ethnic groups, had different qualifying marks and he observed that doing this in such an obviously discriminatory way, 'the United Front Government of the 1970s caused enormous harm to ethnic relations<sup>4</sup>.

Official language Act of 1956 and the linguistic standardization policy had aggravated the sentiments of Tamil people over university education and the employment in the public service. If merit remained the sole criterion for university admissions and the equals were treated equally the separatist movement and the violent armed conflict would have been avoided, the same would have been avoided if the proficiency on Sinhala language was not made compulsory in the public service or

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<sup>2</sup> The Root Causes of the Ethnic Conflict in Sri Lanka.

<<https://siteresources.worldbank.org/INTSRILANKA/Resources/App1.pdf>> p.4, last accessed 19.05.2018

<sup>3</sup> Nesiiah. D, A Review of Quotas in University Admissions <<https://groundviews.org/2012/10/04/a-review-of-quotas-in-university-admissions>> published on October 9, 2012, last accessed 16.05.2018

<sup>4</sup> As cited by Tamils Squeezed out of Higher Education – 1971. <<http://tamilnation.co/indictment/indict010.htm>> last accessed on 16.05.2018

competency in the second language was made equally compulsory for Sinhala and Tamil public servants and merit was the sole consideration. University education particularly in professional courses and a government job with pension and other facilities thereby were considered to be the only choice for Jaffna Tamils for social upward, the damage caused by these two policies over that aggravated the Tamils and led them to find a solution on their own which could not be a success though.

#### 4. District Quota System

In 1972, a district quota system was introduced with a small island wide merit based admission (30%) component. In 2000, a minor change was introduced to reduce the number of subjects from four to three and a general knowledge paper was introduced and in 2002, Z score was introduced instead of previously used aggregate raw marks system. As per the current system of University admission, 40 % is distributed based on merit, 55 % of the places in each course of study are allocated to the students from 25 districts in proportion to the population ratio and the balance 5 % of places in each course is allocated to children from 16 underprivileged districts<sup>5</sup>.

##### 4.1. Arguments Against Quota System

C.R. de Silva says that by 1977 the issue of university admissions had become a focal point of the conflict between the government and Tamil leaders. Tamil youth, embittered by what they considered discrimination against them, formed the radical wing of the Tamil United Liberation Front. Many advocated the use of violence to establish a separate Tamil state of Eelam. It was an object lesson of how inept policy measures and insensitivity to minority interests can exacerbate ethnic tensions<sup>6</sup>.

The deviation from purely merit based university education in Sri Lanka has caused serious impacts on nation building. The standardization policy was not challenged before the court of law, as of the argument by H.L.De Silva, although a provision like Article 126 of the 1978 constitution was not provided under the 1972 constitution, it is not right to argue that fundamental rights under the 1972 constitution were not justiciable, He sees the non-challenge as a strange practice<sup>7</sup>. H.L.De Silva states

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<sup>5</sup> Student Hand book of UGC for the academic year 2017/2018 & Gunawardane.R, University Admission Process Needs Urgent Review: A Proposal, <<https://www.colombotelegraph.com/index.php/university-admission-process-needs-urgent-review-a-proposal/>> last access 16.05.2018

<sup>6</sup> As cited by Tamils Squeezed out of Higher Education – 1971. <<http://tamilnation.co/indictment/indict010.htm>> last accessed on 16.05.2018

<sup>7</sup> De Silva. H.L, Pluralism and the Judiciary in Sri Lanka *Ideas for Constitutional Reform*, p,91

elsewhere that the judgment in citizenship and franchise case discouraged Tamils from bringing any agitation before any court of law<sup>8</sup>

The quota based university admission system was challenged before the court of Law in *Senaviratne v. The University Grants Commission*<sup>9</sup> case not on ethnic grounds but as violation of principle of equality. The court upheld the scheme of admission on the ground that the university had the right to determine the sources from which admissions should be made after having made an overall assessment of the needs of the country and taking in to account particularly the position of person or classes of persons who may be underprivileged or handicapped. The court also held that the criterion adopted was not arbitrary and had a rationale relation to the object to be achieved.

The court was reluctant to hold merit as the sole criterion for university admission( only 30% of the available places were distributed on the merit basis at the commencement of the scheme), it was the opinion of the court that the pure merit basis will place the children in urban areas with better secondary education facilities in an undue advantaged position, with reference to the Directive Principles of State Policy (27(2) (b) (h) the court upheld the scheme as an affirmative action to rectify the imbalance in university admissions. H.L.De Silva argues that it is not legitimate for the court to make Directive Principles of State Policy enforceable in contravention to Article 29 which expressly declares Directive Principles of State Policies are not justiciable. H.L.D Silva draws attention to the fact the only the legislature is allowed to put limitation on equality in terms of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society, so it is only the legislative action not executive action which can place reasonable restrictions on principle of equality. According to him, the judiciary through the judgment in *Senaviratne* case imposed far reaching incursions into the principle of equality by allowing an administrative action to do so with reference to unjustifiable Directive Principles of State Policy, uncertainty is the end result<sup>10</sup>.

