

# **HUMAN RIGHTS ABUSES IN TAMIL AREAS OF SRI LANKA**

BY  
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DEPARTMENT OF POLITICAL SCIENCE



**A THESIS**

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Thesis


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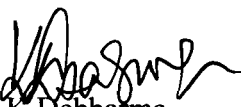
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I, *Haans J Freddy*, hereby declare that the subject matter of this thesis is the record of the work done by me. The contents of this thesis did not form the basis of the award of any previous degree to me or to the best of my knowledge to anybody else, and that the thesis has not been submitted by me for any research degree in any other University/Institute.


This is being submitted to the North-Eastern Hill University for the degree of Doctor of Philosophy in the Department of Political Science.



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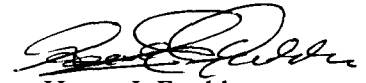
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## Abbreviations

AI	Amnesty International
B-C Pact	Bandaranaike-Chevanayakam Pact
CFA	Ceasefire Agreement
CHA	Consortium of Humanitarian Agencies
COI	Commission of Enquiry
CP	Communist Party
CPA	Centre for Policy Alternatives
CPC	Criminal Procedure Code
DDCs	District Development Councils
DMK	Dravida Munnetra Khazhagam
DMO	District Medical Officer
EPDP	Eelam Peoples Democratic Party
EPRLF	Eelam Peoples Revolutionary Liberation Front
ER	Emergency Regulations
EROS	Eelam Revolutionary Organization of Students
FP	Federal Party
GOSL	Government of Sri Lanka
HHR	Home for Human Rights
HRCSL	Human Rights Commission of Sri Lanka
HRINGOs	Human Rights International Non-Governmental Organizations
HRNGOs	Human Rights Non-Governmental Organizations
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IIGEP	International Independent Group of Eminent Persons
INFORM	Information Monitor
IPKF	Indian Peace Keeping Force
JMO	Judicial Medical Officer
JVP	Janatha Vaimukthi Peramuna
LSSP	Lanka Sama Samaja Party
LST	Law and Society Trust
LTTE	Liberation Tigers of Tamil Eelam
MDMK	Marumalarchi Dravida Munnetra Khazhagam
MEP	Mahajana Eksath Peramuna

NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
PLOTE	Peoples Liberation Organization of Tamil Eelam
PMK	Pattali Makkal Katchi
PRIO	Peace Research Institute, Oslo
PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
SLFP	Sri Lanka Freedom Party
STF	Special Task Force
TC	Tamil Congress
TELO	Tamil Eelam Liberation Organization
TMD	Transport Monitoring Division
TNA	Tamil National Alliance
TNT	Tamil New Tigers
TSF	Tamil Students Federation
TULF	Tamil United Liberation Front
UDHR	Universal Declaration of Human Rights
UF	United Front
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Commission
UNICEF	United Nations International Emergency Children's Fund
UNP	United National Party
UTHR(J)	University Teachers for Human Rights (Jaffna)

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## **CHAPTER - I**

### **INTRODUCTION: CONCEPT OF HUMAN RIGHTS**

## CHAPTER - I

### INTRODUCTION: CONCEPT OF HUMAN RIGHTS

The world today, has accepted the notion that all human beings are entitled to and are empowered for a dignified existence. It is a common phenomenon that human beings everywhere, demand the realization of diverse values to ensure their individual and collective well-being. However, these demands or rights are denied through exploitation, oppression, persecution, etc, in many countries of the world.<sup>1</sup> Human rights gained attention at the international level following the Second World War, where millions of people lost their lives. Horrified by the devastation of life caused by the Second World War, members of the United Nations (UN) took a pledge to take measures for the achievement of universal respect for and observance of human rights and fundamental freedoms for all.<sup>2</sup>

The term 'human rights' which is used since World War II, gained importance in contemporary debates and became a universal phenomenon. After the adoption of the Universal Declaration of Human Rights (UDHR) on December 10, 1948 by the United Nations, it was seen by many as a sign of optimism for the better protection, promotion and enforcement of human rights. However, 50 years since the adoption of the Universal Declaration of Human Rights, it has been reported that human rights abuses has not decreased. The world is filled with examples of violations of basic rights such as

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<sup>1</sup> Weston, Burns, H. (1984) 'Human Rights', *Human Rights Quarterly*, 6 (3): 257-83.

<sup>2</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. New York: The MacMillan Company and The Free Press. p. 541.

ensorship, discrimination, political imprisonment, torture, slavery, disappearances, genocide, extrajudicial killings, arbitrary arrests and killings, poverty, etc. The rights of women and children are also ignored in many different ways.<sup>3</sup>

### **Definition of Human Rights**

There are various contemporary definitions of human rights. The UN defined human rights as those rights which are inherent in our state of nature and without which we cannot live as human beings.<sup>4</sup> Human rights belong to every person and do not depend on the specifics of the individual or the relationship between the right-holder and the right-guarantor.<sup>5</sup> Human rights are the rights that everyone has equally by virtue of their humanity. It is grounded in an appeal to our human nature. Christian Bay defined human rights as any claims that ought to have legal and moral protection to make sure that basic needs will be met.<sup>6</sup> Human rights can be defined as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family. Shree P. P. Rao said human rights are the inherent dignity and inalienable rights of all members of the human family recognizing them as the foundation of freedom, justice and peace in the world. For D. D. Raphael, human rights in a general sense denote the rights of humans. However, in a more specific sense, human rights constitute those rights which one has precisely because of being a human.<sup>7</sup> In the words of Michael Freedon, a human right is a conceptual device, expressed in linguistic form that

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<sup>3</sup> O' Byrne, Darren J. (2005) *Human Rights: An Introduction*. Singapore: Pearson Education. p. 5.

<sup>4</sup> Mishra, Pramod (2000) *Human Rights Global Issues*. Delhi: Kalpaz Publications. p. 4.

<sup>5</sup> Coicaud, Jean Marc, Doyle, Micheal, W. and Marie, Anne (eds.) (2003) *The Globalization of Human Rights*. New York: United Nations University Press. p. 25.

<sup>6</sup> Vincent, R. J. (1986) *Human Rights and International Relations*. Cambridge: Cambridge University Press. pp. 12-14.

<sup>7</sup> Rajawat, Mamta (2001) *Burning Issues of Human Rights*. Delhi: Kalpaz Publications. pp. 33-47.

assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being that is intended to serve as a protective capsule for those attributes; and that appeals for a deliberate action to ensure such a protection.<sup>8</sup> Scot Davidson defined human rights as closely connected with the protection of individuals from the exercise of state government or authority in certain areas of their lives. It is also directed towards the creation of social conditions by the state in which individuals can develop their fullest potential.<sup>9</sup> David Selby defined human rights as those rights which pertain to all persons and are possessed by every individual because they are human.<sup>10</sup> In the words of Cranston, human rights are forms of moral rights and they differ from other rights in being the rights of all human beings at all times and in all situations. Susan Moller Okin defined human rights as a claim to something of crucial importance for human life.<sup>11</sup>

In the context of the present study, human rights can be defined as those rights without which human beings cannot live with dignity, freedom (political, economic, social and cultural) and justice in any nation or state regardless of colour, place of birth, ethnicity, race, religion or sex or any other such considerations. These rights are inherent in human nature and therefore guaranteed and protected by the state without distinction of any sort. When such rights are denied to an individual, whether by the state or non-state actors, it constitutes human rights violations. When large scale violations of such rights occur, it constitutes human rights abuses. Human rights abuses in this context could refer to large-

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<sup>8</sup> Biswal, Tapan (2006) *Human Rights Gender and Environment*. New Delhi: Viva Books Private Limited. p. 44.

<sup>9</sup> *Ibid*, p.44.

<sup>10</sup> Kumar, Arun Palia (1995) *National Human Rights Commission of India*. New Delhi: Atlantic Publishers and Distributors. p. 10.

<sup>11</sup> Kumar, Jawahar, C. (ed.) (1995) *Human Rights Issues and Perspectives*. New Delhi: Regency Publications. p. 10.

scale violations committed repeatedly by state or non-state actors to any community or group of people in their everyday lives. Further, human rights abuses occur when arbitrary arrests, killings, torture, rape, repressive legislations, discrimination, etc., are carried out systematically against any community or sections of society by the state or non-state actors with the objective of suppressing a particular group's aspiration or demand for equal standard of living vis-à-vis other groups in that country. It is in this context that the concept of human rights and its abuses have been examined with particular reference to the Sri Lankan situation mainly to understand whether these rights as mentioned above are guaranteed for the common citizens particularly in the Tamil areas of Sri Lanka.

Further, the concept of human rights can be understood as universal, incontrovertible and subjective. Human rights are universal since they belong to every human being without any distinction of ethnicity, race, gender, religion, or type of government. It is incontrovertible, that is, they are absolute and innate. Human rights are subjective as they are properties of individuals who possess them because of their capacity for rationality, agency and autonomy.<sup>12</sup>

Today, the concept of human rights includes civil and political rights or public liberties, economic, social and cultural needs particularly with regard to development, the environment and self-determination. As said, it is the state's responsibility to protect and promote human rights. It is also the duty of the state to create conditions for peaceful existence which enable human rights to be enjoyed by every individual in that state. But with the increasing risk of violation of human rights resulting from the activities of the state

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<sup>12</sup> O' Byrne, Darren, J. (2005) *Human Rights: An Introduction*. n. 3. p. 27.

as well as non-state actors, international law, whether in its universal or regional manifestation, also guarantees and promotes the enforcement and observance of human rights.<sup>13</sup>

### **Origins of Human Rights**

The term 'human rights' came into usage after the Second World War particularly with the founding of the United Nations in 1945. It replaced the phrase natural rights because it became a matter of great controversy and the later phrase the rights of man was not understood universally to include the rights of women.<sup>14</sup>

It is common in political philosophy and among scholars to suggest that the antecedents of contemporary rights and liberties are of ancient origin.<sup>15</sup> Many trace the historical origins of human rights to ancient Greece and Rome, where it is closely tied to the pre modern natural law doctrines of Greek Stoicism. The Roman jurist Ulpian declared that according to the law of nature, all men are equal and born free. The present concept of human rights can also be identified with early Christian philosophy or with the advent of medieval constitutionalism. For instance, Thomas Aquinas in the Thirteenth Century revived and expounded the classical doctrine that human dignity sets moral limits to political rule.<sup>16</sup>

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<sup>13</sup> Symonides, Jansuz, (ed.) (2002) *Human Rights, Concepts and Standards*. New Delhi: Rawat Publications. pp. 347-49.

<sup>14</sup> Weston, Burns, H. (1984) 'Human Rights', *Human Rights Quarterly*, n. 1. p. 257-58.

<sup>15</sup> Claude, Richard, P. (ed.) (1976) *Comparative Human Rights*. London: John Hopkins University Press. p. 3

<sup>16</sup> *Ibid*, p. 3

Some writers traced the origin of the concept of human rights back to the Dutch jurist Hugo Grotius (1583-1645) or even to earlier thinkers. But the first fully elaborated doctrine of human rights seemed to have appeared in the form of natural rights in the political writings of Thomas Hobbes called the *Leviathan*. The key to Thomas Hobbes' political philosophy is his doctrine of the state of nature where he describes the pre-political situation of the human condition. According to Thomas Hobbes, all men are equal and each is dominated by the desire for self preservation.<sup>17</sup> Thomas Hobbes in his *Leviathan* stated that all individuals possess simple freedoms and liberties which are correlated with duties and obligations on the part of others. Thomas Hobbes said that the right of nature (natural rights) is defined as the right to self preservation which is immediately contrasted with the law of nature (natural law) where the law forbids individuals from doing anything destructive of their lives or to omit the means of self-preservation.<sup>18</sup>

For the idea of human (natural) rights to take hold as general social need and reality, certain basic changes in the beliefs and practices of society had to take place. These basic changes in beliefs and practices began from the Thirteenth Century and took place till the decline of feudalism. Further, when resistance to religious intolerance and political economic bondage began, the long transition to liberal notions of freedom and equality, particularly in relation to the use and ownership of property were the foundations of the modern concept of human rights. The writings of Thomas Aquinas (1224-1274) *Summa Theologica* (Summary of Theology), Hugo Grotius (1583-1645) *De jure belli ac pacis* (On

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<sup>17</sup> Lipset, Seymour Martin (ed.) (1995) *The Encyclopedia of Democracy*. London: Routledge. p. 573.

<sup>18</sup> Curran, Eleanor (2001) 'Hobbes's Theory of Rights: A Modern Interest Theory', *The Journal of Ethics*, 6(1): 63-64.

the Laws of War and Peace), and documents such as the Magna Carta (1215), the Petition of Rights (1628) and the English Bill of Rights (1689) all reflect this transition.<sup>19</sup>

Doctrines of natural law and natural rights suggested that men were entitled to make claims for the protection of their life, liberty and property by virtue of their common humanity.<sup>20</sup> Natural rights are the rights that all men possess, because of which they may be obligated to act, or to refrain from acting in certain ways. According to Thomas Hobbes and John Locke there are many natural rights, but all of them are inferences from one original right, the right of an individual to preserve his life. What is intrinsically right is no longer what is required by, or what partakes of, the good life; it is what is subjectively regarded by the individual as necessary to his security (David Sills, 1968).<sup>21</sup> John Locke stated that, “Man being born with a little to perfect freedom and to an uncontrolled enjoyment of all the rights and privileges of law of nature, equally with any other man hath by nature not only to preserve his property, his life, liberty and estate against the injuries and attempts of other men, but to judge and punish the breaches of law in others”.<sup>22</sup> John Locke further said that sovereignty pertains not to the monarch but of the people as a whole, and that government is an instrument for securing the lives, the property and the well-being of the governed without enslaving them in anyway. Government is not their

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<sup>19</sup> Goetz, Philip, W. (ed.) (1989) *The New Encyclopedia Britannica*, Vol. VI. Chicago: The University of Chicago Press. p. 137.

<sup>20</sup> Laslett, Peter (ed.) (1975) *Philosophy, Politics and Society*. Great Britain: A Blackwell Paperback Publication. p. 35.

<sup>21</sup> Sills, David, L. (ed.) (1968) *International Encyclopedia of Social Sciences*. n. 2. pp. 85-86.

<sup>22</sup> Joshi, S. C. (ed.) (2006) *Human Rights, Concepts, Issues and Laws*. New Delhi: Akansha Publishing House. p. 16.

master; it is created by the people voluntarily and maintained by them to secure their own good.<sup>23</sup>

The concept of natural law which propounded the philosophy of law asserted that positive law ought to be subordinated to the natural law. It was proclaimed that law is an expression of the will of the community. All citizens have a right to concur, either personally or through their representatives, in its formation. It should be the same for all whether it protects or punishes. No man should be accused, arrested or held in confinement, except in cases determined by the law, and according to the forms it has prescribed.<sup>24</sup>

Natural law began with the Roman idea of a universal system of laws, which is not dependent merely on Stoic Cosmopolitanism, but also on the earlier Greek discovery of the idea of nature. The Stoic doctrine reflected in the Greek period, the Hellenization of much of the world by Alexander the Great, and in the Roman period the imperial integration of diverse cultures. The Stoic ideal of living agreeably to nature had an external and an internal aspect from the individual point of view. It believed that there was a natural order in the world at large, governed by reason and that it benefited individuals to discover and live in conformity with this order. Internally the individual was to subordinate will to reason in order to live a moral life.

Natural law according to Cicero was universal and unchanging. Cicero's conception of the equality of man has been located as the beginning of a theory of human nature and

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<sup>23</sup> Robertson, A. H. and Merrills, J. G. (2005) *Human Rights in the World*. Delhi: Universal Law Publishing Co. Pvt. Ltd. pp. 4-5.

<sup>24</sup> Sharma, Gokulesh (1998) *Human Rights and Social Justice*. New Delhi: Deep and Deep Publications. p.3.

society of which the liberty, equality and fraternity of the French Revolution is only the present day expression.<sup>25</sup> The Stoics said that nature provided the best guidance for people's behaviour and that people should do their best to devise an ethical and moral system based on nature. The Stoics argued that because nature had given all individual human beings the capacity to reason, all individuals have the obligation to treat one another with respect. Slave owner and slave were equal in the Stoics eyes. The idea that all mankind has the same rights is the beginning of modern theories of human rights.

