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Revisiting the Anti-ragging Legislation in the Higher Education System of Sri Lanka: A Comparative Analysis with the Indian Legal Framework

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Abstract

Ragging or hazing is a widespread phenomenon in many higher educational institutions all over the world. Disguised in the form of familiarisation of new entrants, the severe forms of ragging often involve direct and indirect physical and psychological harm to new students, often causing human rights violations to the victims. Despite the wide range of legislative, institutional, and administrative efforts taken by the governments and authorities to curb the violent forms of ragging, the practice is still prevalent in many countries and Sri Lanka is not an exception. The objective of this study is to analyse the adequacy of existing legislation in two jurisdictions, namely, Sri Lanka and India to combat the menace of ragging in higher educational institutions and provide suggestions to strengthen the legal framework of Sri Lanka for combating ragging. A doctrinal research approach was adopted in the study and the data were gathered using primary and secondary sources. The study reveals that both Sri Lanka and India comprise stringent laws to combat ragging, however, the practice of ragging is still prevalent in different violent and adapting forms. The study analyses and compares the constitutional protection, special laws, and important institutional policies available in Sri Lanka and India to combat ragging and observes certain lacunae in the existing mechanisms. Based on the comparison of two legal regimes, The paper provides suggestions to strengthen the legal framework of Sri Lanka in order to combat ragging, by drawing from the positive aspects put forward by India, the neighbouring jurisdiction towards the same.

Keywords: *Ragging, Human Rights, Higher Education, Universities, Constitution*

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Introduction

Ragging in the South Asian culture or hazing in the western context can be noticed as a tradition of violence prevailing in many educational institutions across the world disguised in the form of familiarising new students. Believed to be initiated in educational institutions as a set of ice-breaking activities aimed at familiarizing freshers with a sub-culture, ragging has gradually evolved as an unofficial ritual in higher educational institutions in many countries, involving verbal, physical, psychological, and sexual harassment and thereby causing grave human right violations. There is a wide range of legislative, institutional, and administrative measures taken by the governments and higher educational institutions to curb the menace of ragging. However, the practice of ragging is still prevalent in the higher educational settings of many countries, including Sri Lanka and India, irrespective of such measures.

Recognizing that ragging in Sri Lanka involves cruel, inhuman, and degrading treatment and that the society has failed to address its root causes, the Supreme Court of Sri Lanka warranted that those raggers deserve severe punishments and justified the punishments outlined in the country's first ever Anti-ragging Bill in 1998[2]. However, most of such ragging-related stories are rarely unfolded to the authorities due to various reasons, leading to a culture of impunity and the preparators go unpunished. Only a few extreme cases of ragging are reported and redressed while many cases go unreported. As observed by Fernando, J. in the case of *Priyangani Navaratne and Others v. Chandrasena,* ragging is easily done, but difficult to prove; victims are afraid to complain because reprisals are likely; those in authority often fear getting involved, whether by intervening, reporting, or otherwise[3]. Due to such fears and lack of confidence in justice, victims are mostly reluctant to seek redress irrespective of the availability of laws to combat ragging and victim protection. This has formed an encouraging environment to spread the violent momentum.

Against this backdrop, this paper analyses the contemporary legal framework in Sri Lanka and India in terms of combating the menace of ragging in state universities and evaluates their effectiveness as tools for eradicating this brutal and uncivilised sub-culture from the university system. Having observed the

[2] 'The Sunday Times Plus Section' (*Sundaytimes.lk*, 2022) <https://www.sundaytimes.lk/980426/plus5.html> accessed 25 April 2022.
[3] (1998) 1 Sri L.R. at 170

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prevailing lacunae of the existing mechanisms in the Sri Lankan jurisdiction, it also goes on to propose recommendations to strengthen the legal framework of Sri Lanka in order to combat ragging, by comparing the same with the Indian legal framework, where applicable.

Ragging: Definitions, Prevalence and Consequences

The term "ragging" could be applied to any unruly behaviour that involves mocking or treating any student offensively so as to cause nuisance, frustration or feelings of fear to adversely affect his or her state of mind. This may take various forms from mild entertaining activities such as formal introduction, dress-code ragging, playing the fool to extreme and violent forms of verbal, physical or psychological torture, sexual abuse or drug abuse.

As per the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No.20 of 1998 in Sri Lanka, ragging is defined as any act which causes or like to cause physical or psychological injury or mental pain or fear to a student or a member of the staff of an educational institution.

