Effectiveness of the Public Officer's Disciplinary Management System in Sri Lanka

by

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"The work described in this thesis was carried out by me under the supervision of Prof. (Dr.) H.H.D.N.P. Opatha and a report on this has not been submitted in whole or in part to any university or any other institution for another Degree/Diploma".

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"I/we certify that the above statement made by the candidate is true and that this thesis is suitable for the submission to the University for the purpose of evaluation."

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Effectiveness of the Public Officer's Disciplinary Management System in Sri Lanka

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ABSTRACT

In Sri Lanka public sector employment forms a substantial portion in the labour force. As public administration and social welfare is totally concentrated in the hands of the public sector, it becomes very important in all aspects. In this context, enhancing the quality of workers who are attached to the Government sector becomes important. In this study the researcher attempts to discuss the effectiveness of the disciplinary management system that is being used for the public officers and explore into the areas which need changes. It was intended to compare the existing system with a theoretical framework developed by a scholar in the field of Human Resource Management and identify the weaknesses that are inherent in the system. To achieve this objective, a qualitative research was done using fifty public officers and ten departmental heads working in the Magistrates and District Courts in the Kurunegala judicial zone. Fifty public officers were randomly selected irrespective of their job positions. Basically questionnaires and interviews were held to collect information. In addition statistics were obtained from the Ministry of Justice and the Judicial Services Commission to collect other relevant and connected data. Basically the study was conducted in three stages. Firstly, the existing disciplinary management system of the public officers was identified and explained. In the second stage the researcher attempted to introduce a theoretical framework that could be used as a model to evaluate the system. At the third stage, the disciplinary management system of the public officers was analyzed using the evaluative framework discussed in the second stage. Findings of the research disclosed the fact that most of the rule violations of the public officers remained unnoticed or did not deal according to the Establishments Code. On the other hand the system itself inherited several weaknesses which made the entire system ineffective. As a result the Government had not been able to extract the full
benefits that were expected from the system. Thus, in this study the researcher attempted to identify major weaknesses of the system and propose measures to remedy the situations. Therefore it is hoped that these research findings would contribute necessary materials for the policy makers to reshape the system in a more effective manner.
Chapter One

INTRODUCTION

1:1 Introduction

This chapter explains the background of the study, the problem statement, the research questions, objectives of the study, significance of the study, and the limitations of the study.

1:2 Background of the Study

Public service came into being in Sri Lanka during the period of the Governor Fredric North. The first foundation was laid with the assuming of duties of 18 civil servants who arrived here with the Governor. Then the public service was called as Ceylon Civil Service. Their sole objective was, earning more income and reducing the Government expenditure as much as possible.

After gaining independence, the above objectives were changed to a considerable extent. Earlier, by earning more income, they intended to send a big flow of money to Britain. However this system was replaced by introducing a welfare oriented system. As a result the objective of the public service was changed into providing welfare to the society.
Public service was reoriented with the political revolution took place in 1956. S.W.R.D. Bandaranayaka then head of the State emphasized the idea that a, government servant is a public servant who is devoted to serve the general public'. He set himself an example by dedicating himself to the public service throughout his life. Furthermore he paved the way to both lower middle class and poor class to enter into the public service and work in an equal footing. As a result, every body got the opportunity to work in the Government sector, irrespective of their cast, creed or religion. Subsequently, public service was reshaped with drastic changes evolved in the political and economical spheres. There is a popular idea, that the Government sector is not so efficient than the private sector. In order to overcome this situation certain structural changes ought to be introduced to the public sector.

In the above context it is important to enhance the quality of the work force. The quality of an employee depends on various factors, both individual and organizational. Employee discipline inter alia, is one of the major factors which affect the quality and productivity of a worker. Mathis and Jackson (2000) argued that discipline can be positively related to performance, which surprises those who feel that discipline can only harm behaviour. Further, employees may resist unjustified discipline from a manger, but actions taken to maintain legitimate standards actually may reinforce productive group norms and result in
increased performance and feelings of fairness. Therefore any disciplinary system which aims at improving quality and productivity should formulate itself in a manner that would enable the organization to function more efficiently and effectively.

The very purpose of this research is to explore the existing disciplinary management system being followed by the Government sector and to evaluate its effectiveness based on a conceptual framework developed from the current theoretical arguments, research findings and expert opinions. This research study would further deal on the obstacles that one faces in implementing the existing system and its specific weaknesses which would appear in the actual practice. During the study researcher paid a specific attention to examine the reasons behind rule violations. Experiences of public officers, departmental heads, inquiring officers, provided material to this research study. Findings of the research study may be helpful to gather empirical evidence about different aspects of the disciplinary administration of the public sector.

1:3 Problem Statement of the Study

Disciplinary management of the public servants is being regulated by the Volume II of the Establishments Code. Establishments Code had not been revised for fairly a long period of time and therefore its applicability in the modern context is rather questionable.
However no empirical study had been done in this field. Therefore it is high time to evaluate the effectiveness of the existing disciplinary management system.

Thus the research problem of the study was,

**Is the disciplinary management system being practiced for public servants in Sri Lanka, an effective one?**

**1:4 The Research Questions of the Study**

In this study the researcher has attempted to find answers to the following questions.

1. What is the existing disciplinary management system being followed by the Government for the public officers?

2. What should be an appropriate system for managing discipline of the public officers?

3. What is the degree of the effectiveness of the existing disciplinary management system for public officers in terms of the theoretical framework developed through literature and expert opinion?

4. What are the suggestions for the improvement of the disciplinary management system for public officers?
1:5 Objectives of the Study

The main objective of the study is to examine whether the existing disciplinary management system being practiced in the State sector for the public officers, is an effective one or not. In order to accomplish the main objective of the study the following specific objectives were formulated.

1. To explore and document the existing disciplinary management system being followed by the Government for the public servants.

2. To present an appropriate system for managing discipline of the public officers.

3. To determine the effectiveness of the existing disciplinary management system for the public officers.

4. Finding out necessary steps that should be initiated to make the existing disciplinary management system more effective and efficient

1:6 Significance of the Study

Majority of the work force in Sri Lanka consist of Government servants. All the welfare facilities needed by the citizens are being provided by the public sector in this country. However little or no attention had been paid so far about the workers who serve in the Government sector. A Government servant has been labeled as a lethargic, unproductive employee, who works merely for monthly salary. There are number of reasons behind this
labeling. Both individual and organizational factors create evidence to form such an idea among the general public.

The researcher believes that the existing disciplinary management system is also responsible for the inefficiency displayed by the public officers. Although people believe that the purpose of a disciplinary management system is punishing the wrongdoer, it is not so. It serves a variety of purposes. An effective disciplinary management system can prevent employees from doing wrong and illegal things. Particularly it paves the way to improve self discipline which would ultimately result enhancing quality.

However these purposes could be served only if there is an effective disciplinary management system. The public officer’s disciplinary management system which has been laid out in the Establishments Code is a Code that has been prepared in accordance with the early legal principles. It has not been subjected to vital revisions or amendments for quite a long time. Thus its applicability in the present context and its effectiveness are due matters for discussion.

The present disciplinary administration system of the Government servants has not been formulated according to the Human Resource Management concepts. Although human resource management is embedded in all activities of an organization, its importance as a
field of academic study emerged only in the recent past. Experts in Human Resource Management have now emphasized the fact that employee disciplinary management should be based on sound management principles. Therefore we have reached to an hour of need. The necessity of evaluating the existing disciplinary management system (of the public officers) within a conceptual and academic framework has become an urgent need.

Disciplinary management system of the Government servants has been laid out in the Establishments Code. It is applied to all the employees uniformly. According to the Establishments Code both minor and major offences and rule violations should be dealt with punishment. No where does it provide opportunity to identify the reasons behind such offences and violations. Furthermore nobody has made any attempt to find out why public officers commit offences during work. In this study, the researcher has tried to identify reasons that compel officers to violate rules or commit offences. Instead of punishing employees it is always advisable to find out the cause and give treatment to it. Therefore findings of the research study would become a valuable material to the responsible authorities to take remedial actions.

On the other hand there is a scarcity of systematic research that deals with disciplinary management system of the public officers. Only few studies have been carried out in private sector regarding disciplinary issues. However no prior empirical study had been
done in respect of public servants. On the other hand there is no research based literature developed in the field of disciplinary administration. There has been an increasing number of literature which explains issues in disciplinary management in the world context. Even in Sri Lanka literature materials in the field of disciplinary management are available for readers who are interested in gaining theory knowledge. However government servants in Sri Lanka have not been subjected to an empirical research carried in the field of disciplinary management.

Thus, there is a gap in the empirical research knowledge. It is hoped that this study will primarily be important to the Government sector to identify the weaknesses of the existing disciplinary management system and to decide on the areas where modifications should be done. On the other hand this may be useful for those who are interested in studying the practice and procedure of the public servants disciplinary management system.

1.7 Limitations of the Study

01. Among the large number of workers in the public sector, the research study was limited to fifty public officers and ten departmental heads, who are attached to the inferior Courts situated within the Kurunegala judicial zone.
02. Since the researcher is a judicial officer, the participants (i.e. cases 1-50) had a natural fear of disclosing very serious incidents of rule violations. However a serious attempt was made by the researcher to create a fearless and friendly atmosphere to express their ideas. But still they showed some kind of a reluctance to confess about the offences that they have committed in the past.

03. There was no research based evidence on disciplinary management of the Government servants in Sri Lanka. This empirical knowledge gap created a path to depend on researches done in certain private sector institutions.

1:8 Chapter Organization

This research consists of seven chapters. The chapter one gives an introduction to the study. It will explain in brief the background of the study, research problem, objectives of the research, limitations used in the study and the significance of the study.

The second chapter has covered the theory behind disciplinary management. In this chapter researcher has discussed ideas and opinions of the experts in the field, regarding different aspects in disciplinary management.
The third chapter explains in detail the disciplinary management system, presently being followed by the Government for the public officers.

The fourth chapter explains the methodology used in conducting the research. It further discusses the manner in which case studies were done in order to gather relevant information.

The fifth chapter focuses on a conceptual framework for the research. Under this chapter a conceptual model developed by a scholar in Human Resource Management will be discussed in depth, by using available literature in that regard.

The sixth chapter discusses the effectiveness of the existing disciplinary management system of the public officers, in relation to the conceptual framework developed in the earlier chapter.

The seventh chapter is devoted to introduce suggestions which researcher thinks necessary to make the existing system more effective.
Chapter Two

LITERATURE REVIEW

2:1 Introduction

This chapter explains the relevant and available literature for disciplinary management. This literature supports to build a conceptual framework for the research.

2:2 Definition of Discipline

In general discipline means good behaviour. It is the absence of conflicts, irregularities and complexities (Opatha, 1995). Robins (1982) refers discipline to a condition in the organization when employees conduct themselves in accordance with the organization's rules and standards of acceptable behaviour. Werther and Davis (1989) define discipline as management action to encourage compliance with organizational standards. According to Wheeler (1976) discipline is an action taken by management against an individual or a group who has failed to conform to the rules established by management within the organization. According to Carl (1961) discipline means orderliness i.e. the opposite of confusion. He further says that it is a fundamental requirement for people who work within institutions.
Based on the definitions made by renowned authors, Opatha (1995) says that ‘discipline’ involves,

1. A condition where employees conduct themselves in accordance with rules and standards of acceptable behaviour
2. To make employees obey rules of behaviour
3. To punish employees when they do not obey rules of behaviour.
4. Managerial action encouraging employees to comply with standards of the organization.
5. A form of training enforcing organizational rules.

2:3 Importance of Discipline

The purpose of discipline is to encourage employees to behave sensibly at work, where being sensible is defined as adhering to rules and regulations (Dessler, 1984). According to Salmon (1987) discipline is meant to ensure that employees conform to behavioural and performance standards determined by management as being necessary for the achievement of organizational objectives.

Maintaining discipline is an essential element in any organization. If not for the disciplinary rules and regulations organizational goals and objectives could never be
achieved at expected standards. Opatha and Methani (2000) stress the fact that when employees are disciplined, the possibility of utilizing human resource effectively and efficiently is high. Bittel and Newstrom (1990) held the view that properly administered discipline is like a two edged sword which corrects as well as punishes. It helps to develop self control among employees.

In most cases employees discipline themselves. This means that members of an organization confirm with what is considered proper behaviour because they believe it is the right thing to do. Once they are made aware of what is expected of them and assuming they find these standards or rules to be reasonable they seek to meet those expectations. However all employees will not act in this manner. According to David and Stephen (1998) extrinsic disciplinary actions are needed to be taken to rectify these types of cases. He further believes that by imposing extrinsic disciplinary actions i.e. punishment, these categories of employees could be corrected.

Discipline can be positively related to performance (Mathis and Jackson, 2000). This would be a surprising experience to those who feel that discipline can only harm behaviour. Employees may resist unjustified discipline from a manager but actions taken to maintain legitimate standards actually may reinforce productive group norms and result in increased performance and feelings of fairness (Opatha, 2000).
Opatha (1995) emphasizes on two instances where disciplinary management become important. On one hand rules and regulations serve an organization as what laws done in a society. On the other hand discipline can be used as a tool to maintain coordination between departments. As a whole Garrett (1995) says that the purpose of discipline should be to obtain compliance with established rules of conduct that is to correct improper conduct. It should not be punitive in nature that is to discipline solely for the purpose of getting even with the employee.

2:4 Preventive discipline and Corrective discipline

Some managers think of discipline only as punishment, rather than a form of education. They see it as a means to counteract antisocial tendencies in employees—to apply external pressure (rather than as a way to reinforce self discipline and group discipline) (Norman and Lee Danielson, 1956). They hope that punishment will be effective as a deterrent or in some cases they mete out penalties as a form of retributive justice.

This punitive view of discipline is somewhat anachronistic today. According to Paul (1961) severity of punishment seldom deters any lawless individual who has decided to take what he wants rather than work for it. Severe punishment has been superseded by the
theory that reform (rehabilitation and re-education) is a community responsibility toward
offenders against society at large (Paul, 1961).

According to Dessler (1998) forcing rules on employees may gain their short term
compliance, but not their active cooperation when you are not on hand to enforce the
rules. He further states that discipline without punishment, i.e. non-punitive discipline can
avoid these disciplinary problems. This is accomplished by gaining the employees
acceptance of rules and by reducing the punitive nature of the discipline itself.

Based on the above views, disciplinary measures can be broadly categorized into two;

1. Preventive Discipline

2. Corrective Discipline

**Preventive Discipline**

Preventive discipline can be explained as taking steps to control work and behaviour of
employees before violation of disciplinary rules (Opatha, 1995). This is aimed at gaining
employee compliance by giving an understanding about the rules and regulation. The
very purpose of this is prevention rather than punishment.
The objective of preventive discipline is creating ‘self discipline’ among employees. Ordinary, if employees feel that the rules by which they are governed are reasonable, they will respect rules not because they fear punishment, but because they believe in doing things the right way (George and Leonard, 1967). Coming to work on time, following the supervisor’s instruction, avoiding fighting, punching the time clock; all these are accepted by a majority of workers as reasonable rules, as necessary conditions of work. Under this approach, instead of imposing rules by the managers, employees themselves maintain discipline. According to Mannigs and Jackson (1998) self discipline is the best discipline. According to Opatha (1995) it is the duty of the management to create a sound background to prevent disciplinary violations. In order to achieve this objective, management must take following actions,

1. Each standard, rule and regulation must be informed to the employees. Employees should be aware about them.

2. The purpose of each rule should be explained to the employees. What is expected form each rule, what is its importance etc. must be categorically understood by the employees.

3. It is better to get employee participation in preparing standards, rules and regulations.

4. It is always better to have positive rules (eg: first, security) rather than negative rules (eg: don’t be negligent)
According to Paul (1961) in companies where top management has a positive policy for discipline, the written procedure can suitably be started as a general description of what is employees are expected to do, for example,

1) Everyone is expected to abide by all safety regulations and to be safety minded at all times not only for him, but in relation to his fellow employees.

2) Every subordinate is expected to support management authority by following instructions and obeying the orders issued by his immediate supervisor.

3) Every organizational member should respect the property rights of the company and those of all other employees.

4) Every employee should always show a responsible attitude toward other employees.

Human resource department has more responsibility in relation to preventive discipline.

Corrective Discipline

Corrective discipline means, controlling human behaviour after the occurrence of a disciplinary violation. The aim of this approach is to avoid employees in doing wrong things more and more in the future.
According to Opatha (1995) corrective discipline can be of two forms, positive and negative.

**Positive approach**

Here management believes that employees do commit offences. However only the offence will be rejected, but not the employee. Reinstating the employee back to normal state is expected by this approach.

**Negative approach**

Under this approach the offending employee will be subject to personal animosity, revenge, anger, rejection. This concept is harmful to the society. It would bring adverse effects to an organization. In broader sense, under the corrective discipline, a penalty would be imposed. In disciplinary administration a punishment is called a 'disciplinary action'.

**2:5 Hot Stove Rule**

The concept of 'Hot Stove Rule' had been introduced by Douglas Mc Gregor. This rule draws an analogy between touching a hot stove and undergoing discipline. When you touch a hot stove your reaction is immediate, with warning, consistent and impersonal.
(George and Leonard, 1967). Robbins (1992) also believes that disciplinary management should have the effect of touching a hot stove.

The concept of hot stove gives the following four principles for policy of discipline.

1. Warning the possibility of punishing

2. Disciplinary action is to be taken without delay

3. The degree of disciplinary action should be equal to the degree of the offence

4. Whoever violates the rule, he or she should be disciplined.

The hot stove gives a warning that "do not touch and if touched the person who touched will get burnt". It further says that if a person who violates will be punished. Thus it gives an advance warning. Gouldner (1954) says discipline without warning violates the worker's expectation of fair warning. However there should be effective modes of communicating rules and regulations. It is the responsibility of the management to make sure that all employees really know what the rules are and how they are to be enforced. Failure to communicate such information deprives employees of clear warning (George and Leonard, 1967). Punishing a person who has violated a certain rule should be immediate. There should not be a considerable time delay between the act of violating the rule and the act of punishing. Effective discipline is immediate and longer the time that transpires between the offence and the disciplinary action, less effective the discipline will be (Mathis and Jakson, 2000). However immediate discipline does not mean that a
man should be judged without full investigation. But it does mean that the supervisor should take notice of the offence as soon as possible and push the investigation with all due speed. The degree of burning is equaled to the degree of touching the hot stove. Accordingly the degree of punishing should be equaled to the degree of violating. (Opatha, 1995). This is called “consistency” in punishment. According to George and Lenard (1967) consistent discipline is considered fair and is far more likely to be accepted by the workers involved. Indeed consistency is basic to good human relations. In addition to that the burning power of the hot stove does not care for the classification of status, gender, etc. It is impersonal. Similarly, whoever violates a rule he or she should be punished. According to Chirs (1953) discipline is most effective and has least negative effects on individuals, if the individual feels that his behaviour at the particular moment is the only thing being criticized and not his total personality.

2:6 Progressive Discipline

In the recent years many companies have practiced what is called “progressive discipline” which calls for increasingly severe penalties each time a man is indisciplined. George and Leonard (1967) lists the sequence of penalties under progressive discipline as follows,

1. oral warning
2. written warning
3. disciplinary layoff
4. discharge
When a man fails to maintain standards or has broken a rule, a clear oral warning should be given that repetition may eventually call disciplinary action. Written warning is the first formal stage of progressive discipline. Psychologically, perhaps, they are not different from oral warnings, but they are made part of the employee’s record and they can be presented as evidence if more serious penalties follow or if the case is taken to arbitration. Disciplinary layoff is next in severity. However this should be distinguished from layoffs caused by lack of work. Usually disciplinary layoffs are for several days or weeks. Discharge remains the ultimate penalty, and one that is being used less and less commonly. The expense of training a new employee makes the loss of an experienced man very costly to the company, and the hardships that face a man who has been discharged make arbitrators and unions increasingly unwilling to permit its use. Many arbitrators, indeed, refer to discharge as “industrial capital punishment” (George and Leonard, 1967). According to Terry and Michael (1990) organizations that install and carefully administer a progressive discipline system are likely to reap the benefits of improved employee performance, morale, and protection for the employer in grievance proceedings and lawsuits. The underlying rationale of a progressive discipline system is that employees are expected to perform in a safe, competent, and reliable manner; otherwise, they can expect that sanctions will be imposed. In return, the employee has a right to expect fair and consistent treatment from the employer.
According to Jill (1986) in a sound progressive discipline system,

1. An adequate warning system is established. Incidents of employee misconduct are well documented, and the employee is counselled and fully aware that further incidents will lead to more severe penalties.

2. Enforcement is consistent among employees. The employee is assured of equal protection, free from discriminatory application of discipline policies.

3. The penalties are matched with the offence. A penalty structure which is consistent with the offence prevents management from overacting to a specific offence.

4. Due process is ensured. Each employee should have a full hearing, cognizant of the evidence brought against him or her. Furthermore, the system should allow the employee to rebut evidence presented by management.

5. Management has adequate flexibility to tailor the penalty to a specific violation by considering an employee’s work record and extenuating circumstances. Progressive discipline systems with minimum and maximum penalties should provide consistent enforcement, and yet allow a certain degree of flexibility when circumstances warrant.
Dessler (1998) sets out a progressive disciplinary procedure, which aims towards a non-punitive discipline. He believes that discipline can be maintained by gaining employees' acceptance of rules and by reducing the punitive nature of the discipline itself. He says that when there has been a breach of discipline or unsatisfactory work performance, following steps are preferable.

Step (1): Issue an oral reminder; as a supervisor your goal here is to get the employee to agree to solve the problem.

Step (2): Should another incident arise within six weeks, issue the employee a formal written reminder, a copy of which is placed in the personnel file. Here also the aim is to discuss the need for the rule and to obtain the employees' acceptance of the need to act responsibly at work.

Step (3): The next step is a paid one day decision making leave; this should be a final expression of the company's hope that the employee can and will act responsibly with respect to following the rules.

Step (4): If no further incidents occur in the next year or so, one day paid suspension would be purged from the person's file. If the behaviour repeats itself, dismissal would be required.

However this process must be changed in exceptional circumstances. Criminal behaviour might be a ground for immediate dismissal. Also if several incidents occur at very close intervals, step two, the warning might be skipped.
2:7 Types of Disciplinary Misconducts and Offences

Opatha (1995) categorizes misconducts into two,

1. Serious misconducts

2. Non serious misconducts

A serious misconduct would bring adverse results to the effectiveness and productivity. Punishment imposed for these types of offences are comparatively high. Money cheating, bribing, drunkenness are examples. Misconducts which do not have a notable impact towards the effectiveness of the organization are identified as non serious misconducts. Late attendance, obtaining leave without prior approval, lethargy, are examples for non serious misconducts. In order to decide whether an offence is a serious one or not, one should study the quantum of adverse effects. Also its effect to the efficiency and effectiveness of the organization should also be assessed (Opatha, 1995). Severity of misconduct may depend on the nature of the offence and the job environment (Opatha, 1995). Being drunken during office hours may be serious for a delivery driver than an official clerk. Because a driver driving after alcohol would result irreparable loss if he encounter an accident on his way.

On the other hand job environment is also a crucial factor in deciding the severity of the misconduct. Smoking in an office may not be that of a serious thing. However smoking
would be a very much serious offence at a work place where it is highly inflammable as a cracker stores.

There is wide range of problems in an organization that might require disciplinary action. However one should recognize that infractions vary greatly in terms of severity. Therefore, before one reviews the type of discipline available, one should look at the major factors that need to be considered to have fair and equitable practices (David and Stephen 1998).

Wallace (1975) proposes nine contingency factors that help to analyze a disciplinary problem:

1. Seriousness of the problem
2. Duration of the problem
3. Frequency and nature of the problem
4. Employees work history
5. Extenuating factors.
6. Degree of socialization of discipline practices
7. History of the organization's discipline practices
8. Implication for other employees.
9. Management backing
Dimensions and Elements of Employee Disciplinary Administration

Employees Disciplinary Administration (EDA) has three basic dimensions,

1. Discipline Policy

2. Discipline Procedure

3. Discipline Practice

Discipline Policy entails the discipline objectives and the strategy for their achievement (Salmon, 1987). Discipline Procedure is related to the operational mechanism which deals and regulates the manner in which a specified disciplinary issue is to be handled. Discipline Practice implies as a set of dimensions/actions which are made in response to a discipline problem/situation (Opatha and Methani, 2000).

Discipline policy

According to Robins (1982) there are three policy guidelines for disciplinary administration;

1. Make disciplinary action corrective rather than punitive
2. Make disciplinary action progressive
3. Follow the 'Hot Stove Rule'

The objective of a disciplinary action is not to deal out punishment. Its objective is to correct employee's undesirable behaviour (Robbins, 1982) A disciplinary action should have positive purposes and educational motives. It should condemn the wrongful act but
not the wrongdoer. Werther (1985) points out three objectives of a disciplinary action; to reform the employee, to deter others from similar actions and to make discipline effective. It is always desirable for disciplinary action to be progressive. A progressive discipline should start with an oral warning and proceed through written warning, suspension, demotion and in very serious cases demotion. Accordingly there should be lesser penalties for non-serious offences and strong penalties for repeated offences. It should be noted that progressive discipline is meant not for serious offences but for non-serious offences which are being repeated. The severity of the penalty is usually a function of the type of offences and its frequency. Dessler (1984) says that a system of progressive penalties is a pre-requisite to effective discipline. Discipline administration can be viewed as an analogous to touching a hot stove (Robins, 1982). According to that a discipline system should consist warning i.e. possibility of punishing; immediacy i.e. discipline action is to be taken without delay; consistency i.e. the degree of disciplinary action should be equaled to the degree of the offence; impersonality i.e. whoever violates the rule he/she should be punished.

Disciplinary Procedure

A good disciplinary procedure should be formal i.e. it should be written. According to Torrigton (1998) formality of the procedure provides a framework that avoids a risk of inconsistent, ad hoc decisions and the employee knows at the outset how the matter is
likely to be handled. On the other hand there should be a clear set of rules and regulations which gives official instruction promoting fairness and order in the treatment of individual and in the conduct of industrial relations and also for assisting an organization to operate effectively. The purpose of these rules is to inform employees ahead of time as to what is and is not acceptable behaviour (Dessler, 1984). It is also important to specify offences and the degree of their breach, divided as gross serious and minor. At the same time punishments, sanctions and the specific levels of management which have the authority to make decisions should also be stated therein. In any system, provisions must be made to appeal against any disciplinary action either through normal grievance procedure or through a special appeal mechanism (Salamon, 1987). A time period should be specified and the appeal should be heard by a level of management involved in, and more senior to the initial disciplinary panel.