After the fall of the Roman Empire, ethical philosophy was overshadowed by discussions of Christian morality and ethics. The idea of rights was picked up again by philosophers in early modern Europe. Hugo Grotius, the Dutch Philosopher, wrote "*De Jure Belli ac Pacis*" (On the Laws of War and Peace, 1625), in which he carried forward the Stoic idea of natural law based on reason. Before Hugo Grotius, an English legal tradition had developed arguing that all men had certain rights vis-à-vis the government. This tradition began with the Magna Carta (Great Charter), which King John I was forced to sign in 1215. The Magna Carta stated that Englishmen had certain basic rights which even the King could not violate: no free man shall be taken or imprisoned, or outlawed, or exiled, or in any way destroyed except by the lawful judgment of his peers or by the law of the land. These English rights were expanded by the Petition of Rights (1628), and the English Bill of Rights (1689).<sup>26</sup>

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<sup>25</sup> Vincent, R. J. (1986) *Human Rights and International Relations*. n. 6. pp. 20-21.

<sup>26</sup> Lewis, James, R. and Skutsch, Carl (2001) *The Encyclopedia of Human Rights*. New York: Sharpe Reference. pp. 748-49.

In his two treatises on *Civil Government*, John Locke wrote a theory of human rights based on natural law. John Locke like the Stoics argued that all people have reason; he further added that human being's reason should tell them that they should not harm others because all human beings were created by the same divine force, and therefore shared certain rights. According to John Locke these rights were right to life, liberty and property.<sup>27</sup> John Locke imagined the existence of human beings in a state of nature in which men and women were in a state of freedom, able to determine their actions and also in a state of equality in the sense that no one was subjected to the will or authority of another. In practice, natural rights theory was the philosophical impetus for the wave of revolt against absolutism during the late eighteenth century. It is seen in the French Declaration of the Rights of Man, the American Declaration of Independence, and later in the Constitutions of numerous states created after liberation from colonial power and still later in the principal of human rights document of the United Nations, the Universal Declaration of Human Rights. Thus, natural rights theory made an important contribution to the development of human rights. It identified human freedom and equality from which other human rights are derived. However, natural rights became unpopular during the Nineteenth and Twentieth centuries and were criticized by legal scholars and philosophers.<sup>28</sup> Jeremy Bentham was the most notable among those who criticized natural rights. Jeremy Bentham, the founder of the philosophy of utilitarianism, said that the doctrine of natural rights was speculative in nature and therefore, it was nonsense upon stilts for him. According to Jeremy Bentham, rights were determined from law and the people. To him it was the people who made laws which later became rights. On the

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<sup>27</sup> *Ibid*, p. 749.

<sup>28</sup> Rajawat, Mamta (2001) *Burning Issues of Human Rights*. n. 7. pp. 37-38.

contrary, natural law compels a man on the dictates of his conscience, to take up arms against any law which he may dislike. To this Bentham asked, what sort of government will survive in such sort of opposition to the laws made? According to him, it is the principle of utility which promotes the greatest possible number of people that affords the only clue to guide a man.

### **Modern Concept and Universalization of Human Rights**

The aftermath of the Second World War brought about a revival of the natural rights theory.<sup>29</sup> Until 1945, international protection of individual human rights was confined to treaties abolishing slave trade, the laws of war and the minority rights which were concluded after the Treaty of Versailles (June 28, 1919). It was after 1945, that the rights of all human individuals have come under the protection of international law. Immediately after the Second World War, the rules of state behavior and rights pertaining to individuals within states were rewritten in authoritative international documents such as the United Nations Charter of the Human Rights 1945; the Universal Declaration of Human Rights 1948; the Genocide Convention of 1948; the revision of the Geneva Conventions in 1949; the European Convention on Human Rights 1950; and the United Nations Educational, Scientific and Cultural Organizations 1945. All these documents arose with the moral impulse to rebuild public morality after the Second World War. The United Nations Charter of the Human Rights is addressed to states as moral actors, while the Universal Declaration of Human Rights (UDHR) addresses the individual human.<sup>30</sup>

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<sup>29</sup> *Ibid*, pp. 42-43.

<sup>30</sup> Patil, V. T. (2001) *Human Rights, Third Millennium Vision*. Delhi: Authors Press. pp.3-5.

The Charter of the United Nations, signed at San Francisco on June 26, 1945, was a document with its roots in the past and possibilities for the future that could only be imagined. It represented the historical development on mankind's social organization. Its provisions were based largely on past experience and found substantial if not exact expression in earlier instruments. The Charter was a commitment to purposes and principles, the realization of which in the light of the changing world conditions might require substantial adaptation of institutional and procedural arrangements. It is important to note that the Charter not only embodied limitations on a state's freedom of action, it also made provisions for the development of human rights through each nation's Constitution. Thus, the Charter<sup>31</sup> provided a Constitutional basis for achieving international peace, security and well-being.

The Preamble of the Charter of the United Nations (UN) states:

“We the peoples of the United Nations determined:  
to save the succeeding generations from the scourge of war, which twice  
in our lifetime has brought untold sorrow to mankind, and  
to reaffirm faith in fundamental human rights, in the dignity and worth of  
the human person in the equal rights of men and women and of nations  
large and small, and  
to establish conditions under which justice and respect for the obligations  
arising from treaties and other sources of international law can be  
maintained and  
to promote social progress and better standards of life in larger  
freedom...”<sup>32</sup>

The clauses concerning human rights in the Charter provide the foundation for an impetus to further implement the protection and promotion of human rights. In the

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<sup>31</sup> Goodrich, L. M., Hambro, Edvard and Simons, Anne Patricia (1969) *Charter of the United Nations, Commentary and Documents*. New York: Colombia University Press. p. 1.

<sup>32</sup> *Ibid*, p. 19.

Preamble, the members reaffirmed their faith in fundamental human rights and in the equal rights of men and women. Article 1 of the United Nations Charter states that the purposes of the United Nations is to include co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, colour, language or religion. Article 55, states that the United Nations shall promote (a) higher standards of living, full employment, (b) conditions of economic and social progress and development, and (c) universal respect for and observance of human rights and fundamental freedoms for all. Article 56 provides that: all members pledge themselves to take joint and separate action in co-operation with the organization and for the achievement of the purposes set forth in Article 55.<sup>33</sup> According to Article 62, the Economic and Social Council (ECOSOC) was empowered to make recommendations on its own initiative, with respect to international economic, social and other humanitarian matters.<sup>34</sup> The basic objectives of the trusteeship system (Article 76 of UN Charter), in accordance with the purposes of the United Nations as laid down in Article 1 of the Charter, shall be to further international peace and security; to promote political, economic, social and educational advancement of the inhabitants of the trust territories and their progressive development towards self-government or independence; to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition for the interdependence of the peoples of the world; and to ensure equal treatment in social, economic, and commercial matters without distinction of any kind.<sup>35</sup>

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<sup>33</sup> Brownlie, Ian (1973) *Principles of Public International Law*. New York: Oxford University Press. pp. 569-70.

<sup>34</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. n. 2. p. 412.

<sup>35</sup> *Ibid*, p. 466.

In this background, the emergence of the UDHR in 1948, International Covenants, Conventions and treaties of human rights became very important for the protection and promotion of human rights since 1945.<sup>36</sup>

### **The Universal Declaration of Human Rights (UDHR)**

It was more than fifty years ago, that the international community resolved to make a historic commitment to enshrine the fundamental rights of the individuals for living in any part of the world. The commitment came in the form of a Universal Declaration of Human Rights (UDHR) adopted by the member states of the United Nations General Assembly on December 10, 1948.<sup>37</sup> The declaration outlined a common standard of achievement for the future of human rights and has become the cornerstone of human rights. However, the UDHR is not a binding treaty, but rather a declaration of principles of human rights.

The UDHR which was adopted by the United Nations on December 10, 1948,<sup>38</sup> which contains 30 Articles, specifies and unequivocally affirms, among others the following generally agreed upon basic rights: right to life, liberty, and security of a person (Article. 3); the right not to be subjected to torture or to cruel inhuman or degrading treatment or punishment (Article. 5); the right to equal protection of the law (Article. 7); the right not to be subjected to arbitrary arrest, detention or exile (Article. 9); the right to a fair and public trial by an independent and impartial tribunal (Article. 10); the right to freedom of thought, conscience and religion (Article. 18); the right to freedom of opinion

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<sup>36</sup> Nayar, Kuldip (2001) 'The United Nations and Human Rights', *World Focus*, 22(1): 19.

<sup>37</sup> Balu, A. (2001) 'Human Rights and The United Nations', *World Focus*, 22(1): 7.

<sup>38</sup> Paul, Seighart (1983) *The International Law of Human Rights*. New York: Oxford University Press. p. 24.



and expression (Article. 19); the right to freedom of peaceful assembly (Article. 20); the right to work, equal pay for equal work (Article. 23); the right to a standard of living adequate for health and well being... including food, clothing, housing and medical care (Article. 25); the right to education (Article. 26); and the right to a social and international order in which the rights set forth in this declaration can be fully realized (Article. 28).<sup>39</sup> While Article 29 deals with the duties and limitations of individuals in the exercise of rights and freedoms, Article 30 makes provisions for protection against human rights abuses.

Further, on assumption that the UDHR would not impose sufficient binding obligations, the UN Commission on Human Rights drafted the Covenants on human rights designed to become legally binding on the UN's member states. The two Covenants, International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were presented to the United Nations General Assembly in 1954. However, it took a further twelve years before the United Nations General Assembly adopted these Covenants in 1966. The ICCPR has 27 Articles defining a variety of rights and freedoms, and imposing in Article 2 an absolute and immediate obligation on each of the state parties to respect and ensure these rights to all individuals within its territories and subject to its jurisdiction. The ICESCR which was also adopted by the United Nations General Assembly in 1954 has 31 Articles. Article 2 of the ICESCR provides that the States which are party to the covenant shall undertake to

<sup>39</sup> Johansen, Robert, C. (1983) 'Human Rights in the 1980s: Revolutionary Growth or Unanticipated Erosion?', *World Politics*, 35(2): 228-29.

ensure the equal rights of men and women for the enjoyment of all economic, social and cultural rights put forth in the Covenant.<sup>40</sup>

According to the ICCPR it is the responsibility of all states to ensure the life, liberty and security of its citizens. It shall also be the duty of the state to guarantee that no one is subjected to arbitrary arrest and detention or to torture and that everyone is entitled to a fair trial. Everyone has the right to freedom of thought, conscience, religion and freedom of expression. Under the ICESCR, all governments are expected to progressively improve the living conditions of their citizens, they should make efforts to guarantee the right to food, clothing, housing, medical care and protect the family by ensuring the right to social security, education and employment. They are to promote these rights without discrimination of any kind.<sup>41</sup>

The most visible trend in the development of human rights has been seen through the increased number and range of treaties which elucidate or add to the principles of the UDHR. Of these treaties, the most important are the International on Convention Economic, Social and Cultural Rights (ICESCR) and the International Convention on Civil and Political Rights (ICCPR), These are supplemented by a vast number of more specific instruments such as the Convention Against Torture and other cruel inhuman or degrading treatment or punishment; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Rights of the Child; and regional Conventions such as the European Convention on Human rights 1953, the American Convention on Human

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<sup>40</sup> Paul, Seighart (1983) *The International Law of Human Rights*. n. 38. pp. 24-26.

<sup>41</sup> United Nations High Commissioner for Refugees (2005) *Human Rights: The New Consensus*. London: The Regency Press. pp. 11-13.

Rights in 1958, and the Charter on Human Rights and Peoples Rights in 1983.<sup>42</sup> A brief discussion of the ICESCR and the ICCPR are made in the following passages to provide a better understanding of the two Covenants.

### **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Economic, Social and Cultural rights was adopted by the United Nations General Assembly on December 16, 1966, and came into force on January 3, 1976. The Preamble to the Covenant states that state parties to the Covenant, in accordance with the principles proclaimed in the Charter of the United Nations, should recognize the inherent dignity and of the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice, and peace in the world. Article 1 of the ICESCR states that all peoples have the right of self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural developments.<sup>43</sup>

The Covenant on Economic, Social, and Cultural Rights contains various Articles which provide recognition for the right to work (Article. 6), the right of everyone to social security (Article. 9) and to an adequate standard of living for any individual and his or her family (Article. 11). Each state party shall undertake necessary steps, with a view to achieving progressively the full realization of the rights recognized in the covenant by all appropriate means. The rights recognized are to be exercised without discrimination of any

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<sup>42</sup> Mishra, Pramod (2000) *Human Rights Global Issues*. n. 6. pp. 2-3.

<sup>43</sup> Patil, V. T. (2001) *Human Rights, Third Millennium Vision*. n. 35. p. 72.

sort.<sup>44</sup> The ICESCR has no provisions for interpretation and application. Instead it provides a reporting procedure, through the UN Secretary General, to the UN Economic and Social Council (ECOSOC), which may transmit the state reports to the Human Rights Commission with recommendations of a general nature.<sup>45</sup>

### **The International Covenant on Civil and Political Rights (ICCPR)**

Though adopted by the United Nations General Assembly in 1966 the International Covenant on Civil and Political Rights (ICCPR) came into force on March 23, 1976.<sup>46</sup> The ICCPR has 53 Articles, which define in much greater detail than the UDHR and imposing an absolute and immediate obligation on each of the state parties to respect and ensure these rights to all individuals within its territories and subject to its jurisdiction.<sup>47</sup> According to Article 2, each state party is obligated to undertake, respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without discrimination of any kind such as race, color, sex, language, religion political or other opinion, national or social origin, property, birth or other status.<sup>48</sup> Article 25 of the ICCPR provides equal rights for all citizens to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected at genuine periodic elections based on universal and equal suffrage, secret ballot, guaranteeing the free expression and will of the electors, coupled with other rights to

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<sup>44</sup> O' Byrne, Darren, J. (2005) *Human Rights: An Introduction*. n. 3. p. 26

<sup>45</sup> *Ibid*, pp.128-29.

<sup>46</sup> Paul, Seighart (1983) *The International Law of Human Rights*. n. 38. pp. 24-26

<sup>47</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. n. 2. p. 128.

<sup>48</sup> *Ibid*, p. 25.

freedom of speech, association and peaceful assembly and allowing for variation in electoral and constitutional arrangements.<sup>49</sup>

The ICCPR contains provisions which include rights, inter-alia, and the right to life and to protection against arbitrary deprivation of life; freedom from torture or cruel, inhuman, or degrading treatment or punishment; freedom from slavery; the right to liberty and to security of person; the prohibition against arbitrary arrest or detention; the right to a fair and public trial; the right of detainees to be treated with dignity; the prohibition against imprisonment for debt; freedom of movement and residence, including the right to have citizenship or nationality; protection for aliens lawfully within a state's territory against arbitrary expulsion; the prohibition against arbitrary interference with privacy, family, home, correspondence; freedom of thought, conscience, religion, opinion or expression, association and peaceful assembly; protection for the family and children; the right to participate in public affairs; the prohibition of discrimination; and the right of minorities to enjoy their own culture, practice their religion, and to use their own language.<sup>50</sup> The instrument has also established a Human Rights Committee (HRC) having competence in three matters:

- a) to comment on reports that are to be submitted by the state parties on the measures they have adopted to comply with their obligations under the covenant;
- b) to investigate complaints by state parties of failures by other state parties to fulfill their obligations under the covenant;

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<sup>49</sup> Schachter, Oscar and Joyner, Christopher (eds.) (1995) *United Nations Legal Order*, Vol. I. New York: Cambridge University Press. pp. 328-29.

<sup>50</sup> O' Byrne, Darren, J. (2005) *Human Rights An Introduction*. n. 3. p. 25.

- c) under the optional protocol, to investigate complaints from victims of such failures.<sup>51</sup>

### **The Optional Protocol to the International Covenant on Civil and Political Rights**

The Optional Protocol entered into force on March 23, 1976. The purpose of the Optional Protocol as mentioned in the text of the document states that, in order to achieve the purposes of the Covenant on Civil and Political Rights and the implementation of its provisions it would be appropriate to enable the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Since then the Human Rights Committee has adopted rules of procedure and carried out a substantial volume of work including thorough examination of reports of many states, and the consideration of a number of complaints under the Optional Protocol.<sup>52</sup> Any party may refer an alleged breach of the Convention by another party to the Human Rights Committee. In addition, parties may by declaration recognize the competence of the Human Rights Committee to receive petitions from any person, group of persons, non-governmental organizations, etc, regarding violation of the rights provided in the Convention.<sup>53</sup>

The foregoing discussion on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, revealed that the rights provided in these documents are at the international level. However, in each nation or state, these rights are found

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<sup>51</sup> Brownlie, Ian (1973) *Principles of Public International Law*. n. 39. p. 146.

<sup>52</sup> *Ibid*, p. 118.