Findings of the UGC-UNICEF study published in March 2022 on the issues of ragging, sexual and gender-based violence in the Sri Lankan university system have unfolded that ragging in today's context has led to a systematic 'pre-enrolment conditioning' where the new entrants are conditioned to support ragging even before their entrance to the universities. Indicating the brutality and harassment associated with ragging, the above survey sample has revealed shocking statistics with regard to the practice of ragging; about 51.2% of students were exposed to verbal harassment, about 34.3% of students were subjected to psychological violence, about 23.8% had experienced of physical abuse while 16.6% were subjected to sexual harassment. The situation in other Asian countries is no better either. For instance, neighbouring India has reported a total of 1070 and 1016 ragging cases in 2019 and 2020, respectively. Although there was a decline in the ragging complaints reported in 2020 due to the closure of educational institutions consequent of the Covid-19 pandemic, 219 and 511 online ragging cases had been reported in India in the year 2020 with an increase of the same up to 511 cases in 2022. Thus, the practice of ragging has currently emerged as a vicious cycle annually surfaced in different forms at every new student intake, where the victims turn into perpetrators in the following

year, making it hard to sweep away from the higher education settings.

Ragging is associated with physical, behavioural, emotional, and social problems among victims. Various incidences of ragging-related suicides, violence, physical injuries, sexual abuse, and psychiatric illnesses have also been reported. While many victims survive with long-lasting physical or emotional scars as consequences of victimisation, ragging-related deaths have also been reported from time to time**.** The perpetrators, if found guilty, are subject to the punishments imposed by the courts and other respective authorities.

Special Legislation to ban ragging: The Anti-ragging Act

The Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No.20 of 1998 (Hereinafter sometimes referred to as the "Anti-ragging Act") is a distinguished legislative piece in Sri Lanka in terms of ragging. The Act put forth various forms of acts under the definition of ragging ranging from mental pain or fear to physical injuries caused to students or staff members of educational institutions while setting strict punishments for offenders[4]. A comprehensive range of offences including ragging, criminal intimidation, hostage-taking, wrongful restraint, and unlawful confinement committed within and outside of educational institutions are covered by the Act. All the offences are made cognizable offences by the Act[5] enabling the authorities to arrest the perpetrators without a warrant.

Under the provisions of the Anti-ragging Act, the committers, or participants of ragging within or outside of an educational institute are subjected to rigorous imprisonment for a term not exceeding two years, after a summary trial before a Magistrate. In a case of sexual harassment or grievous hurt specified in the Penal Code, imprisonment can be extended up to ten years. The victims are also entitled to compensation of an amount determined by the court[6].

The cases of criminal intimidation committed to a student or a staff member[7], Hostage-taking[8], wrongful restraint[9] and unlawful confinement[10] have also

[4] Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No. 20 of 1998 (Anti-ragging Act 1998), s 17
[5] Anti-ragging Act 1998, s 11
[6] Anti-ragging Act 1998, s 2 (1)
[7] Anti-ragging Act 1998, s 3
[8] Anti-ragging Act 1998, s 4
[9] Anti-ragging Act 1998, s 5
[10] Anti-ragging Act 1998, s 6

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been declared as offences by the Act which can be punished by way of rigorous imprisonment. Sexual harassment or grievous hurt during ragging or hostage-taking are non-bailable offences of which the accused cannot be released on bail except by the discretion of the high court judge, according to the provisions of section 14 of the Bail Act[11]. Forcible occupation and damage to property of education institutes are also punishable with rigorous imprisonment of not exceeding ten years or a fine or both[12]. Any person causing mischief to the property of an educational institution under the Act can be subjected to imprisonment for a term not exceeding twenty years and a fine of five thousand rupees or three times the amount of the loss caused to such property, whichever amount is higher[13]. The court also has the authority to issue expulsion orders for students and dismiss staff members convicted of an offence under the Act, based on the gravity of the offence[14].