**Discipline Practice**

According to Dessler (1984) employees should always be told preferably in writing what is not permitted during work. All the information about rules and regulations must be thoroughly conveyed to all the workers. This can easily be done during orientation and training. To get employee's compliance to all the rules it is important to mention the rationale behind every rule as to give them an idea about the importance of such rules. Periodical review of rules is desirable to ensure that they are being updated and their
observance remains a live issue (Torrignton 1998). Discussions of rules and regulations will not only sustain the general level of awareness of what they are, but will help the participants to clarify the reasons behind the rules and regulations. Moreover employees give better support to rules when they are involved in setting rules and regulations (Werther and Davis, 1994). It is also important to conduct a disciplinary inquiry to ascertain whether an employee has violated a certain rule or not. These inquiries are generally termed as domestic disciplinary investigations. Dessler (1984) points out two important issues regarding domestic inquiries;

1. Management must adequately investigate the matter before administering discipline. Further the investigation must be objective.

2. The investigation must produce substantial evidence of misconduct.

According to Armstrong (1995) there are three basic principles of natural justice that should govern the way in which disciplinary problems are handled.

1) Individuals must know the standards of performance they are expected to achieve and the rules and regulations to which they are expected to conform.

2) They should be given a clear indication of where they are failing or the rules that are being broken

3) Expect in cases of gross misconduct, they should be given an opportunity to improve before disciplinary action is imposed
Recording and monitoring the progress of the disciplinary problems is also an important task. This practice will show whether the problems have been reduced and help management to make necessary changes for the improvement of the policy, procedure and practice of discipline. Training of supervisors and other managers is also an important practice to be followed for effective discipline.
Chapter Three

IDENTIFYING THE EXISTING DISCIPLINARY MANAGEMENT SYSTEM FOR PUBLIC OFFICERS

3:1 Introduction

Under this chapter the researcher attempts to identify the existing disciplinary management system that is being adapted to the public officers. Rules, regulations and circulars regarding disciplinary issues and the procedure that is being followed throughout the public sector will be discussed here at length.

3:2 Legislation regarding Disciplinary Control of the Public Officers

Disciplinary control of the public servants is being governed by the Establishments Code (hereinafter referred to as the Establishments Code). Volume II of the Establishments Code speaks about this subject. It deals with the disciplinary control of all public officers other than public officers referred to in Article 41, 51, 52, 54 and 114 (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka and members of the Army, Navy and Air Force. The provisions of this volume have been approved by the Cabinet of Ministers in terms of Article 55 (4) of the Constitution.
Volume 11 of the Establishments Code consists of two chapters. Chapter XLVII speaks of the general conduct and discipline of the public officers and chapter XLVIII speaks of rules of disciplinary procedure.

3:3 General Conduct and Discipline

Section 1 of the Establishments Code deals with the general conduct of the public officers.

According to the Establishments Code a public officer should give his undivided allegiance to the State when the State has a claim on his service. An officer is required to discharge his duties with diligence and efficiency. An officer should act in a manner befitting to his public office. He should not commit any act that would bring the public service into disrepute.

An officer shall not do anything which will bring his private interest into conflict with his public duty or which compromises his public duty or which compromises his office. He should so conduct himself to avoid giving rise to any appearance of conflict or of being so compromised.
An officer should not canvass directly or indirectly for an appointment promotion or transfer in the public service. An officer should not arrange or interchange duties for a pecuniary consideration.

An officer must be courteous towards the public. He should readily assist all persons visiting public officers on business. An officer should always be polite in his official acts and correspondence. An officer should be temperate and restrained in his language when corresponding or writing reports and minutes.

An officer should not directly participate in the collection of money for public charities from his subordinates nor should he permit member of his family to take part in such a collection from his subordinates. No officer shall utilize Government labour on private jobs whether during or outside the official hours of work or put any Government property to his personal use without the special sanction of the Secretary. Public officers may not furnish supplies on public account or furnish specimens to any public institution without the special prior sanction of the secretary.

Section three to nine deals with the rules and regulations of the following disciplinary issues.

- Use of Liquor and Narcotic Drugs.
- Acceptance of gifts and other subscriptions
- Pecuniary Embarrassment.
- Use of Government funds for private purposes.
- Release of official information to the mass media or the public.
- Publication of books, articles broadcast talk, etc.
- Adherence to the Establishments Code, financial regulations and other relevant provisions.
- Political activities by public officers.

Offences committed by public officers have been specified in the First and the Second schedules of the Establishments Code.

3:4 Rules of Disciplinary Procedure

The power of dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers under the Constitution. According to the Establishments Code, a ‘public officer’ means any person who holds any paid office under the Republic, but does not include,

a) The President
b) The Speaker
c) A Minister
d) A member of the Judicial Service Commission
e) A member of the Public Service Commission
f) A judicial officer
g) A deputy minister
h) A member of Parliament
j) A member of president's staff.
k) A member of the staff of the secretary-general of Parliament
i) Employees of statutory boards, corporations and institutions vested in the Government

All the acts of misconduct or lapse by officers calling for punishment in any form should be dealt with, under these rules, as soon as possible, by the disciplinary authorities, heads of department and other relevant heads of institutions. To enable such action to be taken, reports, information on such acts of misconduct and lapse should be furnished, without delay, to the officer holding supervisory or administrative authority over the officer concerned in the institution where he works.

Whenever information was received the disciplinary authority must make arrangements to hold a preliminary investigation. For this task disciplinary authority can nominate an officer or a group of officers or the relevant head of the department or institution.

If the preliminary investigation reveals sufficient reasons prima facie to prefer charges against the officer the relevant head of the department should furnish the record of proceedings of the preliminary investigation, connected document, a draft charge sheet together with his observations and recommendations to the relevant disciplinary authority.
If after perusal of all the documents the relevant disciplinary authority decides to issue a charge sheet against the relevant officer he should issue the charge sheet, with amendments wherever necessary, against the officer through the relevant head of department.

Where the accused officer has submitted his explanations within the stipulated period the relevant head of the department should forward such explanations together with his observations and recommendations on the disciplinary procedure to the disciplinary authority.

Where the accused officer has failed to submit his explanations within the stipulated period, the head of the department should forward his observations and recommendations on the future course of disciplinary action to the disciplinary authority together with a certificate that the charge sheet was duly handed over to the accused officer.

Where the accused officer has failed or willfully neglected to submit his explanations within the stipulated period the disciplinary authority may at his discretion make an appropriate disciplinary order or take other course of action as he deems fit presuming that the accused officer has pleaded guilty to all the charges.
If after perusal of the explanations submitted by the accused officer and the observations and recommendations made by the relevant head of department, disciplinary authority finds that the accused officer has exculpated himself from the charges he should clear the accused officer of all the charges and acquit him. If he finds that the accused officer is guilty of an offence falling under the second schedule of the Establishments Code, order an appropriate minor punishment at his discretion. If he finds the accused officer is prima facie guilty of an offence falling under the first schedule order a formal disciplinary inquiry against the officer or take such other appropriate course of action as determined by him.

Where the accused officer in his explanation pleads guilty to the charges in the charge sheet against him, the head of the department should forward such explanations to the disciplinary authority together with his observations and recommendations on punishment that may be ordered taking each charge into consideration. After perusal of all such reports the disciplinary authority may order an appropriate punishment or if he finds that a formal disciplinary inquiry needs to be held, order such a disciplinary inquiry or order any other course of action as he deems fit. Where the accused officer does not plead guilty for the charges or denies all or some of the charges the disciplinary authority should order a formal disciplinary inquiry into the entire charges.
The report of the formal disciplinary inquiry, record of proceedings, summary of evidences for the prosecution and the defence together with any other documents produced by the prosecution and the defence should be forwarded to the disciplinary authority.

After careful study of all the reports and documents forwarded to the disciplinary authority by the inquiry panel after the formal disciplinary inquiry the authority may either accept or reject such recommendations and determine whether or not the accused officer is guilty of the charges preferred against him and if he founds guilty, dismiss him or make any other appropriate disciplinary order or take such other course of action as he deems fit. Where the disciplinary authority does agree with the findings of the inquiry panel, it may make a disciplinary order contrary to the findings of the inquiry panel in accordance with the findings independently arrived at him based on the report of the inquiry and other documents. The disciplinary authority should clearly and specifically state in the disciplinary file all the reasons for making such a disciplinary order before it is issued.

The above discussed procedure is the general practice adopted in the Government sector. This procedure is being uniformly applied by the Ministry of Justice and the Judicial Services Commission (the institutions that were subjected of this research).
Chapter Four

CONCEPTUAL FRAMEWORK

4:1 Introduction

This chapter has discussed the framework that is being used to evaluate the disciplinary management system practiced in respect of public officers in Sri Lanka.

4:2 Evaluative Framework

Employee discipline is an essential phenomenon in any industry. Managing discipline is one direct way of shaping labour management relationship (Hackect, 1994). If disciplining is done unfairly and discriminatively it will lead to unfavorable labour management relations. Empirical evidence reveals the fact that employee discipline administration is a significant determinant of labour—management relationship in manufacturing firms in Sri Lanka (Opatha, 2001). Therefore proper employee disciplinary management becomes very important.

Whether the existing disciplinary management system of the Government servants is a proper and effective one is yet a question to which no body has attempted to find answers.
In order to evaluate its effectiveness, one has to develop a framework using current theoretical arguments and expert opinion.

Here the researcher selected the framework that has been suggested by Opatha (2002) for the management of employee discipline. This framework explains a systematic process which involves a series of steps that should be followed. The very reason for the researcher to select this as an evaluative framework is that it covers all there main elements of the concept of Employee Disciplinary Administration (EDA) i.e. disciplinary policy, procedure and practice.
8. Review and Renewal

Figure: 4:1 Evaluative Framework of Employee Discipline Management (EDM)

1. EDM Objectives and policies.
2. Establishment of rules of behaviour and rationale for each rule.
3. Specify Penalties/Sanctions and authorities of sanctions.
4. Communicate all.
5. Monitoring rule violations.
6. Disciplinary investigations.
7. Determine the sanction and implement.
8. Informal Talk/Counseling.

Serious

Non serious


The figure illustrates eight basic steps. Firstly, objectives of the EDM should be determined. Simultaneously there should be a policy statement which would tally with the objectives. The second step is the establishment of rules and regulations that each employee should adhere to. It is of equal importance that the rationale for each rule should be clearly stated. The next step is specifying penalties/sanctions and the relevant disciplinary authorities who could impose these penalties to the wrongdoers. The next step stresses the importance of communicating the objectives, policies, rules regulations and the disciplinary authorities to all the employees. The fifth step involves observing whether actual behaviour of employees is in compliance with expected/desired behaviour of employees and receiving any deviations (rule violations). These rule violations may be serious or non-serious. The framework suggests different courses of action for above two categories of violations. If the rule violation is a serious one, then a disciplinary inquiry would be held in order to determine whether the employee has actually committed an offence. If it was proved, then an appropriate penalty or a sanction would be determined.

On the other hand if the rule violation is a non serious one the sixth step would be the holding of informal talks or counselling. If the rule violation continues, progressive disciplinary actions should be initiated. This means penalizing the rule violator in an increasing way in terms of the severity of the offence. However in both serious and non serious violations, it is essential to review and renew the process. Because the rules
regulations imposed at one period may not be suitable forever. Thus they should be changed according to the internal and external environmental factors. The last step of the process would enable an organization to improve and develop its employee disciplinary management system.

4:3 Objectives and Disciplinary Policy

Any EDM should have clear objectives, i.e. the ultimate goals that they expect to achieve from the discipline system. Objectives are an integral part of any EDM program. Opatha, (2002) points out six objectives that an EDM should generally focus on. They are,

1. Developing self-control among all the employees.

2. Encouraging employees to meet established rules of behaviour.

3. Protecting the organization from illegal and harmful actions of employees.

4. Protecting the life of an employee from illegal and harmful actions of another employee or a group of other employees.

5. Ensuring peaceful and orderly working environment for the achievement of organizational goals and objectives.

6. Promoting fairness and order in the treatment of employees and in the conduct of industrial relations.
Disciplinary policy involves clear general guidelines to be followed by managers in managing employee discipline. According to Salman, (1987) the objective of the disciplinary policy is to set the organizational climate within which disciplinary matters will be determined. In formulating a disciplinary policy, following ingredients should be included.

1. The objectives of EDM

2. The role expected from managers in all levels

3. Philosophy of discipline

Paul, (1961) comments on two things of a disciplinary policy. The first concerns the reference to a minimum of rules. He believes that having as few rules as possible is a good policy. Multiplicity of rules often breeds contempt for the very idea of law. Such contempt is usually expressed in nonobservance and even in non-enforcement of whatever rules are regarded as unimportant.

The second point is that it does not include any comprehensive statement of disciplinary procedure. It becomes more durable because it is less subject to revision when specific rules for action are merely referred to as necessary implementation of purposes and principles but are not spelled out in the policy statement.
**4:4 Rules of Behaviour and Rationale for each rule**

A set of rules is an integral part of a fair and just disciplinary system. (Opatha, 2002). In an organization rules serve about the same purpose that laws do in society and when discipline is called for when one of these rules is violated (Dessler, 1998). Rules are official instructions in respect of what employees must and are allowed to do and what they are not allowed to do. Rules should directly and indirectly contribute to organization’s productivity and then to accomplishment of organization’s goals and objectives. There should be an impact to the achievement of organizational goals (Opatha, 2002).

On the other hand it is very important to state the rules very clearly. This would avoid misunderstandings and misperceptions. Also clearly stated rules can be easily understood by an average number or employees of an organization. Also it would be convenient to communicate and implement if the rules are stated clearly, categorically and simply.

According to Opatha (2002) mentioning the rationale behind the rules are of utmost important. In an organization there can’t be any rule that cannot be rationalized. Rational for each rule may be different from organization to organization according to their nature of environment. However rules formulated without a foundation, is considered as unreasonable and no employee compliance may be expected.
Rules and regulations of an organization should be reasonable. If employees feel that the rules by which they are governed are reasonable they will observe them without question. (George and Leonord, 1967). Employees will respect the rules not because they fear punishment but because they believe in doing things the right way. Coming to work on time following the supervisors instructions, avoiding fighting, drinking etc. are accepted by a majority of workers as reasonable rules, and as necessary conditions of work.

Terry and Michael (1990) also are of the opinion that employees are more likely to accept and abide by policies, standards and rules that are perceived as being reasonable. The definition of what is reasonable will vary from one employee to another. Generally speaking an employee will regard a policy, standard or a rule as being reasonable if he or she understands its rationale. That is, why does this policy exist? What negative consequences might occur if this policy or rule was violated? Most employees are willing to accept rules, (a) if they are applied uniformly (b) if they are clearly communicated to each employee and (c) if the reasoning behind the policy is understood and accepted.

Wray et.al. (1996) suggests that the rules should not be established by management only and employees should have an opportunity to ensure that rules are fair and can be followed by workers. Managers and administrators who take a positive view of discipline, as a form of education and of reinforcement, naturally wish to secure participation from
all employees in all stages of working toward self discipline. In many concerns, such participation is invited by consulting with all supervisors before the procedure for discipline is put into final form (Paul, 1961).

However in talking with employee/union representatives, about management responsibility for discipline it is important to remember and to make clear that such discussions are intended to be informational and educational for all concerned and do not at this stage form part of collective bargaining (Paul, 1961).

4:5 Penalties or Sanctions and Authorities of Sanctions

Penalties are actions that follow rule violations or infractions (Opatha, 2002). Penalties are tools of corrective Discipline. According to Werther and Davis (1993) Corrective Discipline is an action that follows a rule infraction seeking to discourage further infractions and ensuring future compliance with standards. It is expected that the employees will not repeat violations; they will get themselves corrected. According to Werther and Davis (1989) there are three objectives of a disciplinary action.

1 To reform the offender

2 To deter others from similar actions

3 To make discipline effective
These objectives seem to be positive. However a disciplinary action involves a penalty. The gravity of the offence will be the determining factor of the penalty. According to Opatha (2002) both negative approach and positive approach can be used in disciplinary management. Under the negative approach the offender is punished with the objectives of retaliation, dismay, shame, discredit. Under the positive approach the offender is punished with the objective of reformation. Opatha (2002) recommends the use of the latter approach as it has positive influences on labour management relationship, employee job satisfaction and productivity.

Terry and Michael (1990) say that the penalty system should be equitable. An equitable penalty system has two characteristics. It tailors the penalty and it ensures that employees who commit similar transgressions are treated in similar fashion. The use of minimum and maximum penalties for each offence allows management a degree of flexibility to consider both the precise nature of the offence and any extenuating circumstances. Terry and Michael (1990) further points out two other important characteristics that a sound penalty structure should posses. First the system should impose time limits between offences. That is a statute of limitations is necessary. For example should an employee who has committed a minor violation five years ago be credited with a second offence if another minor violation occurs? Organizations may decide to expunge employee’s disciplinary records if no further violations occur within 1-2 years. This has the effect of
offering employees who improve their behaviour a fresh start. Second point is that when employees commit a combination of violation at different time periods, a consistent penalty should be imposed for each violation regardless of how combination of violations is handled. Otherwise employees will begin to view the entire process as capricious and arbitrary.

Any infringement of rules and regulations would constitute misconduct so long as it can be shown that the rule or regulation is reasonably necessary or even desirable for the effective management of the employees or the efficient operation of the organization or in the legitimate interests of the employer (Aydurai, 1996). However a penalty should be compatible with the severity of the offence. Opatha (2002) categorizes offences into two,

1. Serious offences (major acts of misconducts)

2. Non serious offences (minor or moderate acts of misconducts )

Serious offences involve violations of very important rules while non serious offences involve violating of important rules. For the first offence of violation of an important rule an oral warning may be assigned and when violation of the same rule becomes repeated penalties will become progressively severe.
Authorities of sanctions

Determination of the authorities of penalties is an important issue. Employees should know the authority that has legitimate powers to impose penalties and sanctions. Opatha (2002) points out a typical delegation of authority among different levels of management regarding disciplinary actions. According to him different levels of management must intervene for punishment at different stages of the progressive disciplinary management system.

Table 4:1 Delegation of Authority among Different Levels of Management Regarding Disciplinary Actions

<table>
<thead>
<tr>
<th>Disciplinary Action</th>
<th>Management Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Oral warning</td>
<td>Immediate superior of the offender</td>
</tr>
<tr>
<td>2. Written Warning</td>
<td>Do</td>
</tr>
<tr>
<td>3. Final written warning</td>
<td>Immediate superior and immediate superior’s superior</td>
</tr>
<tr>
<td>4. Suspension of work without pay for up to one week</td>
<td>Do</td>
</tr>
<tr>
<td>5. Suspension of work without pay for more than one week, stoppage of pay increment, and similar penalties</td>
<td>Department Manager and personnel/Human Resource Manager</td>
</tr>
<tr>
<td>6. Transfer, Demotion, and Dismissal</td>
<td>Personnel/Human Resource Manager and Top Management</td>
</tr>
</tbody>
</table>

He further says that delegation of authority for discipline must depend on the

- Size of organization
- Levels of management

In cases of serious penalties centralization of authority (as a disciplinary board) would be more appropriate. Decentralization of authority could be justifiable in case of non serious offences.

4:6 Communication and Monitoring Rule Violations

Whatever rules are being adopted by the organization, it is essential that employees be clearly informed about them. Communication and monitoring of rule violations is the fourth step of the conceptual framework. This step involves transmitting discipline information from management to all the employees for the purpose of creating a right and adequate understanding in respect of employee discipline (Opatha, 2002). Communicating rules to the employees is a must for an effective EDM. According to Ivancevich (1992) unless employees are aware of the rules they can hardly be expected to follow them. It is important to convince employees that rules are fair and related to employee productivity, efficiency and effectiveness. In any organization employees should be aware of EDM objectives, policy, all the rules, reasons or rationales for all the rules, penalties, and levels of management having authority to decide disciplinary action. In addition they should be made aware about the conduct of disciplinary investigations, disciplinary cases and results.
George and Leonard (1967) emphasize the management responsibility to make sure that all employees really know what the rules are and how they are to be enforced. Referring to 'Hot Stove Rule', he says that failure to communicate information deprives employees of clear warning. He suggests the following communication program:

1. Upon induction the immediate supervisor can explain the rules to all new employees

2. Notices can be posted in the bulletin board and hand books distributed to employees

3. In some cases lists of penalties can be included in the union contract.

4. When rules are changed the immediate supervisor can call a group meeting or notify individuals informally.

Some arbitrators may say that posting a notice on a bulletin board constitutes clear warning. But from the point of view of human relations, this is not enough. Written communications should be supplemented by oral communications. The better the management explains new rules and why it is necessary, the easier it will be to enforce it simply because workers will be more likely to accept it as reasonable. George and Leonard (1967) say that management is clearly to blame if the men unwittingly violate rules because they don’t know what is expected of them. Good communications pay off
by significantly reducing the amount of disciplinary actions that must be imposed. As a whole disciplinary action is more likely to be interpreted as fair by employees when there is a clear warning that a given violation will lead to discipline action and when it is known what that discipline will be (David and Stephen, 1988).

Opatha (2002) says that through communication employees are encouraged to follow rules so that infractions are prevented. Thus this step is related to major type of discipline proposed by Wether and Davis (1993) i.e., Preventive Discipline. The objective of the progressive discipline is to encourage self discipline among each employee.

According to George and Leonard (1967) the best discipline is the self discipline. The normal human tendency is to do ones share and to live up to the rules of the game. Once people understand what is required of them they can usually be counted on to do their jobs effectively and with good cheer. According to Opatha (2002) a self disciplined employee has generally the following characteristics.

- Accepts the rules which happen to face
- Respects the rules
- Observes the rules by him/herself willingly
- Needs no another person to direct or supervise him/ her to adhere to rules
- Keeps on adhering to rules continuously.
Human resource manager should act a major role in communication. It would be preferable if a copy of all relevant disciplinary matters included in the employee handbook that is to be given to each employee, receiving any deviation or rule violations and determining whether these violations are serious or non-serious. Managers should be attentive on the undesirable behaviours of the employees.

**Monitoring Rule Violations**

Instead of communicating about rules and regulations it is equally important to monitor rule violations. Monitoring refers to assessing whether actual behaviour of employees in the organization is in compliance with the desired behaviour of employees, receiving any deviations or rule violations and determining whether these violations are serious or non-serious. (Opatha, 2002). Management should always be alert on undesired behaviours of the employees. Opatha (2002) lists out five common sources of getting information about rule violations:

- Observation
- Complaints
- Grievances
- Difficulties
- Performance Evaluation
4:7 Disciplinary Investigation

A serious rule violation requires a proper investigation which is called a disciplinary investigation. A disciplinary investigation is a systematic and fair inquiry conducted by the organization in respect of a rule violation with the objective of determining whether the rule violator is guilty or not evidently (Opatha, 2002).

Paul (1961) says that a disciplinary process should not be limited to official reprimands and penalties. Instead it should implement clinical approach which includes following steps.

1. Preliminary investigation
2. An informal friendly talk
3. An oral warning or reprimand
4. A written or official warning
5. A series of penalties such as disciplinary lay off, demotional downgrading or transfer and as a last resort discharge

Opatha (2002) says that a disciplinary investigation should involve following steps when it is viewed as a process:

1. To do a preliminary investigation
2. To suspend the service pending inquiry if necessary
3. To issue a charge sheet

4. To obtain letter of explanation and make decisions based on it

5. To conduct a formal inquiry

4:7:1 Preliminary Investigation

The objective of a preliminary investigation is to ascertain whether there is sufficient evidence to support the rule violation. Paul (1961) says that a supervisor should refrain from taking hasty and perhaps unwarranted corrective action. Instead when a breach of discipline occurs just as when a machine breaks down an alert supervisor investigates the reasons. It is for this that a preliminary inquiry should be held.

The top management must appoint an experienced and qualified officer to do the preliminary investigation. The investigation officer should collect information about violated rules, the time of violation the place where the violation has taken place the witnesses and their statements. The investigating officer must send his report to the management. If it discloses sufficient evidence against the violator then further actions should be taken. If there is no evidence the matter can be ignored.
4:7:2 Suspension

If the rule violation is serious or if the suspected employee's presence at work will disturb the ongoing investigation activities or if the suspected employee may be violent or threaten witnesses or change or hide or destroy relevant documents, the employee should be suspended. Generally the suspension period may be two weeks. However it may go even up to the end of the disciplinary investigation.

During the suspension period management should decide whether to pay the employee or not. Generally one third or half of the salary /wage is paid to the employee whose service is suspended if the rule violation is serious but not very serious leading to dismissal. If it is very serious leading to dismissal if proven the management may decide not to pay at all or a low percentage of the salary /wage.

Paul (1961) says that the main advantage of the temporary suspension is that it enables a supervisor to act promptly perhaps in a situation which could become explosive and where a serious penalty may be justified, but where important facts are temporarily in doubt. While the suspect is suspended there is time to look into the facts calmly and systematically. The mechanism of suspension thus protects both management and the employee. The letter of suspension should be issued to the employee in an understandable language to him.
4:7:3 Charge Sheet

As the next step, a written charge sheet should be sent to the employee by the management. It should state clearly the rule/rules that the employee has violated with an indication of accusation. The management should also ask for explanation in writing. The charge sheet should include how and to whom the explanation should be sent. The charge sheet must be sent to the accused through registered post. If not it should be handed over to the employee himself and get his signature in proof of the receipt. The charge sheet must indicate the fact that if the employee fails to send the letter of explanation within the prescribed period it will assume that he/she has no answer to give and is guilty of all the accusations.

4:7:4 Receipt of Letter of Explanation

The decision of continuing the investigations depends on the nature of the explanation given to the charge sheet. Opatha (2002) describes five main possible natures of letter of explanation.

1. The accused accepts that he/she is guilty of all the charges.

   The management should decide to stop further proceeding on investigation and should concentrate on deciding the penalty /penalties.
2. The accused denies all the charges with acceptable reasons.

If defending reasons are acceptable the management should release him/her from all the charges and should declare so issuing a written letter to the accused. A statement of regret for the inconvenience occurred, is to be included in this letter from the point of human relations.

3. The accused denies all the charges with unacceptable reasons.

If defending reasons are unacceptable the management should proceed further. A formal inquiry will need to be held.