<sup>53</sup> *Ibid*, p.119.

enumerated in their respective Constitutions known mostly as fundamental rights. Fundamental rights included in the Constitutions of various countries guarantee individual and minority rights.<sup>54</sup>

### **Human Rights in Sri Lanka**

Although, international human rights instruments and Constitutions of various countries create provisions to protect the rights of the people, it is reported that these rights are not fully protected and violations of human rights continue to exist in many parts of the world. It is also seen in the Third World countries like in Sri Lanka the prevalence of ethnic conflict and human rights abuses perpetrated by the state as well as non-state actors. Ever since its independence from British rule on February 4, 1948, Sri Lanka has been facing ethnic tension between Sinhalese and the Tamils of Sri Lanka that resulted in various forms of human rights abuses in the areas dominated by the Tamils. Sri Lanka has signed and ratified many of the international human rights instruments which are shown in Table 1.1:

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<sup>54</sup> Wickramaratne, Jeyampathy (1996) *Fundamental Rights in Sri Lanka*. New Delhi: Navarang Publishers. pp. 2-9.

**Table 1.1: International Human Rights Instruments Signed and Ratified by Sri Lanka.**

<b>Sl. No</b>	<b>International Human Rights Instruments</b>	<b>Date</b>
1.	Convention on the Prevention and Punishment of the Crime of Genocide	12.10.1950
2.	Slavery Convention as amended by the Protocol	21.03.1958
3.	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	21.03.1958
4.	Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others	15.04.1958
5.	Convention on the Nationality of Married Woman	30.05.1958
6.	International Covenant on Economic, Social and Cultural Rights	11.06.1980
7.	International Covenant on Civil and Political Rights	11.06.1980
8.	Convention for the Elimination of all Forms of Discrimination Against women	05.10.1981
9.	International Convention on the Suppression and Punishment of the Crime of Apartheid	18.12.1982
10.	International Convention for the Elimination of all Forms of Racial Discrimination	18.12.1982
11.	Convention on the Rights of the Child	12.07.1991
12.	Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment	03.01.1994
13.	Convention on the Rights of Migrant Workers and Members of their families	11.03.1996
14.	Optional Protocol to the International Covenant on Civil and Political Rights	03.10.1997
15.	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts	06.09.2000
16.	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	09.05.2002
17.	Optional Protocol to the Convention on Elimination of All forms of Discrimination Against Women	15.10.2002

Source: Manoharan, N. (2003) 'Ethnic Violence and Human Rights in Sri Lanka', Ph. D. Thesis, Jawaharlal Nehru University, New Delhi. p. 230

Table 1.1: clearly shows that Sri Lanka has signed and ratified many of the important international human rights instruments. Further, Articles 10 to 14 of the 1978 Constitution of Sri Lanka provides the fundamental rights which are to be enjoyed by every citizen of the country. These Articles provide the various freedoms and rights such as freedom of thought, conscience, religion, speech, assembly, association, movement, arbitrary arrest, detention and punishment, torture, prohibition of retroactive penal legislation and the right to equality.<sup>55</sup> Although, Sri Lanka has signed and ratified many of the international human rights instruments and has also included in its Constitution the various fundamental rights for its citizens, various reports suggest that widespread human rights abuses were committed in the Tamil areas of Sri Lanka by various agencies of the Government including its security forces and the Liberation Tigers of Tamil Eelam (LTTE). Therefore, the study has examined the various factors responsible for human rights abuses in the context of the charges made against the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. Further, the role of major human rights Non-governmental organizations and the Human Rights Commission of Sri Lanka in the protection and promotion of human rights in the Tamil Areas of Sri Lanka has been examined.

### **Methodology**

Data for the study was collected through primary and secondary sources. Primary sources included documents and reports of the UN Human Rights Commission, reports of Amnesty International, Asian Human Rights Commission, Human Rights Watch, International Committee of Red Cross, Peace Brigades International, University Teachers

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<sup>55</sup> *The 1978 Constitution of Sri Lanka, Articles 10 to 14.*

Human Rights (Jaffna), Home for Human Rights, Colombo, Law and Society Trust, Colombo, Centre for Policy Alternatives (Colombo), INFORM (Colombo), Consortium of Humanitarian Agencies, Human Rights Commission of Sri Lanka and Sri Lankan Parliamentary debates. Primary data was also collected through in depth interviews conducted with District Officials such as District Medical Officers, Police Officers, Members of the Special Task Force, Civil Servants in Sri Lanka, Party leaders and Secretaries of the Sri Lanka Freedom Party (SLFP, Colombo), United National Party (UNP, Colombo), Tamil National Alliance (TNA, Colombo), Dravida Munnetra Khazhagam (DMK, Chennai), Pattali Makkal Katchi (PMK, Chennai), Marumalarchi Dravida Munnetra Khazhagam (MDMK, Chennai), leaders of refugee camps in Tamilnadu, Journalists in Sri Lanka, Directors, Executive Directors and Secretaries of Human Rights Non-Governmental Organizations in Sri Lanka such as the Home for Human Rights, Law and Society Trust, Centre for Policy Alternatives, Information Monitor and the Consortium of Humanitarian Agencies. Further, interviews were conducted with the chairman and general secretaries of the Human Rights Commission of Sri Lanka (HRCSL).

Secondary sources include data collected from books, monographs, articles from various journals, magazines, newspapers, and weekly's.

The data collected from both the sources (primary and secondary) were quantified and analyzed in qualitative terms.

## **CHAPTER – II**

### **STATE AND HUMAN RIGHTS ABUSES**

## CHAPTER – II

### STATE AND HUMAN RIGHTS ABUSES

Increasing international attention for the protection and promotion of human rights has brought about greater concern for the better treatment of nationals within the territory of a sovereign state. It is argued that when the treatment of nationals within one's territory assumes brutal forms, it constitutes mass and flagrant violations of human rights on a scale which shocks the conscience of mankind, the matter then ceases to be the sole concern of the state or nation. This is a very important principle now universally accepted. In this background, no state can say that citizens of other nations do not have the right to voice concern in matters concerning human rights violations within its borders. Therefore, in order to preserve the respect of the international community and also avoid external intervention in various forms such as legal, moral and even force, every state should be deeply conscious of the way in which it treats its citizens, to preserve the respect of the international community and also avoid intervention in various forms such as legal, moral and even force from other states.<sup>1</sup>

After its independence in 1948, Sri Lanka, witnessed a fundamental shift in its political order with violence perpetrated against the Tamil minorities. In Sri Lanka, institutional arrangements of the democratic state have survived many political conflicts and tensions, yet it no longer rests on the social consensus or social contract that was

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<sup>1</sup> Kadirgamar, Lakshman (2003) 'Human Rights and Armed Conflict', in A. R. B. Amarasinghe and S. S. Wijeratne (eds.) *Human Rights, Human Values and the Rule of Law*. Colombo: Legal Aid Foundation. p. 101.

negotiated and re-negotiated in the aftermath of independence. In carrying out its policies to suppress the demands of the Tamils for the creation of a separate state of Tamil Eelam, the Government of Sri Lanka (GOSL) increased the deployment of the military with the mandate to fight counter insurgency wars in the northern and eastern provinces.<sup>2</sup> The state also enacted legislations such as the Prevention of Terrorism Act and the Emergency Regulations that has resulted in the increasing human rights violations in the region.<sup>3</sup>

### **Charges of Human Rights Abuses Against the State**

Allegations of various human rights abuses are leveled against the state by the local and international community, various non-governmental organizations (both international and local). The state is charged of committing various human rights abuses against the minorities like the Tamils in the northern and eastern provinces of Sri Lanka. The human rights abuses are committed by the state security forces, police and the Special Task Force (STF). These human rights violations have been evidenced by the reports of mass graves, torture chambers, illegal detention centers, testimonies from families of thousands of missing persons and through the government's goal of removing political opposition that appeared in the form of militancy by the minority Tamils. Crimes against humanity as enumerated in international instruments include murder, torture, enforced disappearances, extermination, arbitrary imprisonment, and persecution on political grounds.<sup>4</sup> In Sri Lanka, there were violations of human rights in the context of mounting

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<sup>2</sup> Rupesinghe, Kumar and Khawar, M. (eds.) (1991) *Internal Conflicts in South Asia*. Oslo: Peace Research Institute. pp. 118-19.

<sup>3</sup> *Ibid*, p. 121.

<sup>4</sup> Black, Laura (2004) 'Forced Disappearances in Sri Lanka Constitute a Crime Against Humanity', *Law and Society Trust Review*, 1(205): p. 1.

demands for greater autonomy and the establishment of a separate state of Tamil Eelam by the Tamil community and the armed militant group namely the Liberation Tigers of Tamil Eelam (LTTE), who predominantly live in the northern and eastern provinces of Sri Lanka.<sup>5</sup> These violations range from discrimination, repressive legislation, arbitrary arrests, extra-judicial killings, political killings, physical torture, involuntary disappearances or forced disappearances, keeping the arrested incommunicado without trial for long periods, genocide, impunity, etc.

### **Discrimination**

Soon after independence, the Government of Sri Lanka enacted two legislations namely, The Citizenship Act of 1948 and The Ceylon Parliamentary Elections Act No. 3 of 1949. These Acts denied citizenship and the right to franchise to more than one million Indian origin Tamils. The Indian origin Tamils are those people who were taken by the British to Sri Lanka as plantation workers from 1837 onwards.<sup>6</sup> Following these acts, in 1956, the Sri Lanka Freedom Party (SLFP) led by S. W. R. D. Bandaranaike enacted the Official Languages Act which made Sinhala the only Official Language. According to this act, all official correspondence was to be made in Sinhala only.<sup>7</sup> All those who were employed in the government services had to learn Sinhala and pass a proficiency test failing which they had to face dismissal. Relegating Tamil to a lower status offended the Tamils and inflamed their feelings. The ethnic riots of 1956, 1958, 1977 and the holocaust

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<sup>5</sup> Amnesty International (1986) *Sri Lanka Disappearances*. London: Amnesty International. p. 11.

<sup>6</sup> Vije, Mayan (1987) *The Plantation Tamils of Sri Lanka*. Madras: A Tamil Information and Research Unit Publication. p. 2.

<sup>7</sup> Manohar, N. (2008) *Democratic Dilemma, Ethnic Violence and Human Rights in Sri Lanka*. New Delhi: Samskriti Publications. pp. 50-51.

of 1983 which caused genocide against the Tamils in the country can be attributed as the consequences of the Official Languages Act of 1956. The Act disabled the Tamils to use their mother tongue in their day to day affairs with the state.<sup>8</sup> The Tamils protested against the Act on the fear that it would affect education and employment privileges. This protest led to the signing of the Bandaranaike-Chelvanayakam Pact on July 26, 1957. However, Bandaranaike, the then Prime Minister, abrogated the pact following protests from the Buddhist clergy. Following the abrogation of the Bandaranaike-Chelvanayakam Pact, the Tamils staged a *Satyagraha*<sup>9</sup> which resulted in violence perpetrated against the Tamils by organized Sinhalese mobs. This was followed by anti-Tamil riots in 1958, where 350 (mostly Tamils) persons were killed. As a result, Bandaranaike was willing to offer some concessions to the Tamils regarding the use of their language in official matters. This angered the Sinhalese-Buddhist which led to the assassination of Bandaranaike in 1959. After Bandaranaike's assassination, his wife Sirimavo Bandaranaike led the United Front (UF) Government and enacted the standardization policy in 1971. This policy provided undue privileges to the Sinhalese students for higher education without high percentage as compared to the Tamils.<sup>10</sup>

As many of the policies and legislations of the successive Government of Sri Lanka did not seem to favour the interest and demands of the Tamils, the Tamil leadership

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<sup>8</sup> Iqbal, M. C. M. (2000) 'The Beginning of the Ethnic Problem in Sri Lanka-Violation of Language Rights', *Law and Society Trust Review*, 11(154): p. 24.

<sup>9</sup> Satyagraha is a philosophy and practice of nonviolent resistance developed by Mohandas Karamchand Gandhi. Gandhi deployed Satyagraha in the Indian independence movement and also during his earlier struggles in South Africa. The word Satyagraha is derived from two Sanskrit words 'Satya' which means truth and 'Agraha' which means insistence or holding firmly to.

<sup>10</sup> Manohar, N. (2008) *Democratic Dilemma, Ethnic Violence and Human Rights in Sri Lanka*. n. 6. p. 51.

under the banner of the Tamil United Liberation Front (TULF)<sup>11</sup> at the Vaddukkoddai Convention resolved to fight for the restoration and reconstitution of the free, sovereign, secular, socialist state of Tamil Eelam based on the right of self-determination. The TULF stated that this demand has become inevitable in order to safeguard the very existence of the Tamil people in Sri Lanka. On the other hand, Sinhalese dominated Sri Lankan Government made the Sixth Amendment (1983) according to which all members of Parliament were to take oath denouncing the support of demand on separate state failing which they would forfeit their seats in the Parliament. So, as none of the Tamils Members of Parliament complied with this amendment, they all lost their seats in the Parliament. This completely weakened the political realm of the Tamils in the politics of Sri Lanka.<sup>12</sup>

The Tamil youth, who suffered most due to the Language Act and standardization policy enacted by the Sri Lankan Government, became frustrated at the inability of the Tamil political leadership to get their grievances redressed. Hence, the Tamil youth thought that armed struggle was the only way to achieve the separate state of Tamil Eelam in the mid 1970's. The states response to the demand was to adopt a firm stand to curb militancy of the Tamil groups.<sup>13</sup> The government enacted legislations to crush Tamil militancy that had arisen due to the states discriminatory attitudes towards the minorities (Tamils). These legislations are the Prevention of Terrorism Act (PTA) of 1979 and

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<sup>11</sup> On May 4, 1972 several Tamil political groups, including the All Ceylon Tamil Congress, formed the Tamil United Front (TUF). The Tamil United front changed its name to the Tamil United Liberation Front (TULF) after the Federal Party joined them in 1976.

<sup>12</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle* p. 63.

<sup>13</sup> Misra, S. S. (1995) *Ethnic Conflict and Security Crisis in Sri Lanka*. New Delhi: Kalinga Publications. pp. 54-56.

Emergency Regulations which were enacted under the Public Security Ordinance (PSO of 1947). These acts or legislations were enacted to counter militancy.

The Sri Lankan Government claimed to have enacted the Prevention of Terrorism Act 1979 (PTA) and the Emergency Regulations 1989 (ER) under the Public Security Ordinance of 1947 (PSO), to curb militancy and preserve the integrity of the country. On the contrary, these Acts provide the security forces unlimited powers in its operations against the Tamil militants. The Prevention of Terrorism Act and Emergency Regulations enabled the security forces to use violence with maximum possible immunity. In the past, the number of incommunicado detentions increased phenomenally and there have been reports of maltreatment, torture, deaths due to torture, disappearances, of those who were detained under these draconian laws. These Acts alienated the Tamils in the north and east and also consequently increased militant activity which received strong support from the public. Under the Prevention of Terrorism Act and Emergency Regulations, the security forces have extensive powers to arrest suspected opponents of the government and detain them incommunicado without charge or trial for long periods. It is reported that in these conditions, deaths in custody, enforced disappearances, torture, summary executions, extra judicial killings, etc., were committed frequently. On the other hand, the Emergency Regulations permit the security forces to dispose dead bodies without post-mortem or inquest, thereby enabling the security forces to cover up their unlawful activities and deliberate killing of innocent Tamil civilians.<sup>14</sup> Under these acts any person could be arrested and detained merely on suspicion. Those arrested could be detained without

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<sup>14</sup> Amnesty International (1990) *Sri Lanka Extra Judicial Executions, Disappearances and Torture, 1987-1990*. London: Amnesty International. p. 2.

charge or trial for a period of 18 months incommunicado. In case of death in custody, the Emergency Regulations permit the disposal of dead bodies without inquest or post mortem, to the security forces. Apparently, since the enactment of these two acts there have been reports of thousands of disappearances, extra judicial killings, torture, murder and other forms of human rights violations.<sup>15</sup> In the following paragraphs, a brief discussion of the Prevention of Terrorism Act No. 48 of 1979 of Sri Lanka is made to show the various forms of human rights abuses which are committed by the security agencies through this act.