In contrast, there is no uniform national anti-ragging law in India. However, several states in India have enacted their own legislations on ragging, in response to severe forms of ragging incidents. Tamil Nadu was the first state in India to introduce its own anti- ragging law in 1997. Thereafter, the Government of Maharashtra enacted the Maharashtra Prohibition of Ragging Act, 1999 and established ragging or abating it as a criminal act punishable with imprisonment and a penalty[15]. Maharashtra Anti-ragging Act empowers educational institutions for investigating the allegations, suspension, and dismissal of the accused students from the institution while holding such institutions accountable for abating the acts of ragging in case of its failure to properly investigate the ragging-related complaints[16]. Currently, Indian states of Tripura, Karnataka, Andra Pradesh, Kerala, Assam, West Bengal, Himachal Pradesh, Uttar Pradesh, Goa, and Jammu Kashmir have also enacted their own state-specific ragging Acts.

Although Sri Lanka is privileged to have a unique piece of national legislation exclusively imposed on combating ragging which can be recognized as a comparative positive aspect of the Sri Lankan legal framework, the number

[11] Anti-ragging Act 1998, s 9
[12] Anti-ragging Act 1998, s 7 (1)
[13] Anti-ragging Act 1998, s 7 (2)
[14] Anti-ragging Act 1998, s 8
[15] Maharashtra Prohibition of Ragging Act 1999, s 4
[16] Maharashtra Prohibition of Ragging Act, 1999, s 7

of ragging cases annually reported indicates that the law has taken a back seat[17]. This is mainly due to two main reasons: the punishments laid down by the Anti-ragging Act are always observed to be inactive in terms of their enforcement and, the existing law is not updated with the provisions to combat new forms of violence which have emerged in par with the technological advancements. Therefore, it is high time to amend the Anti-ragging Act with a firm view of strengthening law enforcement and addressing the new forms of violence such as cyberbullying, online voyeurism, and non-consensual distribution of intimate videos/images.

The Universities Act

The Universities Act No.16 of 1978 in Sri Lanka, inter alia, includes provisions related to the establishment, maintenance, and administration of universities and Higher Educational Institutions and connected matters[18]. The Vice-Chancellor of a university, with the consent of the University Council, is granted the authority to prohibit certain persons from entering or remaining within the precincts of the university in instances where the presence is undesirable, with an opportunity of being heard[19]. Such a prohibition must remain in force until revoked by the same authority. The Act also requires the courts to accept a written certificate issued by a Vice-Chancellor as evidence of the facts until the contrary is proved[20]. Any person disobeying such prohibition shall be guilty of an offence which can be punishable with a fine for each day of his stay[21].

Institutional Policies

University Grants Commission of Sri Lanka (hereinafter sometimes referred to as the "UGC"), the apex body of the University system in Sri Lanka, has issued several circulars from time to time in order to facilitate the implementation of the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No.20 of 1998. UGC Commission circular No.919 dated 15 January 2010 titled 'Guidelines to be Introduced to Curb the Menace of Ragging in the Universities or Higher Education Institutions' includes a set of instructions on preventing gender-related discrimination including ragging, and the procedures

[17] 'A Bottom-Up Approach Needed To Eradicate 'Ragging' | Daily FT' (*Ft.lk*, 2022) <https://www.ft.lk/news/A-bottom-up-approach-needed-to-eradicate-ragging/56-702037> accessed 25 April 2022.
[18] Preamble of the Universities Act No. 16 of 1978
[19] Universities Act No. 16 of 1978, s 131(1)
[20] Universities Act No. 16 of 1978, s 131(2)
[21] Universities Act No. 16 of 1978, s 132

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to be followed in an event of ragging. Circular No. 946 dated 10.02.2011 has been issued with a set of common guidelines to be followed in dealing with student disciplinary matters and imposing punishments.

The Vice-Chancellor of a university is thereby empowered to impose an Out of Bounds Declaration on students in a case of misconduct or indiscipline exposed through a fact-finding mission, prohibiting such students the access to the university. It also empowers authorities to record the punishments in the student's personal file and the student record book. The Commission Circular 12/2019 has been issued by the UGC to introduce some strategies/actions to be implemented by the universities through developing by-laws to combat Ragging and Sexual and Gender-Based Violence (SGBV). Under the circular, the university authorities are required to take adequate measures to protect the witnesses of ragging and SGBV incidents under the Assistance to and Protection of Victims of Crime and Witnesses Act, No.04 of 2015. The Commission Circular No.04/2020 issued on 10.08.2020 requires Higher Education Institutes to report the complaints on ragging and SGBV with the actions taken for such complaints by the institution, within seven days upon receiving such complaints.