4. The accused accepts that he/she is guilty of some charges and denies other charges.

If defending reasons for denying charges are acceptable, the management should release him/her from those charges and declare by sending a letter as recommended under the second category. If defending reasons for denying charges are not acceptable a formal inquiry will need to be held to determine whether the accused is guilty for those charges.

5. The accused does not reply.

The management should send another copy of the charge sheet under the registered post if the accused is on suspension or otherwise. If the accused is working in
the organization, hand over and get signature so as to ensure the receipt of the charge sheet. The second copy should contain an additional statement that if the employee fails to reply for the second time too the management will assume that the accused has no answers and will be treated as guilty of all the accusations in the charge sheet. As stated in the charge sheet, the management can decide that the accused is guilty of the charges and decide to hold a formal inquiry.

4:7:5 Formal Inquiry

Formal inquiry is being held to verify whether the person has actually committed an offence. Qualified, educated and experienced members should be appointed as members of the board who hold the inquiry. The role of the panel is to listen to the evidence presented by the management and to the defence made by the employee and decide whether the officer is indeed guilty of the charges against him/her (Aminuddin, 1997). The inquiring officers should be unprejudiced and they should not be the same persons who carried out the preliminary investigation of the rule violation. Opatha (2002) says that it is fair to allow the accused to bring a trade representative if he/she belongs to any recognized union. It should be allowed for the accused officer to bring any relevant documents for his/her defence and any witnesses who are ready to give evidence on his/her behalf.
It is also important to inform the date and other important particulars of the inquiry to the employee in writing. Opatha (2002) suggests sending a second notice of inquiry if the accused did not attend on the scheduled day. The second notice should contain a statement saying that if he fails to attend, the case would be heard ex parte.

Opatha (2002,40) points out 15 guide lines that should be essentially followed when conducting a formal inquiry.

1. Adhere to natural justice law that implies that the management must act without bias and without vindictiveness and discipline the employees based on fair play. The basic principles of natural justice that are fundamental in any inquiry are (Khenghor and Huan, 1992):

   i. "No man shall be condemned unheard" meaning that the accused must be given a sufficient opportunity not only to know the case against him/her but also to answer it.

   ii. "No person shall sit in judgement in his/her own cause or in any in which he/she is an interested party" meaning that the inquiry must be conducted by a person who is impartial and unbiased and is not directly concerned with or involved in the allegations against the accused.
2. The inquiry panel must start the formal inquiry with an open mind i.e. no preconceived conclusions of the guilt or innocence of the accused. They must endeavor to establish the truth of the case.

3. The inquiry panel should hear both sides i.e. the case of rule violation presented by prosecuting officer and the case of defense by the accused or his/her representative.

4. The investigation officer/prosecuting officer who represents the organization should be invited to present the case to the panel.

5. If the accused needs to question the prosecuting officer or investigating officer with respect to anything of presentation the inquiry panel must give an opportunity for that.

6. The accused must be given every opportunity to speak in his/her own defence and also the opportunity to produce any witnesses.

7. All witness who present on behalf of the organization must be called to the inquiry room of one by one and allow them to leave the room after testifying is over.
8. The Chairman of the inquiry panel should test the relevancy of questions being asked and avoid incriminating questions unless they are essential to ask to clarify any doubts.

9. Witnesses on behalf of the organization must be examined first.

10. The accused must be given the opportunity to cross-examine the witnesses who present on behalf of the organization.

11. The accused his/her witnesses are to be examined and can also be cross-examined.

12. The Chairman of the inquiry panel must make sure to keep verbatim notes of the proceedings.

13. The inquiry panel must submit a clear report to the management who appointed the panel with the panel conclusion whether the accused is guilty of charge or not. The question of punishment is not a matter for the inquiry panel. It is a matter for the management who appointed the panel.
14. If the accused absents himself/herself without notice or reasonable cause, the inquiry should be adjourned and he/she should be informed about this and the inquiry scheduled to be held for the second time.

15. If the accused absents him/her without acceptable reasons for the second time also the inquiry should be held exparte.

4:8 Sanction Determination and Implementation

Determining a sanction/penalty is an important step in EDM. According to Aminuddin (1997) it is for the top management, in consultation with Human Resource Director/Manager to decide what penalty would appropriate if the employee has found guilty. Opatha (2002) says that a disciplinary action going to be taken against an employee should be fair and equal to the degree of offence.

Terry and Michael (1990) observe two characteristics that should inherent in an equitable penalty structure. According to them it tailors the penalty to the offence and it ensures that employees who commit similar transgressions are treated in similar fashion. Serious violations can result in discharge on the first offence and will result in discharge on the second. Minor violations on the other hand do not result in discharge before the third offence and may offer employees as many as four chances. The use of minimum and
maximum penalties for each offence allows management a degree of flexibility to consider both the precise nature of the offence and any extenuating circumstances.

Opatha (2002) points out 11 factors that should be taken into consideration when determining a disciplinary action:

1. Nature of the offence.
2. Consequences of the offence i.e. cost of the offence actually incurred and the cost that could have incurred.
3. Previous offences done by the employees.
4. Whether relevant rule or rules has/have been properly communicated.
5. Job performance records.
6. Special contributions made by the employee to the organization such as innovations, creative ideas, cost savings, fire preventions etc.
7. Whether there was any provocation.
8. Whether the offender was physically fit or not.
9. Previous disciplinary actions inflicted
10. Post disciplinary actions inflicted by other organizations engaged in the same industry for similar rule violations.
11. Employee's length of service with the organization.

He further says that whoever who has violated clearly a rule and is found to be guilty by a disciplinary investigation, he/she should be given a sanction. It does not matter whether the employee is an excellent job performer or not. Opatha (2002) categorically says that,
consideration of above mentioned factors does not apply to the question of whether punishing or not, but it does apply to the question of what the degree or gravity of punishing is.

Opatha (2002) suggests the use of a Disciplinary Board consisting of the managing director, human resource director/manager and a legal officer to impose sanctions.

If a particular rule has been violated by two employees, same penalty should be imposed on both of them provided that nature of the jobs, nature of the places, frequency of the violations, loss involved and other conditions do not differ. If there is no equal treatment, many unfavorable consequences such as grievances, complaints, conflicts and disorders are likely happen (Opatha, 2002). Discipline is not most effective and has least negative effect on individuals if the particular moment is the only thing being criticized and not his total personality (Chris, 1953).

**Sanction Implementation**

In case of termination, the theory suggests to send a letter of termination to the relevant immediate superior of the employee, Labour Commissioner and other relevant union for the purpose of sanction implementation. In case of sanctions other than termination
(transfer, demotion, reduction of seniority etc.) it is important to prepare a letter of disciplinary action and send one copy to the relevant employee without delay.

4:9 Informal Talk/Counselling

Non serious offences when committed for the first time counselling would be appropriate than a punishment. Counselling approach involves an informal talk. According to Catt and Miller (1991) an informal talk with the offending employee will often corrects many relatively minor violations.

However if non serious offences were repeated they become very serious. For the first infraction or up to the second infraction, informal talk is suggested to apply. The purpose of informal talk is to get a commitment from the offender to correct his/her behaviour, without using punitive discipline (Opatha, 2002). During the informal talk no disciplinary action is taken against the employee who has violated the rule. The talk must be held in private in order to avoid interruptions and other embarrassments.

Opatha (2002) points out two approaches of informal talk:

1. Sandwich Approach

This approach is a one-way-communication where a corrective comment is sandwiched between two positive comments in order to make the corrective comment more
acceptable (Werther, et al 1985). Opatha (2002) says that use of this approach may be more appropriate for an employee whose job performance is well above average or excellent.

2. Participative approach

According to Opatha (2002) there are five steps in this approach:

1. Manager informally invites the offending employee to talk about an important thing.
2. Manager informs the rule violation specifically with date time place etc.
3. Manager listens to versions/response of the offending employee.
4. Both attempt to find out what is causing the problem of discipline.
5. Both discuss to find a solution and implement it.

Informal talk does involve penalizing the employee who was wrong. The informal talk will provide path to correct employee’s future behaviour while superior/manager can still remain on friendly terms with the employee. Opatha (2002) suggests six guidelines for informal talk:

1. Talk with the employee about the rule violation in private.
2. When the manager is angry due to rule violation, it is not suggested to conduct an informal talk.
3. Before having an informal talk, the manager must get all the facts. Basing decisions on hearsay evidence, general impression about the employee opinions and post behaviour must be avoided.

4. The manager should attack the wrongful act, not the person.

5. Using of ambiguous statements should be avoided. Be specific and clear.

6. The manager should listen to the version of the offending employee about the rule violation and reasons for it. There may not be a real violation or may be some factor or factors out of the control of the employee

4:10 Progressive Discipline

Progressive discipline calls for increasingly severe penalties each time a man is undisciplined. Opatha (2002) states that progressive discipline is a discipline program which progresses from the least sever to the most sever in terms of disciplinary action/penalties. He further says that a progressive disciplinary system is a prerequisite to effective EDM. The objective of progressive discipline is to give an opportunity to an offender to correct his/her behaviour before more severe penalties are inflicted (Weather and Davis 1989). The following exhibit shows a typical Progressive Disciplinary program.
Table: 4:2 A typical Progressive Disciplinary Program

<table>
<thead>
<tr>
<th>Time of Violation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Informal talk</td>
</tr>
<tr>
<td>Second</td>
<td>Verbal warning</td>
</tr>
<tr>
<td>Third</td>
<td>Written warning with a record in personal file</td>
</tr>
<tr>
<td>Fourth</td>
<td>One week suspension from work without pay</td>
</tr>
<tr>
<td>Fifth</td>
<td>Suspension for one month without pay</td>
</tr>
<tr>
<td>Sixth</td>
<td>Demotion</td>
</tr>
<tr>
<td>Seventh</td>
<td>Dismissal</td>
</tr>
</tbody>
</table>


Dessler (1998) observes progressive discipline as a foundation of effective discipline. He says that the severity of the penalty is usually a function of the type of offences and the number of times the offence has occurred. The underlying rationale of a progressive discipline system is that employee are expected to perform in a safe, competent and reliable manner, otherwise they can expect that sanctions will be imposed. In return the employee has a right to expect fair and consistent treatment from the employee (Terry and
According to Jill Hauser (1986) the essence of progressive discipline can be condensed as follows:

1. An adequate warning system is established
2. Enforcement is consistent among employees
3. The penalties are matched with the offence
4. Due process is ensured
5. Management has adequate flexibility

George and Leonard (1967) explain the ordinary sequence of penalties under progressive discipline as follows:

1 Oral warning
2 Written warning
3 Disciplinary layoff
4 Discharge

From the perspective of human and industrial relations, progressive discipline is said to be a good approach, because it provides an opportunity to the employees to correct their future behaviour.

Informal talk which is the first step is not considered as a punitive measure. If the rule violation is redone after the informal talk an oral warning is suggested. Opatha (2002)
suggests that an oral warning should be implemented at a face to face meeting which is called a disciplinary meeting held between the offender and the manager.

Behaviour Modification Approach to discipline as suggested by Bittel and Newstrom (1990) can be used in the above meetings. This is a step-by-step procedure aimed towards positive corrective discipline. Bottle and Newstrom (1990) suggest six steps to follow sequentially.

1. State the disciplinary problem
2. Ask the employee for his or her view of the problem
3. Ask the employee for a solution to the problem
4. Agree on a plan to solve the problem
5. Give the employee an oral or written warning
6. Set up a date for a review

Under progressive discipline, if violation is done again after the informal talk and discipline meeting, written warning is suggested. In order to implement this written warning, an interview called ‘discipline interview’ will have to be held (Opatha 2002).

A disciplinary action should aim at condemning the wrongful act and not the wrongdoer as a person. Its objectives are to reform the offender, deter others from similar action and
to make rules effective not to penalize for the sake of punishing or discharging (Opatha 2002).

4:11 Review and Renewal

In implementing a disciplinary management system one come across very many shortcomings. Always improvements should be made to the existing system. Therefore review and renewal of the system would become very important (Opatha,2002), (Salmon (1987). According to Terry and Michael (1990) policies that were reasonable in the past may become antiquated due to change in the workplace. Technological advances in security systems may become obsolete. Therefore management must periodically assess polices, standards and rules to ensure that they remain relevant. A prime test for reasonableness is to carefully examining rules that represent employee disciplinary trouble spots. Rules that are repeatedly violated may need elimination restructuring or re-emphasis to employees regarding their importance (Terry and Michael 1990).

For the purpose of reviewing and renewing the system Opatha (2002) points out ten areas to which one should inquire into:

1. Were disciplinary actions inflicted implemented properly?

2. Were they accepted by the relevant offenders? If not, why?
3. What are the problems being developed or developed due to disciplinary decisions?

4. Have the offenders appealed for the penalties?

5. What is the nature of these appeals (arguments against penalties facts justifications etc.)?

6. What are the attitudes of managers and non-managers including the offenders who have been penalized about rules, reasons behind rules, penalties and discipline administration?

7. Are there new rules to be formulated? why?

8. Are there rules to be abolished or modified? Why?

9. What problems do disciplining gives rise to?

10. What is going on in the outside world (in relation to EDM) that may suggest new approaches, procedures etc. to improve current practices?

According to Opatha (2002) three principles should be followed for an effective EDM

1. Providing an opportunity to appeal

2. The manager himself/herself should set a good example of a ‘self disciplined’ person

3. Keeping records properly regarding all decisions on disciplining employees and all relevant incidents regarding discipline
Opportunity to appeal

There might have instances where first line managers make mistakes. Thus an opportunity should be given to the offending party to place his grievance before a higher forum. According to Terry and Michael (1990) an ideal type of discipline system is one which leaves employee fully satisfied with the outcome. Unfortunately, disciplinary systems are used and overused and the parties involved are not always pleased with the results. Therefore appeal mechanisms are important.

The normal grievance settlement procedure can be used for the purpose of appeals or a special disciplinary appeal procedure can be developed and used in this respect (Opatha 2002). This system should specify following facts:

1. Time period within which the appeal should be preferred.
2. Authority to which the appeal should be submitted.
3. Time of hearing the appeal
4. Participants in the appeal hearing

Manager himself being a ‘self disciplined’ person

If the manager himself breaches rules the subordinates would not follow them. Thus it is important for him to be well disciplined and set himself an example.
Keeping proper records

Every manager should keep records regarding disciplinary issues of each employee. Because it is up to the manager to prove the case and justify his course of action. Opatha (2002) suggests about maintaining a book titled 'Employee Discipline Administration' in which proper and accurate records/notes should be made in respect of every step of disciplining each of his/her subordinates.
Chapter Five

RESEARCH METHODOLOGY

5:1 Introduction

This chapter will explain the methodology that the researcher used in collecting relevant and connected data. It will focus on nature of the research, unit of analysis, type of investigation, data collection method, study setting, time horizon, extent of researcher interference and the responses of the cases.

5:2 Nature of the study

By this research it was intended to describe the existing disciplinary management system of the public officers and to find out its effectiveness in terms of the theoretical framework developed using literature and expert opinion. Thus, the nature of the study in view of the purpose was descriptive. A descriptive study is done in order to describe a phenomenon. The first part of the dissertation explains the nature of the present system laid out in Volume II of the Establishments Code. Legal framework and procedure which is in practice was identified basing the above piece of legislation and the other relevant and connected circulars issued by the Ministry of Public Administration. In the latter part of the study the present system was analyzed using a theoretical framework developed by
using expert opinion and available literature. The purpose of the analysis is to assess the
effectiveness of the present system in comparing to the above framework. The theoretical
framework consisted of eight steps which explains almost all essential ingredients that
should be incorporated in a sound disciplinary management system. In order to evaluate
the effectiveness, criteria were formulated based on each step of the theoretical model.
Information was gathered from the participants to the research, other secondary
documents and the Establishments Code in respect of each criterion. This was a holistic
approach whereby the researcher intended to examine all the practical and procedural
aspects of the whole disciplinary administration process.

5.3 Unit of Analysis

The unit of analysis refers to the level of aggregation of the data during subsequent
analysis. The unit of analysis in this research is individual. This study was carried out to
find out whether the existing disciplinary management system of the public officers is an
effective one or not. In order to assess the system each public officer's experience and
ideas should be considered carefully. Therefore the research had to be conducted on
individual basis. The research was carried among public officers who are attached to the
Magistrates and District Courts of the Kurunegala Judicial Zone. The following courts
were selected for this purpose.

1. District Court, Kurunegala.
Five employees were selected irrespective of their job positions from each of the above ten institutions. In addition to that all the departmental heads, i.e. relevant District judges and Magistrates were also participated in the research. Thus the total sample population consisted of sixty participants. For the convenience of reference, fifty employees identified, were labeled as cases 1-50 and ten departmental heads identified, were labeled as cases A,B,C,D,E,F,G,H,I and J.

Table 5:1 A description of the cases 1 - 50

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<td>G</td>
<td>Magistrate Court – Maho</td>
<td>Male</td>
<td>48</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>Magistrate Court – Galgamuwa</td>
<td>Male</td>
<td>45</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>District Court – Kuliyapitiya</td>
<td>Male</td>
<td>52</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>Add. District Court - Kuliyapitiya</td>
<td>Male</td>
<td>50</td>
<td>01</td>
<td></td>
</tr>
</tbody>
</table>

D.C. - District Court.
A.D.C. - Additional District Court.
M.C. - Magistrate Court.
A.M.C. - Additional Magistrate Court.

Table 5:2 A description of cases A – J
5:4 Type of Investigation

This study was neither causal nor correlational one using scientific approach. The research was aimed towards evaluating the effectiveness of the existing disciplinary management system using the qualitative approach. In achieving this objective the researcher attempted to delineate qualitatively critical factors, which contribute to make the system ineffective.

5:5 Data Collection Method

Since this research is a qualitative case study the trustworthiness of the information becomes very essential. In order to secure the trustworthiness and the reliability of information, the researcher adopted following couple of methods,

a) Thick description

b) Triangulation

Thick description

Purpose of adopting this method is to gather descriptive data, as much as possible by holding interviews etc. When holding interviews, the researcher got the opportunity not only to get information which was necessary to the research, but also to get clarifications of issues which were doubtful. In addition explanatory data could be obtained by doing interviews.
Triangulation

In triangulation reliability and trustworthiness of information would be verified using three methods i.e.

a) observation
b) interviews
c) documents

While observing the behaviors of the respondents, the researcher made an attempt to verify the truthfulness of the information given by the employees by examining their personal files. In this research two methods were used to collect data from the cases. These two methods are,

1. Distribution of a questionnaire
2. Holding of interviews

In addition to that data relevant to this research was basically gathered from the Establishments Code, circulars released from the Ministry of Public Administration, past case records of disciplinary investigations and statistics available in the Ministry of Justice and the Judicial Services Commission.
Data for the research was collected in two stages. A set questionnaire was distributed among cases 1 – 50 at the first stage. Once the written answers were received, interviews were held with each case. Gathering information through a questionnaire was to be limited only to the employees, i.e. cases 1 – 50, because departmental heads, i.e. cases A – J preferred to express their ideas orally rather than answering to a question paper. They showed lethargy in writing down answers and so much so that, the researcher had to hold interviews with them straightaway.

Prior to the sending of questionnaires, the researcher had to obtain permission from the relevant departmental heads. Purpose of the research was informed over the telephone to all the ten departmental heads at the very inception. Once a favorable response was received from the head of the departments, the researcher informed in writing the academic purpose behind the research and also the main objectives of the research and a formal request was made to provide five employees from each of the institutions. In addition all the departmental heads themselves agreed to provide information to the researcher orally. Since this study was conducted to fulfill academic purposes, all the departmental heads willingly extended their cooperation.

Questionnaires were sent to each of the institutions through their head of the department. It was requested to send back the answers within two weeks from the receipt of the
document. It was specially requested from the departmental heads to explain the researcher's purpose behind this research to the employees to whom the questionnaire was given. The departmental heads had distributed the questionnaire among the employees whom he/she considered suitable and responsible enough to cooperate with the research. Answers to the questionnaire were received in writing through respective departmental heads. The departmental heads were cordial enough to collect the answer sheet on due time and as a result unnecessary delay was avoided to a greater extent.

After the receiving of the responses in writing, the researcher carefully examined them and fixed time schedules to hold the interviews with the respondents. The researcher informed the departmental heads in advance the date and time on which she intended to hold interviews. Advance notice was given to institutions in order to ensure the attendance of the respondents. The researcher made it a point to have the interviews with the departmental heads on the same day. The researcher was able to complete interviews within five whole days. Interviews with the departmental heads were held at their convenience during lunch hour and after the adjournment of the court sessions. The researcher took much effort to have the discussions with the departmental heads in a manner which would not disturb their bench work. Interviews with the other employees were held during office hours. The heads of the departments were kind enough to release the officers from their scheduled duties during their respective hours of discussions.
The questions put forward at the interviews were somewhat similar to the questions stated in the questionnaire. The questionnaire was sent in Sinhalese and the interviews were also held in Sinhalese. An English translation of the questionnaire distributed among cases 1–50 and the list of questions put forward to the cases 1-50 are given below.

An English translation of the questionnaire distributed among cases 1-50

<table>
<thead>
<tr>
<th>Name-</th>
<th>Male/female-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present work place-</td>
<td>Marital status-</td>
</tr>
<tr>
<td>Designation-</td>
<td></td>
</tr>
<tr>
<td>Age-</td>
<td></td>
</tr>
<tr>
<td>Work Experience-</td>
<td></td>
</tr>
</tbody>
</table>

1. Do you have an understanding about the disciplinary administration system of the Public officers?

2. How did you acquire that knowledge, i.e. is it by reading the Establishments Code, from others, through experience etc. ?

3. Have you ever read the Establishments Code? If so, what was your purpose?

4. What do you think about the rules stated in the E- Code? Are they reasonable/ highly reasonable/ not reasonable or unreasonable?

5. Have you ever participated in formulating disciplinary rules?

6. Are all the offences / misconducts committed by your brother/sister employees being brought to the notice of the departmental heads? If not, why? (Explain reasons in detail)
7. To your knowledge and experience what percentage of offences are being brought to the notice of the relevant authorities?

8. Have you ever being subjected to a disciplinary action? (If so briefly explain reasons)

9. Have you ever committed any misconduct or violated any disciplinary rule? If so what were the reasons? (Explain your answer)

10. Do you think employee counselling is a good approach in disciplinary management?

11. How should the employees be punished? Should all the employees be dealt according to the rules stated in the E-Code?

12. What should be the criterion for imposing penalties? Is it the severity of the offence or the number of times an offence is being repeated?

13. What are your ideas about the existing system? Do you think it needs changes?

14. What are your recommendations and suggestions about disciplinary actions?

Questions put forward to cases 1-50 at the interview

1. Do you have a sound understanding about the disciplinary rules and regulations?

2. Do you know the laws under which disciplinary issues are being governed?

3. Have you ever read the Establishments Code? If you have, for what purpose have you done so?

4. How do you get instructions whenever you undergo any disciplinary problem?
5. Do you think the rules stated in the Establishments Code are reasonable? (This question was posed to the respondents after giving them a copy of the rules and regulations stated in the Establishments Code and giving them some time to read them)

6. Have you observed misconducts of your brother/sister officers?

7. If so, have you made any attempt to inform about these misconducts to the departmental heads? If not, why?

8. Why don’t other employees report about misconducts to the relevant authorities?

9. Have you ever violated any disciplinary rule? If so, what were the reasons?

10. What is the best criterion for imposing punishment?

11. Do you think that the departmental heads must take actions exactly according to the Establishments Code in all cases of misconducts?

12. Do you think employee counselling and informal talk are good approaches?

13. Do you think the existing disciplinary management system should be changed? What are your suggestions and recommendations?

Since most of the cases were not aware of the disciplinary rules and regulations stated in the Establishments Code, researcher had to distribute a copy of the Sinhalese version of the first part of the E – Code. It was so done to make the cases aware of the available rules and regulations. In addition, cases were requested to mark on an itemized rating
scale whether the nine rules of conduct that have been stated in the Establishments Code are reasonable or not.

**Itemized rating scale used in this respect is given below:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Highly Reasonable</th>
<th>Reasonable</th>
<th>Not unreasonable</th>
<th>Unreasonable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General Conduct</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Use of liquor and Narcotic drugs</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>4. Pecuniary embarrassment</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5. Use of Government funds for private purpose</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>6. Release of official information to mass media</td>
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<td></td>
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<tr>
<td>7. Publications of articles, book etc.</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>8. Adherence to statutory rules</td>
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<td></td>
<td></td>
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<tr>
<td>9. Political activities by public officers</td>
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</tbody>
</table>
Interviews with the departmental heads, i.e. cases A – J were also held in Sinhalese and within the course of the interviews some responded in English for certain explanations. A list of the questions posed to cases A – J is given below.

**Questions put forward to cases A-J at the interview**

1. Have you read the Establishments Code? If so, to what extent?

2. What was your purpose of reading the Establishments Code?

3. What is your idea about monitoring rule violations?

4. How many preliminary investigations have you held during your career life?

5. Problems and issues regarding the conduct of the preliminary investigations?

6. What is the average time taken to send the preliminary investigation report?

7. What is your idea about informal talk, counselling and progressive discipline?

**5:6 Study Setting**

The study was a non contrived one. It was conducted in the natural environment where events normally occur. All the interviews with the employees and the departmental heads were done in the workstation itself where each of them is attached to.

Interviews with the departmental heads were done in the official chamber of each judicial officer during lunch hours and after court sessions. Time was scheduled according to the
convenience of each of them. Each interview extended for about one hour to one and a half hours. During the hours of discussion the chamber was kept closed, in order to avoid interruptions. A friendly atmosphere was created within the discussion room. Since all information was gathered solely for educational purpose all the cases willingly cooperated by expressing their ideas. Questions were put one by one to the departmental heads and answers given to them were taken down in writing.

Interviews with cases 1 – 50 were done in the judge's chamber, rest room and parade room according to the available facilities of each organization. Interviews done in the judge's chamber was done only when the judge was on the bench hearing cases. All the interviews were held in closed compartments where no body else but only the interviewer and the interviewee were present. One after another was called for interviews and their responses were taken down in writing by the researcher. No other method of recording i.e. tape recording or steno graphing was used due to lack of facilities. On the other hand as the researcher herself is a judicial officer, they did not prefer tape recording their responses. At the commencement of the interview, the purpose of the research was explained to the respondents and inquired them whether they are consenting to express their ideas. It is worth noting that none of the respondents pay a negative response. Majority was keen to sharing their valuable experience for an academic work. In order to create a friendly atmosphere for the respondents to express ideas fearlessly, the researcher
convinced them that they are quite free to express their ideas and their responses will not in any manner incriminate themselves. In addition the researcher undertook to assure the secrecy of information to the best of her ability.