#### **Prevention of Terrorism Act No 48 of 1979 of Sri Lanka**

The Prevention of Terrorism Act in Sri Lanka has been seen to have violated international human rights standards. As stated in the preamble to the Sri Lankan Prevention of Terrorism Act of 1979, it was enacted to prevent acts of terrorism and the prevention of unlawful activities by an individual or group of individuals, associations, organizations, or body of persons within or outside Sri Lanka. The Preamble to the Prevention of Terrorism Act further states that, it was enacted to prevent the use of force or the commission of crime as a means of or as an aid in, accomplishing governmental change within Sri Lanka.<sup>16</sup> The Tamils on the other hand did not want governmental change, but they demanded a separate state based on the principle of self-determination. The provisions of the Prevention of Terrorism Act was enacted to suppress the demand of separate state by Tamils, who failed to receive any concessions from the government by

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<sup>15</sup> *Ibid*, p. 3

<sup>16</sup> The Prevention of Terrorism Act No. 48 of 1979, Sri Lanka.

Constitutional means since the independence of Sri Lanka in 1948.<sup>17</sup> While the Sri Lankan Constitution and its legal system contain some fair trial safeguards, the PTA and its practices associated with it fall short of those safeguards although the Sri Lankan state is committed to the International Convention on Civil and Political Rights (ICCPR) as a state. Some of the major violations which occurred under Prevention of Terrorism Act are briefly outlined as follows:

The PTA violates the individual's right to have a fair and public trial. The right to a fair and public trial is a basic human right, non-observance of which undermines all other human rights. Articles 9 and 14 of the ICCPR guarantee these rights. The concept of a fair trial is relevant in the context of Sri Lanka because many have been arrested, tried and sentenced to long terms in jail under the PTA. Under the PTA many were arrested on grounds of suspicion of being an LTTE member, supporting it or failing to give information to the state about the organization. The provisions of the PTA created a new type of offence where, if an individual fails to give information when asked for by the security personnel or the police, he or she would be arrested.

The provisions under PTA allow arrest of any person without warrant. Any police officer authorized by the superintendent of police in writing can arrest, enter and search any person, in any place, stop, search any person or persons traveling in any vehicle, seize any document connected with any unlawful activity without a warrant issued by a magistrate. The Criminal Procedure Code (CPC) states that arrest could be made only

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<sup>17</sup> Ganesalingam, S. V. (2002) 'PTA Violates International Human Rights Standards', *Beyond the Wall*. 1(1): p. 22.

after the authorization of a magistrate. It also states that the arrested should be produced before the magistrate within 24 hours of arrest, but the PTA permits continued detention of any person for a period of 72 hours and thereafter to be kept in administrative detention under the order made by the Minister-in-Charge of Defense upto a maximum of 18 months, which could be followed by remand till conclusion of trial. The detention may be in any place as determined by the Minister-in-Charge of Defense and not necessarily in a prison. Under the PTA, a detainee need not be informed of the reasons or a copy of the detention order is not given at the time of arrest. It is only when a person is produced before a high court that a copy of the indictment will be served, that he or she comes to know the reasons for the arrest.

The right to the access of a legal council is severely restricted and is also not guaranteed in Sri Lanka. The state does not provide pre-trial aid to those detained under PTA before indictment. This is due to the fact that if an individual is arrested under the PTA he or she is not allowed to contact or meet any of his or her relatives or consult a lawyer before being produced in a court of law. This hampers pre-trial aid to the prisoner completely.

Confessions made by those detained are usually obtained through physical torture. After obtaining confession the detained person is taken to a District Medical Officer (DMO) who completes the medical examination form supplied by the police where evidence of physical torture is ignored in the medical report. Such medical reports are produced in the court to show that the detainee's confession was not obtained through

torture and that it was voluntary. The Criminal Procedure Code prohibits subjecting a detainee to medical examination without his or her consent. These medical reports have been dismissed by the courts in many cases on the grounds that they cannot be true. To quote **Nesaraja Sivakumar vs. Officer Incharge in Thirukkovil** five medical reports were dismissed by the court and subsequent medical examination was conducted on the court's orders which revealed 16 injuries for which the compensation was awarded for torture. But according to section 16 of the PTA, any confession is *prima facie* evidence and the burden of proving that the confession was obtained through torture lies on the suspect.<sup>18</sup>

### **Emergency Regulations**

All successive governments that came to power in post-independent Sri Lanka followed a policy of gradually curtailing the democratic rights of the people. Under the Public Security Ordinance the President of Sri Lanka is empowered to declare a state of emergency and thereby bringing Emergency Regulations into force through gazette notification. When Emergency Regulations are passed by the Parliament it overrides even fundamental rights that are guaranteed in the Sri Lankan Constitution. Through Emergency Regulations the President is empowered to enforce new laws, create new offences and enhance punishments. Under Emergency Regulations public meetings, strikes, picketing, demonstrations are banned and elections can also be postponed.<sup>19</sup>

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<sup>18</sup> *Ibid*, pp. 23-24

<sup>19</sup> Tiranagama, Kalyananda (1991) *South Asia: Human Rights in Difficult Circumstances*. Kathmandu: Informal Sector Service Center. pp. 35-36.

Under section 5 of the Public Security Ordinance the Sri Lankan Government enacted the Emergency Regulations. Under these regulations any police officer authorized by the Assistant Superintendent of Police can take possession of and bury or cremate the dead body of any person who died in custody. Section 55 FF(1) of Emergency Regulations states that if anyone obstructs a police officer while taking possession of and burying or cremating a dead person, he or she can be arrested. It also provides that it shall not be necessary for any police officer to comply with other provisions relating to inquest of death or post mortem while burying or cremating a dead body.<sup>20</sup>

Emergency (Restriction on Transport of Articles) Regulations No. 1 of 1991, places restrictions on transportation of specific articles to the northern and eastern provinces. There are as many as 50 articles listed in the regulations which are considered capable of being used in a manner harmful to national security. Some of them include any type of fuel including coal, wax, candles, toy guns, motor cycles, timber, empty jute bags, medicine, soya based food, sweets, confectionery, etc.<sup>21</sup> Any person found in possession of the articles mentioned in the regulations could be arrested and detained in police custody under the PTA as a preventive measure of curbing terrorism. But on the other hand, these articles are basic essential items which are used in day to day life of any individual or person. For example, if fuel is restricted it hampers cooking, transport, industry, etc.

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<sup>20</sup> Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1989.

<sup>21</sup> Emergency (Restriction on Transport of Articles) Regulations No. 1 of 1991.

Sri Lankan Government promulgated the Prevention of Terrorism Act and Emergency Regulations to suppress the demand for separate state of Tamil Eelam, but there are reports which state that these acts actually perpetrate gross human rights violations. These legislations namely the Prevention of Terrorism Act and the Emergency Regulations stand contrary to the ICCPR. Articles 9, 12, 14, 19, 21, 22 and 25 of the ICCPR, provide or guarantee the rights to liberty and security of a person and the freedom from arbitrary arrest and detention, freedom of movement and choice of residence, the right to a fair trial and the right to legal defense, freedom of opinion and expression, the right of assembly and associations and the right to take part in public affairs.<sup>22</sup> The Sri Lankan Prevention of Terrorism Act and the Emergency Regulations derogates many of the rights to which Sri Lanka is bound as a state party to the ICCPR. Both the PTA and the ER are considered as repressive legislation as it denies most of the rights guaranteed in the ICCPR. These violations occur in the context of the states response to the growing militancy or rebellion of the LTTE which demanded a separate state of Tamil Eelam. Arbitrary arrests, detentions, torture, disappearances, extra-judicial killings, rape, intimidation are the major forms of violations which arise due to these legislations promulgated to curb militancy.

### **Disappearances**

The term disappearance is used when there are reasonable grounds to believe that a person was arrested and authorities deny that the person is in their custody. A disappearance may be resolved by the authorities acknowledging a person's detention or

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<sup>22</sup> Seighart, Paul (1984) *Sri Lanka A Mounting Tragedy of Errors, Report of a Mission to Sri Lanka*. Geneva: International Commission of Jurists. pp. 10-13.

by the detainee's release. People who have disappeared may well have been victims of violent, often illegal arrest or arbitrary arrest, torture, unacknowledged detention and at worst, may have died due to torture while in secret detention. Such cases of disappearances clearly violate international law, as it denies or does not guarantee the right to security of a person. The right not to be subjected to arbitrary arrest and detention and the right to an effective remedy against violation of fundamental rights are provided in Articles 3, 9 and 8 of the Universal Declaration of Human Rights (UDHR) and Articles 2 and 9 of the ICCPR. The UN Commission on Human Rights expressed concern at the anguish and sorrow of the families concerned, who should know the fate of their relatives. However, a person's disappearance may have been through torture resulting in death while in custody and the dead body disposed off under provisions in the Emergency Regulations. This is a violation of the rights provided in Articles 3 and 5 of the UDHR and Articles 6 and 7 of the ICCPR which state that the rights to life and not to be tortured are absolute rights. These rights are absolute from which no state shall derogate even during emergency as stated in Article 4 of the ICCPR.<sup>23</sup>

Enforced disappearances is said to have occurred while countering demands for autonomy and the establishment of separate state by the LTTE, who live in the northern and eastern provinces of Sri Lanka.<sup>24</sup> Human rights agencies such as the Human Rights Watch, the Amnesty International, and the Asian Human Rights Commission have alleged that abductions, arbitrary arrests by the government security forces, death squads, and government militias were responsible for thousands of disappearances of persons in the

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<sup>23</sup> Amnesty International (1986) *Sri Lanka Disappearances*. London: Amnesty International. pp. 8-9.

<sup>24</sup> *Ibid*, p. 11.

north and the east since the 1980s. According to the reports of Amnesty International, the government set up three commissions of inquiry to look into the human rights violations which had occurred since 1988. These commissions had reportedly received information on approximately 30,000 cases of disappearances.<sup>25</sup> It was also reported that most of the disappeared belonged to the Tamil community in the north and east except for the youth belonging to the Sinhala community in the south during the Janatha Vaimukthi Peramuna (JVP) insurgency.

The disappearance of tens of thousands of people in Sri Lanka was committed by the government to suppress the demands made by the Tamils for the creation of a separate state of Tamil Eelam. The victims may not have been involved with the armed group, but attending a meeting, or even reading a book, related to the liberation movement of the Tamils were sufficient reason to be targeted for enforced disappearances and extra-judicial killings. Most of the victims were reportedly persons who were arbitrarily arrested, detained, tortured and eventually killed and were not in any way involved with the liberation movements. Some of the victims included members of political parties and many were also children.<sup>26</sup> The most frequently used method of detention which resulted in the disappearances of thousands of people in the north and east was through cordon and search operations in which the army, often in conjunction with the police, particularly the Special Task Force (STF), went into a village or a rural area and detained scores of persons. Many of them would be released within 24 to 48 hours, but some persons would

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<sup>25</sup> Amnesty International Report (1996) London: Amnesty International. p. 281.

<sup>26</sup> Black, Laura (2004) 'Forced Disappearances in Sri Lanka Constitute a Crime Against Humanity', n. 4. p. 2.

be detained for questioning or interrogation which eventually led to their disappearances and most of them feared dead. In the Jaffna peninsula the highest number of disappearances occurred in 1996 when the security forces regained control over the region from the Liberation Tigers of Tamil Eelam (LTTE).<sup>27</sup>

Since 1985, cases of disappearances were reported particularly from the northern and eastern provinces where the Special Task Force operates. In many of these cases, although the officials did not deny arrest or detention, relatives of the detainee were denied access, stating that he or she had been transferred to other detention camps. However, when relatives of the detainee tried to find the detained at various camps to which the officials had referred, that he or she had been taken, those camps denied saying that the person was not there. The following statement is one of the testimonies of a mother whose son disappeared after being arrested by the Special Task Force at Karaithivu in the eastern province:

“...on hearing of his arrest I rushed to the Karaithivu junction where I was told that he was being detained. When I reached the junction I saw a truck and three army vehicles going away ...A woman who was standing at the junction informed me that her son-in-law and my son were being taken away in a truck by the Special Task Force. I and the other lady got into a bus and followed the Special Task Force Vehicle. We saw the STF vehicle halted at the Kalmunai hospital. We saw my son in the truck he was wearing a trouser and was bare bodied. His shirt was tied covering his eyes. On seeing my son we raised cries. An officer in the truck pointed his gun at us. The driver of the STF vehicle then drove off. We then went to the Kaluwanchikudy camp where we saw the Special Task Force vehicle came a little later than us and drove into the camp. My son was taken from the vehicle into the camp.

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<sup>27</sup> Report of the Working group on Enforced Disappearances, October 1999, pp. 1-3

When I went to the camp one week later and made enquiries for my son, I was told that he would be released. I went again to the camp after a few days, I was told that he had been sent to fill up and transport sand bags after which he would be released. When I went to the camp again the next day, I was told that he had been sent to the Kallady camp. So I went to the Kallady camp where I was told that he had been transferred to Colombo. I complained to the Ministry of National Security but received no communication. I complained to the Committee to Monitor the Cessation of Hostilities who acknowledged the receipt of my letter but I received no further communication. In spite of my several attempts the authorities are refusing to disclose the whereabouts of my son...<sup>28</sup>

In other cases, officials initially confirmed that a person had been detained, but subsequently gave false information about where he was being held and later denied that he was arrested.<sup>29</sup> Disappearances in the north and east of Sri Lanka are basically a result of the provisions in the Prevention of Terrorism Act and Emergency Regulations. These regions have been ruled under Emergency Regulations continuously, which allows arrest without warrant on mere suspicion. People from Jaffna state that being a Tamil is sufficient reason to be arrested. According to the annual report of Human Rights Commission of Sri Lanka (1999), about 350 persons had disappeared in the year 1999 alone. The list of disappeared include school children, University students, government servants and house wives. The majority of those disappeared were males. Usually men are suspected to be members of the LTTE or other Tamil militant groups. In the north and east of Sri Lanka, disappearances occurred due to security and political reasons, especially in

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<sup>28</sup> Amnesty International (1986) *Sri Lanka Disappearances*. n. 23. p. 15.

<sup>29</sup> *Ibid*, p. 16.

times of confrontation between the LTTE and the security forces. During such confrontation, civilians are arrested on suspicion or by citing security reasons.<sup>30</sup>

According to the reports of Amnesty International (2001), enforced disappearances continued to occur in Vavuniya, Batticaloa, Jaffna, Mannar, and Trincomalee in the year 2000.<sup>31</sup> Reports from the Human Rights Commission of Sri Lanka also provide evidence that there were disappearances of persons even after the Ceasefire Agreement (CFA, 2002) between the Government of Sri Lanka and the LTTE. Reports of various NGOs in Sri Lanka, such as Information Monitor (INFORM) also state that enforced disappearances were common throughout the ceasefire period. After resumption of war against the LTTE in the north in 2008, reports of the United Nations High Commissioner for Refugees, Amnesty International, Human Rights Watch and various Human Rights International Non-Governmental Organizations (HRINGOs) and local Human Rights Non-Governmental Organizations (HRNGOs), have expressed concern over enforced disappearances in the Tamil areas for which there has been no accountability. Many countries in the South Asian region have also expressed concern over the frequent occurrences of enforced disappearances.

Disappearance, which forms the basis of a charge of human rights violation against the Government of Sri Lanka, is a crime against humanity. Crimes against humanity are defined in many international instruments which include the Resolution on Rwanda, the

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<sup>30</sup> Robinson, Dhanaluxmi (2003) 'Disappearances in Jaffna and Their Social Implications' *Beyond The Wall*, 1(1): p. 16.

<sup>31</sup> Amnesty International (2001) *Amnesty International Report (2001)* London: Amnesty International. p. 225.

Statute of the International Criminal Court and the Draft Code of Crimes Against the Peace and Security of Mankind. The Definition of the International Criminal Court on enforced disappearance states that:

“The arrest, detention or abduction of persons by or with the authorization, support or acquiescence of, a state or political organization, followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of law for a prolonged period of time”.<sup>32</sup>

Enforced disappearances in Sri Lanka clearly go in line with the above mentioned definition. In the Tamil areas of Sri Lanka many who were abducted and detained, or arrested for questioning were said to have disappeared. The police and government officials always refused to give information relating to detention or arrest to the families of those persons disappeared.<sup>33</sup> State sponsoring of enforced disappearances can be considered as one of the worst forms of human rights abuses as it is very difficult to find definite ways of getting redress. Experiences in a number of countries suggest that it is almost impossible to get any legal redress for mass disappearances caused by state agencies. State leaders can claim impunity for actions done as heads of state. State officials often possess vital evidence concerning events leading to disappearances and are protected from any actions arising from their refusal to co-operate in investigating cases of disappearances. There is also no prosecutor empowered to try offences committed by the leaders of the state and state officers acting on their behalf. Such are the formidable

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<sup>32</sup> Black, Laura (2004) 'Forced Disappearances in Sri Lanka Constitute a Crime Against Humanity'. n. 4. p. 9.