Similarly, The University Grants Commission of India (UGC India) has also issued Regulations on Curbing the Menace of Ragging in Higher Educational Institutions in the year 2009 (as amended in 2016). The UGC of India provides a much wider definition of the term "Ragging" which includes following acts committed within and outside the educational institution and also within public and private transportation.

a. Any verbal/written or physical conduct by any student /students which has the effect of teasing, treating or handling with rudeness a fresher/ any other student.

b. Indulging in rowdy or indiscipline activities by any student/ students which causes or is likely to cause annoyance, hardship, physical or psychological harm, or to raise fear or apprehension thereof in any fresher or any other student.

c. Asking any student to do any act which such student will not in the ordinary course do and which has the effect of causing or generating a sense of shame, torment or embarrassment so as to adversely affect the

physique or psyche of such fresher or any other student.

d. Any act by a senior student that prevents, disrupts or disturbs the regular academic activity of any other student or a fresher.

e. Exploiting the services of a fresher or any other student for completing the academic tasks assigned to an individual or a group of students.

f. Any act of financial extortion or forceful expenditure burden put on a fresher or any other student by students

g. Any act of physical abuse including all variants of it: sexual abuse, homosexual assaults, stripping, forcing obscene and lewd acts, gestures, causing bodily harm or any other danger to health or person.

h. Any act or abuse by spoken words, emails, posts, or public insults which would also include deriving perverted pleasure, vicarious or sadistic thrill from actively or passively participating in the discomfiture to fresher or any other student.

i. Any act that affects the mental health and self-confidence of a fresher or any other student with or without an intent to derive a sadistic pleasure or showing off power, authority or superiority by a student over any fresher.

j. Any act of physical or mental abuse (including bullying and exclusion) targeted at another student (fresher or otherwise) on the ground of colour, race, religion, caste, ethnicity, gender (including transgender), sexual orientation, appearance, nationality, regional origins, linguistic identity, place of birth, place of residence or economic background.

Educational institutes in India are kept mandated by UGC regulations to take measures to curb the menace of ragging including providing separate hostel facilities to newcomers, regular raids by anti-ragging squad and submission of affidavits by all senior students and their parents not to indulge in ragging.

Furthermore, Certain government bodies have also set up their own Institute Specific Regulations on ragging. For instance, the All-India Council for Technical Education (AICTE) has created the "All-India Council for Technical Education (Prevention and Prohibition of Ragging in Technical Institutions, Universities including Deemed to be Universities imparting technical education) Regulations,

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2009" under Section 23 and Section 10 of the AICTE Act,1987. Similarly, the Medical Council of India has made the "Medical Council of India (Prevention and Prohibition of Ragging in Medical Colleges/Institutions) Regulations, 2009" under Section 33 of the Indian Medical Council Act,1956.

Constitutional Protection over Ragging as a Human Rights Violation

No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment, according to Article 5 of the Universal Declaration of Human Rights[22]. 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, though includes no specified provisions for combating ragging or protecting victims, as the Supreme Law of the Country, has granted validity for universally accepted human rights through Chapter III of the Constitution. Accordingly, Article 11 of the Constitution mandates that no person shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment[23]. This, as a fundamental right, is absolute in nature and cannot be restricted or in-fringed under any circumstance.

Sri Lankan case law also provides wide interpretations of the meaning of torture. The interpretation given to Article 11 of the Constitution by Justice Amarasinghe in the case of *WWK de Silva v. Chairman, Ceylon Fertilizer Corporation*[24] is of relevance in the cases of ragging. There, Amarasinghe J was in the opinion that the torture or cruel, inhuman, or degrading treatment or punishment contemplated in Article 11 of the Constitution is not confined to the real of physical violence and it would embrace the sphere of the soul and mind as well"[25].

Victims are entitled to file a fundamental right application in the Supreme Court in case of such a fundamental right violation committed by an executive or administrative action as per the provisions of Articles 17 and 126 of the Constitution. This enables the aggrieved party to name the respective educational institution as a respondent party for the omission of its responsibility to have sufficient measures to ensure students' protection. Thus, Ragging, inter alia, if involves in any form of torture, cruel, inhuman, or degrading treatment, would amount to a violation of human rights and fundamental rights of victims under Article 11 of the Sri Lankan Constitution.