Thereafter questions were put forward to the respondents. While answering, the researcher was mindful enough to observe facial expressions of the respondents in order to verify their trustworthiness. During the course of the interview a Sinhalese version of the first chapter (where rules of behavior and conduct have been stated), appendix one (where offences have been interpreted) and first and second schedules (where major and minor offences have been listed) to the Establishments Code were distributed among the respondents. The purpose of this is to decide the understandability of each rule and offence. In addition an itemized rating scale was given to each participant to mark whether each of the nine rules of conduct and behavior stated in the Establishments Code is reasonable or not. After gathering relevant information, personal files of the each of the interviewees were checked up with the permission of the departmental heads. However this was done after the conclusion of each interview and the respondents were not aware of it. By checking their personal files the researcher was able to verify the correctness of certain information given by the respondents regarding previous disciplinary records. It is worthwhile noting that except in few case most of the information given regarding their previous conducts was correct. However letters of warnings for minor offences were
included in the personal files of few respondents who stated that they never have undergone a disciplinary punishment during their career life.

5:7 Time Horizon

In this research information was gathered over a period of two months. Since data collection is done in more points in time the time horizon was longitudinal. Collection of data through questionnaires took about one month and the interviews were held over a period of one month. Almost all the respondents extended their maximum cooperation to this study and as a result unnecessary delay was avoided to a greater extent.

5:8 Extent of Researcher Interference

Researcher interference refers to the degree of manipulating and/or controlling variables in order to answer the research question. The extent of the researcher interference in this study is minimal. Since this is a field study the researcher could be a neutral character. All the respondents were given a free opportunity to express their ideas while being in their usual work environment. The only intervention the researcher had was that she had to explain provisions and procedures stated in the Establishments Code to certain participants whose knowledge regarding these issues were fairly low.
5:9 Other Sources of Information

In addition to information collected from employees and departmental heads, the researcher used past case records and pending case records which were available in the disciplinary division of the Ministry of Justice and the Judicial Service Commission. Twenty five files were collected from each institution. Particular information regarding procedural aspects was gathered from the materials available in these case records. However due to lack of time, the researcher could not do a deep study on these files. However the researcher was able to gather necessary information by skimming through the journal entries and the proceedings of the case records.

5:10 Responses of cases

Responses of case 1-50

Case: 1

He says that he has fairly a good knowledge of disciplinary issues. He has acquired that knowledge by reading the Establishments Code. Also his experience contributed to gain knowledge. He has read the E – Code for his Efficiency Bar examination. But he has not read it fully. He says that most of the rules stated in the E – Code are reasonable. However some provision in the E – Code like, attending time etc. are not fair because they have been formulated without being sensible to transportation problems. Case one has never taken part in formulating rules. He says that he sometimes informs about
employees misconducts, but if the departmental head is a very strict person or thinking about the bitter consequences that the wrongdoers family will undergo, he refrain from telling it to his boss. He, as a registrar had warned wrong doing employees several times without complaining about them to the superiors. According to him only 1% of the offences are been reported to the departmental action. Case one has been late to come to work due to transportation problems. He says that the bus owners don’t run on scheduled times. He believes that informal talk and counseling is a good approach. He further says both severity and the number of times the offence is repeated should be taken into consideration when imposing penalties. He says that the existing disciplinary management system ought to be changed. It should be more flexible.

Case: 2

Case 2 has a little understanding about disciplinary issues. He has gained that knowledge from the experience of others. He has not read the E – Code. However he has not participated in formulating rules. Due to the sympathetic attitude that he has towards the other employees he do not go on complaining against others. He says that if a disciplinary action was taken, the wrongdoer's family will suffer for ever. He says that only 5% of the offences will be noted by the departmental head. He too admits the fact that he has violated disciplinary rules like late attendance and leaving early. According to him it is the lack of transport facilities that made him come late. Since most of the trivial rule
violations occur due to unavoidable reasons, he believes that informal talk and counseling would do a lot. He further says that applying E–Code regulations in all instances are not suitable. While stressing on the facts that strict punishment should be given when an offence was repeated, he said that the present system should be changed.

Case: 3

Although case 3 has not read the E–Code, he said that he has a sound knowledge about disciplinary laws. He has once undergone a problem while he was serving in the High Court of Colombo. He has been charged for misappropriation of money. His services have been suspended for more than two years. However, he has been discharged from all the charges. He said that, he gained all the knowledge from his own experience. He says that some rules in the E–Code are not reasonable. He has not participated in formulating rules. He has sometimes reported to the departmental head about certain misconducts of the officers. But when officers do not get themselves corrected even if complained, he does not go on complaining. On the other hand if the departmental head does not take any action even if information about misconducts were given, he keeps silent. He says that only 2% of the offences are being reported to the departmental head. All other remains unnoticed by the relevant authorities. Case 3 says that he has never violated disciplinary rules. Since he lives in the close proximity, he has never been late to come to work. He says that the procedure stated under the E–Code contains very strict provisions.
Therefore some flexible rules should be introduced to the system. He says that for non-serious offences, informal talk and counseling is a better approach. He further says that both severity and the consequence of doing an offence should be taken into consideration when imposing punishments.

Case: 4

She says that she does not have a sufficient knowledge about disciplinary rules and regulations. She has not read the E-Code. She says that she learns from other's experience. According to her, rules stated in the E-Code are reasonable. She has not participated in formulating rules. She has never lodged a complaint to the departmental head against another employee. She thinks that giving information about misconducts is not her business. Also she says that if a strict action was taken against a person about whom she complained, it will be a grave sin. According to her rate of reporting about misconducts is just 1%. She says that she has lot of domestic work to engage with. She has no servant and therefore everything should be done by her. Therefore she frequently gets late to come. In such occasions she indicates a false time in the attendance registry. She prefers informal talk and counseling. She thinks that if the departmental head is aware of her real problems, he would definitely excuse her. She says that "severity of the offence" should be the determining criterion in imposing punishments. She too believes that the existing system should be changed.
Case: 5

She says that she always inquire from others when a disciplinary problem arose. She admits that she has a little knowledge about disciplinary issues. According to her all the rules stated in the E – Code are highly reasonable. Her participation in preparing rules is nil. She says that the nature of the departmental head prevents her from giving information. If the boss is a lenient one, employees will cooperate in giving information. If he is strict, no body will take a step forward. The information transmission rate is 1%. Although she has not been subjected to a disciplinary action, she has committed certain trivial rule violations like leaving early than the scheduled hours. That has been done so in order to attend funerals. She says that progressive discipline is the most suitable approach for minor offences. Since she did not have a knowledge about the present procedure she could not say whether the system should be changed or not. But she said that the employee counseling should be encouraged.

Case: 6

She has a sufficient knowledge about disciplinary issues. She has read the Establishments Code for the E – Bar examination. She says that most of the rules stated in the E – Code are reasonable. However she has not participated in making or revising rules and regulations. Her belief is that only 2% of the information about misconducts goes to the
departmental head. Others remain unnoticed for ever. Thus number of offences increases
day to day. It is the nature of the departmental heads which prevents them from giving
information. If he does not take any action, then nobody would give hints. Also when
offences are done on humanitarian grounds, (i.e. when officers have personal problems)
she keeps quite without complaining. As a senior officer she has advised offenders
several times. Case 6 has got late to come to work due to traffic congestion. However she
covers the time from evening working hours. She has never being subjected to a
disciplinary action. But she too believes that employee counselling, informal talk and
progressive discipline should be introduced. She further says that both the severity and
repetition of violations should be taken into account when imposing penalties.

Case: 7

He has never been subjected to a disciplinary action. Although he has not read the E –
Code, he has some kind of an understanding about disciplinary matters. He acquires
knowledge by learning from other people’s experience. Except certain rules regarding
time schedules, other rules are regarded as reasonable by him. He has not participated in
making rules. According to him rate of transmitting information about misconducts to the
disciplinary authorities is 5%. Main reason for this is that giving information against
certain officers would sometimes become life endangering. He has been late to come to
work on several occasions. Although there is not much distance from his home to the
work place, buses take about 1 ½ hours to come. According to him informal talk and progressive discipline is a good approach. The existing system is good, but the above concepts should be introduced to them.

Case: 8

He has some knowledge about disciplinary management. He has learnt about these things through his own experience. He says that only 2% of the information transmits to the departmental head. He says that some times immediate superiors collude with the other employees to commit offences. For example he has noticed registrars using alcohol with the other employees. Therefore it is of no use complaining against these officers. He too has violated certain disciplinary rules. He has gone out during office hours to get things done from Government institutions like banks. However he has never been subjected to a disciplinary action. He says that ‘severity of the offence’ should be the deciding fact in imposing a punishment. His view is that the present system should be changed. It includes lot of strict rules. It is not sensitive over employee's personal difficulties. He agrees with introducing informal talk and progressive discipline to the present system.

Case: 9

Case 9 has not read the E – Code. He preferred to get knowledge by inquiring from a friend of him. He says that all the rules in the E – Code are reasonable except rules
regarding public officers engaging in political activities. He says that public officers should be given more freedom to engage in political activities. He too believes that employees do not give proper information about misconducts. He puts the entire blame on the departmental head. He says that if the departmental head is a neutral person who neglects wrongdoings, it is no point of telling. Thus information transmission rate is 5%. He says that the bus service in his area is very poor and the bus drivers are not thinking about them. Therefore a journey of half an hour automatically extends up to one and a half hours. Continuous breakdowns due to poor maintenance too contribute to this situation. As a result of this he has been late to come. But he has never been subjected to a disciplinary action. He says that the departmental heads should know these problems. He too is in the view that the present system should be severely changed. But he does not know how to change it. However he says that progressive discipline and informal talks are good concepts to introduce to our system.

Case: 10

He has not read the E – Code. He also has the practice of asking others when a problem arises. He has not been subjected to any disciplinary action. According to him information transmission rate is 1%. He has a sympathetic feeling towards others. He says people commit offences due to personal problems. He has left the office before due time to pick his children from school when there is no body to do it. He says that informal talk
is a good approach because people get a chance to place their grievances to their head of the departments. He says that more punishments should be given if offences were repeated. He says that in managing discipline one should not be too strict or act according to the rule. There should be some kind of flexibility.

Case: 11

He has a good knowledge about disciplinary matters. He has read the E–Code for the E-Bar examination. However he has read only a part of the E–Code. He says that whenever a problem arises he reads the E–Code rather than asking from others. He says that most of the rules stated in the Establishments Code are reasonable. He further says that all information about misconducts do not go to the departmental heads. Information transmitting rate is only 2%. He says that when complaints were made, wrongdoers have to undergo bitter consequences. Therefore he does not like to share that sin. He has got late to attend on rare occasions. The number of buses that are driven along their route is very limited. Therefore he has to lag in the bus halt for long hours. In order to get things done from banks, he has compelled to leave the office during work hours. He says that whenever possible he obtains permission from the departmental head. He says that punishments should be imposed according to the severity. He too says that the existing system should be changed. Concepts like progressive discipline and employee counseling should be introduced to the system.
Case: 12

His knowledge disciplinary issues is very low. He has the practice of learning by his own experience. He has never undergone a disciplinary action. According to him the rate of reporting about misconducts is 3%. Since the departmental head does not take any action for employee's misconducts, he too keeps silent. Case 12 has never participated in making disciplinary rules. He has left early than the scheduled hours to take his feeble mother to the doctor. But he has never informed about this to the departmental head. He says that progressive discipline, employee counseling and informal talk are good approaches. Since he did not have a sound understanding about the present system he couldn't express an idea about whether the present system needs any changes.

Case: 13

He has not read the E – Code. He makes inquiries from others when ever he wants to know something. He says few of the rules in the E – Code are not reasonable. He has never participated in preparing rules. He believes that giving information about other people's misconducts is not his business. He says that information transmission rate is just 1%. He has not been subjected to a disciplinary action. However once or twice, during his career life he has been late to come. However it has happened so only when there is a bus strike. He has been very punctual throughout. He prefers to initiate punishment according
to the number of times the offence is being repeated. He further says that informal talk and progressive discipline should be introduced to our system.

Case: 14

She has not read the E – Code. She has the practice of asking others whenever there is a disciplinary problem. According to her knowledge all the rules and regulations stated in the E – Code are reasonable. She too says that even rule violations are quite common among public officers only 2% of them are being reported to the authorities. She says that when something was informed to her boss he gets very annoyed and shouts to the wrongdoer. Also he discloses the name of the informant too. She says that she does not like to face such a situation. So she keeps quite. She has never been subjected to a disciplinary action. But she has left early than scheduled time. She has a child of tender ages, and only her old mother is available at home to look after the child. Therefore she tries to go home as early as possible. She further says that all employees should not be dealt according to the rule. There should be some flexibility for minor offenders. In this respect progressive discipline is an important attempt. She also believes that informal talk is a good approach. She said that the present system should be changed according to the necessities of public officers.
Case: 15

She has also not read the E – Code. She too has got used to ask others when there is a disciplinary problem. According to her, all the rules in the E – Code are reasonable. She too admits the fact that proper information about misconducts don’t go to the departmental heads. Information transmission rate is 2%. She has a fear of breaking off good relationships with the other employees, if complaints were made against. She has never been caught for any offence or a rule violation. She confessed that on certain occasions she has entered a false time in the attendance registry. As a mother she has to discharge a lot of domestic responsibilities, and thus she gets late to come. She has entered false time in the attendance registry in order to save her leave entitlements. She says ‘severity’ should be the criterion in imposing punishments. She too says that the existing disciplinary management system should be changed by introducing informal talk and progressive discipline.

Case: 16

He has read the E – Code for the E – Bar examination. He used to refer the Code whenever there is a problem. According to him except rules regarding attending time, all other rules are highly reasonable. However he has never participated in preparing rules and regulations. He says that information transmission rate is 15%. He says that whenever possible he gives information about misconducts to the departmental heads. However
most of the others don’t do this. He has never been subjected to a disciplinary action. He says that he has on some occasions postponed duties. He says that he has to perform multiple duties and when most important duties were given priority certain routine work get delayed. When there is a heavy load of cases, he is compelled to put off other routinely work. He says that employees should not always be punished according to law. For non serious offences, always the wrongdoer should be given an opportunity to correct himself. He says that severity of the offence should be the criterion in imposing punishments. However he says that the E – Code is an obsolete piece of legislation and therefore it should be changed.

Case: 17

She has not read the E – Code. The knowledge that she has gained about disciplinary issues are based on the brother/sister officer’s experience. She says that certain disciplinary rules are not fair. Specially attending time and leave entitlements are not fair. Reporting of misconducts rate is only 1%. She says that even immediate superiors, i.e. registrars commit offences with the other employees. For example there had been occasions where both of then using liquor during office hours. Therefore complaining to higher authorities will be of no use. She has never been subjected to a disciplinary action. However due to transport problems she has been late to come to work place. Also when there are bus strikes she has left early before the due time. Case 17 has not participated in
making rules. She says that all offenders should be punished according to law. However she says that progressive discipline and employee counselling are good approach. She too appreciates having informal talks with the departmental head. She further says that punishment criterion should be the number of times that an offence is repeated.

Case: 18

He did not have a sufficient knowledge about disciplinary issues. He too prefers to learn from others. According to him except rules regarding 'public officers engaging in political activities' all others seems to be proper and reasonable. He also says that only a handful of the offences which happen day to day are noted by the departmental heads. He says that nobody easily come forward to give information. According to him, nature of the departmental head matters a lot. He has not been subjected to a disciplinary action. However due to poor transport facilities once or twice he has got late to attend. He said that authorities should be lenient to the first offender. They must not be straightaway dealt according to law. According to him progressive disciple and informal talk are good approaches. He says that the present system should be drastically changed.

Case: 19

Case 19 has got knowledge about disciplinary issues through her own experience. Whenever a problem arises she does not go on inquiring from others or looking at the E -
Code. She just faces it. She says that during her career life she has got a lot of experience. However she is also reluctant to give information about misconducts, to the departmental head. She thinks that it is a sin. Her belief is that when the wrongdoer’s family suffers as a result of a dismissal from the job that sin will automatically passes to her family. According to her, information transmitting rate is only 2%. Case 19 has never taken part in making disciplinary rules and regulations. She has not been subjected to any disciplinary action also. However on the days that she has got late due to transport problems and domestic problems, she indicates a false time in the attendance registry. She thinks that first offenders must be treated leniently. However severity of the offence should be the deciding fact when imposing punishment. She said that informal counselling and progressive discipline are sound practices, which ought to be incorporated in any discipline system.

Case: 20

She has not read the E – Code. She says that it is convenient to ask from somebody else about disciplinary issues. She has not participated in rule making. She says that only 4% of the information about misconducts goes to the disciplinary authorities. In most instances immediate supervisor, i.e. the registrar tolerates wrongdoings. Thus other employees also keep silent. She has never been subjected to a disciplinary action. She sometimes put false time in certain documents like certified copies. Since there is a heavy
load of work, she works even after scheduled time. But she puts an office time in the
certified copies. (N.B. certified copies should be prepared during office hours) She says
that if the departmental heads know their actual problems, they would definitely excuse
them. Thus informal talk becomes advantageous. She says that offenders should be dealt
according to the number of times the same offence is committed. Although she says that
the existing system should be changed, she could not suggest as to how it should be done
and what should be the necessary changes.

Case: 21

He had fairly a good knowledge of disciplinary issues. He has referred the E – Code for
the E – Bar examination. He has never participated in making disciplinary rules. However
he says that the rules stated in the E – Code are fair. Case 21 has made every attempt to
give information about misconducts to the departmental heads. However in cases of
trivial offences he remains silent. But he says that only a handful of the offences are being
noted by the departmental heads. That rate is only 3%. Although he has not been
subjected to a disciplinary action, he has committed minor violations like leaving before
the scheduled time, attending late to work etc. He says that it is due to personal problems.
When his wife got sick he had to leave early. He says that if all employees get a chance to
place their grievances before the departmental heads that would be a great opportunity.
He is on the view that punishments should be imposed according to the severity of the
offence. He is also on the opinion that penalties should be progressed according to the number of offences that a person commits.

Case: 22

She too has not read the E – Code. Thus her knowledge about disciplinary issues is very low. She preferred to consult a friend if she wants to know something about discipline. However she says that all the rules in the E – Code are highly reasonable. She says that only 5% of the misconducts are being reported to the authorities. She points out two reasons for this, i.e. nature of the departmental head and the fear of breaking off relationships with the wrongdoing employees. Case 22 is from Rathnapura. She comes to work from a boarding place. On the days that she comes from Rathnapura she gets late. And on the days she goes home also, she leaves early than the scheduled time. She says that it is not fair to impose penalties according to the severity. She says that a wrong doer should be given an opportunity to correct himself. She perceives informal talk as a great opportunity to make their bosses aware of their actual problems. She further says that progressive discipline should be introduced to the present system. Her view is that ‘repetition of offences’ should be the main criterion is deciding a penalty.
Case: 23

Case 23 has read the Establishments Code. The purpose of reading it was the E – Bar examination. Although she has read the E – Code, she preferred to learn things from other's experience. She says that complaining about misconduct rate is only 1%. According to her, most of the employees are compelled to commit certain trivial offences particularly due to personal problems. Therefore it is not fair to give them a punishment. She says that she too had been late to come on several occasions. She comes from a remote area where there is no proper bus service. She believes that if they were given an opportunity to talk with the departmental heads that would be a good opportunity. Thus she says that opportunity to hold informal talks should be an integral part of the existing system. She further says that all employees must not be dealt with punishments according to the rule. Only serious offences must be dealt according to law.

Case: 24

Case 24 has not read the E – Code. However she has some understanding about disciplinary issues, which she gained from her personal experience. She too admitted the fact that the rules stated in the E – Code are reasonable. She says that officers sometimes compel to violate rules because of the personal and domestic problems that they undergo in their lives. Therefore it is not fair to go and complain against them. According to her, reporting about misconducts happens rarely. Rough percentage is 1%. Although she has
not been subjected to a disciplinary action, she has sometimes violated certain disciplinary rules. While her mother was ill, she had left early for three months period. She says that informal talk can be used in making employees mind. On the other hand progressive discipline is also a good approach. She says that punishments should be given according to the severity of the offence. However first offenders must be given a chance to correct themselves.

Case: 25

He says that he learns from others. He has not read the E – Coed. Also he has not undergone any disciplinary punishment. He has not taken part in formulating disciplinary rules. He says that giving information about officer's misconducts are absolutely life endangering. He says that he has dangerous experiences in this respect. Once he has complained against a subject clerk about accepting a bribe. However on the very next day some underworld group had come and threatened him. He has got to know that the officer against whom the complaint was made had many contacts with the underworld people. After that serious incident he has never ever gone and lodged complaints against others. He says that the information transmitting rate is 2%. He says that the existing rules are not sufficient. The procedure itself is unreasonable. Therefore the system should be changed. Progressive discipline and employee counseling should be included in it.
Case: 26

She too has read the E–Code for her E–Bar examination. However she had the practice of referring the E–Coed when a problem arose. She admitted that E–Code contains reasonable rules and regulations. The percentage rate of reporting of misconducts is only 5%. He says that complaining against certain officers is useless because they never get themselves corrected. Also if the departmental head is tolerant over misconducts, it is absolutely no result in complaining. Except on one or two occasion she has never violated rules. She says that when her husband is busy, she should attend to her children’s school affairs. On such occasion she has left the office early without obtaining permission. She further says that most of the rule violations are being done due to personal problems and therefore they should not be dealt according to the law. In the light of this opinion, she says that progressive discipline would be the most suitable approach in punishing employees. She says that certain procedural changes ought to be introduced to the existing system.

Case: 27

He has not read the E–Code. Thus his knowledge on disciplinary issues is fairly low. However he says that the rules stated in the E–Code are reasonable. Case 27 preferred learning from others. He says that only 1% of the misconducts are being reported to the authorities. He believes that giving information is not his business. Therefore he preferred
to be silent. On the other hand he says that he is scared to go and meet the boss to complain against others. He has never caught for a disciplinary problem. However he has gone out during office hours, without obtaining permission from the boss. He has gone so to get certain things done from government institutions. He says that all wrongdoers should be dealt with according to law. However having informal talks with the boss would relieve employees for a big pressure. Case 27 has never participated in making disciplinary rules. He further believes that the existing system is quite correct, and it should be continued.

Case: 28

He has some knowledge about disciplinary matters. He too has the practice of asking others. He says that it is convenient than reading the Establishments Code. He has not participated in making rules and regulations. He says that when departmental heads themselves neglect offences there is no purpose of giving information about other's misconducts. Reporting of information rate is 2%. He has gone out during office hours to get things done from banks. He further says that 'severity' should be the deciding fact in imposing punishments. While believing that the existing system should be changed, he says that more weightage should be given to concepts like progressive discipline and informal talk.
Case: 29

He has not read the E – Code. However he says that he learns by doing day to day work. He too said that rules in the E – Code are reasonable. According to him only 5% of the information goes to the departmental head. He has a fear about the reaction of the departmental head if he tries to complain against others. He thinks that the departmental head will definitely scold him. He says that he gets late to come on Mondays since he is coming strait from Pelmadulla. He believes that informal talk and progressive discipline are good approach. However he did not have any ideas as to whether the existing system should be changed or not. He says that ‘severity’ should be the deciding factor in imposing punishments.

Case: 30

Case 30 has not read the E –Code. He too has used to gather information from his friends. However he has some knowledge about discipline management. He says that rules in the E – Code are somewhat reasonable. However certain rules have not been formulated according to the necessities of the employees. He too believes the fact that only a handful of the misconducts are reported to the departmental heads. The rate is just 3%. He thinks that when information was given to the departmental heads they should ensure the secrecy of the information. If the informant’s name was disclosed there will be problem. Since securing of the secrecy of information is doubtful he never attempts to give
information to the departmental heads. He admits the fact that he has been negligent when
discharging his duties. However all these things have occurred unintentionally due to
heavy work load. He has never been subjected to a disciplinary action. He says that
informal talk between the departmental head and the employee would enhance mutual
confidence. He too believes that the provisions in the E – Code must be more flexible.

Case: 31

She has read the E – Code for the E – Bar examination. She used to refer the E – Code
whenever necessary. She has not participated in preparing disciplinary rules. But she says
that most of the disciplinary rules stated in the E – Code are reasonable. She says that
about 20% of the misconducts are being reported to proper authorities. However there is a
reluctance shown by the employees to give information about misconducts, because of
the fear that they have about breaking relationships with the brother/sister employees. She
believes that minor violation of rules occur daily. She also has indicated false time in the
attendance registry, in order to save short leave entitlements. She says that punishment
should be imposed according to the number of times a person commits an offence.
According to her, punishments should be progressed accordingly. She further admits that
informal talk is a favorable one on the part of employees. She also says that the existing
system is a good one and it need not changed.
Case: 32

Case 32 also used to get assistance from others rather than referring the E - Code whenever a disciplinary problem arises. He says that E - Codes are not available and asking from others is quite convenient. Except rules regarding political activities, all other rules can be considered as reasonable. Reporting of misconduct rate is 2% and the reason behind this is the nature of the departmental head. As his departmental head is a person who take actions to the rule. Even for a trivial incident, nobody will be frank enough to go and complain, against others unless there is a revenge to be taken. He admits that he also has done certain wrongful things. When he has excessive work, he has delayed some important duties. However he says that informal talks and progressive discipline should be encouraged. He further says that the criterion for deciding punishment should be the 'severity of the offence'.

Case: 33

He has fairly a good knowledge of disciplinary issue. He has gathered this knowledge by learning from other people's experience. According to him, except certain rules, most of the ones stated in the E - Code are reasonable. He says that the nature of the departmental head stands as the major barrier in communicating rule violations. When the departmental head takes prompt and strict action whenever a complaint is made, no one goes on complaining to him. The rate of transmitting of information is just 3%. He confessed that
on one occasion he gave a photostat copy of a case proceeding to a lawyer who has helped him a lot in his life. Although this is illegal, he has not gained any financial encouragement. He says that the severity of the offence should be the guiding factor. He too says that 'informal talks' and 'progressive discipline' concepts should be introduced to the present system.