<sup>33</sup> *Ibid*, p. 9.

obstacles faced by family members of victims of disappearances and others who try to help them. Although, various human rights organizations, both national and international, have made efforts to condemn disappearances, the state agencies responsible for such acts seem to have paid no attention. Although the number of disappearances in countries like Sri Lanka is horrendous, obtaining legal redress remains a major hurdle.<sup>34</sup>

Reports of various human rights organizations both at local and international levels state that thousands of people have disappeared from the region. But in reality it is feared that the estimates figured in these reports are much lesser than the actual number of people disappeared. This could be mainly because of the fact that many of the families of those disappeared do not report to the police or any other concerned officials either due to the fear of repercussions they might face from the authorities or the agency or group which had actually caused the disappearance. Also, it is reported that such complaints to any government authority or agency does not provide any useful information with regard to the status of people whether they are alive or dead. A statement by the Asian Human Rights Commission on disappearances states that disappearances in Sri Lanka are a legal construct. Human rights groups also allege that the Government of Sri Lanka is not taking effective measures to prevent abductions and disappearances in the Tamil areas of Sri Lanka.<sup>35</sup>

Faced with mounting pressure from various international and national human rights organizations in Sri Lanka, the Government of Sri Lanka appointed a Presidential

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<sup>34</sup> <http://www.ahrchk.net/pub/mainfile.php/disappearances/11/03/09>.

<sup>35</sup> Pirassath, Mahesh (2007) 'Waiting for the Disappeared', *Peace Monitor*, 5(5): 2-3.

Commission<sup>36</sup> to investigate abductions, disappearances and killings. But the family members and relatives of the disappeared are of the view that such moves made by the government would not yield any good result. They also believe that it would not minimize the occurrence of disappearance. Mano Ganesan, the first runner up of the U. S. Human Rights Award (2007 Freedom Defenders Award), states that although seven commissions were setup to investigate into such disappearances, but no positive result so far has been reported. When a group of relatives of the disappeared were taken to meet President Rajapakse, they returned disappointed and distressed. One among the group said that the President spoke the following:

“We have not abducted anybody and we have no need to abduct anybody. These allegations are made to soil the name of the government. Having concealed your daughter and son-in-law, you now say that they have disappeared. They may be in Germany or France, go and find them there”.<sup>37</sup>

The above statement made by the President of Sri Lanka shows, that the government is not concerned about the issue of enforced disappearances. The issue of disappearances and extra-judicial killings, in many respects, also provides an important window into many facets of the overall human rights violations in Sri Lanka. They are

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<sup>36</sup> The Presidential Commission to investigate abductions, disappearances and killings was appointed by the President of Sri Lanka, to inquire and report on matters related to (i) allegations about the involuntary removal of persons from their residences, or the disappearance of persons from their residences, (ii) to establish evidence on such alleged removals or disappearances, (iii) reveal whereabouts of the persons alleged to have been so removed or to have so, (iv) ascertain whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances, (v) suggest legal proceedings that can be taken against the persons found to be responsible for such disappearances, (vi) provide relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have disappeared.

<sup>37</sup> Pirassath, Mahesh (2007) ‘Waiting for the Disappeared’, n. 35. pp.4-5.

symptomatic of the widespread use of torture and the failure of the government to take effective measures to prevent such violations committed by the security forces and the police.<sup>38</sup>

### **Torture**

Torture is an enabled tool in the Sri Lankan Government's war against terror. As per various reports, tens of thousands of people have been tortured and killed in Sri Lanka since 1975. Laws such as the Prevention of Terrorism Act, Emergency Regulations, and the Indemnity Act empower the Sri Lankan armed forces and other security personnel to arrest without warrant, detain without basic legal safeguards and dispose dead bodies without inquest. Innumerable cases of torture have been reported and recorded by various human rights organizations which have been summarily dismissed by the Government of Sri Lanka.<sup>39</sup> Various reports show that young Tamil men were subjected to systematic torture and subsequently killed by the security forces after arrests. It is also reported that the security forces covered such killings as encounters with terrorists.<sup>40</sup>

Reports of Amnesty International talk about torture in army camps in the north including Vavuniya, Palaly, Elephant Pass and Point Pedro. These reports also state that young men were subjected to torture by the Special Task Force in the eastern province.<sup>41</sup> There were instances as per the reports wherein the innocent people arrested by the

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<sup>38</sup> Alston, Philip (2006) 'Civil and Political Rights, Including the Question of Disappearances and Summary Executions, Summary or Arbitrary Executions', *Law and Society Trust Review*, 161(221): p. 1.

<sup>39</sup> [www.sangam.com](http://www.sangam.com). 14/03/09.

<sup>40</sup> Somasundaram, Daya (1998) *Scarred Minds: The Psychological Impact of War on Sri Lankan Tamils*. New Delhi: Sage Publications. p. 55.

<sup>41</sup> Amnesty International (1985) *Amnesty International Report (1985)* London: Amnesty International. p. 231.

security forces succumb to torture. Many who survived are reported to have developed neuro-psychological problems, depression, permanent physical disability and various other complications following their release from custody (after being tortured). Most of the victims range from the age group of 14 years and above. Torture is being used on those detained to extract information about LTTE. In most cases, those tortured are innocent civilians who could be working as *coolies* (daily wage workers), mechanics, farmers, etc.<sup>42</sup>

Although the Constitution of Sri Lanka has provisions for the prevention of torture, it is reportedly widespread in the Tamil areas of Sri Lanka. The high number of indictments for torture filed by the Attorney General's (AG) Office, the number of successful fundamental rights cases decided by the Supreme Court and the high number of complaints received by the Human Rights Commission of Sri Lanka suggest or indicate that torture is widely practiced in Sri Lanka. The practice of torture has become routine in the context of counter-terrorism operations.<sup>43</sup> Some of the extreme methods of torture are listed as follows:

- Verbal abuse.
- Handcuffing and suspending from the rafters in the roof.
- Beating with wooden sticks, coconut leaf stem, S-Lon pipes, PVC pipes filled with sand or stone, electrical wires etc.

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<sup>42</sup> Based on an interview with a Professor from the University of Colombo on 03/10/08, in Colombo.

<sup>43</sup> *UN News Service, UN Human Rights Expert Reports Allegations of Torture in Sri Lanka.* [http://www.unhcr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhcr.ch/html/menu3/b/h_cat39.htm). 14/03/09.

- Repeated beatings in the genitals.
- Assault on elbows, shoulders, knees, ankles with batons.
- Burning with cigarettes.
- Burning with cigarettes on genitals.
- Pulling the penis and scrotum forcefully and squeezing them.
- Suspended upside down and beaten with iron rods on the soles of the feet and buttocks particularly and all over the body.
- Burning with the red hot iron.
- Asphyxiation with plastic bags, bags containing petrol, chilly.
- Head shaved and suspended upside down with burning chillies underneath the head.
- Applying electric shocks especially to the genitals.
- Suspension with the thumbs of legs or hands.
- Insertions with metal rods in the rectum.
- Beatings with blunt weapons.
- Beatings on the head with iron rods, wooden planks.
- Inserting S-Lon pipes into the rectum after which a barbed wire would be inserted and the S-Lon pipe removed and the barbed wire pulled out of the rectum.
- Inserting S-Lon pipes into the rectum and chilli powder introduced through the pipe.
- Vaginal insertions with any hard material which include even rusted iron pipes, rods.
- Vaginal insertions with plantain flower.

- Rape, sometimes raped by a group of men continuously (5-10).
- Molestation.
- Parading naked.
- Slapping on cheeks, ears.
- Forcing to remove clothes and paraded.
- Kicks to the chest and abdomen.
- Cut with razor blade.
- Forcing to kiss dead stray dog.
- Strangling.
- Piercing all over the body particularly under the nails of fingers, genitals and on nipples.
- Stabbings with any sharp object.
- Mock executions.
- Shot with gun.
- Peeling the skin off the body.

Many of these methods of torture as mentioned are used on those in custody by the security forces and the police to extract information.<sup>44</sup> In the case of men, it is usually physical torture causing severe body pain and harm. Women were subjected to such forms of torture including sexual harassment. It is reported that torture is generally practiced by the security forces as those arrested were Tamils and the majority of security personnel

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<sup>44</sup> Jeyawardene, Kishali Pinto, and Kois, Lisa (2008) *Sri Lanka: The Right not to be Tortured, A Critical Analysis of the Judicial Response*. Colombo: Law and Society Trust, pp. 2-3.

belong to the Sinhalese community. Such practices of torture is against the law of the land as in Article 11 of the 1978 Constitution of Sri Lanka states that, “no person shall be subjected to torture or to cruel treatment or punishment.” Also, Article 27 (2) (b) of the Directive Principles of State Policy and Fundamental Duties states that the state is pledged to establish in Sri Lanka “the full realization of the fundamental rights and freedoms of all persons.”<sup>45</sup> International proscriptions against torture have also been enumerated in international human rights and humanitarian treaties such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ICCPR, the Status of the International Criminal Court, the Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Standards for the Protection of Prisoners have been set forth through the Standard Rules for the Treatment of Prisoners. These international instruments serve as *jus cogens* norms, which create *erga omnes* obligations between states. Such violations also attract universal jurisdiction. In addition to being a state-party to international treaties, prohibiting torture and other forms of cruel, inhuman and degrading treatment, Sri Lanka has proscribed torture through its Constitution and Penal law as mentioned earlier. Despite the international prohibition against torture, and its reaffirmation through Sri Lankan Law, torture is reportedly practiced in Sri Lanka as part of normal criminal investigations and also as part of operations linked to the armed conflict.<sup>46</sup>

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<sup>45</sup> The 1978 Constitution of Sri Lanka.

<sup>46</sup> Jeyawardene, Kishali Pinto, and Kois, Lisa (2008) *Sri Lanka: The Right not to be Tortured, A Critical Analysis of the Judicial Response*. n. 43. p. 3.

In general, it is argued that the practice of torture and the resultant human rights violations occur only during a period when the country is faced with a feared threat to its sovereignty and national integrity. However, it is a fact that even when there was no active conflict in Sri Lanka, the practice of torture was widespread. In fact it is reported that a significant number of cases involving police brutality in the north and east of Sri Lanka were not linked to the conflict. Sometimes, the victims were tortured for petty thefts and for no reason at all. There were cases or reports which suggest that the police tortured a person for asking the reasons for his or her arrest. This constitutes a severe breakdown of the Rule of Law perpetuated by the very custodians of the law.<sup>47</sup> Torture is one of the most established forms of crimes against humanity as stated by the Statute on Rwanda, The Draft Codes of Crimes Against Peace and the Statute of the International Criminal Court. These Statutes and Draft Codes define Torture as:

“the intentional infliction or severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from inherent in or incidental to lawful sanctions.”

Eyewitnesses, testimonies of victims of detention and torture, reports of illegal detention centers, torture cells and physical marks or scars on the victim's body and the bodies exhumed from mass graves as well as those on display as public warnings revealed

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<sup>47</sup> *Ibid.*, pp. 4-5.

the severe physical torture committed against the innocent civilians in the Tamil areas of Sri Lanka.<sup>48</sup>

There were numerous cases filed under violations of fundamental rights against the Sri Lankan security forces which included physical torture being perpetrated against detainees. In 2001, a 23 year old woman was detained under the PTA, tortured and raped by 12 police officers and four indictments were placed on her. But all four indictments were withdrawn by the state because of the evidence of physical torture and rape. After medical re-examination on the victim by the court's orders, evidence of physical torture and rape were revealed. Despite there being strong evidence of physical torture and rape, the state decided that no criminal action should be taken against the police. The Human Rights Commission of Sri Lanka however, recommended that a sum of rupees two lakhs be paid to the victim as compensation by the state, but compensation was not paid.<sup>49</sup> In the case of **Singarasa vs The Attorney General**, statements made as a result of torture by Singarasa during interrogation were accepted as *prima facie* evidence and convicted for 50 years. This shows the culture of impunity being practiced by the Sri Lankan government.

### **Impunity**

Impunity for human rights violations by government security forces has been a long problem in Sri Lanka. As the conflict intensified and the security forces were charged in a longer list of abuses from arbitrary arrests to war crimes, the Government of Sri

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<sup>48</sup> Black, Laura (2004) 'Forced Disappearances in Sri Lanka Constitute a Crime Against Humanity'. n. 44. pp. 7-8.

<sup>49</sup> Ganesalingam, S. V. (2006) 'HRC's Recommendation Flouted: No Prosecution in Custodial Rape Case', *Beyond the Wall*, 2(1): p. 7.

Lanka was unwilling to hold those persons accountable who were responsible for serious violations of human rights. However, government institutions have been unable to deal with the scale and intensity of abuse.<sup>50</sup> The Amnesty International (AI) has also stated in one of its public statements that Sri Lanka has been characterized by decades of impunity by perpetrators of violations of international human rights and humanitarian law.<sup>51</sup>

Since the beginning of the civil war in Sri Lanka from the 1990s, successive governments have consistently failed to adequately investigate or prosecute those in the security forces or the police for serious violations of human rights and international humanitarian law. In cases of enforced disappearances, torture, rape, indiscriminate attacks on civilians, reprisal attacks, abductions, etc, the successive Sri Lankan governments have failed to hold security personnel accountable for committing such serious crimes.<sup>52</sup>

In response to rising international pressure and concern over human rights violations in Sri Lanka and to pre-empt proposals from an international human rights monitoring mission in November 2006, the President appointed a group of commissioners to the bodies that deal with the police, public service and human rights issues. Prior to this the government established a Presidential Commission of Inquiry (COI) to investigate serious cases of human rights violations by all persons since August 1, 2005. The Commission of Inquiry was assisted by a group of observers called the International

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<sup>50</sup> <http://www.hrw.org/en/reports/2007/08/05/return-war>. 17/03/09.

<sup>51</sup> Amnesty International (2006) *Sri Lanka: Amnesty International Urges Effective Action to End Impunity*. Amnesty International Public Statement. Amnesty Index: IOR 41/026/2006.

<sup>52</sup> <http://www.hrw.org/en/node/10799/section11/11>. 17/03/09.

Independent Group of Eminent Persons (IIGEP).<sup>53</sup> The Commission of Inquiry had serious deficiencies and could not work effectively to investigate human rights violations committed by the state. This could be due to the fact that (i) the commission could not investigate into the 16 cases it had mandate to, (ii) the commission could only make recommendations to the government on the steps by which it could possibly improve the situation, (iii) investigations were stymied with inadequate witness protection program that would encourage the victims and witnesses to testify about the abuses committed by the government security forces, (iv) the Attorney General's office had direct role to play in the commission's enquiry where a potential conflict of interest would undermine the commission's independence. The head of the commission limited the international expert's role by prohibiting them from conducting investigations and speaking with witnesses.<sup>54</sup> Due to the above said reasons the Commission of Inquiry failed to demonstrate any improvement in the context of the increasing human rights violations. On March 6, 2008, the International Independent Group of Eminent Persons announced its resignation as it was frustrated over the government's lack of support. In its statement, the Commission of Inquiry said "there has been a lack of political and institutional will to investigate and inquire into cases before the commission. There is also a climate of threat, both direct and indirect, to the lives of those who are capable of identifying persons responsible for human rights violations, including those who are likely to have been committed by the security forces".<sup>55</sup>

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<sup>53</sup> <http://www.hrw.org/en/node/10799/sec/2.173/09.17/03/09>

<sup>54</sup> *Ibid*,

<sup>55</sup> Fonseka, Bhavani (2007) 'Was the Establishment of the COI and IIGEP a Deterrent?', *Peace Monitor*, 5(5): 11.

Impunity is perhaps the single most important factor contributing to the phenomenon of disappearance and various other forms of human rights violations. Perpetrators of human rights violations become all the more irresponsible if they are not held accountable in a court of law. In recent years international human rights enforcement strategies have come increasingly to focus on the need to impose direct legal accountability on the perpetrators of serious human rights violations. Such accountability is essential if basic rights are to be effectively protected. It is the responsibility of the government to hold those persons accountable regardless of whether they are members of that government or of its security forces for committing human rights violations.<sup>56</sup>

In 2008, categorically denying state sponsored human rights violations of any nature, President Mahinda Rajapakse asserted that all the doors were wide opened for all local and international human rights organizations to visit the country, investigate and ascertain the veracity of the alleged human rights violations. He also stated that these allegations are propagating slanderous, malicious and mischievous news to incite the masses to create communal violence and hatred.<sup>57</sup> But the President's statement was contrary to the situation in Sri Lanka as the ethnic conflict and the ongoing civil war against the LTTE arose mainly due to communal hatred. It was also contrary because the government had failed to prosecute those convicted of violating human rights. There are numerous cases to be concluded (Laws Delays) and such delay allows the perpetrators to continue working in the same manner and pervade accountability. It is said that the

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<sup>56</sup> Asian Human Rights Watch (1992) *Human Rights Accountability in Sri Lanka*, Hong Kong: Asian Human Rights Watch. p. 1.