[22] Assembly, U.G., 1948. Universal declaration of human rights. *UN General Assembly*, *302*(2), pp.14-25.
[23] Article 11 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka
[24] *WWK de Silva* v. *Chairman, Ceylon Fertilizer Corporation* (1989) 2 Sri L R 393
[25] ibid per Amarasinghe J pp 404-405

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No.22 of 1994 gives effect to the International Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment and, by bringing the torture into the purview of the Criminal Procedure Code of Sri Lanka, it declares torture a crime which is cognizable and non-bailable[26]. The Act which states that any person who tortures any other person shall be guilty of an offence[27], further expands the protection safeguarded by Article 11 of the Constitution. It extends the scope of Article 126 of the Constitution in terms of imposing the liability on the preparators, by enabling the victims to impose the liability on private individuals for the torture or other cruelties committed in the name of ragging.

Indian constitution too has no expressed constitutional provisions in terms of ragging. However, the fundamental rights section of the Indian Constitution of 1950 includes the Right to Equality, the Right to Life and Personal Liberty, and the Right against Exploitation which can be made directly applicable for the cases of ragging. Article 21 of the Constitution which guarantees the right to life and personal liberty is of particular importance in this regard. The right to life and personal liberty in Indian Constitution which provides for comprehensive protection over human rights violations has been further extended by Indian courts through Judicial interpretations. For instance, in the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*[28], the right to life has been extended up to the right to live with human dignity and all that goes along with it, and inter-alia the right of freely moving about and mixing and mingling with fellow human beings. Hence, the depreciation of such fundamental rights by way of ragging, empowers the victims to file a writ petition to the Supreme Court[29] or to the High Court[30] in India.

Although the right to life is not expressly guaranteed in the Sri Lankan Constitution as a fundamental right, the Sri Lankan Courts, in several instances have attempted to establish the right to life through case law by interpreting the same within the purviews of other fundamental rights enshrined in the Constitution. For instance,

[26] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 (The Torture Act 1994), s 2(4)
[27] (The Torture Act 1994), s 2(1)
[28] AIR 1981 SCC 746: Francis Coralie Mullin v. Administrator, Union Territory of Delhi
[29] Article 32 of the Indian Constitution 1950
[30] Article 226 of the Indian Constitution 1950

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in the case of *Rathnayake Tharanga Lakmali v Niroshan Abeykoon*[31], the right to life was established through Article 11 and 13(4) of the Constitution. However, the absence of the right to life as an explicit provision in the Sri Lankan Constitution set barriers in its fundamental rights jurisprudence. Thus, the explicit inclusion of the right to life in the fundamental rights chapter of the Sri Lankan Constitution is of much importance to strengthen the prevailing law.

Applicability of the Penal Code

Although the Penal Code of Sri Lanka has not specifically included the term "Ragging", physical torture or sexual harassment associated with ragging can be defined as punishable offences under the following provisions of the Penal Code. Section 345 of the Penal Code defines sexual harassment as an unwelcome sexual advance by words or action used by a person in authority, in a workplace or any other place. Section 311 of the Penal Code includes several kinds of hurt within the scope of the grievous hurt;a) emasculation; (b) permanent privation or impairment of the sight of either eye; (c) permanent privation or impairment of the hearing of either ear; (d) privation of any member or joint; (e) destruction or permanent impairment of the powers of any member or joint; (f) permanent disfiguration of the head or face; (g) cut or fracture, of bone, cartilage or moth or dislocation or subluxation, of bone, joint or tooth; (h) any injury which endangers life or if' consequence of which an operation involving the opening of the thoracic, abdominal or cranial cavities is performed; (i) any injury which causes the sufferer to be in severe bodily pain or unable to follow his ordinary pursuits, for a period of twenty days either because of the injury or any operation necessitated by the injury[32].

Similarly, no expressed provisions are included in the Indian Penal Code for ragging. However, several provisions in the Indian Penal Code can be availed by a victim to register a First Information Report (FIR) with the Police. The offences of which such FIR can be instituted include Obscene acts and songs[33], punishment for voluntarily causing hurt, voluntarily causing hurt by dangerous weapon or means, punishment for voluntarily causing grievous hurt, voluntarily causing grievous hurt by dangerous weapon[34], Wrongful Restraint[35], Wrongful

[31] SC/ FR Application 577/2010
[32] Section 311 of the Penal Code
[33] Indian Penal Code (1806), s 294
[34] Indian Penal Code (1806), s 323-326
[35] Indian penal Code (1806), s 339

Confinement, Punishment for Wrongful Restraint, Punishment for Wrongful Confinement and Section[36], Punishment for culpable homicide not amounting to murder[37].