Indian Chief Justice A. N. Ray affirmed that "equality of opportunity for unequals can only mean aggravation of inequality. Merit not being considered as the sole criterion for university admission and the introduction of the quota system in Sri Lanka appears to be equal treatment of unequals which is in fact a violation of equality. Rathika Coomaraswamy states that *Senaviratne* case is an example of a judiciary which uses policy analysis not to give full effect to the policy and intent of underlying

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<sup>8</sup> De Silva. H.L.Pluralism and the Judiciary in Sri Lanka, *Ideas for Constitutional Reform* p,87

<sup>9</sup> S.C. Application No 88/1980.

<sup>10</sup> De Silva,H.L. PC. The role of the Judiciary in the Protection of constitutional Rights in *Ideas for Constitutional Reform*, 94

fundamental rights provisions but to actually limit these right and to give constitutional justification for an adverse policy of the moment<sup>11</sup>.

The rationale behind the condemnation is violation of principle of equality. Although the judicial pronouncement to give enforceability to Directive Principles of State Policy has been justified in some other instances, for example in approving the 13<sup>th</sup> Amendment to the Constitution, the same approach in the admission policy case is controversial as it appears to and in fact treats un equals equal.

#### 4.2. Arguments in support of Quota System

The standardization policy and the quota system are appreciated by few for different reasons. “If the selection of students for universities is based on merit, the dynamics of circumstances and environment won't be reflected on, they have a significant and profound effect on merit which are by-products of the history for which it would be unjust to penalize the students, the unequal opportunities to be dealt with forthright manner, so the affirmative action in the form of quota should be retained and implemented to deal with the legacies of history while attempting to effectively minimize( disparities cannot be eliminated at all, it will exist in all societies in one form or the other) the disparities and unequal opportunities currently exist”<sup>12</sup>.

Neville.S. Laduwahetty stresses the following too,

*“The universities around the world came to understand long ago that the quality of education improved if they had students with varying life experiences and it is considered to be the responsibility of the universities to provide access to all sectors of the people. In the pre-standardization and district quota era, the Sri Lankan universities did not fulfill the same responsibility whereas the Tamil students entered to medical and engineering faculties more than the Sinhalese despite the population ratio, which is an un due share of the resources. Also the interests of the larger community won't be served if the majority of the engineers and doctors can communicate in Tamil only. Tamils wrongly perceive the standardization as a climatic step to discriminate Tamils in the education sphere. It is nowhere evident in the world that university admission is made purely on merit or raw marks”<sup>13</sup>.*

The rationale behind the defense of quota system is rectification of injustice caused by in equal distribution of resources among the districts across the country.

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<sup>11</sup> Coomaraswamy.R, The Sri Lankan Judiciary and Fundamental Rights A Realist Critique' (1987) 6 Colombo LR 158;

<sup>12</sup> Neville S.Laduwahetty, Selection to Universities January 1997, Sri Lankan Issues. A collection of Articles (March 24, 1997) 98-103.

<sup>13</sup> Neville S.Laduwahetty, Selection to Universities January 1997, Sri Lankan Issues. A collection of Articles (March 24, 1997)82-85.

## 5. Effectiveness of Higher Education Policies

### 5.1. Policy drawbacks

In the background of the introduction of standardization first and the quota system then, the question of the time is whether the same had served the purpose of addressing the problems of unequal opportunities in terms of education and other socio economic issues. The district quota system assumes that educational opportunities are not uniform for every district so that island wide merit based admission is inappropriate; it also assumes that all the schools in the district have equal educational opportunities so a district can be declared as underprivileged. The assumptions underpinning the quota system are proved to be wrong. Every district has schools which are well equipped and less equipped, for example Matara has schools of both nature. Since there are disparities in terms of educational facilities within a district even, instead of district quota, quota based on school groups would be appropriate<sup>14</sup>.

It is sad to note that out of 25 administrative districts, 16 are declared to be educationally disadvantaged. Amongst the provinces, only the western province is educationally advantaged. Without taking steps to improve the standards of education in the schools of those districts, the quota system is employed to cover the unequal opportunities thereby the purpose of the affirmative action is lost. Affirmative actions do not offer permanent solutions, only ad hoc remedies. And also the quota system was introduced to address the disparities in teaching science in schools across the world, in fact it is unnecessarily extended to arts and commerce stream too and retained for science stream without ensuring the development of science education even after 48 years of introduction to quota. As of now the admission for students to the universities in the Arts stream is done based on All Island merit with few exceptions. Admissions to courses on Music, Dance, Drama & Theatre, Visual Arts, Visual & Technological Arts and Art & Design are still done based on district quota. Admissions in commerce stream still continue to be done under quota system. It is not clear why quota based admission process takes place in some courses in the Arts stream and Commerce stream as a whole.