Case: 34
She has never read the E - Code. She has learnt from other's experience. According to her rules in the E - Code are somewhat reasonable. She says that information about misconducts very rarely go to the departmental head. Information transmitting rate is only 1%. The very reason is the sympathetic attitude that they have towards the offending employees. She says that if a disciplinary action is taken, his whole family will undergo bitter consequences. She says that the severity of the offence should be the deciding fact in determining the penalty. She has never undergone any disciplinary action. But she has gone out of the office during working hours without obtaining permission to attend to her children's school. She appreciates informal talk and progressive discipline. She says that the existing system should be changed according to the necessities of the public officers.
Case: 35

She has never read the E - Code. Her knowledge on disciplinary matters is very low. She too has used to learn by other's experience. All the rules seem to be reasonable. However she has not participated in making rules and regulations. Since people violate rules due to personal difficulties, she is not complaining against them. Rate of reporting about misconducts is 1%. Due to problems in the public transport facilities she had come late on two or three instances. She says that informal talk and progressive discipline should be integral parts of the present system. According to her more punishment should be given when offences were repeated.

Case: 36

Case 36 has read the E - Code. He says that the purpose of reading the E - Code is to get knowledge about day to day issues. He says that rules in the E - Code are reasonable. He too believes that proper information do not go to the relevant authorities. Rate of giving information to the departmental heads is only 2%. The main reason for this is the bitter consequences that the offending employees have to undergo when a disciplinary action is taken. According to case 36 he has not committed any offence during his career life. He says that informal talk, counselling and progressive discipline are good concepts. However he says that E - Code should be followed to the rule. He too says that a person should be punished according to the severity of the offence.
Case: 37

She has not read the E-Code. She says that she gathers knowledge about disciplinary issues from her own experience. She said that almost all the rules in the E-Code are reasonable. According to her, the rate of reporting misconducts is 4%. Since most of the rule violations are of trivial nature, case 37 has not attempted to complain against them. She has delayed and postponed certain duties. She says that she has immense personal problems. Her husband died suddenly by a road traffic accident. Due to these problems she misses certain duties. Also when there is an unmanageable work load she gets frustrated; this affects her productivity. However she considers informal talk as a unique opportunity. Case 37 has never participated in preparing rules. However she says that the present system contains strict procedures. It is unfavorable to act in a serious manner for the first offender. She says that punishments should be progressed with the number of times the same offence is repeated.

Case: 38

Case 38 has too read the E-Code. He has done so to solve other officer’s problems. However he learns mostly by looking at other people’s experiences. He says that about 10% of the misconducts are being reported to the department heads. He says that employees will not get themselves corrected even if information was given. Therefore he
dose not take any interest in complaining about misconducts. He too has inserted a false
time in the attendance registry on several occasions. He has done so when he has got late
to come due to household problems. He too appreciates informal talk and progressive
disciplinary approaches. He says that the first offender must be excused without dealing
under the E - Code. But this may apply only to non serious offences. According to him
the punishment criterion should be the 'severity of the offence'.

Case: 39

Case 39 has not read the E - Code. She too learns from other people's experiences. She
has not participated in formulating rules. She says that all rules are fairly reasonable. Due
to the fact that the relationship between the employees have will be destroyed, she dose
not go to complain against others. Information reporting rate is only 5%. She says that she
was once caught for doing outside work during office hours. In that case she has been
severely warned by the head of the department. But no other action had been taken
against. She said that employees must be punished according to the severity of the
offence. Applying E - Code rules for all the officers are not favorable. There should be
some leniency for good employees who commit offences due to unavoidable
circumstances. She is positive towards employee counselling and progressive discipline.
Case: 40

She has not read the E - Code. She says that she learns from her own experience. She has not taken part in preparing disciplinary rules. However, she says that all the rules stated in the E - Code are actually reasonable. She has gone out during office hours to attend funerals. She says that reporting of misconducts rate is only 2%. She assigns the full responsibility of this situation to the departmental heads. She says that the strictness of the departmental head refrain people from giving information about misconducts. She says that dealing according to the E - Code is good. But an opportunity should be given to have informal talks too. She says that severity of the offence should be the guiding factor in deciding a punishment.

Case: 41

Case 41 has read the E - Code for the E - Bar examination. She too perceives rules in the Code as reasonable. She has not joined in formulating disciplinary rules. She says that only 1% of the information about misconducts is being reported to the authorities. She says that since she has to look after her mother who is ill and feeble she has left about 15 minutes early on several days. But on sympathetic grounds everybody has tolerated it. She further says that wrongdoers should be dealt according to the E - Code. However informal talk and progressive discipline are 'employee - friendly' approaches and
therefore they should be introduced to our system. According to her criterion for punishment should be the 'severity of the offence'.

Case: 42

He has not read the E - Code. He has used to acquire knowledge by inquiring from others. According to him rules in the E - Code are reasonable. Due to the fact that departmental heads too are tolerant about employees misconducts, employees are also don't go on complaining against others. He has never been subjected to a disciplinary action. He too has been late to come to the office several times due to transport problems. He has never participated in law making. However he believes that the present system should be drastically changed. He too has a positive view about progressive discipline and employee counselling.

Case: 43

Although she has not read the E - Code she has some knowledge about disciplinary issues which she had gained from her own experience. According to her, information reporting rate is 3%. She too has the fear of breaking relationships between brother/sister officers, if information was given against. She has never joined in law making. However she says that E - Code rules are reasonable. She has gone out during office hours for medical checkups. But she has never obtained permission. She believes that all employees must
not be punished equally. She says that employees must be punished according to the number of times an offence is been repeated. She believes that the present system should be continued. But employees must be given an opportunity to have informal talks with their superiors.

Case: 44

Case 44 too has not read the E - Code. But she all the time learns from other's experiences. She says that some rules in the E - Code like giving information to mass media are too strict. She has never participated in formulating rules. According to her, rate of reporting misconducts is just 1%. According to her when immediate superiors like registrars neglect and tolerate certain offences, there is absolutely no purpose of complaining against. She has once been absent without obtaining leave. She has done so to get his fathers pension approved from Colombo. She says that dealing strictly according to law is not suitable in all instances. She says that employees must be given an opportunity to express their grievances to theirs bosses. She says that punishment should be decided according to the severity of the offence. She too held the view that the existing system should be changed.
Case: 45

Case 45 preferred to get advice from other employees rather than referring the E - Code. He has not read the E - Code. He says that the rules in the E - Code are reasonable. He further says that only 1% of the information about misconducts are been reported to the departmental heads. The main reason is the nature of the departmental head; i.e. if he does not take any action even if the misconducts were reported no body would complain about misconducts. Due to transportation problems he has got late to attend once or twice. Instead of that he has never undergone a disciplinary action. He further says that informal talk and progressive discipline are good concepts. According to him punishments should be imposed according to the severity of the offence.

Case: 46

Case 46 has read the E - Code to a greater extent. He has read it for the purpose of passing the E - Bar examination. However he used to refer up the E - Code whenever necessary. According to his experience, rate of reporting misconducts is just 2%. He believes that it is of no use reporting because most of the offences are minor and negligible. Although he has not been subjected to a disciplinary action he has engaged in certain misconducts. He has indicated false times in the attendance registry. He says that when there are bus strikes he gets late. He believes that the present disciplinary management system should be changed. Minor offenders should never be dealt under the
Code. According to him the best approach is talking to each other and settling the problem. He too believed that the penalties should be progressed according to the number of time the offence is been repeated.

Case: 47

He has not read the E – Code. But his personal experience has contributed some knowledge about disciplinary issues. Since his departmental head initiates strict actions, he never goes on complaining about other people's misconducts. Rate of reporting misconducts is 2%. He has gone during office hours without obtaining leave to get certain things done from government institutions. He says that obtaining leave for such a small matter is useless. He has not been subjected to a disciplinary action. However he believes that the present system should be changed. His view is that the existing system is not suitable for minor offenders. He was positive about progressive discipline and informal talk. He further says that 'severity of the offence' should be the criterion for deciding the punishment.

Case: 48

She has read the E – Code. The purpose of reading was to pass the E – Bar exam. However she says that asking from another person whenever she wants to know something is always convenient than reading the Establishments Code. She says that the
rules stated in the E – Code are reasonable. She has never participated in making
disciplinary rules. She says that her husband was in the hospital for over five months.
During that period she has left early on most of the occasions. Having knowing the
grievance of her, the departmental head had tolerated all these. Therefore she encourages
informal talk and progressive disciple. She says that the system needs certain changes.
Also minor offenders who commit rule violations should be given a chance to rectify
themselves. Thus, applying the E – Code provisions equally to all the employees is not
suitable. She further says that about 20% of the information about misconducts goes to
the departmental heads. She says that most of these rule violations are trivial and
therefore she does not want to complain about them.

Case: 49

Case 49 did not have a sound understanding about E – Code regulations. She has not read
the E – Code. She has learnt things from examining other's experience. Her view is that
the rules stated in the E – Code are reasonable. She has never participated in formulating
rules. She has never undergone a disciplinary action. She says that she has not committed
any rule violation. She is scared to give information about misconducts because if her
name was disclosed by the departmental head, she would be in a trouble. She said that E –
Code provision should be applied equally to everybody irrespective of the nature of the
offence. She believes that progressive discipline and informal talks are good approaches.
She says that the present system should have above concepts incorporated within it. She is on the opinion that the criterion of punishment should be the ‘severity of the offence’.

**Case: 50**

Case 50 has not read the E – Code. However he had some knowledge about disciplinary management, gathered from his own experience. He has never participated in preparing rules. According to him, the rate of reporting offences is just 2%. Fear of breaking off relationships with the informant and the wrongdoer is the major fact for this state of affairs. Case 50 has never undergone a disciplinary action. However he got late to come to the office on several occasions, due to traffic congestion. He says that employee counseling, informal talk and progressive discipline are good approaches. However he says that it is not necessary to impose punishment right according to law. For minor offences some alternative action should be taken. He says the deciding criterion for the punishment should be the severity of the offence. He further says that the existing system should be changed. But he could not express an idea as to how it should be changed.

**Responses of cases A-J**

**Case: A**

Case A has read the E – Code fully. He is a person of 12 years of experience. He has read it to know about day to day administerial matters. He says that there is much day to day
work. Therefore there is hardly any time to monitor rule violations. He has held 5 disciplinary inquiries during his career life. He says that it is convenient to hold an investigations if the offences were caught straightaway by them. But when information was received by anonymous letters, it is hard to proceed ahead as the letter dose not carry enough material. But when offenders are caught by the Bribery Commission or Auditor Generals Department he finds it easy to carryout investigations. He says that due to heavy work load they find no time to carryout preliminary investigations properly. Therefore they get delayed. He further says that in most of the preliminary investigations the accused officer moves for postponements. This delays the case unnecessarily. He takes about one month to two months time period to send the preliminary investigation report.

Case A holds a negative view about informal talks. He says that he cant find out time to talk with the employees who commit misconducts. Also if this practice is encouraged, it will be an utter inconvenience to him. However he believes that punishments should be progressed when they were repeated. He further says that ‘severity of the offence’ should be the main criterion in imposing punishments.

Case: B

He has read the E - Code, but not fully. He refers it for day to day administerial matters. He says that as judges, their prime duty is to hear cases. Monitoring rule violations is an additional task. Therefore it is not necessary to give much weightage. He has held 2
preliminary investigations. Most of the suspected officers do not turn up on due time. Since most of them are under suspension when holding preliminary investigation, it is difficult to get them down. On the other hand, case B says that they were not properly trained to conduct preliminary investigations. Thus they have to learn them by doing. Due to heavy work and reasons explained above, some time is taken to send the preliminary investigation report. He says that whenever possible he talks with the officers who violate rules and ask about reasons. He says that most of them violate rules due to personal problems. He says that he does not take strict actions, unless the offence was disclosed in public as through mass media.

Case: C
Case C has fully read the E – Code. He has done so, not for any other purpose, but to enhance knowledge. He says that he does not go on monitoring employee's behaviours. But if things were revealed by any other method (like through bribery commission etc.) he does not hesitate to take prompt disciplinary action. He has held three preliminary investigations. He says that when conducting the first investigation, he did not have much training. He says that not having enough time to conduct preliminary investigation is the main obstacle. He takes 2 months to 4 months time period to send the preliminary report. Case ‘C’ also had the practice of talking to employees and asking reasons for their misbehaviors. He says that although he asks, he is not in a position to give solutions other
than advising them. He too believes that informal talk and progressive discipline should be introduced to our system. Also he says that punishment should be decided according to the number of times the offence is being repeated.

Case: D

Case D has read the E – Code, but not fully. She says that whenever she finds time, she goes around the office and inspects employee's behaviour and how they work. She has held only one preliminary investigation. She says that a little training is necessary to conduct such an investigation. She has done the investigation by asking from her friend in the field. She says that the suspect officers do not turn up on due time. Thus the inquiry gets delayed unnecessarily. She has taken three weeks to one month time period to send the investigation report. She says that people don't give sufficient information to catch offenders. She says that it is pointless conducting informal talk. Because even if they listen to them, they are not in a position to give a solution as they are restrained by the regulations of the E – Code. However she says that progressive discipline is a good approach. She believes that the severity of the offence should be the criterion for the imposition of punishment.
Case: E

He has fully read the E – Code. He says that it is essential as they work in the capacity of departmental heads. He says that he pays more attention to hear cases rather than monitoring rule violations of employees. He has held 4 preliminary investigations. Lack of time is the main problem that he has undergone. He further says that brother/sister officers of the suspect do not give correct evidence against the suspect. He has taken three months to four months time period to send the preliminary investigation report. He says that if they go behind the employees to observe their behaviours, they will loose confidence about them and as a result they can't get work done from them. He says that offenders must be punished according to the ‘severity’ of the offence that they commit. Accordingly progressive discipline should be incorporated to the present system.

Case: F

Case F is an experienced judicial officer. She has read the E – Code fully for to deal with daily issues. She says that as judicial officers they have to accommodate themselves in a separate chamber. So there isn't any possibility of observing behaviours of the staff members. She has held 5 disciplinary investigations. She says that if offences were revealed over the media they take prompt actions. Also when certain offences were recovered through court cases (i.e. when hearing cases, some witnesses allege about misconducts of the court staff) they are compelled to take disciplinary action. However
lack of time to conduct inquiries is the main obstacle she has undergone. She says that time is insufficient to get down employees and talk with them about their problems. She is on the view that ‘severity’ should be the deciding fact when imposing punishment. However she has a positive view towards progressive discipline.

Case: G

He is a person of ten years of experience. But it is wonderful to note that he has not read the E - Code fully. He has referred it for his day to day managerial issues. He says that most of the public officers commit misconducts due to humanitarian grounds and therefore they should not be too strict to them. Due to this reason he doesn’t go behind monitoring. He has held one preliminary investigation. He sees it as a time consuming one. He says it is better if some training is given to them about conducting of preliminary investigations. He has taken one month to two months time period to send the investigation report. He believes that employee counseling is a good approach. With some knowledge on psychology, he says that department heads can solve lot of personal problems of the employees by applying this method. However the law does not provide any room for the departmental heads to give special relief to employees. Thus their hands are somewhat tied. Case G holds a positive view about progressive discipline.
Case: II

He has read the E – Code to some extent when dealing day to day administerial issues. He says that monitoring continuously about these rule violations will make employees dissatisfied. Therefore he does not go behind monitoring. He always expects the other employees to give information about misconducts. He has held one preliminary investigation. He confessed that he hadn’t much experience when conducting this investigation. He has taken 3 months to send the investigation report. However he firmly says that informal talk will not give any result. He believed that those who commit offences must be strictly dealt with a punishment. Otherwise they will once again repeat the same. Also he says that having informal talk is rather time consuming effort. He too believes that progressive discipline is a good approach.

Case: I

Case I is a person of twenty years of experience. He has read the E – Code fully. He says that he has no time to monitor rule violations. He devotes his full time to hear cases. He has held 5 disciplinary investigations. He says that there is a difficulty in gathering evidence. He says that a proper disciplinary investigation takes a long time. But with the day to day work load, he finds it difficult to do a proper investigation. Thus investigation becomes incomplete. He takes about one month to four moths time period to send preliminary investigation report. However he says that if they go on taking actions for
each and every rule violation, it will be a big inconvenience. Thus a method like informal
talk should be introduced. He further says that he takes definite actions when certain rule
violations were disclosed in public. However he says that imposing punishments
according to the ‘severity of the offence’ is the best method. He further says that
progressive discipline is a successful approach which should be introduced to our system.

Case: J

Case J is a very junior officer with only one year of experience. He has read the E – Code
to some extent. He has read it in order to conduct a disciplinary inquiry. He has held only
one inquiry. However he says that he had to undergo big problems as there was no prior
training given to him in that respect. He says that he has no time to monitor rule
violations. He occupies in a separate chamber and as a result he can't properly see what is
happening outside. He uses to take information from the peon or ‘arachchi’ who regularly
comes to his chamber. He says that it is difficult to get down suspects in time, as they are
under interdiction by the time of the inquiry. He says that informal talks would become
effortless, as departmental heads are not in a position to give a solution to employee's
problems. Because the law does not provide any room for to do so. He says that
employees should be punished according to the ‘severity’ of the offence. Case J holds a
positive view about progressive discipline. He has taken one month to send the
preliminary investigation report.
In addition to the above information following data was also gathered from cases.

Information was tabled as follows by the researcher for the convenience of reference:

**Facts gathered from cases 1-50:**

**Table 5:3 Measuring the Reasonability of Rules and Regulations**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Highly Reasonable</th>
<th>Reasonable</th>
<th>Not unreasonable</th>
<th>Unreasonable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General Conduct.</td>
<td>15</td>
<td>35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Use of liquor and Narcotic drugs.</td>
<td>49</td>
<td>1</td>
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<tr>
<td>3. Gifts and subscription.</td>
<td></td>
<td>29</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>4. Pecuniary embarrassment.</td>
<td>48</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Use of Government funds for private purpose.</td>
<td>42</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Release of official information to mass media.</td>
<td>2</td>
<td>15</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>7. Publications all Articles, book etc.</td>
<td></td>
<td>21</td>
<td>23</td>
<td>6</td>
</tr>
<tr>
<td>8. Adherence to statutory rules.</td>
<td>30</td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Political activities by public officers.</td>
<td>28</td>
<td>15</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>
Table: 5:4 Degree of reading the Establishments Code

<table>
<thead>
<tr>
<th>Participants</th>
<th>Fully read the Establishments Code</th>
<th>Partly read the Establishments Code</th>
<th>Not read the Establishments Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases 1-50</td>
<td>-</td>
<td>14</td>
<td>36</td>
</tr>
<tr>
<td>(Public Officers)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases A-J</td>
<td>5</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>(Departmental Heads)</td>
<td>5</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

Following information was obtained from the Registrars of each Court (who were among the cases).

**Organization**

<table>
<thead>
<tr>
<th>Establishments Code</th>
<th>Available number of copies of the</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrate Court – Galgamuwa</td>
<td>1</td>
</tr>
<tr>
<td>District Court – Kurunegala</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court and Additional Magistrate Court- Kurunegala</td>
<td>2</td>
</tr>
<tr>
<td>Additional District Court – Kurunegala</td>
<td>1</td>
</tr>
<tr>
<td>District Court and Additional District Court- Kuliyapitiya</td>
<td>-</td>
</tr>
<tr>
<td>Magistrate Court- Maho</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court- Wariyapola</td>
<td>-</td>
</tr>
<tr>
<td>Magistrate Court-Pillessa</td>
<td>-</td>
</tr>
</tbody>
</table>
Following facts were obtained from cases A-J

Table: 5:5 Method of receiving information about misconducts/offences

<table>
<thead>
<tr>
<th>Institution</th>
<th>Dpt. head himself takes cognizes of offences</th>
<th>Giving information by the other employees</th>
<th>Written petitions</th>
<th>Revealing of offences during hearing of cases</th>
<th>Other methods</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court Kurunegala</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>District Court Kurunegala</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court Kurunegala</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court Galgamuwa</td>
<td>_</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court Maho</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Magistrate Court Wariyapola</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court Pillessa</td>
<td>_</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

N.B. Other methods include direct raids by the Bribery commission officers, auditors etc.
Table: 5:6 Working experience and the number of preliminary inquiries held by the Departmental Heads

<table>
<thead>
<tr>
<th>Case</th>
<th>Work Experience as judicial officers</th>
<th>Number of preliminary Investigations held</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>B</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>C</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>D</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>E</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>F</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>G</td>
<td>20</td>
<td>6</td>
</tr>
<tr>
<td>H</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>I</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>J</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

Table: 5:7 Average time taken to complete a preliminary investigation

<table>
<thead>
<tr>
<th>Cases</th>
<th>Avg. time taken to complete a preliminary investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1 month – 2 months</td>
</tr>
<tr>
<td>B</td>
<td>2 weeks- 1 month</td>
</tr>
<tr>
<td>C</td>
<td>2 months- 4 months</td>
</tr>
<tr>
<td>D</td>
<td>3 weeks- 1 month</td>
</tr>
<tr>
<td>E</td>
<td>3 months -4 months</td>
</tr>
<tr>
<td>Column</td>
<td>Time Period</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------</td>
</tr>
<tr>
<td>F</td>
<td>1 month - 2 months</td>
</tr>
<tr>
<td>G</td>
<td>1 month - 2 months</td>
</tr>
<tr>
<td>H</td>
<td>2 months - 3 months</td>
</tr>
<tr>
<td>I</td>
<td>1 month - 4 months</td>
</tr>
<tr>
<td>J</td>
<td>2 weeks - 1 months</td>
</tr>
</tbody>
</table>
### 6:1 Introduction

In this chapter, the researcher attempted to analyze the existing disciplinary management system with the criteria developed in accordance with the theoretical framework explained in the fourth chapter.

### 6:2 Criteria for Evaluation.

Criteria for evaluating the existing management system would be based on the steps of the theoretical framework. The evaluative criteria formulated in accordance with each step of the model can be listed as follows.

<table>
<thead>
<tr>
<th>EDM Objectives and policies</th>
<th>Criteria</th>
<th>1. Availability of clear written objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2. Availability of a clear policy statement</td>
</tr>
</tbody>
</table>

**Rules of Behavior**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>1. Availability of a clear set of written rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Stating of rationale behind each rule</td>
</tr>
<tr>
<td></td>
<td>3. Reasonability of rules and regulations</td>
</tr>
<tr>
<td></td>
<td>4. Employee's participation in formulating and revising rules</td>
</tr>
</tbody>
</table>
Penalties and sanctions
Criteria 1. Stating of penalties and sanctions and grouping them into categories
2. Specification of the authorities of sanction

Communication and Monitoring rule violations
Criteria 1. Methods available for the communication of rules
2. Available number of copies of Establishments Code in each institution
3. Degree of reading the Establishments Code by the cases
4. Purpose of reading the Establishments Code by the cases
5. Methods of acquiring knowledge regarding disciplinary issues by the cases
   A-J
6. Degree to which offences are being monitored by the departmental heads
7. Extent to which information about offences are being brought to the notice of the departmental heads

Disciplinary Investigation
Criteria 1. Adaptation of the proper procedure of disciplinary investigation
2. Degree to which the existing procedure contains defects (if any) at each stage of the investigation process

Sanction determination and Implementation
Criteria 1. Indication of sufficient guidelines to decide the appropriateness of the penalty

Informal Talk and Counselling
Criteria 1. Availability of provisions in the present system for conducting informal talk.
2. Application of informal talk and counseling in solving day to day minor disciplinary issues
Progressive Discipline.
Criteria 1. Availability of provisions in the present system for the use of progressive discipline

Review and Renewal.
Criteria 1. Opportunity to appeal against a disciplinary order by an aggrieved party
2. Revising and amending of the existing legislations

6:3 EDM Objectives and disciplinary policy

Criteria: 1. Availability of clear written objectives
2. Availability of a clear policy statement

Data Source: Establishments Code and the Mission Statement of the Ministry of Public Administration

Disciplinary issues of the public servants have been discussed in Volume 11 of the Establishments Code. Rules of this Code equally apply to all the public officers in the State sector. However the Establishments Code does not state any of the objectives that the Government is expected to achieve. Neither Volume I nor II contains even a preamble.

Since the sole responsibility of implementing the disciplinary control system of the public servants is vested with the Ministry of the Public Administration, the researcher made an attempt to find out whether the Ministry specifies any objective connected to employee
discipline management. Vision, mission and the objectives of the Ministry of Public Administration are as follows;

**Vision:** An excellent public service for the nation

**Mission:** To ensure an excellent public service through sound national and regional administration system with competence human resources.

**Objectives**

- To formulate efficiency policies on recruitment, remuneration and other service conditions in human resource management (HRM) of public service
- To develop strategies to reorient mindset of existing public servants to response to people needs
- To formulate and implement new management structures and systems for enhance productivity and quality in the public service
- To establish and share a system of values (result oriented attitudes, accountability, resource prudence, impartiality transparency etc.)
- Identify training requirements of public sector personnel, facilitate and conduct training programs
- To formulate and execute policies and programs with regard to pensions of public officers
- Improve existing internal and financial assets management system
- Enhance an efficient and effective regional administrative system
- To implement an institutional framework within the public service capable of achieving development objectives identified by the Government
- To provide the necessary services for maintaining the normal administration properly
- To promote utilization of modern IT to improve productivity and quality
- **To provide better staff to deliver effective public service**
- To enhance practices to meet the needs of the public and public servants
- To upgrade, develop and execute guidelines for simplifying and making efficient, the various operational processes in the public service to cater public needs
- To coordinate and guide the activities of district Secretaries and divisional Secretaries
- To improve the performance of district and divisional administration
- To coordinate the functions of the district divisional at grass root level
- Perform functions delegated by law through officers and organizations at village and divisional levels and the Registrar General Department
- Implement an Official Languages Policy
- To coordinate and monitor foreign and local funded projects/programmer
- To coordinate National Independence Day ceremony and other State ceremonies
In view of the above objectives it is clear that even the Ministry does not have a specific objective regarding disciplinary management of the public officers. The only objective in which employee discipline administration can be incorporated is the objective ‘to provide better staff to deliver effective public service’.

**Conclusion:** Although objectives and policy guidelines should be an integral part of a discipline management system, the present system did not have either of them.

### 6:4 Rules of Behaviour

**Criteria:**
1. Availability of a clear set of written rules
2. Stating of rationale behind each rule
3. Reasonability of rules and regulations
4. Employee's participation in formulating and revising rules

**Data Source:** Establishments Code and case studies

The Establishments Code state out rules, regulations and offences very clearly and distinctively.