<sup>57</sup> Government Has Nothing to Hide on Human Rights- President, <http://www.defence.lk/>. 19/10/08

Sinhalese have always held the opinion that Sri Lanka belongs to them and has showed it through the years by its policies which excluded the ethnic community of the Tamils<sup>58</sup>. Taking the advantageous position of numerical strength, the Sinhalese led government has always sidelined the Tamils of Sri Lanka. There are also reports that economic sanctions imposed by the government have hampered normal life in the Jaffna region. These economic sanctions were imposed in the form of Emergency Regulations which placed restrictions to transport essential items to this region.

Among other charges of human rights abuses against the state are the creation of High Security Zones which restricts freedom of movement in the north especially in the Jaffna region, media censorship, and various forms of suppression of information with the resumption of war against LTTE in 2006. The Sri Lankan Government is charged of using civilians in these regions as human shields to either evade LTTE's attacks on them or to make them remove land mines placed by the LTTE in the north and east.

Freedom of press and expression continue to remain severely curtailed across Sri Lanka. Journalists in Sri Lanka faced attacks from the security forces, political parties and other armed groups for which the Sri Lankan Government failed to take necessary measures to protect press freedom. In 2005, atleast two journalists were killed.<sup>59</sup> Editors of various newspapers who wrote against the government and its policies and its ruthlessness towards civilians during the war against the LTTE faced threats, intimidation and in some

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<sup>58</sup> Based on interviews conducted in Sri Lanka during 25/09/08- 24/10/08.

<sup>59</sup> Chakma, Suhas (ed.) (2006) *SAARC Human Rights Report*. New Delhi: Asian Commission for Human Rights. pp. 101-02.

cases arrested and detained under police custody. Some faced physical assault from unknown masked men who were believed to be agents of the government. It is reported that the list of Newspaper editors and other journalists who were abducted, killed or detained for revealing the atrocities committed by the government and its security forces increased every day.<sup>60</sup> One of the most recent incidents of attack on media personnel is the killing of Lasantha Wickrematunge. Though the Government of Sri Lanka has denied any involvement in the murder of Lasantha, it is evident that the government could have been involved from the fact that President Mahinda Rajapakse had called Lasantha a Tiger (LTTE) and also a terrorist, but after the assassination of the latter, the former had said words of grief and disbelief.<sup>61</sup>

In his last words on the editorial column, the chief editor of the Sunday Leader, a weekly newspaper in Sri Lanka wrote:

...no other profession calls on its practitioners to lay down their lives for their art save the armed forces and in Sri Lanka, Journalism. In the course of the past few years, the independent media have increasingly come under attack. Electronic and print media institutions have been burnt, bombed, sealed and coerced. Countless number of journalists have been harassed, threatened and killed... he also stated that... the distaste for the war should not be interpreted to mean that we support the LTTE. The LTTE are among the most ruthless and bloodthirsty organizations ever to have infested the planet. There is no gainsaying that it must be eradicated. But to do so by violating the rights of the Tamil citizens, bombing and shooting them mercilessly, is not only wrong but shames the Sinhalese, whose claim to be the custodians of the Dhamma is forever called into question by this savagery, much of which is unknown to the public because of censorship.<sup>62</sup>

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<sup>60</sup> *Ibid*, pp.101-02.

<sup>61</sup> <http://thesundayleader.lk/20090308/commentthtm.8march,2009>.

<sup>62</sup> Wickrematunge, Lasantha, *And Then They Came for Me*, The Sunday Leader, Colombo. 11/01/09.

Prior to his death in the same editorial Lasantha also stated that

...I know you (Mahinda Rajapakse) will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry. But like all the enquiries you have ordered in the past, nothing will come of this one too. For truth be told, we both know who will be behind my death ...As anguished as I know you will be, I also know that you have no choice but to protect my killers: You will see to it that the guilty one is never convicted....<sup>63</sup>

True to his editorial, Lasantha was killed on January 8, 2009, by unidentified men on motorcycles, and the government has not found out the killers and brought them to justice. No one has been prosecuted or even arrested in connection with the murder of Lasantha. This case also proves that the Sri Lankan Government practices impunity for violence committed on those who criticize its war against the LTTE in the north and east of the country. Sadly, the fact is that in the so called war against terror, Sri Lanka is the only country in the world to routinely bomb its own citizens.<sup>64</sup>

The foregoing discussion provides a clear understanding of the charges of human rights violations alleged against the Government of Sri Lanka. In an interview with a government official, the respondent said the government is violating human rights for a better future. This statement by the official shows the negative attitude of the government towards the issue of protecting of human rights of its own citizens.<sup>65</sup> In another interview, the respondent stated that the human rights situation has deteriorated than it was before. He also stated that people live in a constant state of fear. The government has instilled fear

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<sup>63</sup> *Ibid*,

<sup>64</sup> Wicrematunge, Lasantha, *And Then They Came for Me*, The Sunday Leader, Colombo. January 11, 2009.

<sup>65</sup> Based on a interview conducted in Colombo with a government official on 28/08/08.

in the minds of the people and people are afraid to talk about their rights and their infringement.<sup>66</sup> Anyone who speaks of human rights in the north and east of the country may face intimidation and threats or even be abducted eventually resulting in disappearance. In another interview, the respondent stated that the government has failed to acknowledge the fact that these northern and eastern provinces of Sri Lanka are claimed by the Tamils as their traditional homelands. This view of the respondent was substantiated by the statement of the secretary of the Human Rights Commission of Sri Lanka who stated that there are no Tamil areas in this country it is only the northern and eastern provinces.<sup>67</sup>

Many of the Sinhalese themselves acknowledge the fact that the government along with its agencies commits various forms of human rights violations against the Tamils in Sri Lanka. Though they belong to the Sinhala community many show sympathy towards the plight of the Tamils and have also stated that the condition of the Tamils in the region is appalling. The freedoms as guaranteed in the Constitution of Sri Lanka are violated every day by the security personnel. The Tamil community in Sri Lanka says that being a Tamil in this country is sufficient reason enough to be arrested under the PTA and killed.<sup>68</sup> The government has been charged of killing and waging war against innocent civilians in the north and east by many human rights organizations. In another interview, a Tamil from Jaffna stated that in Jaffna, everyday some 10 men would be rounded up and shot in the

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<sup>66</sup> Based on an interview held with a university professor in Colombo on 12/09/08.

<sup>67</sup> Excerpts of an interview with the Secretary of the HRCSL on 13/09/08.

<sup>68</sup> Based on an interview conducted in Colombo with a Lawyer on 14/09/08.

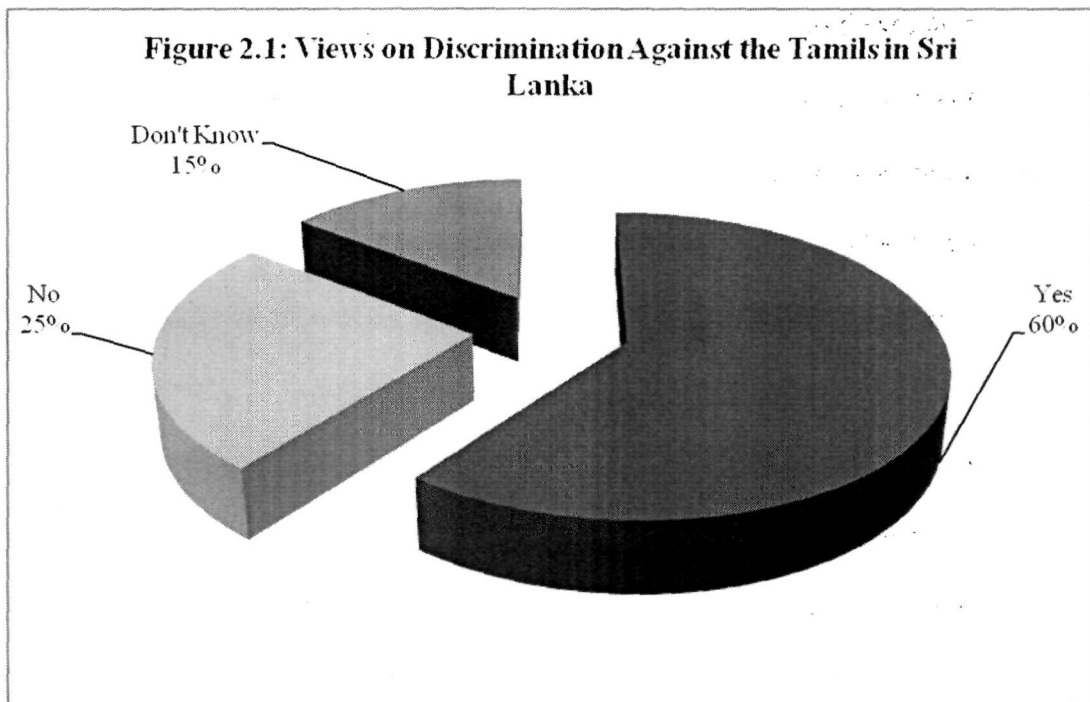
pretext that they were members of the LTTE.<sup>69</sup> In India, many political party leaders have alleged that the government is causing genocide in the name of eradicating terrorism in Sri Lanka. Human chains were formed and protests were held to urge the government of Sri Lanka to stop the war against civilians in these regions. But the Government of Sri Lanka has continued its war against the LTTE at the cost of civilian lives.

The government's inability to effectively solve the Tamil problem and the growth of Tamil rebellion and the states response to the rebellion has caused serious human rights violations which occur with impunity. In a war like situation, human rights violations are inevitable but they cannot be justified in the name of providing a better future. Civilians in the north and east of Sri Lanka face immense hardship with a significant number of them being killed in the crossfire and indiscriminate raids. Lack of transport links to Jaffna affects food supply to over 500,000 people in the region.<sup>70</sup>

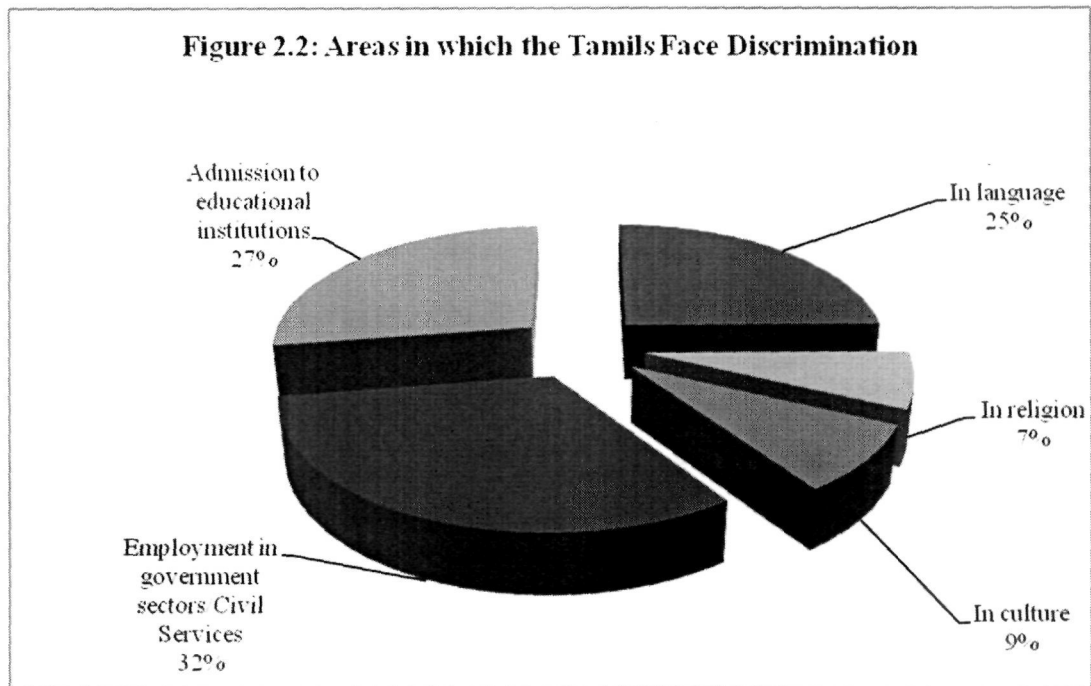
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<sup>69</sup> Based on an interview conducted with a Tamil in Kandy on 23/09/08.

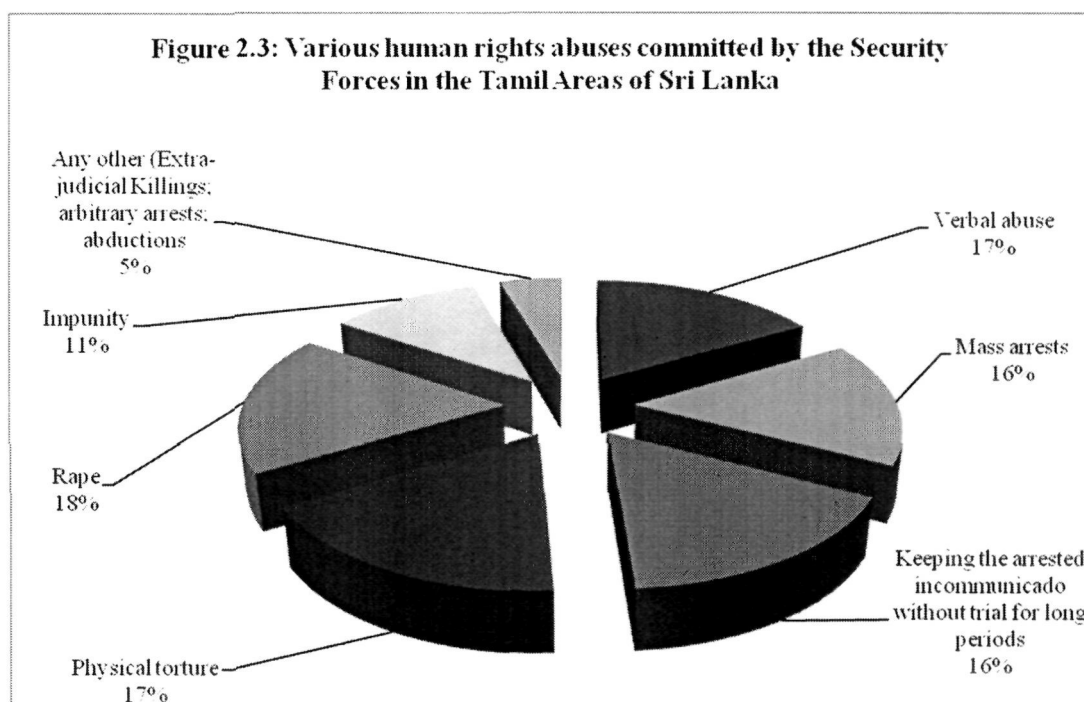
<sup>70</sup> Daily Mirror, Colombo, 3/6/08.



Opinions expressed by different groups of people in Sri Lanka revealed that the Tamils face discrimination by the Government of Sri Lanka and the Sinhalese in Sri Lanka. 60 percent of the respondents agreed to the fact that the Tamils face discrimination by the Government of Sri Lanka and the Sinhalese in Sri Lanka while 25 percent of the respondents said that the Tamils in Sri Lanka did not face discrimination. The remaining 15 percent of the respondents said that they don't know whether the Tamils in Sri Lanka face discrimination by the Government of Sri Lanka and the Sinhalese.



Respondents who agreed to the fact that the Tamils in Sri Lanka faced discrimination, also stated the areas in which they were discriminated by the Government of Sri Lanka and the Sinhalese. 32 percent of the respondents said that the Tamils in Sri Lanka faced discrimination relating to employment in government sectors and civil services while another 27 percent of the respondents expressed that the Tamils were discriminated in getting admissions to educational institutions such as universities and professional courses. The Tamils faced discrimination in Language was stated by 25 percent and another 9 percent said that were discriminated in culture. The remaining 7 percent of the respondents felt that the Tamils were discriminated with regard to their religion.