The Raghavan Committee which was appointed by the Ministry of Human Resources Development (MHRD) under the Supreme Court's directives, in its report submitted in 2007, recommended inclusion of the offence of ragging as a special section under the Indian Penal Code[38]. Based on its recommendations, an interim order has been issued by the Supreme Court of India making educational institutions obligatory to register a First Information Report (FIR) with the Police to report every ragging-related or abating incident on an immediate basis[39].

The above analysis depicts that Both Sri Lanka and India, in their respective Penal Codes do not expressly recognize a criminal offense called ragging but the justice is made accessible for a victim through several other provisions and definitions included therein. However, the explicit inclusion of ragging as a criminal offence under a specific section in the Penal Code of Sri Lanka, by taking Raghavan Committee recommendations as a model will further strengthen the existing Sri Lankan law on ragging. Further, having observed that many ragging complaints in Sri Lanka are internally settled case-by-case without forwarding to the Police, it is suggested to make it obligatory for Sri Lankan educational institutions to file official First Information Reports (FIR) with the police for every ragging-related incident or complaint observed or reported. It will ensure the functioning of all cases through the criminal justice system.

The Rules of Locus Standi

According to Article 126 of the Sri Lankan Constitution, only the aggrieved party or his/her Attorney at Law is allowed to apply to the Supreme Court for relief or redress, in case of an infringement or an imminent infringement of a fundamental right. Stringent adherence to this condition can be manifested by reviewing the case law such as *Somawathie v. Weerasinghe and others*[40] where the right of any person other than the aggrieved party or his/her Attorney-at-Law was denied vindicating the fundamental rights of the aggrieved person.

[36] Indian penal Code (1806), s 340-342
[37] Indian penal Code (1806), s 506
[38] Raghavan Committee Recommendation Report. Human Resource Development Ministry, Government of India.
[39] The Supreme Court of India Order May 2007
[40] [1990] 2 Sri L.R.

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In contrast, Indian Courts have taken a much-liberalized approach in such instances. Article 32 of the Indian Constitution allows any member of the public to maintain a petition on behalf of a person or a class of persons who is unable to approach the Court for relief due to poverty, helplessness, or disability or socially or economically disadvantaged position[41]. *Hussainara Khatoon V Home Secretary, State of Bihar*[42] and *People's Union for Democratic Rights v. Union of India*[43] are some landmark cases that showcase the innovations made by Indian Courts under the aegis of public interest litigation. Over the time, Sri Lankan Courts have also procedurally relaxed the locus standi (or standing) rule to a certain extent which can be manifested in the cases such as *Sriyani Silva v. Iddamalgoda, Officer-in-Charge, Police Station Paivaaala and Others*[44]. However, when compared with India's innovative processes such as epistolary jurisdiction which enables individual judges to act on letters written by or on behalf of aggrieved people, Sri Lankan law is still bound by the constitutional provisions which require identifying the "aggrieved party". These boundaries, similar to all human rights violations, are common to ragging victims, as well and hence, prevent the ability of concerned parties to represent the victim. Therefore, it is recommended that constitutional amendments are necessary to broaden the rules of standing.

Judicial Activism

Indian case law provides many examples that the Indian judiciary, to a great extent, has exercised judicial activism, particularly in the context of the protection and preservation of human rights. This is particularly seen in the case of *Vishaka v State of Rajastan (1997)* where the Indian Supreme Court held that, in the absence of effective measures to protect against sexual harassment under the domestic laws, recourse may be made to the International Agreements and their norms to give a purposive interpretation to Articles 14, 15 19(1)(g) and 21 of the Indian constitution for providing safeguards against sexual harassment.

In the case of *Vishwa Jagriti Mission through President vs. Central Government, through Cabinet Secretary*[45], the Supreme Court has laid down broad guidelines for educational institutes to curb ragging including initiation

[41] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
[42] AIR 1979 SC 1360
[43] AIR 1982 SC 1473
[44] SC NO. 471/2000 (FR), 2003
[45] 2001 (3) SCR 540.

of anti-ragging movements right after advertising admissions, watching ragging prone Zones, the inclusion of details of ragging involvements in perpetrators' migration certificates, awareness of students and guardians on the forms of ragging with the institutional approaches to combat them and the punishments, and building confidence on freshers not to tolerate but report ragging incidents.