Rules and regulations regarding general conduct and behavior: Chapter XLVII

Serious offences: First Schedule to the Establishments Code

Non serious offences: Second Schedule to the Establishments Code
Chapter XLVII of the Establishments Code explains the rules regarding,

1. General conduct
2. Use of liquor and narcotic drugs
3. Gifts and subscriptions
4. Pecuniary embarrassment
5. Use of Government funds for private purposes
6. Release of official information to the mass media or the public
7. Publication of books, articles, broadcast talks, etc.
8. Adherence to the Establishments Code, Financial Regulation and other provisions
9. Political activities by public officers

Rules of General conduct

1. A Public officer should give his undivided allegiance to the State.
2. An officer must perform any duty entrusted to him with diligence and efficiency.
3. An officer is required to familiarize himself with all Governmental rules and regulations.
4. An officer should act in a manner befitting his public office.
5. An officer shall not do anything, which will bring his private interest into conflict with his public duty.
6. Canvassing for an appointment, promotion or transfer will render disciplinary action.
7. Interchange of duties for a pecuniary consideration will render disciplinary action.
8. An officer must be courteous towards the public.
9. An officer must be temperate and restrained in his language when corresponding.
10. An officer should not directly or indirectly participate in collection of money for public charities.
11. No officer shall utilize Government labour on private jobs.

12. No officer may furnish suppliers on public account to any public institution without prior sanction of the secretary.

Rules relating to use of Narcotic Drugs

1. Use of liquor or narcotic drugs and smelling of liquor or narcotic drugs and smelling of liquor whilst on duty is an act of misconduct, which render major punishment.

Rules on Gifts and Subscriptions

1. An officer or members of his family shall not accept any gifts or present on the cost of goods supplied by him or services rendered by him.

2. Gift received in the capacity of public officer is vested with the Government.

3. Money subscribed to mark public appreciation of an officer may be used for public purpose.

4. The collection of subscriptions from subordinates to defray the cost of testimonials to superior officers is prohibited.

Rules on Pecuniary Embarrassment

1. Serious pecuniary embarrassment of an officer may render disciplinary action.

2. An officer is prohibited from borrowing money on the security of his salary receipt.

3. Disciplinary action should be taken in cases of public officers who have been declared indebt or insolvent by a Court of Law.
Rules on use of Government funds for private purposes

1. An officer is strictly prohibited from borrowing from any Government shroff or Cashier.
2. Shroffs and cashiers are strictly prohibited from making unauthorized advances and granting loans to any officers.
3. The appropriation of public money even for a shorter period for private purposes is a very grave offence.

Rules on release of official information to the mass media or public

1. Information regarding Government and Departmental activities, which may be of interest and value to the public, may be given to mass media or public only by a Secretary or Head of the Department on his discretion.
2. This information should be channeled through Director of Information, and no expression of opinion should be proffered.
3. No information which embarrasses the Government should be given to mass media.
4. An officer, who is not specially authorized, is forbidden to allow him to be interviewed on any information gained in the course of the official duties.
5. Officers are strictly prohibited from sending official correspondence to mass media.
6. No officer may hold any office in any mass media organization without the prior permission of the secretary of Public Administration.
Rules on Publication of Books, Articles, Broadcast, Talks, etc.

1. An officer shall not contribute articles, creative writings anonymously or under a pseudonym to mass media.

2. An officer must not publish books and articles on administrative matters without the prior approval of the secretary.

3. Use of official records for the purpose of publishing a book or other work should only be done with the prior permission of the Departmental Head.

4. Publishing of any book or other work should be done only with the permission of the Secretary.


1. All Public officers should adhere to the provisions of the Establishments Code, Financial Regulations, and Circulars etc. Any infringement of the provisions of these may be treated as an offence which renders immediate disciplinary action.

2. Any officer, who puts undue pressure to infringe any provision of the above stated laws, shall be subjected to a disciplinary action.

Rules on Political activities by Public officers

1. Only officers who are privileged to enjoy political rights under chapter xxxii of part one of the Establishments Code can enjoy political rights. Those who act in excess to the limit stated therein is guilty of a serious misconduct.

2. Any public officer who is deprived of political rights under chapter xxxii, engaging in political activities shall be deemed to be guilty of misconduct of a serious nature.
Appendix I to the Establishments Code gives definitions of offences committed by the public officers. According to the appendix to the Establishments Code ‘offences committed by public officers’ may be broadly defined as follows. But it says that this definition should not be treated as a comprehensive list of offences. It does not preclude taking action against an officer for any other offence not covered by these definitions but for which it is considered that an officer should be punished.

**Categorization of offences**

- Inefficiency
- Incompetence
- Negligence
- Lack of Integrity
- Improper Conduct (Whether connected with an officer’s official duties or not) and indiscipline

Definitions of the above categories have been given in the appendix to the Establishments Code. A copy of the appendix is annexed herewith marked annexure1. The Second Schedule to the Establishments Code lists out offences that can be treated as ‘serious offences committed by the public officers’. Copies of the First and Second Schedule to the Establishments Code are annexed herewith marked annexure 2 and 3.
However Establishments Code does not layout the rational behind each rule. According to the evaluative framework, rational for each rule should be stated. Stating the rationale is important in order to assess its reasonability. Although the rationale for the rule has not been stated along with the rule, the researcher attempted to find out whether the officers can identify the rational behind rules. For this purpose the researcher requested the respondents to state according to their understanding, the rationality behind three given rules of conduct, i.e. use of liquor and drugs, pecuniary embarrassment and adherence to the provisions of the Establishments Code. By this the researcher intended to verify whether the employees are aware of the rationality behind each rule. General responses of cases 1-50 about the rational behind these rules can be summarized as follows:

**Use of liquor and drugs** - It would bring disrepute to the institution; it sets a bad precedent to the other employees; it reduces employee's productivity

**Pecuniary embarrassment** - It invites corruption; no need of an additional monetary inducements as public officers are being paid; it is bad to the image of the Government

**Adherence to the provisions of the Establishments Code**; for to regulate day to day work; to control employees; to minimize complexities

It was evident from the findings, that the participants held different opinions about the rationality behind rules. There was no common agreement. Unless there is no common view equal level adherence cannot be expected.
Reasonability of Rules

Employees view about the reasonability of rules was measured by using an itemized rating scale. Since all cases had no idea about the rules, the researcher distributed a copy of the Sinhalese version of the chapter XLVII of the Establishments Code. Responses of cases 1-50 can be depicted as follows.

Table 6:1 Measuring the Reasonability of Rules and Regulations

<table>
<thead>
<tr>
<th>Rule</th>
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<th>Reasonable</th>
<th>Not unreasonable</th>
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<td></td>
</tr>
<tr>
<td>7. Publications all Articles, book etc.</td>
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<td>23</td>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>
However about 75% of the cases supported with the fact that the rules pertaining to time of attending work are not reasonable. Due to transportation problems and personal problems employees are undergoing difficulties at a rate. Thus they are of the view that the authorities have not been sensitive to their real issues. This will be discussed in detail at a latter stage. However majority agreed with the fact that most of the rules are reasonable and is necessary for the control of the individual behaviour.

**Employee participation in preparing the Establishments Code**

Establishments Code of the public officers is a national and uniform system. It has been legislated by the Parliament and codified as a separate volume to the Establishments Code. In this context this system is a total work of the legislature and the Government policy makers. Thus employee/union participation in formulating the system is minimal.

**Rate of participation in formulating rules:**

- **Departmental Heads (cases A-J)**: Nil (Had never participated)
- **Public officers (cases 1-50)**: Nil (Had never participated)
None of the participants, i.e. public officers (referred to as cases 1-50) and departments heads (referred to as cases A-J) have participated in formulating policies and procedures. They are just following a set of rules prepared by a distant group of people, i.e. Parliamentarians who are not sensitive toward employee’s working background.

However in the preface to Volume 11 of the Establishments Code, the Secretary to the Ministry of Public Administration and Home affairs calls information from the general public regarding doubts and difficulties in interpretation and cases not covered by the Establishments Code. He requests the general public and the State officers to report such to the Director of Establishments. However none of the research participants have attempted to respond to it. It is indeed wonderful to note that none of the Departmental Heads or the public officers was aware of the fact that there is such an invitation in the Code itself.

Conclusion: According to the research findings stated above, it can be said that,

1) Rules and regulations have been properly laid out in the Establishments Code.

2) Rationality behind each rule has not been stated and the public officers did not have a common agreement regarding them.
3) Public officers and departmental heads have never participated in formulating or revising rules and regulations.

6:5 Penalties/Sanctions and Authorities of Penalties

Criteria
1. Stating of penalties and sanctions and grouping them into categories
2. Specification of the authorities of sanction

Data Source: Establishments Code

Section 24 of the Establishments Code lays down penalties that may be imposed to offending employees. According to that section:

Minor Punishments are,
- Reprimand (A warning or a severe warning is not a punishment)
- Severe reprimand
- Censure
- Suspension of the increment for a period not exceeding one year.
- Stoppage of increment for a period not exceeding one year.
- Order a disciplinary transfer on the office at his own expense.
- A fine not exceeding a week's pay.
- Any other form of punishment similar to but not more severe than the above punishment as determined by the relevant disciplinary inquiry.

Major Punishments are,
- Dismissal.
- Termination of service of an officer serving a period of probation.
- Retirement for general inefficiency.
- Compulsory retirement as a merciful alternative for dismissal.
- Rejection of extension of service beyond the optional age of retirement.
- Reduction in seniority.
- Reduction in the rank.
- Reduction to a lower post where the officer does not belong to a "service" but holds a departmental post.
- Reduction of salary by a specified number of increments.
- Deferment of salary increments.
- Deferment of promotion for a specified period.
- Disqualification from sitting any promotional examination for a specified period.
- Any other form of punishment similar to and not more severe than those listed above as determined by the relevant Disciplinary authority.

In view of the above section it can be stated that the penalties have been stated under two clear categories i.e. major and minor.

Section 24 says that minor punishment may be appropriate for offences described in the Second Schedule and offences of similar type. Under the Establishments Code, if an officer finds guilty for an offence falling under the second schedule the disciplinary authority can order an appropriate minor punishment at his discretion. If an officer finds guilty for an offence falling under the first schedule, he could be dismissed or any other appropriate punishment may be imposed as the Disciplinary authority seems fit.
The Establishments Code states as follows:

"The seriousness of an offence must be judged not only by the act itself, but in relations to the office held by the person concerned, and the circumstances surrounding it."

In view of the above statement in the Establishments Code, Disciplinary authority had been given a wide opportunity to decide whether an offence is a serious one or not. On the other hand the schedules to the Establishments Code give a clear indication about what offences are serious and what are not.

**Disciplinary authority**

According to chapter XLVIII, the power of dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers under the Constitution.

According to Article 114 (1) of the Constitution, disciplinary control of the judicial officers and scheduled public officers (i.e. Registrars of Courts, clerks, fiscals, interpreters, stenographers, typists and binders) are vested with the Judicial Services Commission.
The Establishments Code defines "Disciplinary authority" as the appropriate authority for dismissing or exercising disciplinary control over any particular officer. It also includes any authority appointed to act in such capacity in the absence of the substantive holder of post. Disciplinary authority in the case of an officer holding an acting appointment will be the Disciplinary authority appropriate to such officer, had he been holding such appointment on a substantive basis.

The power of dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers who will directly exercise these powers in respect of Additional Secretaries to Ministers, District Secretaries and Government Agents, Heads of Departments, Senior Assistants Secretaries and other officers appointed by the Cabinet of Ministers. The Cabinet of Ministers has delegated its powers of dismissal and disciplinary control in respect of all other categories of officers in staff grade except officers in Auditor Generals Department and Department of Elections not in the combined service where secretary to the President is the Disciplinary authority and officers in staff grade in the Auditor General's Department and the officers in staff grade not falling under a Ministry and not in the Combined Service where the Head of the Department is the Disciplinary authority.

The Disciplinary control of all other officers has been delegated by the Commission to the relevant Secretaries to the Ministries, Heads of Departments and other public officers. In
the case of others in the Combined service, the power of dismissal and disciplinary control is accordingly delegated to the Director of Combined services.

Thus the Establishments Code has very clearly stated the Disciplinary authority of each public officer. Therefore employees can get a clear idea of the Disciplinary authority.

Conclusion: It can be said that the Establishments Code has very clearly and categorically stated the offences, relevant penalties and the authorities of sanctions.

6.6 Communication of Rules and Regulations

Criteria
1. Methods available for the communication of rules
2. Available number of copies of Establishments Code in each institution
3. Degree of reading the Establishments Code by the cases
4. Purpose of reading the Establishments Code by the cases
5. Methods of acquiring knowledge regarding disciplinary issues by the cases

Data Source: Case studies and statistics from the Ministry of Public Administration

In the public sector there had been no proper mechanism of communicating rules and regulations. The only method was the distribution of the Establishments Code and the Government circulars to each organization. However there weren't a sufficient number of copies of the Establishments Code in an organization for the employee reference.

Following information was obtained from the Registrars of each Court (who were among the cases).
<table>
<thead>
<tr>
<th>Organization</th>
<th>Available number of copies of the Establishments Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrate Court – Galgamuwa</td>
<td>1</td>
</tr>
<tr>
<td>District Court – Kurunegala</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court and Additional Magistrate Court– Kurunegala</td>
<td>2</td>
</tr>
<tr>
<td>Additional District Court – Kurunegala</td>
<td>1</td>
</tr>
<tr>
<td>District Court and Additional District Court- Kuliyapitiya</td>
<td>-</td>
</tr>
<tr>
<td>Magistrate Court- Maho</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court- Wariyapola</td>
<td>-</td>
</tr>
<tr>
<td>Magistrate Court-Pillessa</td>
<td>-</td>
</tr>
</tbody>
</table>

It is interesting to note that the copies of the Establishments Code were in the custody of the Registrars and they were bit reluctant to give it to the staff members for reference. They paid more attention on keeping them in their safe custody than giving it to the staff members for reference. There is also a shortage of the circulation of Public Administration Ministry Circulars too. Only 3000 copies of the circulars are being distributed among the Government departments. Therefore a single department gets approximately one copy. Also no arrangement had been made to buy the publications for the employees who really want to purchase them for their own use. From 2001, all the circulars have been published in the internet. However internet facilities have not been provided to Courts and therefore employees could not have access to it.
The research revealed that the knowledge of disciplinary issues is very low among public officers. 36 out of the 50 cases have not read the Establishments Code and the rest have read not fully but partially. However 5 out of the cases A-J have read it fully whereas the others have read it partially.

Information was collected from all 60 cases regarding the following three main issues through the questionnaire and the interviews,

1) Degree of reading the Establishments Code
2) Purpose of reading the Establishments Code
3) Mode of acquiring knowledge about disciplinary issues

Table: 6:2 Degree of reading the Establishments Code

<table>
<thead>
<tr>
<th>Participants</th>
<th>Fully read the Establishments Code</th>
<th>Partly read the Establishments Code</th>
<th>Not read the Establishments Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases 1-50 (Public Officers)</td>
<td>0</td>
<td>14</td>
<td>36</td>
</tr>
<tr>
<td>Cases A-J (Departmental Heads)</td>
<td>5</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

Purpose of reading the Establishments Code by cases 1-50

76% - For the E-Bar Examination
16% - For the disciplinary issues that the employee himself/herself underwent
6% - For the disciplinary issues that a brother/sister employee underwent

2% - For to improve knowledge

Out of the limited number of public officers who have even partially read the Establishments Code, they have done so mainly for their Efficiency Bar Examination. Approximately, 70% of the Departmental Heads have read the Establishments Code for day today administrational issues and particularly when acting themselves as preliminary investigating officers.

The research revealed that public officers gathered knowledge about disciplinary matters basically in four ways:

<table>
<thead>
<tr>
<th>Mode of acquiring knowledge</th>
<th>Public Officers (Cases 1-50)</th>
<th>Departmental Heads (Cases A-J)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. By reading the Establishments Code</td>
<td>20%</td>
<td>72%</td>
</tr>
<tr>
<td>2. Through Personal experience</td>
<td>24%</td>
<td>-</td>
</tr>
<tr>
<td>3. Through experience of others</td>
<td>46%</td>
<td>-</td>
</tr>
<tr>
<td>4. By consulting a friend in the field</td>
<td>10%</td>
<td>28%</td>
</tr>
</tbody>
</table>

None of the organizations had a proper method of communicating disciplinary rules and regulations. No employee had been made aware of these rules and regulations at there
induction. At the same time employees do not have a sensible feeling about the importance of knowing the law and procedure.

Conclusion: There wasn't a proper mechanism of communicating disciplinary rules. The number of Establishments Codes available in an institution is rather insufficient for the reference of the employees. At the same time employee's knowledge about disciplinary legislations are fairly low. The main purpose of being knowledgeable on these issues was to get through the Efficiency Bar examination. Rather than reading the Establishments Code public officers preferred to learn from others experience than reading the Establishments Code.

Conclusion: There wasn't a proper mechanism of communicating of disciplinary rules. The number of Establishments Codes available was rather insufficient for employees' reference. At the same time employee's knowledge of disciplinary laws are relatively low. The main purpose of reading the Establishments Code is none other than passing the Efficiency Bar examination. In a case of a disciplinary issue employees preferred to ask somebody else than reading the Establishments Code.
6:7 Monitoring of rule violations

Criteria: 1 Degree to which offences are being monitored by the departmental heads
2 Extent to which information about offences are being brought to the notice of the departmental heads

Data Source: Establishments Code

Case studies

Section 1:2 of Chapter XLVII says that,

‘All acts of misconducts or offences calling for punishment in any form should be dealt with under these rules as soon as possible by the Disciplinary Authorities, Heads of Departments and other relevant Heads of Institutions. **To enable such action to be taken reports, information, etc. on such acts of misconduct and lapse should be furnished without delay to the relevant Disciplinary Authorities, Heads of Departments and other Heads of Institutions by the officer or officers holding Supervisory or Administrative authority over the officer concerned in the institution or office where he works. To shirk this responsibility will also be an act of misconduct calling for disciplinary action.’

Basically there are two ways of getting information about misconducts

1. Monitoring
2. Getting information from other employees
Monitoring

According to the theory, management should always be alert on the misconducts of the employees. However, research revealed that this monitoring task has been done by the Departmental Heads at a very low level. It would be important to mention the response precisely that each Departmental Head made:

Case A: "with the day to work load there is hardly any time to monitor misconducts..."

Case B: "although we are Departmental Heads, as judges we are there for to hear cases and administer Justice. Thus monitoring misconducts of the staff is an additional task to which we pay a least attention..."

Case C: "we do not go on monitoring for rule violations. But if there is any information about misconducts we take necessary actions..."

Case D: "I go around the office whenever I find time. In such occasions if I see any misbehavior I call the officers and take actions immediately; I warn them ..."

Case E: "There is hardly any time to go around and inspect work. My prime duty is to administer justice. Therefore I pay my whole attention on it..."
Case F: "We occupy in a separate chamber which is quite away from the office. Thus we can't see what is happening in the office. As judges we can't move with people as other administrators do..."

Case G: "Most public officers do misconducts due to humanitarian grounds. Thus in case of minor offences we must not be too strict. Therefore I do not follow back the employees..."

Case H: "If we go on monitoring all the time, employees will be dissatisfied; then we cannot get more work done..."

Case I: "Actually there is no time to monitor everything. All eight hours should be devoted to hear cases..."

Case J: "I do not go on monitoring. I have no time. But I get information through `Court archchi' and the peon. Sometimes I use personal decoys to get information..."

In view of the above responses, it is clear that Departmental Heads do not monitor offences sufficiently. Reasons for this situation can be summarized as follows:

- Lack of time
- Devaluing the importance of monitoring
- Giving priority to day to day work (i.e. hearing of cases)
- Getting information from other employees.
In this study the researcher also attempted to examine the experience of the employees too. According to the employees, only a handful of offences /misconducts committed by public officers had been brought to the notice of the Departmental Head. The common experience of all the fifty cases was that employees do violate rules and commit trivial offences day to day. But no disciplinary action has been taken against any, because information about these offences has not been duly communicated to the relevant authorities. Also none of these offences and rule violations have been properly monitored either by the departmental heads or immediate supervisors.

**Percentage rate of reporting of misconducts to the departmental head** (It should be noted that the following percentages were stated not on empirical evidence but on the general experience of the cases)

<table>
<thead>
<tr>
<th>Cases</th>
<th>Percentage</th>
<th>Cases</th>
<th>Percentage</th>
<th>Cases</th>
<th>Percentage</th>
<th>Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1%</td>
<td>16</td>
<td>15%</td>
<td>31</td>
<td>20%</td>
<td>46</td>
<td>2%</td>
</tr>
<tr>
<td>2</td>
<td>5%</td>
<td>17</td>
<td>1%</td>
<td>32</td>
<td>2%</td>
<td>47</td>
<td>2%</td>
</tr>
<tr>
<td>3</td>
<td>2%</td>
<td>18</td>
<td>1%</td>
<td>33</td>
<td>3%</td>
<td>48</td>
<td>20%</td>
</tr>
<tr>
<td>4</td>
<td>1%</td>
<td>19</td>
<td>2%</td>
<td>34</td>
<td>1%</td>
<td>49</td>
<td>2%</td>
</tr>
<tr>
<td>5</td>
<td>1%</td>
<td>20</td>
<td>4%</td>
<td>35</td>
<td>1%</td>
<td>50</td>
<td>1%</td>
</tr>
<tr>
<td>6</td>
<td>10%</td>
<td>21</td>
<td>3%</td>
<td>36</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>5%</td>
<td>22</td>
<td>5%</td>
<td>37</td>
<td>4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>2%</td>
<td>23</td>
<td>1%</td>
<td>38</td>
<td>10%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

168
<table>
<thead>
<tr>
<th></th>
<th>5%</th>
<th>24</th>
<th>1%</th>
<th>39</th>
<th>5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>1%</td>
<td>25</td>
<td>2%</td>
<td>40</td>
<td>2%</td>
</tr>
<tr>
<td>11</td>
<td>2%</td>
<td>26</td>
<td>5%</td>
<td>41</td>
<td>1%</td>
</tr>
<tr>
<td>12</td>
<td>3%</td>
<td>27</td>
<td>1%</td>
<td>42</td>
<td>5%</td>
</tr>
<tr>
<td>13</td>
<td>1%</td>
<td>28</td>
<td>2%</td>
<td>43</td>
<td>3%</td>
</tr>
<tr>
<td>14</td>
<td>2%</td>
<td>29</td>
<td>5%</td>
<td>44</td>
<td>1%</td>
</tr>
<tr>
<td>15</td>
<td>2%</td>
<td>30</td>
<td>3%</td>
<td>45</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Average Percentage: 3.64%**

The above findings reveal that most of the misconducts of public officers are remained unnoticed by the due authorities.

The researcher observed a reluctance of giving information about misconducts to the relevant authorities. From the information gathered from cases 1 - 50 the researcher was able to identify twelve major factors which have contributed to this situation:

1) Nature of the Departmental Head

If the Departmental Head is a very strict person, employees are afraid to confront him and tell others wrongs.

If the Departmental Head does not take any action even if he was informed about misconducts, employees do not tend to give information. Employees are hesitant to implicate another employee if the Departmental Head takes very serious prompt actions against the wrong doer.
2) Possibility of breaking the relationship between the wrongdoer and the informant

3) The fact that the wrongdoing employee has to undergo bitter consequences as a result of giving information

4) Neglecting misconducts by the immediate supervisor

5) The attitude that giving information is not their business

6) If the offence is of a trivial nature employees tend to neglect it

7) Informants become subjected to harassments

8) Even disciplinary actions were taken certain employees will not get themselves corrected

9) When officers violate rules due to unavoidable personal problems

10) Failure to secure the secrecy of the information

11) Complaining against certain officers would sometimes become life endangering

12) The fact that the immediate supervisor collude with wrong doers in committing certain offences

Due to the above mentioned reasons most of the employees do not go and complain against another officer. Since there is no proper monitoring system also, most of the misconducts/rule violations remain undisclosed.

**Conclusion:** There wasn't a proper monitoring system within the organization. Departmental heads preferred to obtain information from other sources than monitoring.
rule violations. There was a reluctance of giving information about misconducts by the other employees due to various reasons. Thus most of the rule violations/offences remain unnoticed by the relevant authorities.

6:8 Disciplinary Investigation

Criteria
1 Adaptation of the proper procedure of disciplinary investigation
2 Degree to which the existing procedure contains defects (if any) at each stage of the investigation process

Data source: Establishments Code, Case records and Case studies (A-J)

6:8:1 Preliminary Investigation

Section 13 of the Establishments Code describes provisions regarding the preliminary investigation. Section 13:1 reads as follows:

'A preliminary investigation is that which is conducted by a Disciplinary authority or Head of Institution or other appropriate Authority or by an officer or a committee of officers duly authorized by the above authorities to find facts as are necessary to ascertain the truth of a suspicion or information that an act of misconduct has been committed by an officer or several officers and to find out and report whether there are prima facie sufficient material and evidence to prefer charges and take disciplinary action against the officer or officers under suspicion.'
(It should be noted that when the liability is ascertained against a person under section 104 of Financial Regulations, factors were disclosed from an auditor’s report and when a person is convicted from a Court of Law, a formal inquiry can be held straightaway without holding a preliminary investigation)

In view of the above section it is apparent that, there are two main objectives of a preliminary investigation i.e.

1. Ascertaining the truth of a suspicion or information
2. Finding out and report whether there are prima facie sufficient materials and evidence to prefer charges and take disciplinary action

In the light of section 13:1 information or a mere suspicion is sufficient to commence a preliminary investigation. However most of the preliminary investigations are being commenced on information received. According to Opatha (2002) it is preferable to have a written form of giving information. In the Government sector there is no such system to forward information.

The researcher attempted to gather information regarding the methods of obtaining information about misconducts by certain Courts. Statistics of last two years which were available with the departmental heads were used in this respect.
Table: 6.3 Method of receiving information about misconduct/offences

<table>
<thead>
<tr>
<th>Institution</th>
<th>Dpt. head himself takes cognizes of offences</th>
<th>Giving information by the other employees</th>
<th>Written petitions</th>
<th>Revealing of offences during hearing of cases</th>
<th>Other methods</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court Kurunegala</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>District Court Kurunegala</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court Kurunegala</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Magistrate Court Galgamuwa</td>
<td>_</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court Maho</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Magistrate Court Wariyapola</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Magistrate Court Pillessa</td>
<td>_</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

N.B. Other methods include direct raids by the Bribery commission officers, auditors etc.