Opinions expressed by the respondents reveal that the various forms of human rights abuses committed by the security forces in the Tamil areas of Sri Lanka include (i) verbal abuse, (ii) mass arrests, (iii) keeping the arrested incommunicado without trial for long periods, (iv) physical torture, (v) rape, (vi) impunity, (vii) extra-judicial killings, (viii) arbitrary arrests and (ix) abductions. 18 percent of the respondents stated that the security personnel committed rape against civilians living in the region while another 17 percent of the respondents said that the security forces were using verbal abuse. Physical torture was stated by 17 percent of the respondents and 16 percent of the respondents said that the security forces were involved in mass arrests in the Tamil areas of Sri Lanka. Further, 16 percent of the respondents stated that those arrested were kept in detention incommunicado for long periods without trial while another 11 percent of the respondents said that Impunity was practiced in the north and east of Sri Lanka. The remaining 5

percent of the respondents said that the security forces were involved in extra-judicial killings, arbitrary arrests and abductions in the Tamil areas of Sri Lanka. Thus, it is clearly revealed from the various opinions expressed by the people living in Sri Lanka, that various forms of human rights abuses are committed by the Sri Lankan Government and its security forces in the Tamil areas of Sri Lanka.

In the inter-ethnic conflict in Sri Lanka, human rights violations were committed by both the warring groups (GOSL and LTTE). It cannot be said or proved that the Government of Sri Lanka only violates human rights in the Tamil areas of Sri Lanka. The LTTE which is recognised as the world's most organised terrorist organisation is also charged with various human rights violations. It is also believed that the LTTE has killed as many people in these regions as the security forces. The next chapter deals with the charges of human rights violations against the LTTE.

## **CHAPTER – III**

### **LTTE AND HUMAN RIGHTS ABUSES**

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### LTTE AND HUMAN RIGHTS ABUSES

Since independence in 1948, the powers and privileges that the Sri Lankan Tamils enjoyed during the British rule in Sri Lanka declined systematically and gradually. This led to increasing political alienation and polarization and the resultant violence and seemingly intractable impasse of the 1980s. Thirty years of political moderation and demands for accommodation of the Tamils with the majority Sinhalese led to secessionist demands for a separate state of Tamil Eelam comprising the northern and eastern provinces since the early 1970's by the Tamils in Sri Lanka.<sup>1</sup>

During this period several armed groups were formed with the objective of creating a separate state for the Tamils called Tamil Eelam through armed struggle.<sup>2</sup> Although, there were reports of more than thirty such armed groups, some important organizations are as follows:

- Eelam Revolutionary Organization of Students (EROS, 1975)
- Liberation Tigers of Tamil Eelam (LTTE, 1976)
- Tamil Eelam Liberation Organization (TELO, 1979)
- Peoples Liberation Organization of Tamil Eelam (PLOTE, 1980)
- Eelam People's Revolutionary Liberation Front (EPRLF, 1980)

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<sup>1</sup> Bullion, Allan, J. (1995) *India, Sri Lanka and the Tamil Crisis, 1976-1994*. London: Pinter. p. 14.

<sup>2</sup> *Ibid*, p. 91.

- Tamil Eelam Army (TEA, 1983)
- Tamil Eelam National Army (TENA, 1983)
- Tamil Eelam Liberation Cobras (TELC, 1983)
- Eelam National Democratic Liberation Front (ENDLF, 1987).<sup>3</sup>

Among the listed armed groups, the Liberation Tigers of Tamil Eelam (LTTE), Eelam Revolutionary organization of Students (EROS), Tamil Eelam Liberation Organization (TELO), People's Liberation Organization of Tamil Eelam (PLOTE) and Eelam People's Revolutionary Liberation Front (EPRLF) emerged as the most important Tamil organizations. These groups emerged slowly as a response to the discriminatory policies carried out by the Sri Lankan Government towards the Tamil minority in the post independence period.<sup>4</sup> By the early 1990s, the LTTE gained supremacy and eliminated all other groups in the north and east. Many of the other groups joined mainstream politics or were eliminated by the LTTE.<sup>5</sup> Thereafter, the LTTE became the only armed outfit or militant organization in Sri Lanka.

### **THE Liberation Tigers of Tamil Eelam (LTTE)**

The roots of the LTTE can be traced back to as early as 1970, when the Tamil Students Federation (TSF) was founded. The Tamil Students Federation renamed itself as Tamil New Tigers (TNT) and finally as the LTTE in 1976. In November 1978, the LTTE issued a document entitled "*The Struggle for Tamil Eelam and the Liberation Tigers*",

<sup>3</sup> <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/index.html>. 19/05/09.

<sup>4</sup> De Silva, Purnaka, L. (1990) 'The Growth of Tamil Paramilitary Nationalisms', in Siri Gamage and I. B. Watson (eds.), *Conflict and Community in Contemporary Sri Lanka: Pearl of the East or the Island of Tears*. London: Sage Publications. p.97.

<sup>5</sup> *Ibid*, p. 98.

which articulated the need for its birth, its relevance and role for the future. In it, the LTTE provided the ideological *raison d'être* (reason for being) and for the type of activities in which it engaged itself.

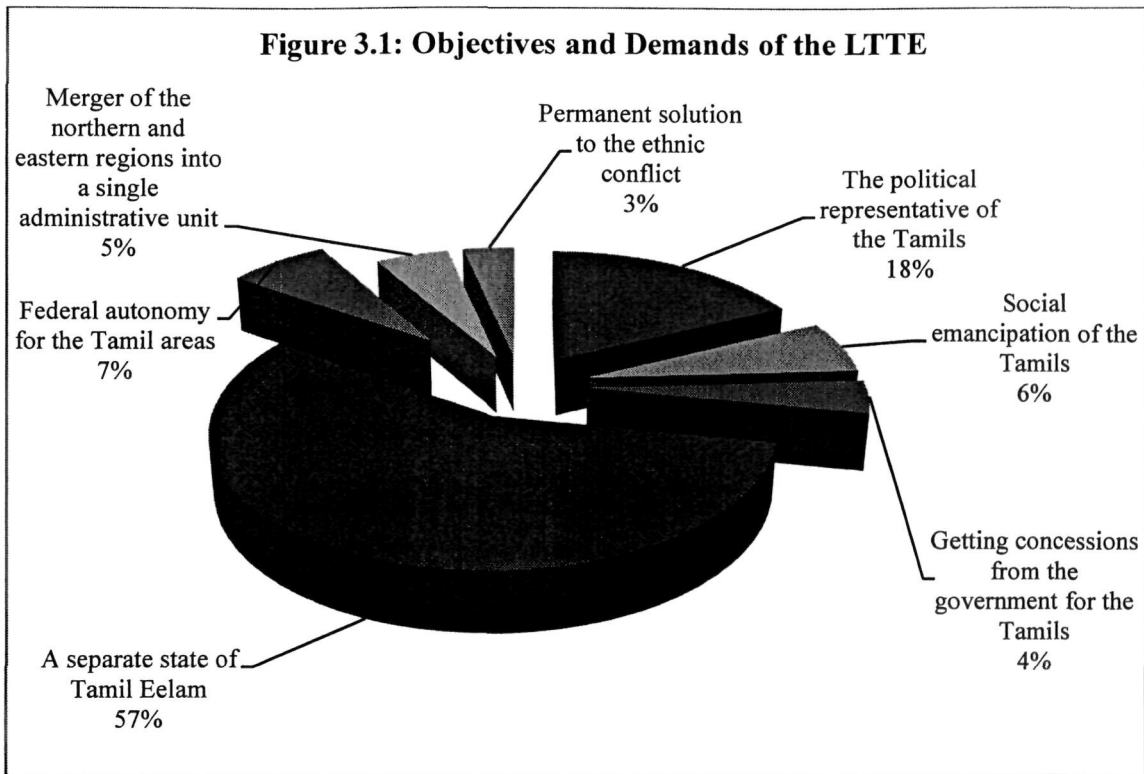
...the Tamil Liberation Tigers are the historical product of the Sinhalese chauvinistic oppression. They were the product of a revolutionary situation generated by the contradictions of national conflict. Caught up at the peak of national oppression, constantly victimized by police brutality and political actions, the revolutionary ardor of the militant Tamil youth sought concrete political expression to register their protest. Disenchantment with the political strategy of non-violence, confronted with the demand for revolutionary political practice, the Tiger movement gave its historical birth in 1976 as the resistance movement of the people...<sup>6</sup>

As shown in figure: 3.1, the LTTE had two basic political objectives. First, the total liberation of the Tamil homeland comprising of the northern and eastern provinces of Sri Lanka, securing political independence for Tamils in Sri Lanka and the establishment of an independent, Sovereign, Socialist, State of Tamil Eelam. Secondly, the socialist transformation and creation of a radically new society free from all structures of oppression and exploitation.<sup>7</sup>

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<sup>6</sup> Bhasin, Avtar Singh (2004) *India in Sri Lanka: Between Lion and the Tigers*. New Delhi: Manas Publications. pp. 54-55.

<sup>7</sup> Manivasakan, S. (2000) *Strategic Dimensions of Sri Lankan Ethnic Conflict*. Chennai: YesYem Publication. p. 56.



With regard to the objectives and demands of the LTTE, various views have been expressed by the respondents. According to the responses and opinions expressed by different groups of people interviewed, 57 percent said that the objective and demand of the LTTE was to achieve a separate state of Tamil Eelam and 18 percent considered its objective to be the sole political representative of the Tamils of Sri Lanka. Federal autonomy for the Tamil areas of Sri Lanka as the objective of the LTTE was expressed by 7 percent, while social emancipation of the Tamils as the objective of the LTTE was viewed by 6 percent of the respondents. 5 percent of the respondents said the LTTE demanded the merger of the northern and eastern provinces of Sri Lanka into a single administrative unit while getting concessions from the government for the Tamils was

viewed by 4 percent of the respondents. The remaining 3 percent of the respondents expressed that permanent solution to the ethnic conflict was one of the objectives of the LTTE.

According to the United States State Department Reports, the LTTE headed by Velupillai Prabhakaran was the world's most organized terrorist organization.<sup>8</sup> However, the LTTE considered itself as freedom fighters working for the liberation of the Tamils from Sinhalese oppression in the country. It clarified its character and role as an extra parliamentary liberation movement and not a group of terrorists as the government and the international community has called them.<sup>9</sup>

The LTTE is perceived differently by people living in Sri Lanka and other countries. In its initial stage, they were identified intimately as "boys" by extremist Tamil politicians who themselves were gunned down by the LTTE later as they differed in their demands from the LTTE. Others labeled the LTTE as Terrorist organization or guerilla movement. But the LTTE has described itself as a liberation organization.<sup>10</sup> The LTTE successfully discredited or destroyed almost all other rival militant groups and emerged as the single most important entity. It organized itself as a state within a state by controlling territory, organizing civil and criminal administration in areas under its control and collecting taxes. The LTTE also marginalized all moderate, Tamil opinion and no one dared accept a solution that was not acceptable to the LTTE. One factor that symbolized

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<sup>8</sup> Kronstadt, Alan, K. *Sri Lanka: Background and U.S. Relations*, Report for Congress. 09/04/03.

<sup>9</sup> Gamage, Siri and Watson, I. B. (eds.) (1990) *Conflict and Community in Contemporary Sri Lanka: Pearl of the East or the Island of Tears*. n. 5. p. 55

<sup>10</sup> Henanayake, Shantha, K. (2005) *Peace in Sri Lanka, Obstacles and Opportunities*. Sri Lanka: World Alliance for Peace. p. 91

the LTTE's superiority over other armed groups, is the cyanide capsule worn by every cadre. These capsules were to be swallowed when capture by the enemy was inevitable. This showed their absolute or extreme commitment to their cause of achieving a separate state for the Tamils of Sri Lanka (Eelam).<sup>11</sup>

The LTTE derived its support from the Jaffna Tamils in the early years of its formation. Its literature is filled with references to the ancient glory of the Jaffna kingdom, Tamil tradition, culture and language and the Tamil homeland which needed to be protected from the Sinhalese.<sup>12</sup> Primarily a nationalist group from the beginning, the LTTE advocated violence. The first instance of such violence was the assassination of Jaffna Mayor, Alfred Duriappah on July 27, 1975 by the leader of LTTE, V. Prabhakaran.

The year 1983 proved to be a watershed in the ethnic conflict and violence increased in the north and east of Sri Lanka.<sup>13</sup> 1983 was a decisive moment in the history of political violence that took place in the form of anti-Tamil riots of an unprecedented scale and intensity. The events of 1983 anti-Tamil riots are believed to be the result of the ambush and killing of army soldiers by the LTTE. Thus, it appeared that the LTTE based its movement on violence from its very inception. For a discussion of human rights violations committed by the LTTE, a brief recapitulation of the Eelam Wars has to be made. There are four different phases of the war, Eelam war I, II, III and IV. Eelam War- I

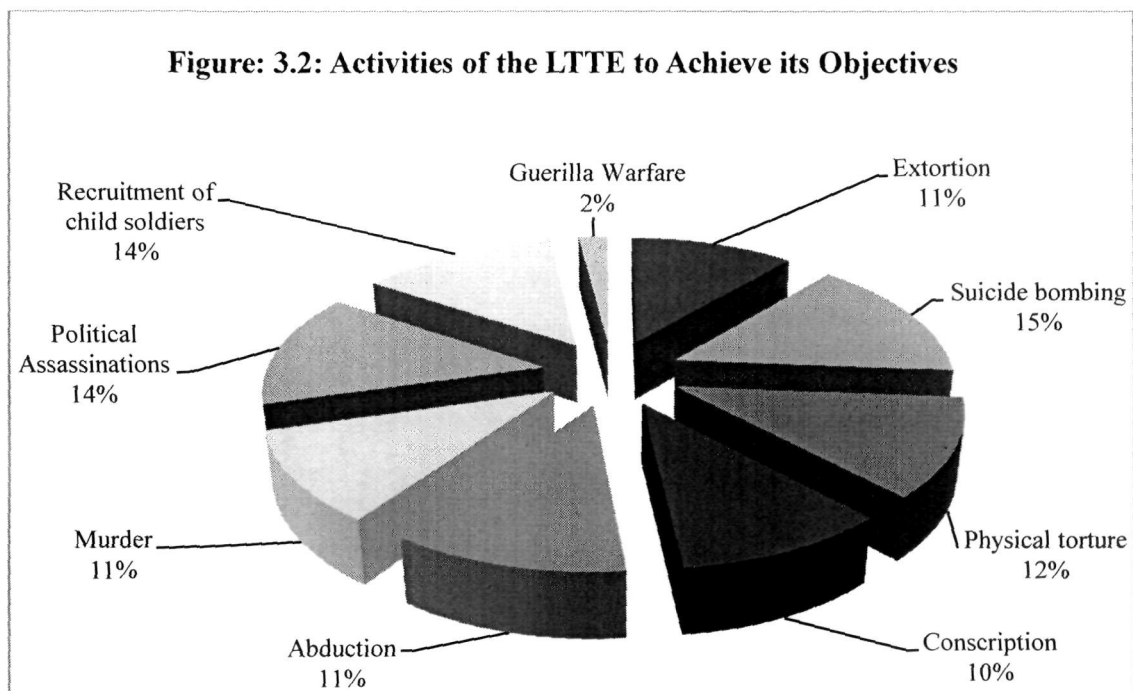
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<sup>11</sup> Gamage, Siri and Watson, I. B. (eds.) (1990) *Conflict and Community in Contemporary Sri Lanka: Pearl of the East or the Island of Tears*. n. 5. p. 57.

<sup>12</sup> Hellmann, Rajanayagam Dagmar (1988) 'The Tamil Militants- Before the Accord and After', *Pacific Affairs*, 61(14): 609-619.

<sup>13</sup> Gamage, Siri and Watson, I. B. (eds.) (1980) *Conflict and Community in Contemporary Sri Lanka: Pearl of the East or the Island of Tears*. n. 5. pp. 58-59.

commenced in 1983 in the aftermath of the anti-Tamil riots of that year in July till Indian Peace Keeping Force established itself in the north and east of Sri Lanka in 1987. Eelam War-II started in June 1990 with the collapse of peace talks and continued till December 1994. The third Eelam War begun in April 1995 which was again after the peace talks collapsed and continued till 2002 when peace was brokered by Norway.<sup>14</sup> The final war started in 2008 and ultimately ended the 37 year old quest of the LTTE following the death of its leader V. Prabhakaran (1954-2009), who was killed in combat with the Sri Lankan Army (SLA).<sup>15</sup>



To achieve the stated objectives and demands, the respondents said that the LTTE had involved in different activities which resulted in human rights abuses. Figure 3.2

<sup>14</sup> Ghosh, Partha, S. (2003) *Ethnicity versus Nationalism: The Devolution Discourse in Sri Lanka*. New Delhi: Sage Publications. p. 351.