In addition to, the Z-score method is also controversial. A research finding concludes that using z-score method in determining university admissions in Sri Lanka is disadvantageous to most students. In most cases, the cut off score was higher than it was when the raw score method was utilized at a 0.05 significant level. In all cases the test can be 80% confident that standardizing the score did not have a positive impact on university admissions in Sri Lanka. Also, this method lacks transparency,

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<sup>14</sup> R.P.Gunawardane, 'University Admission Process Needs Urgent Review: A Proposal' *Colombo Telegraph* <<https://www.colombotelegraph.com/index.php/university-admission-process-needs-urgent-review-a-proposal/>> last access 16.05.2018.



as the published data does not provide the candidates the mean and the standard deviation of each distribution-subject wise or based on districts<sup>15</sup>.

## 5.2. Practical Misuse of Quota System

In addition to many theoretical errors, the quota system encounters great misuse in practice. For example, a student gets enrolled to a school in a rural area, but not attending classes there, following classes in an urban area, but applies to sit for the A/L examination from the rural school, and finally the university admission is secured from the district quota, the poor and economically and otherwise disadvantaged child could not secure the admission, the elite in the district misappropriates the quota, the same happens to 5% allocation for the disadvantaged districts. Although the government has taken steps to prevent the abuse in the recent time (the handbook provides information as to how the district of the candidate is determined), the misappropriation of quota system had affected vulnerable and marginalized section of the country. One of the purposes of introducing quota system was to prevent the students from moving to urban areas in search of quality education, by guaranteeing admissions to the universities proportionate to the population, unfortunately it did not happen in Sri Lanka.

Also the quota system is subjected to discretion of the UGC in many instance and caused tensions among students from different districts, for example 9 students from the Jaffna district challenged the decision of the UGC to reduce the number of medical faculty admission on quota basis from 39 to 28<sup>16</sup>. In *Samarakoon and Others v. University Grants Commission and Others* case<sup>17</sup>, the decision of the UGC to reduce the number of intake of medical student in the given year from 900 to 865 was challenged and the Supreme Court held that the failure to admit the petitioners as declared in the UGC handbook was arbitrary and constituted an infringement of their rights under the Constitution.

Dr.M.Y.M Siddeek admits that an ethnic conflict was created by the linguistic standardization policy however he convinces that it was in operation only for a short period, 2 years. He claims that the district quota system provides many benefits to the students from Northern Province, he cites for an example that a student from Kilinochi enters to medical faculty with less marks compared to students entering medical faculty from other districts. He also admits that the quota system had negatively affected the Jaffna students like the students in Colombo, however points out that the Tamil and

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<sup>15</sup> Warnapala, Yajni & Silva, Karishma, 'Z-Score demystified: A Critical Analysis of the Sri Lankan University Admission Policy', Journal of Case Studies in Education

<sup>16</sup> Jaffna students allege discrimination in University Admissions  
<<http://wap.tamilnet.com/art.html?catid=13&artid=22272> > last accessed 16.05.2018.

<sup>17</sup> SC (FR) Application NO. 307/2001.

<[http://www.hrcsl.lk/PFF/Right to Equality/SAMARAKOON%20AND%20OTHERS%20vs.%20U...pdf](http://www.hrcsl.lk/PFF/Right%20to%20Equality/SAMARAKOON%20AND%20OTHERS%20vs.%20U...pdf)> Last accessed 16.05.2018.

Sinhala speaking students from other districts other than Jaffna and Colombo respectively have been benefited from the district quota system<sup>18</sup>.

## 6. Conclusion

Merit based admission is the practice everywhere. In case of necessity, a temporary quota provision may be included in the admission process while taking steps to gradually move towards merit based admission. Sri Lanka's experience is other way round, it shifted from All Island merit based admission to district quota method whereas the latter system has become perpetual. The government must take positive steps to improve the standards of so called underprivileged districts, it is pity that some districts remain underprivileged for decades. The concept of underprivileged district quota system should be abolished. District based quota system is also an irrational arrangement as it implies that every school in a district is of same standard which is not true, a categorization of schools in terms of facilities is a prudent alternative and admissions to courses in the Science stream should be done based on the classification of schools. The school based quota system should be limited to 30 percentage and the rest of the admissions should be based on All Island merit in Science stream and the government should take necessary steps to implement pure merit based admission in science stream in due course. The admission to Arts and Commerce streams must be done strictly on All Island merit with immediate effect without any reservations.

The admission process is centralized and the University Grants Commission is the apex body governing admission and other related matters. Sri Lanka should work on a policy change whereas the respective universities which offer courses are provided with some authority more or less to decide on number of students and to which courses students are admitted to etc. Each degree awarding institute should have an admission committee which can admit students who satisfy the required criterion, within it, while the University Grants Commission exercises the overall supervisory role. In order to make the University education meaningful, the Sri Lankan universities can think of testing the students at interviews, aptitude test etc. in addition to the advanced level examination results since world of work as of now requires some soft skills. The changes proposed above will contribute to advancement of higher education in the country.

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<sup>18</sup> M.Y.M.Siddeek, 'The Myth About the University Admissions Criteria' *Colombo Telegraph*  
<<https://www.colombotelegraph.com/index.php/the-myth-about-the-university-admissions-criteria/>> last access 16.05.2018.