Interviews made with the Departmental Heads revealed following facts:

Most information was sent to the Departmental Heads by anonymous letters. In such cases they find it difficult to commence action as the veracity of the information has not been ascertained. However if the letter contains sufficient materials the matter can be inquired into. Cases B C H and G had been able to get caught certain wrongdoers through
the clues disclosed by anonymous letters. However they say that this task is more or less similar to an investigation done by a detective.

In the present context electronic media disclose to the general public certain misconducts of public officers. However none of the Departmental Heads (cases A-J) had undergone any experience of that nature in respect of the officers of their staff. But they were firmly on the idea that if some misconduct of their officers were disclosed by the media they will be initiating prompt action irrespective of the designation the officer holds.

Cases A-J's general view was that if misconduct was revealed during the course of a Court case (for eg. an accused in open Court says a particular clerk demanded money to give a photocopy of a case record) it would be easier to take direct actions. Also if an officer was caught by the Bribery Commission immediate action would be taken. But in all other instances they tend to take a lenient action like warning, etc. rather than taking proper disciplinary action.

Two important findings which were evident from the above facts are,

1) There was no formal method of getting information

2) Information given is not sufficient to commence an inquiry
Investigation Officer

According to the provisions of the Establishments Code a Disciplinary authority may direct following people to hold the inquiry:

1. An officer nominated by him
2. Group of officers nominated by him
3. Relevant head of the institution

A typical letter of authorization given to a Departmental Head authorizing an officer to hold the preliminary investigation is annexed herewith marked annexure 4.

Opatha (2002, 31) states that an investigation officer should be an experienced and a qualified officer. He should posses,

1 Experience
2 Qualifications

Section 13:9 of the Establishments Code reads as follows,

It is not essential that the officer conducting the preliminary investigation is senior to the suspect officer. But it is more appropriate to appoint whenever possible an officer senior to the suspect officer.
Except the above provision, Establishments Code is silent to the experience and other qualifications of the inquiring officers. (Cases A-J have held at least one disciplinary inquiry during their carrier life as judicial officers. Their work experience varies from 2 years to 15 years).

Following figure depicts the working experience as Departmental Heads and the number of preliminary inquiries they have held during their career life.

Table: 6:4 Working experience and the number of preliminary inquiries held by the Departmental Heads

<table>
<thead>
<tr>
<th>Case</th>
<th>Work Experience as judicial officers</th>
<th>Number of preliminary Investigations held</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>B</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>C</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>D</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>E</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>F</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>G</td>
<td>20</td>
<td>6</td>
</tr>
<tr>
<td>H</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>I</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>J</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>
When all the cases were doing their first preliminary investigation they have never been
given a prior training. Everybody had done so by consulting their brother/sister judges.
Whenever necessary, instructions have been obtained by the Judicial Service Commission
too..

Task of an Investigating officer

According to section 13:1 of the Establishments Code the primary task of an officer or a
Committee of officers conducting a preliminary investigation is the,

1) Recording of statements of relevant persons

2) Examination of documents and records

3) Obtaining of originals or certified copies thereof

4) Physical verification of State owned assets in charge of the officer or officers subject to
the investigation

5) Examination of relevant premises

6) Taking over all articles and documents which are considered necessary and making
their observations and recommendations on matters found out by them regarding the act
of misconduct committed.
Establishments Code specifies certain guidelines when conducting a preliminary investigation:-

-The suspected officer or officers or their representatives should not be allowed to be present when statements are recorded from connected parties in a preliminary investigation.

-Where the alleged charges relate to a shortage or misappropriation of goods, account of all the relevant stock in charge of the relevant officer should be taken.

-Suspected officer can be present when State documents and stocks in their charge are verified. At the end of the verification they should hand over a statement to the officer conducting the preliminary investigation that the verification was done in their presence and whether or not they are satisfied with the results of the verification.

-Suspected officer can be present when materials necessary for production are selected and sealed and observe such process.

-If the officer willfully neglects to produce State property, documents and money in their charge, the relevant authority should appoint a Board comprising of three members. This board has power to break open the locks.

Based on the conceptual framework, Opatha (2002) says that an investigation officer should submit his/her report within a short period of time, generally within one week.
The Establishments Code does not specify an exact time limit for the submitting of the report. However, section 13:2 states as follows:

'An authority ordering a preliminary investigation into an act of misconduct should, at the same time such order is issued, specify the time limit within which the officer or committee of officers should complete the preliminary investigation taking into consideration the nature of each act of misconduct as the case may be. However, where the officer conducting the preliminary investigation adduces reasons that there are valid obstacles to completing the investigation within the specified time limit, the relevant authority may grant an appropriate extension of time. Nevertheless, all relevant parties should ensure that such preliminary investigation are carried out and are completed with the least possible delay.

The researcher was able to gather data regarding the time period within which the departmental heads submit the preliminary investigation report. The below list indicates the rough average time taken by the Departmental Heads to complete an investigation.

<table>
<thead>
<tr>
<th>Cases</th>
<th>Avg. time taken to complete a preliminary investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1 month – 2 months</td>
</tr>
<tr>
<td>B</td>
<td>2 weeks- 1 month</td>
</tr>
</tbody>
</table>
The researcher observed several reasons for this delay:

-Heavy routine work load does not warrant officers to engage fully to this task.

It usually takes a considerable period for the suspected officer to come and give a statement. In most cases at the time of investigation suspect is on suspension. He does not properly respond to the letter issued by the inquirer.

-Most investigation officers are not trained and experienced. Thus they make lot of mistakes during the course of the inquiry. Correcting these mistakes and regularizing the procedure do take a very long time.
Section 13:3 of the Establishments Code states that,

'An officer appointed by relevant authority to conduct preliminary inquiry should be released from his substantive duties to the officer to devote his full time continuously on such task.. Although such a provision had been specifically laid out, most Departmental Heads have not acted accordingly. Sometimes they appoint the most senior person i.e. the registrar to conduct the inquiry. A registrar's work cannot be performed by another officer. Therefore inquirer usually conducts the inquiry as an additional task while doing his other duties. After the completion of the preliminary investigation the investigation officer must send his report together with all the statements and materials collected.

(Section 13:12)

A typical preliminary investigation report is annexed marked annexure 5.

The officer conducting the preliminary investigation should also prepare a draft charge sheet and forward it to the relevant authority in the event that sufficient material is disclosed. A draft charge sheet is annexed herewith as annexure 6.

**Conclusion:** Research findings revealed following facts,

1) Investigating officers are not properly trained enough to conduct preliminary investigations

2) There is a delay in sending the preliminary investigation report
6:8:2 Suspension

Provisions regarding interdiction and compulsory leave have been laid out in section 31 of the Establishments Code. According to that section where it is disclosed prima-facie that a public officer has committed either one or some of the offences stated therein such officer maybe forthwith interdicted. Power to interdict has been vested with three categories of officers:

1. Disciplinary authority
2. Secretary to the Ministry
3. Head of the Department not holding Disciplinary authority

Opatha (2002, 31, 32) indicates three instances where suspension will become necessary:

- If the rule violation is serious
- If the suspected employee's presence at work will disturb the ongoing investigation activities.
- If the suspected employee may be violent or threaten witnesses or change or hinder or destroy relevant documents

According to the Establishments Code, only following offences may be dealt with interdiction:
1. Non allegiance to the Constitution

2. Act or cause to act in such manner as to bring Sri Lanka into disrepute

3. Being prosecuted in a Court of law on anti Government, terrorist or criminal charges.

4. Being prosecuted in a Court of law on bribery or corruption charges

5. Being drunk or smelling of liquor within duty hours or within Government premises

6. Use or be in possession of narcotic drugs within duty hours or within Government premises

7. Misappropriate or cause another to misappropriate Government funds

8. Misappropriate Government resource or cause such misappropriation or cause destruction or depreciation of Government resources willfully or negligently

9. Act or cause to act negligently or inadvertently or willfully in such manner as to harm Government interests.

10. Act in such manner as to bring the public service into disrepute.

11. Divulge information that may harm the State, the State service or any other State institution or make available or cause to make available State documents or copies thereof to outside parties without the permission of an appropriate authority

12. Alter, distort destroy or fudge State documents
13. Conduct oneself or act in such manner as to obstruct a public officer in the discharge of his duties or insult or cause or threaten to cause bodily harm to a public officer.

14. Refuse or neglect to carry out lawful orders given by a senior officer or insubordination.

In the Establishments Code there is a special provision which can be fallen in line with the second category of instances described by Opatha (2002). According to Section 31:1:15, where it is considered that allowing an officer to perform his duties is harmful or imprudent, so far as the public service is concerned, he can be interdicted. However only a Disciplinary authority may interdict an employee under such circumstances.

The theory says that it is only after a preliminary investigation that an officer may be interdicted /suspended. However Establishments Code provide authorities to interdict officers even without holding a preliminary investigation. Such instances are,

1. Where it is evident to the relevant authority that the continuance of the officer in the service is detrimental to the holding of a preliminary investigation against him.

2. Where the first information itself on the suspected acts of misconduct committed by the officer is sufficient to establish the relevant matter.
3. Where the Court proceedings have been initiated against a public officer.

If an officer cannot be appropriately interdicted but if one feels that in the interest of the investigations that he should not exercise the functions of his office, he should be transferred or attached to an institution within the relevant Ministry or he should be placed on compulsory leave.

The theory also discusses the importance of payments during suspension. It says that one third or half the salary/wage is paid if the violation is not so serious. Section 31:10 of the Establishments Code says that the non-payment or the payment of one half of the emoluments to an officer under interdiction is decided by the Disciplinary authority. However it points out two instances where emoluments should not be paid during interdiction.

1. Where legal proceedings have been initiated for a terrorist offence or anti-Government activities or criminal offence or an offence of bribery, corruption or fraud.

2. Where misappropriation of a serious nature of public funds and property is committed or where they are caused to be destroyed or depreciated by acts of commission or omission.
Section 31:12 explains what considerations the Disciplinary authority should make when deciding the payments pending inquiry:

I) Seriousness of the charge

II) Prior record of service

III) Employee's financial needs

Establishments Code further provides authority to suspend the ongoing payment made pending investigation (Section 31:13), if the officer while receiving one half of the emoluments,

i) Acts willfully or negligently in such a manner as to impede the progress of the formal disciplinary inquiry

ii) Unduly delay the progress of the proceedings

The Disciplinary authority may suspend the payment of one half of the emoluments to the officer.

In view of the above provisions it can be said that the suspension/interdiction procedure under the Establishments Code are falling in line with the concept to a greater extent.

6:8:3 Charge sheet

A charge sheet issued to a public officer need not take a legalistic form. However it should be clear and simple. A charge sheet should essentially contain,
- A statement of any acts of misconducts or lapses committed by the accused officer.
- The schedule under which the charge sheet is issued.
- The schedule under which the charges fall.
- The time limit allowed for the accused officer to submit his answer to the charge sheet.
- The charges preferred.
- The names, posts and present places of work of witnesses who are expected to be summoned for the formal disciplinary inquiry to substantiate charges.
- Statements of witnesses and documents that would be used to substantiate the charges at the formal disciplinary inquiry.
- Details about the persons from whose custody the documents that constitutes evidence are lying, and how and where they could be examined by the accused officer himself or with his representative.
- The fact that the accused officer has the right to appoint an officer to represent him.
- Actions that would be taken if answers to the charge sheet are not received within stipulated time period.

According to section 14: 4 a Disciplinary authority may amend a charge sheet at any time between its handover to the accused officer and the commencement of the formal disciplinary inquiry. However section 14: 7 limits the number of occasion that a charge can be amended to two.
Following research findings reveal the fact that in most cases, the charge sheets that have been issued are defective and as a result they have been amended during the course of the inquiry. Following facts were gathered after perusing the formal inquiry files available in the Disciplinary Division of the Ministry of Justice and the Judicial Service Commission.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Number of files perused</th>
<th>Number of files which included an amended charge sheet.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Justice</td>
<td>30</td>
<td>12</td>
</tr>
<tr>
<td>Judicial Service Commission</td>
<td>20</td>
<td>10</td>
</tr>
</tbody>
</table>

It was evident from the case records that most of the charge sheets have been prepared by copying the draft that is being sent by the preliminary investigation officer and not by perusing the statements and other documents properly. It was also found that certain cases have unnecessarily prolonged due to the amendment of the charge sheet.

**Conclusion:** Most of the charge sheets are being prepared without due care and attention. As a result cases drag on unnecessarily.
6:8:4 Letter of the Explanation

Once a charge sheet is issued the accused officer should send answer to it. According to the Establishments Code if the accused officer willfully neglects to submit his explanation within the stipulated period, the Disciplinary authority may at his discretion make an appropriate disciplinary order or take some other cause of action as he deems fit. When the accused officer pleads guilty to one or some of the charges, a formal disciplinary inquiry should be held. If the officer expressly admitted that he is guilty of all the charges, the Disciplinary authority may order an appropriate punishment or order formal disciplinary inquiry, irrespective of the fact the officer has pleaded guilty. An officer can either furnish a comprehensive answer or plead guilty or not guilty and request for an inquiry to prove his innocence. Where the Disciplinary authority finds that the accused officer has in his answer sufficiently established his innocence he may clear the accused officer of all the charges and acquit him or where it finds that he is guilty of an offence falling under the second schedule, order a minor punishment or where it finds that he is prima facie guilty of an offence falling under the First schedule, order a formal disciplinary inquiry.

The researcher attempted to make a comparison between the Establishments Code and the evaluative framework regarding the courses of actions taken when the explanation letter is received.
The conceptual framework suggests the following courses of action:

**Figure: 6.1 Steps to be followed after receiving the letter of explanation under the**

**Conceptual Framework**

- **Accepting the charges**
  - Decide on penalty
    - Release from all the charges
- **Denies all the charges**
  - Reasons acceptable
    - Formal Inquiry
  - Reasons unacceptable
  - Reason charges
    - Reasons acceptable
      - Release from those charges
    - Reasons unacceptable
      - Formal Inquiry
  - Accepting charges
  - Denying charges
    - Send a second copy of the charge sheet
- **Denies some charges and accepts other charges**
- **Does not reply**
  - No reply
    - Formal inquiry
  - Decide on punishment
E- Code lays down the following courses of action:

Figure: 6:2 Steps to be followed after receiving the letter of explanation under the Establishments Code

- Failed to furnish answers
- Pleads guilty for some charges and denies others
- Pleads guilty for the charges

- Make a disciplinary order
- Formal Inquiry for all the charges
- Order punishment or disciplinary inquiry

The basic difference in those two is that under the Establishments Code even if acceptable reasons were given a formal inquiry ought to be held to prove the innocence. But the conceptual framework provides opportunity to release the officer without holding a formal inquiry.

Conclusion: There are slight differences in the procedure followed after the receipt of the letter of explanation. However these differences cannot be considered as material.
6:8:5 Formal Inquiry

Inquiry Board/ Tribunal of Inquiry

The Secretary in charge of the subject of Public Administration should constitute a Panel of Inquiry officers consisting of,

1) Public officers who have not been punished for an offence indicated under the First schedule of the Establishments Code during their period of service and who count a period of service of ten years or more

2) Attorneys –at-Law

Where the Disciplinary authority contemplates action for an offence falling under the Second schedule of the Establishments Code, the tribunal appointed for the purpose should consist of only one member.

Opatha (2002) lays down fifteen rules that should be followed when conducting a systematic inquiry. E- Code too provides certain guidelines under section 17, 18 and 19. Below shown is a comparison of the concept and the provisions of the Establishments Code.
1 Concept: Adherence to Natural Justice Law.

1. No man shall be condemned unheard

11 No person shall sit in judgment in his/her own cause or in any in which he/she is an interested party.

Establishments Code: (Section 19:10) It will be the responsibility of the inquiring officer to conduct the inquiry impartially fairly and expeditiously in accordance with the provisions of the Establishments Code. However Establishments Code does not specify what an impartial/ fair inquiry is. Thus one has to look for decisions of the superior Courts. In the case of Athukoralu Vs Jayarathna (SC case No 645/95) the principles of Audi Alteram Partem (i.e. no man shall be condemned unheard) was discussed in depth. In that case it was held that before transferring an employee on a complaint made against him/her, he/she should be given an opportunity to show cause and a formal inquiry should be held. Also in the cases University of Sri Lanka Vs Fernando and Jayasinghe Vs Attorney General (1994) 2 SLR 87 the Supreme Court pointed out certain guidelines that should be followed at a disciplinary inquiry: They are,

1) Party should be informed about the charges in advance

2) Sufficient time should be granted to show cause to the charges

3) Accused officer should be given an opportunity to cross examine the prosecution witnesses.
4) Accused officer should have the right to appoint a public officer or an Attorney-at-law to represent him.

5) When any party moves to call any witness that application should not be rejected.

6) If a witness refuses to give evidence he/she should be requested to give evidence in writing.

2) **Concept:** The inquiry panel must start the formal inquiry with an open mind i.e. no preconceived conclusions of the guilt or innocence of the accused. They must endeavor to establish the truth of the case.

**Establishments Code:** There is no specific provision in that respect.

3) **Concept:** The inquiry panel should hear both sides i.e. the case of the rule violation presented by prosecuting officer and the case of defence by the accused or his/her representative.

**Establishments Code:** The overall procedure explained under section 21 provides provisions for both parties to present their cases.

4) **Concept:** The investigation officer/prosecuting officer who represents the organization should be invited to present the case to the panel.

**Establishments Code:** The head of the Ministry or the Department should appoint an officer to present the case for the prosecution (Section 17:1). It will be the sole
responsibility of such officer to conduct the case in such a manner as to establish the charges preferred against the officer.

5) **Concept:** If the accused needs to question the prosecuting officer or investigation officer with respect to anything of the presentation, the inquiry panel must give an opportunity for that.

**Establishments Code:** There is no such a provision in the Establishments Code. However the Establishments Code does not specifically deprives accused officer from this right.

6) **Concept:** The accused must be given every opportunity to speak in his/her own defence and also the opportunity to produce any witnesses.

**Establishments Code:** Section 21 provides accused officer to show his defence and to produce witnesses. In this respect section 21:15 can be emphasized.

7) **Concept:** All witnesses who present on behalf of the organization must be called to the inquiry room one by one and allow them to leave the room after testifying is over.

**Establishments Code:** No witness should be permitted by the Tribunal to be present when evidence of any other witness is being recorded.
8) **Concept**: The Chairman of the inquiry panel should test the relevancy of questions being asked and avoid incriminating questions unless they are essential to ask to clarify any doubts.

**Establishments Code**: There is no similar provision.

9) **Concept**: Witnesses on behalf of the organization must be examined first.

**Establishments Code**: Code does not specifically say as to who should start the case. However section 19 says that the prosecution officer should present his case clearly and 21 provides the accused to give his defense in answer to the allegations.

10) **Concept**: The accused must be given the opportunity to cross examine the witnesses who present on behalf of the organization.

**Establishments Code**: Section 21:14 permits the defence to cross examines the witnesses on the recorded statements and on any other oral evidence led from him at the inquiry.

11) **Concept**: The accused and his/her witnesses are to be examined and can be cross examined.

**Establishments Code**: The accused officer may give evidence on his behalf at the formal disciplinary inquiry in which event he may be cross examined. Likewise the accused
officer, as he chooses, may refrain from giving evidence or make only a written or an oral statement. If he makes a statement he will not be liable to be cross examined.

12) **Concept:** The Chairman of the inquiry panel must make sure to keep verbatim notes of the proceedings.

**Establishments Code:** It is the responsibility of the Disciplinary authority to keep the proceedings of the formal disciplinary inquiry from its commencement to the conclusion under his constant observation and take corrective action. (Section 22:2)

13) **Concept:** The inquiry panel must submit clear report to the management who appointed the panel with the panel conclusion of whether the accused is guilty as charged or not.

**Establishments Code:** The tribunal should as soon as possible after the conclusion of the inquiry transmit its type written report thereon together with the record of the proceedings (Section 21:7). This report should contain,

- The background to the incident in brief (21:26:1)
- General remarks on the conduct of the formal disciplinary inquiry (21:26:2)
- Summary of evidence led on the charges (21:26:3)
- Analysis of evidence on each charge and findings of the Tribunal on each charge (21:26:4)
Where the accused officer is found guilty of even one charge, the opinion of the Tribunal as to the seriousness of the charge and suggestions to the Disciplinary authority on imposing punishment (21:26:5)

14) Concept: If the accused gets absent without notice or reasonable cause the inquiry should be adjourned and he/she should be informed about this and the inquiry scheduled to be held for second time.

Establishments Code: Section 21:2 says that if the accused officer absents himself from the inquiry consecutively on two occasions without giving prior notice indicating valid reasons for his absence and if he will not participate in the next date too the tribunal should inform the accused officer under registered post that the inquiry will be held exparte.

15) Concept: If the accused gets absent without acceptable reasons for the second time also the inquiry should be held exparte.

Establishments Code: Where the accused officer fails to appear when the inquiry is resumed on the next date the tribunal should proceed with the inquiry whether or not the accused officer participates in the proceedings.
Notes for the guidance of Tribunals of inquiry have been stated in the Establishments Code under appendix 2. A copy of the same is annexed herewith marked annexure 7.

Conclusion: It can be said that the manner in which the formal inquiry should be held is falling in line with the theory.

6:9 Sanction Determination and Implementation

Criteria 1. Indication of sufficient guidelines to decide the severity of a penalty

Data source: Establishments Code

Establishments Code provides three instances of imposing sanctions:

1. After the conclusion of the preliminary investigation
2. Where the accused officer admits that he is guilty of all charges
3. After the conclusion of the formal inquiry

After the conclusion of the Disciplinary inquiry, if the Disciplinary authority finds that the accused officer is guilty of all the offences falling under the Second schedule (i.e. minor offences), he may order an appropriate minor punishment at his discretion. Where the accused officer has expressly admitted that he is guilty of all the charges in the charge sheet issued to him, the relevant Disciplinary authority may, in consideration of each charge, order appropriate punishment on him or order a formal disciplinary inquiry. The relevant Disciplinary authority may, after careful study of all reports and documents
forwarded to him by the Tribunal after the formal inquiry, either accept or reject such recommendations and determine whether or not the accused officer is guilty of the charges and if he is found not guilty, clear him of all the charges in the charge sheet and acquit him, and if found guilty, dismiss him or make an appropriate disciplinary order or take such other course of action as the Disciplinary authority deem fit. Where the Disciplinary authority does not agree with the findings of the Tribunal, he may make a disciplinary order contrary to the findings of the Tribunal in accordance with the findings independently arrived at by him based on the report of the inquiry and other documents.

Section 23:8 of the Establishments Code says that only a minor punishment (as described in Section 24:2) may be imposed on an accused officer found guilty of an offence falling under the Second schedule.

The Establishments Code says that the disciplinary authority can order an appropriate punishment. Also Appendix 1 to the Establishments Code says that 'the seriousness of an offence must be judged not only by the act itself but in relation to the office held by the person concerned, and the circumstances surrounding it'. This is the only guideline given in the Establishments Code to decide the punishment. However the theory explains more guidelines that should be taken into account when deciding the punishment.
Conclusion: Guidelines given in the Establishments Code to determine the penalty is insufficient to decide the appropriateness of the punishment.

6:10 Informal Talk /Counselling

Criteria 1. Availability of provisions in the present system for making informal talk.
   2. Application of informal talk and counseling in solving day to day minor disciplinary issues

Data source: Establishments Code and case studies

There is no provision in the E-Code which allows the Departmental Head to have informal talks with the offending employees. Except cases B and C no other Departmental Head had attempted to inquire into the reasons for rule violations. Cases B and C have had the practice of asking the reasons for employees late attendance, postponement of cases etc. However instead of advising not to do so they have not gone further by finding solutions. Cases A- J were all on the idea that as Departmental Heads they are not in a position to give solutions to employee's problems. For example most of the employees have had the problem of coming on time due to transport problem. As Departmental Heads they can't give the employees any concessions as their hands are tied with the provisions of the Establishments Code.
On the other hand cases 1-50 were firmly on the view that informal talks must be encouraged. They said that almost all of them are compelled to violate certain rules due to unavoidable reasons. Their general view was that if they were given an opportunity to explain these to the departmental heads, they will give some solution to them. The researcher made this a point to identify common rule violations done by the public officers and the reasons behind them.

Considering the responses of all the cases it was revealed that none had committed a serious offence. Almost every body had engaged in trivial rule violations. Three common rule violations were identified from the information collected. They are,

1. Late attendance
2. Leaving earlier than the scheduled time by indicating a false time in the registry
3. Going out during office hours to engage in personal matters

**Reasons for late attendance**

- Weaknesses in the public transport facilities  80%
- Personal and household problems  10%
- Remoteness to the work place  8%
- Other reasons  2%
Reasons for early departure

- Household engagements 90%
- Traveling problems 16%
- Other reasons 4%

Reasons for leaving office premises without permission during office hours

- To get things done from Governmental institutions 60%
- Children's affairs and other personal issues 30%
- Other reasons 10%

Almost all the employees (i.e. cases 1-50) held the idea that if there was an opportunity to place these grievances to their Departmental Heads it would be very valuable. All equally believed the fact that if they inform the reasons for these trivial rule violations, the departmental head would either excuse them or give them a solution.

Almost all the employees were on the idea that counselling in a good, friendly measure. All the fifty cases were positive about it. Their response can be summarized as follows:

<table>
<thead>
<tr>
<th>Employee counselling</th>
<th>Good approach</th>
<th>Bad approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases 1-50</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

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However Departmental Heads (i.e. cases A-D) expressed multiple views. While some admitted counselling as an advantageous attempt, others held against it. They believed it as a time consuming impractical extra duty. Two cases strongly held the idea that institutional discipline cannot be maintained to the rule if this approach was introduced.

**Conclusion:** There is no provision in the Establishments Code for informal talk and counselling. However all the public officers held the view that the opportunity to have informal talk should be encouraged. But departmental heads held a counter view about it.

**6:11 Progressive discipline**

**Criteria**  
1. Availability of provisions in the present system for the use of progressive discipline

**Data source:** Establishments Code and case studies

E- Code does not allow imposition of progressive discipline. According to the procedure laid out in the Establishments Code, even the first offender should be dealt with a suitable punishment if the charges were proved.
Discussions made with the participants to the research revealed the fact that some preferred to impose punishment according to the 'severity of the offence', while some were on the view that the 'punishment should depend on the number of times the offence is repeated'.