In the case of *Thiruvananthapuram Government Engineering College vs State of Kerala*[46], the Supreme Court of India emphasised the need of dealing with ragging incidents, seriously. Arijit Pasayat, CJ observed that the practice which was intended to be in good faith and to provide untainted fun has now been characterized as physical torture with a sadistic tendency and sexual perversions and it was clear that ragging, which was originally thought of to be a mere joke, has crossed bounds of decency and had entered the arena of physical and mental torture which needed to be dealt with iron hands.

Pon Navarasu/ John David Ragging Case[47] which involved the murder of first-year student by seniors was a crucial ragging-related case which paved the path to criminalizing ragging in Tamil Nadu and issuing the first ever state-specific anti-ragging law in India by Tamil Nadu government.

In *University of Kerala V. Council, principals, Colleges, Kerala & Others*[48], the Supreme Court has expressed displeasure on ragging incidents reported from educational institutions and issued directions for supplementing and strengthening the existing orders to combat ragging.

However, such a great level of judicial activism is not observed in the existing Sri Lankan legal context due to the restrictions placed by Article 80 (3) of the Constitution which prohibits the judicial review of validly enacted laws. Hence, it is recommended to introduce sufficient constitutional safeguards to uphold the independence of the judiciary and the rule of law enabling the judges to exercise judicial activism in order to make justice accessible to victims.

The Institutional Obligation

Educational institutions owe a duty of care and obligation in terms of student safety and wellbeing. In many universities, measures for student Safety and

[46] [WP (C) 656 of 1998; 2000 (2) KLT 11]
[47] Inspector of Police, Tamil Nadu vs John David on 20 April 2011.
[48] [2009] INSC 284

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prevention of ragging are included in prospectuses and student handbooks. Such representations can be considered as implied terms of the university-student contract and the failure to prevent ragging can hence be defined as a breach of that contractual obligation. Failure to prevent ragging is contrary to the UGC Regulations, too. Any negligent failure of a university employee may also be sufficient to impose the personal liability on the employee as well as the vicarious liability on the university on the basis that the employee acts in the course of employment. All these arguments justify the avenues for a ragging victim to utilize private actions against universities. However, neither India nor Sri Lanka has not yet taken firm actions to expressly recognize the private liability of the respective educational institutions for the failure to prevent ragging practices in their vicinity. Therefore, based on the rebuttable presumption that the Institutional failure or the omission to take sufficient measures to prevent ragging resulted in causing such human rights violations, the Anti-ragging Act could further be strengthened by explicitly imposing the private liability upon the relevant academic institution for the ragging practices occurred in its premises. Similar accountability shall be vested upon the respective staff of the academic institution who is delegated with the duty to take reasonable care of the students' safety, property, and student disciplines. the UGC Regulations could also be amended to explicitly provide for these causes of action.

Conclusion

Ragging is a deep-rooted tradition commonly observed in many higher educational institutions all over the world, including Sri Lanka. Having observed that the various legislative, institutional, and administrative measures imposed by policymakers have not been successful to curb ragging in the Sri Lankan higher education setting, this research paper suggests some suggestions to strengthen the existing legal framework of Sri Lanka in terms of curbing ragging, by comparing the same with its neighbouring counterpart, the Indian legal system. The study acknowledges the relevance of the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998 (the Anti-ragging Act) as a strong legislative weapon to combat ragging in Sri Lanka. However, by observing its over-stringency and obsolescence, it is suggested to amend the Anti-ragging Act to suit the contemporary context. Further suggestions include the explicit inclusion of the right to life as a fundamental right in the Sri Lankan Constitution and the explicit provisions for

ragging in the Penal Code. The study also emphasizes the necessity of imposing the private liability upon the respective educational institution for its failure to take preventive measures on human rights violations. Making it obligatory for Sri Lankan educational institutions to file official First Information Reports (FIR) with the police for every reported or observed ragging incident is also suggested to ensure that all cases flow through the criminal justice system. Moreover, it warrants a relaxation of constitutional provisions in terms of representative standing in the Sri Lankan legal regime. Having observed the instances of judicial activism exercised in the Indian courts, and the constitutional restraints over the judicial review in Sri Lanka, the study also recognizes the need to uphold the independence of the judiciary and the rule of law in Sri Lanka, as well, in order to promote freedom, equality, and justice.