**Employees (Cases 1-50)**

- 66% held the view that punishment should be given according to the severity of the offence

- 34% held the view that punishment should be given according to the number of times the offence is repeated

**Departmental Heads (Cases A-J)**

- 72% held the view that punishment should be given according to the severity of the offence

- 18% held the view that punishment should be given according to the number of times the offence is repeated

However all the participants expressed the view that a blend of both criteria would be more appropriate. They were on the idea that when imposing punishment both the severity and the number of times the offence was repeated should be taken into account.
Conclusion: There is no provision in the Establishments Code for progressive discipline.

Both public officers and departmental heads were on the view that this is a suitable approach to introduce for the disciplinary management of the public officers.

6:12 Review and Renewal

Criteria 1. Opportunity to appeal against a disciplinary order by an aggrieved party
2. Revising and amending of the existing legislations

Data source: Establishments Code

Selection 26 of the E-Code lays down provisions regarding appeals and revisions against disciplinary orders. The Disciplinary authority itself can revise, vary or cancel any order after it has been made, for the sole purpose of correcting an error or irregularity appearing on the face of such order. However it should state reasons for doing so in the record itself.

Under the provisions of the Establishments Code any public officer who is dissatisfied with a disciplinary order can appeal to a higher forum. Section 26:3 says that a public officer aggrieved by any disciplinary order made by a Disciplinary authority may appeal against such order in writing to either the Cabinet of Ministers or the Public Services Commission. Under section 26:02 the appellate authority may revise, vary or cancel the disciplinary order on the averment of the appeal.
The theoretical framework indicates four essential ingredients that should be incorporated within the appeal mechanism. Thus it is important to analyze the Establishments Code procedure in relation to these four categories.

1. **Time of lodging/ bringing the appeal**

   Under section 26:6, an appeal made under section 26:5 should be made within three months of the receipt of the disciplinary order. However appeals received after three months but before six months may also be entertained at the discretion of the Commission if there are valid reasons.

2. **Authority**

   An aggrieved party can either appeal to the Cabinet of Minister or the Public Service Commission as the case may be. If a person who is not satisfied by a disciplinary order made by a public officer holding delegated authority from the Public Service Commission or a Committee, has the right of making only one appeal to the Commission. A further appeal on a decision made by the Commission can be preferred to the Cabinet of Ministers.

3. **Time of hearing**

   The E- Code does not specify any time limit within which an inquiry should be conducted.
4. Participants

Establishments Code does not indicate as to who should participate in the appeal inquiry. Neither has it stated about the constitution of the panel of appeal. It blankly allows the Public Service Commission and the Cabinet of Ministers to hold the full appellate authority.

The third principle observed by Opatha (2002) is keeping of records in the proper manner. Although there is no specific provision in Volume II of the Establishments Code regarding keeping of records about disciplinary issues, it specifically states that all disciplinary inquiry proceedings should be properly documented. The preliminary inquiry report should contain all the findings in writing. On the other hand section 22:2 says that it is the responsibility of the Disciplinary authority to keep the proceedings of the formal disciplinary inquiry, from its commencement to the conclusion, under his constant observation and take corrective action.

The theory casts a responsibility on the immediate supervisors to keep records. Unlike private entities, Government institutions regularly keep records about each and every aspect. Thus in cases where cash or Governmental articles were misused, they automatically go to records. However in most instances where non serious offences were
done, no record would be kept in the files. A mere warning or a reprimand would close
the entire chapter, without leaving any record in the personal file.

Any disciplinary management system needs revising with the lapse of the time. Rules
regulations and procedures should be amended according to the socio and economical
changes. Otherwise the system will be stagnated.

However the present system of the disciplinary administration system of the public
officers has not been revised for quite a long period of time. The last revision has been
done in 1999 after 18 years. Since then no revision has been made up to now.

Conclusion: There is a regular appeal mechanism in the Establishments Code. However
the entire Code had not been subjected to revisions and amendments for quite a long
period of time. This is a major obstacle for the development of the system.
Chapter Seven

SUGGESTIONS FOR THE IMPROVEMENT OF THE DISCIPLINARY MANAGEMENT SYSTEM OF THE PUBLIC OFFICERS

7:1 Introduction

In this chapter the researcher would be discussing appropriate measures that could be suggested to improve the existing disciplinary management system of the public officers. These suggestions would be based on the evaluative framework.

7:2 Suggestions to improve the existing system

Previous chapter of the research revealed several weaknesses that are visible in the existing disciplinary management system. It was evident from the research that due to several weakness and drawbacks that are inherent in the system, the Government had not been able to extract the maximum benefits as expected. In order to overcome this situation following recommendations can be suggested.
Objectives and policy

The Establishments Code does not have an objective statement and a policy statement. It is essential to have targets because all rules, regulations and procedures should be interpreted in accordance with the targets that the government is expected to achieve. These objectives and policy statement can be included as preamble to the Establishments Code. Therefore a preamble should be introduced to the Establishments Code.

Rules of behaviour

The Establishments Code specifically identifies rules and regulations that the officers should follow. Chapter XLVII gives fairly a sound interpretation. However it does not state the rational behind each rule. And also there is no employee participation at the law formation stage. In view of this situation rational behind each rule should be explained to each employee. Perhaps it would be impractical to codify these rationales in a piece of legislation. However an attempt should be taken to distribute a supplement or a separate note indicating what the Government expects from each rule. On the other hand the research revealed that certain rules are not reasonable in the present context. Thus policy makers should review the existing rules and their applicability in the modern context.
It may not be practical for all the Government employees to participate in formulating disciplinary policies. However ideas of employees can be called in advance and their views should be considered. On the other hand disciplinary decisions should be based on recommendations of a committee which consist members from the grass root level, i.e. employees, union members and departmental heads.

Penalties or sanctions.

Establishments Code categorizes punishments into two, i.e. major and minor punishments. It has also given powers to the disciplinary authority to decide the appropriate punishment. However it does not layout sufficient guide lines to decide the appropriateness of the punishment. Therefore rather than giving the disciplinary authority, a wide discretion on selecting the punishment, it would be useful if clear guide lines were given in deciding the punishment, i.e. severity of the offence, whether the employee is a first offender or whether he repeats the offence, the office that he hold, his past service record etc. If criteria and guidelines were given there won't be many complexities.

Communication and monitoring rule violation

None of the cases 1-50 had read the Establishments Code in whole, and as a result none had a sound knowledge about the Establishments Code. As a whole there had been no proper rule communication methods adopted among the institutions. Most of the
employees were not aware about the existence of certain rules. So much so that numerous trivial offences had been committed by certain officers unintentionally. The researcher is on the opinion that all institutional heads must take serious attention towards this aspect. Number of copies given to each institution should be increased promptly. At the same time Ministry of Public Administration should initiate measures to distribute leaflets and circulars explaining disciplinary guidelines in simple and in all three languages. It is of equally important to hold seminars periodically at institutional level, in order to refresh employees about disciplinary issues.

It was revealed from the research that the departmental heads have hardly any time to monitor rule violations. This may be true in most cases, especially in the case of Courts (which were the subject matter of this research) where the departmental head had to perform dual characters, i.e. as a judge and the chief administrative officer. No wonder he has hardly any time to devote for monitoring employee's work. If certain powers and authorities of disciplinary management are delegated to the Registrars, monitoring could be more regularized. On the other hand it was evident from the research that most of the rule violations are not noticed by the departmental heads. Simultaneously brother/sister employees are reluctant to give information about rule violation due to various reasons. Research findings revealed that the nature of the departmental heads do count a lot for this situation. Therefore Departmental Heads must get themselves adjusted to create a
sound backgrounds which encourage people to give information about misconducts. The researcher suggests that all new recruits as Departmental Heads should be given continuous training about administration and particularly about disciplinary management.

**Disciplinary Investigation.**

Under the exiting system there is no proper method of giving information about misconducts. Even information given verbally can be taken into consideration. However the reliability and validity of this information are very low and hardly give any clue to proceed against. Therefore it is important to have a standard written form to give information. Departmental heads should take all the attempts to secure the secrecy of this information.

Research finding revealed that most of the Departmental Heads take actions only if information was given in public (ie. Thorough mass media, Bribery commission). In most instances they ignore information given in camera. This practice should be done away with. Departmental Heads must take every attempt to find truth of the information given to him. Preliminary investigations are held mostly by the Departmental Heads themselves. Newly recruited judicial officers are not trained to hold these inquiries and as a result certain procedural defects occur during the course of the investigation. In order to
overcome this situation special training should necessarily be given to the Departmental Heads.

Establishments Code does not indicate any time period within which the preliminary investigation report should be submitted. Research findings revealed that Departmental Heads take two weeks to four months time period to send this report. This is an undue delay. Opatha (2002) says that within two weeks the report should be completed. Therefore it is important to fix a time period to send this report. This would be an effective measure of expediting proceedings.

Research findings revealed that in most of the cases charge sheets had to be amended due to the defects of drafting. When the charge sheet was amended cases get delayed unnecessarily. Thus a proper training should be given in drafting charge sheets. Also a second person should check the corrections of the draft before it is sent to the accused officer.

Establishments Code does not specify the qualifications of the inquiry panel (i.e.-tribunal of inquiry). The theory says that the inquiry panel should consist of specialist qualified in human resource management, law and management. Therefore it would be appropriate to state the essential qualification of the members of tribunal of inquiry.
Informal talk/Counselling

All the cases who participated in the research showed an anxiety to place their grievances to the Departmental Head. However even for minor offences Departmental Head has no option but to take disciplinary actions to the rule. However most of the problems could be solved if discretion was granted to the Departmental Heads to have informal talks and adopt remedial actions. In this attempt Departmental Heads should also be given training on employee counselling. Unless they are knowledgeable on psychology, no counseling can be done effectively.

The researcher found that most of the employees violate disciplinary rules due to traveling difficulties and other personal problems. Most of the employees had got remote station and as a results they undergo serious hardship when reporting to work. However changing of time schedules according to the necessities of the employees should not be done as it is adverse to the disciplinary control. However when formulating transfer policies authorities should be sensitive to these personal issues of the employees.

Progressive discipline

The researcher is of the view that progressive discipline is a suitable approach that can be adopted in the field of Government servants. Establishments Code does not consider the sequence of doing an offence but direct the authority to punish according to the severity.
No doubt severity of the offence should be considered in imposing punishment. But it is always better to follow a progressive penalty system. This would enhance employee satisfaction too.

**Review and renewal**

Provisions regarding the disciplinary management of the public officers have not been repealed for a long period of time except few amendments made to the procedure. No essential changes had been introduced to the system. The researcher believes that the system should be changed according to the social and economical necessities of the country.

Despite all the other factors employee's individual character stands ahead in shaping up discipline of an employee. Individual character has been generally agreed as one of the greatest motive powers in the world. The character of a person consists of all the qualities they have that combine to form their personality or atmosphere (Collins Birmingham University English Language Dictionary, 1987). Opatha, (2007) defines character as the aggregate of all the relatively persistent moral qualities he or she has that combines to form his / her real nature. Character may consist of values as well. Character is actually about a person's engagement in right behavior and the use of right words and the non-engagement in wrong behavior and wrong words. It can also be defined as a complex set
of relatively persistent qualities of the individual person, and generally has a positive connotation when used in discussion of moral education.

In an organization employees and employers character do count a lot. A good character possesses patience, responsibility, honesty, respect for others, determination, punctuality, courage, compassion, empathy, etc. A good character will automatically produce a disciplined worker. If he or she has self discipline in him / her there is actually no necessity to control him / her by rules or regulations. An employee with a good character will never engage in an undisciplined action under any circumstance. In an organization, not only the employee but also the employer i.e. supervisors, departmental heads should also posses a good character. If the immediate supervisor or the boss is having good virtues then his subordinates appreciate him and pay respect to him. They will also talk highly of him. In such a situation the manager himself become an example to others and make others to follow him.

In the above context, in addition to all other remedial measures character building of state officers and their departmental heads become very important. In the present context there is a constant need to develop people's individual character through a proper character development program both at individual level and organizational level.
Character development is a deliberate attempt to eradicate or alleviate vices from the person as much as possible. Vices are negative qualities which need to be eradicated or alleviated totally within a person. Ideally the extent to which vices are possessed by a particular person should be zero or minimum to have the highest level of good character. They include jealousy, greed, anger, stinginess, doubt, deception, corruption, retaliation etc. Any program set out for developing individual character should meet the classical ethical tests of reversibility and universibility. I.e. it should address the questions that 'would you want to be treated this way in a similar situation?' and 'would you want all persons to act this way in a similar situation?' Ideally a person who treats others morally expects to be treated by others morally. Also a person of good character wants all other persons to act morally in a similar situation.

Therefore in addition to all other attempts in disciplining employees, focusing towards the character development of them and their heads of the departments and supervisors would be the most successful, longstanding and costless solution.
7:3 Conclusion

This study was carried out to find out the effectiveness of the existing disciplinary management system used for the public sector. A theoretical framework suggested by a scholar in the field of Human Resource Management was used to evaluate the system and to measure its effectiveness.

Research findings revealed that only a handful of offences and rule violations of the public officers have been dealt under the proper procedure laid out in the Establishments Code. Majority of rule violations were remained unnoticed or perhaps neglected by the Departmental Heads. Most of the times, rule violators were sent back with a mere warning.

The existing system itself contained several weaknesses. Basically, system did not contain a policy statement which is an integral item of a proper system. Also most of the rule violations were not properly monitored. As a result minor rule violations were common among the employees and they were tolerant to the offenders. Therefore minor violations were repeatedly done by the employees. Sound disciplinary management techniques like employee counselling, progressive discipline were not included in the system.
In addition several other shortcomings were apparent in the existing procedure. The employees themselves were on the idea that the system is no longer applicable in the present context and it need changes. The researcher too believes that modern Human Resource Management techniques should be introduced to the existing system to make it more effective. Some of the recommendations have been suggested by the researcher herself in the latter part of the research.

As a whole the research revealed the fact that the existing disciplinary management is less effective as a disciplinary control mechanism. Therefore these findings will provide guidance to the relevant authorities to reform the system in a more effective and efficient manner.
References


Gouldner, A.(1954). *Patterns of Bureaucracy*, p170


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Appendices
APPENDIX I

DEFINITION OF OFFENCES CAUSED OR COMMITTED BY PUBLIC OFFICERS

(1) Offences committed by public officers may be broadly defined as follows, but this definition should not be treated as a comprehensive list of offences. It will also not preclude taking action against an officer for any other offence not covered by these definitions, but for which it is considered that an officer should be punished.

(2) Offences may be broadly categorized under the following heads:

Inefficiency,
Incompetence,
Negligence,
Lack of Integrity,
Improper Conduct (whether connected with an officer’s official duties or not), and Indiscipline.

Inefficiency may or may not arise from a lack of competence. It consists of failure due to indifference, inadverence or other defects on the part of an officer to discharge the duties expected of him to reasonable standards.

Incompetence arises from a lack of the intellectual, temperamental, physical or other qualities that an officer is presumed to possess or to have developed for the efficient discharge of his duties, considering his position, seniority, the level of responsibility at which he functions, his age, experience, the qualifications normally stipulated for recruitment to the post he holds, etc. It could be technical, professional or administrative incompetence, or incompetence in the handling of staff, labour, or other personal relationship in his office.

Negligence is a neglect of the duties entrusted to him and would cover such matters as errors and mistakes arising from a lack of care or diligence, failure to supervise programmes, staff, etc., to ensure that public funds are not wasted or public property damaged.

Lack of Integrity relates to acts or omissions arising from motives of improper personal gain, fraud, cheating, theft, forgery, dishonesty, concealment of the truth or portions of the truth in writing reports, suppression of documents or facts, bribery, the use of his official position or the exercise of his official functions for his own private advantage or the advantage of his friends or relatives; the use of public property or the services of subordinates for private purposes; acceptance of gifts or favours from members of the public or firms with whom an officer has official dealings or on whom he is in a position to bestow some present or future favour; any act which brings his private interest into real conflict with his official duties.
**Improper Conduct** when connected with official duties, relates to such matters as the betrayal of confidence enjoyed officially; acts of indiscretion in the place of work, or outside the place of work but in relation to an officer’s subordinates; speaking in public or publishing articles on matters in which the officer is prohibited from expressing opinions in public; engaging in political activities where he is prohibited from doing so; inciting his subordinates to disloyalty; doing anything that might seem to compromise his official position or any other act which demoralizes the Public Service, or brings the Public Service or the office he holds into disrepute; any act which appears to bring his private interest into conflict with his public duties even if the conflict is not in fact real. Improper conduct not connected with his official duties relates to such matters as habitual drunkenness, use of narcotic drugs, disorderly behavior in public places, immorality of a type that becomes a public scandal or any other act which brings the Public Service or the office he holds into disrepute.

**Indiscipline** relates to such matters as unpunctuality, refusal to carry out orders, rudeness whether to his superiors, subordinates or members of the public, drunkenness when on duty, use of narcotic drugs, leaving office without permission, etc.

Breaches of the Financial Regulations, the Establishments Code, or any Departmental Orders, Regulations, etc., are specific offences, which may also arise from Incompetence, Negligence or the Lack of Integrity.

**Examples:**

A law enforcement officer, and in certain circumstances an officer who fraternizes with a law-breaker or reputed law-breaker would be guilty of improper conduct.

An officer who has interests in a firm with whom he has official dealings would be guilty of improper conduct, even if in fact he gets no benefit out of it unless he has brought the fact to the notice of his superior officer.

An officer whose child obtains employment or an apprenticeship in a firm with which he has dealings in his official capacity, would be guilty of improper conduct, even though such employment was sought and obtained by that child on his own merits, unless notice of that fact has been given to his superior officer.

If any personal gain or advantage is obtained by any of the above acts the officer would be guilty of a lack of integrity. Benefits obtained for welfare or other society, or acts done under the guise or in the name of such a society could in certain circumstances amount to improper conduct or lack of integrity.

The seriousness of an offence must be judged not only by the act itself, but in relations to the office held by the person concerned, and the circumstances surrounding it.

All these categories of offences may be classed in one or another of Schedules A and B depending on their gravity (judged in the light of this section) and on the punishment that would seem appropriate if the offences are proved.

An officer may not be exculpated on the grounds that he did or omitted to do anything on the orders of his Minister unless he can furnish proof that he tendered the correct advice in writing to his Minister, but that his advice was overruled. This provision will have a special bearing on offences of the type described in the First Schedule.
The First Schedule of Offences Committed by Public Officers


(2) Act or cause to act in such manner as to bring the Democratic Socialist Republic of Sri Lanka into disrepute.

(3) Anti-government or terrorist or criminal offences.

(4) Bribery or Corruption.

(5) Being drunk or smelling of liquor within duty hours or within Government premises.

(6) Use or be in possession of narcotic drugs within duty hours or within Government premises.

(7) Misappropriate or cause another to misappropriate public funds.

(8) Misappropriate government resources or cause such misappropriation or cause destruction or depreciation of government resources willfully or negligently.

(9) Act or cause to act negligently or inadvertently or willfully in such manner as to harm government interests.

(10) Act in such manner as to bring the public service into disrepute.

(11) Divulge information that may harm the State, the State Service or other State Institution or make available or cause to make available State documents or copies thereof to outside parties without the permission of an appropriate authority.

(12) Alter, distort, destroy or fudge State documents.

(13) Conduct oneself or act in such manner as to obstruct a public officer in the discharge of his duties, or insult, or cause or threaten to cause bodily harm to a public officer.

(14) Refuse to carry out lawful orders given by a senior officer or insubordination.

(15) Any violation of provisions of the Establishments Code, Financial Regulations, Public Service Commission Circulars, Public Administration Circulars, Treasury Circulars, Departmental Circulars, Departmental Handbooks or Manuals or willfully, inadvertently or negligently act in circumvention of such provisions.

(16) Aid and abet, or cause to commit the above offences.
The Second Schedule of Offences Committed by Public Officers

Offences, though not falling within the First Schedule above, are caused owing to the inefficiency, incompetence, inadvertence, lack of integrity, improper negligence and indiscipline of an officer.
MINISTRY OF JUSTICE AND LAW REFORMS

விழாவின் மூலம் புரோஸ்தோனை - முன்னேற்ற. III வசதி. சுற்று-தகவல்

02. கான்வல் வழமை முன்னேற்றம் கேள்வி செயல் செய்ய உதவியும் உதவி முன்னேற்றம் கேள்வியை பிடித்து பயர்பெறுவதற்கு என்றால் என்றாலே சுற்று-தகவல் நூற்றூர் எண்ணை அடையத் தவறுமே, புலவர் கான்வல் 5 முதல் பதிவுக்கு அலை காட்டு அல்ல என்று ஆட்டுதல் குறுகிய நூற்றூர் எண்ணை அடை. 

விளக்கம்: விளக்கின் மூலம் புரோஸ்தோனை செய்ய.
ANNEXURE 5

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02. PR/374/05 ने 27/06 के पत्र के तहत अनुसार 80.52 फीट चौक का निर्माण किया गया।

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2. ამ პირობით აღჭურვილ ადამიანი აღჭურვილ ადამიანური მომსახურება.
3. ეს მიზნათ რაცხოვალები მომსახურება წარმოადგენს 2 ამ.

თოვლით X1.VIII ცხოვრების 5 ცხ CU. რომელიც გამო ჰქონდა ცხოვ.

ვინა რომ მონაწილე წელზე არ შეიტანე.

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मुख्य विषय: जीर्ण वपूरण संबंधी वेबसाइट विस्तार

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ANNEXURE 6

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Ministry No: 111

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I. მათემატიკი:

I. 2004.05.20 წინ კი რუტერი ჯენსი ფაქტორი გამორჩეულ ვითარო და მიუთითებელ ადამიანთანთ სიმპათია. (ე.წ. რუტერ ჯენი მათემატიკი, აღქმა ჯენი, რომ ამ დღე/პერიოდში, თანამდებობა 01.)

II. ჯანღური ჯანღური, (ჯინჯალ ჯანღური, საქართველო რესპუბლიკა, ჯანღური)

04. පිබේ කොහොමද දැන් සිටි බීඟු රජයේ ප්‍රශ්නයට උස්ථාන ක්‍රමයන් තුල පුළුල් පැලේ තුන්ට කියන්නේ එක්ක සිය පියෝට පැයෙන්නේ (තැන්පත් නිසා වාස) වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳා.

05. පියෝටු කොහොමද XLVIII ක්ෂාපය 15.7 වන 15.8 වන පියෝටුක් නිසදාය කොහොමද ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳ වේදිකාවන් ප්‍රශ්නය පැළබඳා.

06. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන්

07. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන් ප්‍රශ්නය වේදිකාවන්

නමුත්

1. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
2. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
3. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
4. පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්

විශේෂ

- පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
- පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
- පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
- පියෝටු කොහොමද ප්‍රශ්නය වේදිකාවන්
APPENDIX 2

Notes for the Guidance of Tribunals of Inquiry

1. The date and time of the Inquiry, the place at which it is held, the name of the officer presenting the case for the prosecution, name of the accused officer, and the name of the person appearing for the defence should be entered on the record at the commencement of each sitting.

2. The evidence of witnesses should be given in the language in which they are most familiar. If the Tribunal or the defence are not familiar with it, the evidence should be translated. The evidence need not be given on oath.

3. All evidence should be recorded in direct speech as a continuous narrative and not in the form of question and answer. (e.g. "I then saw him leaving the office." not "Witness states that he then saw him leaving the office.") However, if on particular points a record in question and answer form is necessary in order to put the meaning of what is being recorded beyond doubt, it may be so recorded.

4. Where the evidence of a witness contradicts the evidence given by him at the preliminary investigation, he should be requested to explain the contradiction. The explanation of the witness, if any, should be recorded. If he states that he is unable to offer an explanation such statement should also be recorded. If the witness remains silent when so questioned, the fact should be recorded within square brackets. Here the Tribunal should pay attention to Section 20 of Chapter XLVIII of this Code.

5. If a witness refuses to give an answer, the question should be recorded and the observation (the witness does not answer) recorded thus in square brackets.

6. Any other observations arising out of the evidence being recorded, and which the Tribunal wishes to record, should be recorded in the same manner in square brackets e.g. (At this stage the defence objects to my asking him the question “Were you aware that James had been to jail?” I overrule the objection after hearing the defence.)

7. Similarly any other observations pertinent to the Inquiry should be recorded at the stage at which they arise, and in the body of the record e.g. (At this stage the witness turns boisterous and I/We adjourn the Inquiry for half an hour.)

8. After the evidence of the prosecution witnesses has been led, the accused officer should be asked whether he is summoning any witnesses in his defence and his answer recorded. The evidence of the defence witnesses, if any, should then be recorded. If witnesses for the prosecution are re-examined or new witnesses are summoned after the defence has led its evidence, the defence will be permitted the same facility.
9. At the conclusion of a witness' evidence he should be asked to read over his statement and sign it with the endorsement "read and accepted as correct". The Tribunal should also sign the statement, if the evidence is recorded in a language other than that in which he gave it. The Tribunal should read over and explain to the witness the evidence as recorded by him and sign the statement with the endorsement "read and explained by me." If the witness denies having made any statement as recorded, such denial should be recorded within square brackets together with the comments of the Tribunal, immediately below evidence recorded and before the witness is asked to subscribe his signature to it.

10. The questions put to witness should be simple and so framed as to obtain from the witness, as nearly as may be, in a chronological sequence, a narrative of all the relevant facts which he has witnessed, i.e., which he has in any manner directly seen or otherwise directly observed or perceived. A general request to a witness to tell what he knows or to state the facts of the case is, as a rule, not to be permitted because it affords an opening for a prepared story.

11. A witness should not be permitted to state in evidence what another person told him, unless the statement of that person has been recorded or will be recorded in the course of the inquiry.

12. It is the duty of the Tribunal to ascertain facts of the case. The Tribunal may recall witnesses already heard to get at the truth of the matter and should be in a position at the end of the inquiry to state clearly whether the officer concerned is guilty or not guilty of the charge or charges made against him.

13. Productions at an Inquiry for the prosecution should be marked P1, P2, etc., (in the order in which they are produced) and productions of the defence marked D1, D2, etc., and initialled by the Tribunal.

14. The Tribunal in arriving at its conclusions should consider a fact to be proved, if after considering all available evidence, it believes such a fact to exist or considers its existence so probable that a prudent man would in the circumstances act on the presumption that it exists. It should consider a fact disproved if after considering all the available evidence it is satisfied that the fact does not exist or considers its non-existence so probable that a prudent man would in the circumstances act on the presumption that it does not exist. A fact is said not to be proved, when it is neither proved nor disproved.

15. The conclusions of the Tribunal should always be based on facts established in evidence given before it and not on conjectures. Inferences may, however, be drawn where they obviously arise from the facts of the case.