<sup>15</sup> The Hindu, "End of a War Zealot," 19/05/09.

clearly reveals that the LTTE had been involved in extortion, suicide bombing, physical torture, conscription, abduction, murder, political assassination and recruitment of child soldiers to achieve its objectives in the Tamil Areas of Sri Lanka. 15 percent said that the LTTE was involved in suicide bombing while another 14 percent said that political assassinations were one of its activities in the Tamil areas of Sri Lanka. 14 percent expressed that the LTTE recruited child soldiers, and extortion was also stated by the respondents. Further, 11 percent of the respondents stated that the LTTE committed murder while another 11 percent said that the LTTE was involved in abduction in the Tamil areas of Sri Lanka. Conscription of people into the LTTE was expressed by 10 percent of the respondents, while the remaining 2 percent of the total respondents said that the LTTE was involved in Guerilla warfare to achieve its objectives.

A brief chronology of the LTTE could be summarized as follows:

- “1975” the LTTE demanded a separate state for ethnic minority Tamils in the north and east of Sri Lanka.
- “1983” LTTE ambushed an army patrol in Jaffna killing 13 soldiers which is believed to have led to the anti-Tamil riots where an estimated 300-600 people mostly Tamils were killed. The Civil War in Sri Lanka begins.
- “1987” India and Sri Lanka sign a pact called the Indo-Sri Lankan Peace Accord to end Tamil Separatism. Following the Indo-Sri Lankan Peace Accord, the Indian Peace Keeping Force was sent to Sri Lanka who ended up fighting the LTTE.
- “1990” Indian Troops were withdrawn from Sri Lanka.

- “1991” An LTTE suicide bomber assassinated former Indian Prime Minister Rajiv Gandhi, during an election campaign near Sriperumbudur, Chennai, apparently in revenge for sending the Indian Peace Keeping Force.
- “1993” President Ranasinghe was assassinated by an LTTE suicide bomber after peace Talks failed.
- “2002” Ceasefire Agreement (CFA) was signed between the Government of Sri Lanka and the LTTE.
- “2005” LTTE launched the first major attack since the Ceasefire Agreement killing atleast 12 Sri Lankan Navy soldiers.
- “2006” Talks in Norway started that aimed at restoring peace.
- “2009” Sri Lankan Government officially stated it has captured the last LTTE held territory. The government also claimed that V. Prabhakaran and his top aides including his son Charles Anthony were killed on May 18, 2009.<sup>16</sup>

Constant clashes between the Sri Lankan Army and the LTTE since 1983 have had its grave consequences for the civilians living in the north and east of Sri Lanka. In any fighting the loss of a combatant does not generally draw much attention. On the contrary when innocent civilians are affected in the crossfire there is much criticism for such actions against either group. We have seen that the objective of the LTTE was to achieve a separate state for the Tamils in the north and east of Sri Lanka. The LTTE followed the path of violence and armed struggle to achieve its stated objective, thus violating the rights of civilians living in the regions under its control. The LTTE had involved in various methods

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<sup>16</sup> *The Times of India*, "LTTE Chief Prabhakaran killed: Lanka Army Sources". 18/05/09.

of violence which reflect grave abuses of human rights. These human rights violations include extortion, kidnapping, torture, murder, political assassinations, suicide bombing, child recruitment and conscription. However, these abuses are not documented well to provide an approximate figure of victims. Most cases filed against the LTTE are in the context of political assassinations through suicide bombing. Other abuses were generally not reported as civilians in the region faced threats to their lives by the LTTE. In all instances, anyone who opposed the LTTE were generally killed or murdered and in many cases abducted and disappeared. Reports of many human rights agencies show evidence of such abuses. Some of the activities of the LTTE that drew both the national and international communities' attention are as follows:

### **Political Assassinations**

Since the growth of the LTTE and its increased amount of violence, the LTTE has been involved in a number of political assassinations. Some of the major political assassinations include former Prime Minister of India, Rajiv Gandhi (May 21, 1991), assassination of Sri Lankan President R. Premadasa (May 1, 1993), killing of presidential candidate Gamini Dissanayake (October 24, 1994). Other assassinations include Tamil politicians, A. Amirthalingam (July 13, 1989) founder of Tamil United Liberation Front (TULF), Assassination of Tamil intellectual Prof. Rajani Tiranagama (September 21, 1989) and Dr. Neelan Thiruchelvam (July 29, 1999).<sup>17</sup> Political assassinations by the LTTE have been in most cases through suicide missions. The LTTE killed or assassinated the above said people probably because they were at one time or the other opposed to their ideology of a separate state of Tamil Eelam.

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<sup>17</sup> Hennayake, Shantha K. (2005) '*Peace in Sri Lanka, Obstacles and Opportunities*'. n. 10, pp. 93-94.

### **Suicide Missions or Bombings by the LTTE**

A list of suicide missions carried out by the LTTE is as follows in chronological order:

- July 5, 1987, the LTTE carried out its first suicide mission at Nelliady army camp killing 40 security forces.
- July 12, 1990, six security personnel were killed when a group of four male suicide cadres of the LTTE attacked a naval vessel in Trincomalee with an explosive laden boat.
- March 2, 1991, Deputy Defence Minister Ranjan Wijeratne and 18 persons were killed by an LTTE suicide bomber in Colombo.
- November 16, 1992, Sri Lankan Navy Commander, Vice Admiral W. W. E. C Fernando and four navy personnel were killed by a suicide bomber on a two wheeler at Galle Face in Colombo.
- May 1, 1993, a suicide bomber, later identified as Babu, killed President R. Premadasa and 23 persons in Colombo.
- October 24, 1994, leader of opposition and United National Party UNP candidate for presidential elections Gamini Dissanayake and 58 others were killed by a female suicide bomber at Thotalaga junctions in Colombo.
- November 3, 1995, a suicide unit intruded into an oil storage depot in Colombo and destroyed 14 storage tanks causing \$ 61 million in damage. They also killed 23 soldiers and two civilians.

- January 31, 1996, a suicide bomber detonated a truck loaded with more than 100 Kilograms of explosives in front of the Central Bank at Janadipathi Mawatha in Colombo killing 91 people and wounding at least 1400 others.
- October 15, 1997, suicide bombers detonate a truck packed with explosives in the parking lot at Galadari hotel close to World Trade Centre (WTC) in Colombo killing 18 persons and injuring atleast 110.
- January 25, 1998, sixteen persons were killed in Sri Lanka's holiest Buddhist Shrine Sri Dalada Maligwa by LTTE suicide bombers.
- July 29, 1999, A Tamil Politician, Neelan Tiruchelvam and two more persons were killed by a suicide bomber at Kynsey Road, Rosmead Place in Colombo.
- June 5, 2000, thirty four navy personnel belonging to the Sri Lankan Navy were killed in a suicide attack by sea tigers near the Vadamarachchi coast of Jaffna Peninsula.
- July 24, 2001, 20 suicide bombers of the LTTE attacked the Air force base in Katunayake and the Bandaranaike International Airport. 8 military aircrafts including KFIR Jets two MI-17 Helicopters, MIG-27 Fighters and six Sri Lankan Airlines airbuses were destroyed in the attack. 13 LTTE cadres, six soldiers and an airport engineer were killed in the crossfire.
- July 7, 2004, a woman suicide bomber identified as Thiyagaraja Jeyarani detonated explosives strapped around her waist at the Kollupitiya Police Station killing 4 policemen and injuring 1 person.

- April 25, 2006, Army Commander Lieutenant. General Sarath Fonseka was critically injured while atleast 8 persons were killed when a pregnant suicide bomber blew herself in front of the military hospital in Colombo.
- May 24, 2007, a suspected LTTE suicide bomber in an explosive laden motorcycle, rammed a bus carrying army personnel in Colombo.
- October 22 and 23, 2008, two LTTE suicide boats carried out an abortive attempt on two merchant ships. Two top sea tigers were reportedly killed in the attempt.
- February 4, 2009, a 13 year old LTTE suicide bomber blew herself after reaching the troops in a location north of Chalai injuring one soldier.<sup>18</sup>

The above mentioned instances of suicide missions are just one in a year but the LTTE has carried out many such attacks which are not mentioned here. The list also shows that the LTTE had used suicide attackers which included children who were 13 years old to pregnant women. In all of these attacks, innocent civilians were also victims. The LTTE in many cases had carried out such attacks to draw the attention of the government. Many reports suggest that the LTTE had used children in suicide missions. It is also reported that the LTTE has used child soldiers in its suicide missions because they are not usually checked thoroughly by the security forces. Since the 1980s, the LTTE has approximately carried out 200 suicide bombings.<sup>19</sup>

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<sup>18</sup> [http://satp.org/satporg/countries/shrilanka/database/data\\_suicide\\_killings.htm](http://satp.org/satporg/countries/shrilanka/database/data_suicide_killings.htm). 03/ 06/09.

<sup>19</sup> Human Rights Watch (2004) *Living in Fear, Child Soldiers and the Tamil Tigers in Sri Lanka*. New York: Human Rights Watch. pp. 6-7.

## Child Soldiers

The LTTE had recruited children and used them as soldiers throughout its struggle in Sri Lanka, especially since October 1987 when the LTTE attacked the IPKF in the northern peninsula. LTTE's recruitment of Child soldiers was fueled by several factors. **First**, a sophisticated LTTE propaganda which exposed children throughout the north and east by special events honouring LTTE heroes, parades of LTTE cadres, public displays of war paraphernalia and speeches and videos, particularly in schools. Families of LTTE heroes were afforded special respect, and children were drawn to the status and glamour of serving cadres, which attracted many to join the organization.<sup>20</sup> The **second** factor was that children recruited into the organization were victims of violence or witnessed violence being perpetrated against them or their families. These children joined the LTTE to avenge those abuses committed against them. **Third**, deprivation including poverty and lack of vocational and educational opportunities often fueled recruitment particularly among the Tamils of the eastern province. Enlisting in the LTTE was perceived as a positive alternative to the other options children saw around them. **Finally**, coercion and force by the LTTE brought many children into the organization. Particularly in the east, the LTTE had pressurized Tamil families to provide a son or daughter for the cause of achieving Tamil Eelam. Any resistance to comply with the demand of the LTTE was often subjected to threats and harassment. In many cases it is alleged that children were recruited by force.<sup>21</sup>

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<sup>20</sup> *Ibid*, pp. 4-5.

<sup>21</sup> *Ibid*, p. 5.

However, the LTTE often used the excuse that children joined the organization voluntarily for food their parents could not adequately provide. Sri Lanka's Directorate of Military Intelligence estimated that at least 60 percent of LTTE fighters were below 18 years of age. A comparative estimate of LTTE child fighters revealed that at least 40 percent of the fighting force were both boys and girls between the age group of 9 and 18 years. Children were recruited as they are receptive to high levels of indoctrination, willing to engage in high risk operations, obedient and can easily learn to use modern weapons such as M16, AK-47 and Type 57 which are light in weight, easy to fire and require minimum training. It was also reported that the LTTE used children in its operations because of the fact that the Sri Lankan armed forces or the police did not perceive children as potential threats. Children were well-known to be used for both gathering of intelligence, as well as ambush. Various reports also suggest that children were used everywhere except in leadership positions. Most of the children between 10 to 16 years of age were from Batticaloa region. It is reported that more children were recruited from Jaffna and the Vanni regions by the LTTE. The children recruited by the LTTE were trained for a period of four months in jungle warfare. Parents of the children had no access to visit their children during training. It was reported that during 1995 and 1996 the LTTE recruited and trained about 2000 persons, largely from the displaced population in the north. It was also reported that of the 2000 recruited about 1000 were between the ages of 12 to 18. The LTTE also formed a group called the Leopard Brigade, which consisted of children drawn from LTTE managed orphanages. The LTTE regarded this group as their fiercest fighting force.<sup>22</sup>

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<sup>22</sup> *Sri Lanka Second Country Report on the Implementation of the Convention on the Rights of The Child*. Sri Lanka: Sri Lanka Government, 1998. pp. 44-45.

In April 1995, the LTTE is said to have visited schools and recruited students in their mid-teens through intense propaganda and the screening of action videos. This had often led to closing down of schools in the north and east of Sri Lanka as parents and teachers feared that their children would be abducted or kidnapped or attracted to join the LTTE. As said, the LTTE is reported to have used threats and intimidation on those families who resisted such recruitment. Many families were known to have fled to safer places to save their children from being recruited by the LTTE. It was also reported that the LTTE resorted to abduction if families failed to contribute their quota.<sup>23</sup> Children were frequently abducted from their home at night or picked up by the LTTE cadres while returning back from school or temples or shops to their homes. It is also alleged that parents who resisted abduction of their children faced violent retribution from the LTTE.<sup>24</sup>

After recruitment, children were subjected to rigorous training. They were trained to handle weapons, including landmines and bombs and also in military tactics thereby placing the lives of such children in a precarious condition. Children who made mistakes during training were subjected to frequent torture. The LTTE, harshly punished children who attempted to escape. Those children who were caught trying to flee LTTE camps were beaten or shot dead in front of their entire unit. Such actions by the LTTE dissuaded other children who were contemplating to run away.<sup>25</sup>

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<sup>23</sup> Lata Hogg, Charu (2006) *Sri Lanka, The Liberation Tigers of Tamil Eelam and Child Recruitment*. Switzerland: Coalition to stop the use of Child Soldiers, Forum on Armed Groups and Involvement of Children in Armed Conflict. p. 12.

<sup>24</sup> Human Rights Watch (2004) *Living in Fear, Child Soldiers and the Tamil Tigers in Sri Lanka*. New York: Human Rights Watch, n. 19. pp. 2-3.

<sup>25</sup> *Ibid*, p. 3.

The Norwegian brokered ceasefire between the Government of Sri Lanka (GOSL) and LTTE in February 2002 brought about an end to hostilities which had cost more than 60,000 lives. However, it is reported that during the ceasefire period (2002 to 2008), the recruitment of children by the LTTE may have increased.<sup>26</sup> In February 2003, following the peace talks in Berlin, an LTTE spokesperson said the LTTE had made a solemn pledge to United Nations International Children's Emergency Fund (UNICEF) to cease all underage recruitment. He also stated that children's ages will be checked prior to their recruitment into the LTTE. But, it was reported that abduction, forcible and involuntary recruitment of children continued despite its pledge to avoid child recruitment. In February 2004, about 1250 children were reportedly still remaining in LTTE custody. Most of the children recruited were about 15 years during this period.<sup>27</sup>

In March 2004, following the split of Karuna, Commander of the LTTE in the eastern province, fighting between the northern group led by V. Prabhakaran and the eastern group led by Karuna started. Personal differences between Prabhakaran and Karuna were believed to be the main reason for the split in the LTTE. Karuna is believed to have demanded the sacking of Pottu Amman, Head of the Intelligence Wing, Tiger Police Chief Nadesan and Finance Division Chief Thamilendhi. Karuna also alleged that of the 30 LTTE departments none is headed by an Eastern Tamil. Following the split within the LTTE, Karuna was expelled from the LTTE. Eventually the group led by Karuna was defeated by the LTTE headed by Prabhakaran. After the defeat of the Karuna faction, some 2000 child soldiers fled or were assisted to return home by the Karuna led forces. This was

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<sup>26</sup> *Ibid*, p. 3.

<sup>27</sup> *Child Soldiers Global Report*, (2004). London: Coalition to Stop the Use of Child Soldiers. p. 207.

followed by massive re-recruitment of children by the LTTE, often through force, abduction, threats and intimidation. Those who resisted re-recruitment were reportedly beaten by members of the LTTE.<sup>28</sup> In December 2005, it was also reported that the LTTE recruited children displaced or orphaned by the tsunami.<sup>29</sup>

Following resumption of fighting between the Sri Lankan armed forces and the LTTE, the violence increasingly placed civilians' lives in danger. The LTTE is also said to have restricted the movement of civilians through a pass system. It was reported that only people with medical needs and elderly were allowed to go out of the areas under the LTTE's control. The LTTE also continued to compel young men and children to join their forces. Reports also suggest that the LTTE had gone beyond its "*one person per family*" recruitment policy and required more members to join the organization depending on the size of the family.<sup>30</sup> According to the report of UNICEF, as of October 2008, there were 1424 cases of children recruited by the LTTE whose fate remains unknown.<sup>31</sup>

Forced recruitment by the LTTE of adults was also reported. Human Rights Watch reported in December 2008, that the LTTE forcibly re-mobilized all former LTTE fighters including those who were recruited as children in an effort to boost their ranks with experienced fighters.<sup>32</sup> In September 2008, the LTTE publicly announced more severe punitive policies for those who would attempt to avoid recruitment. The LTTE is reported

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<sup>28</sup> Human Rights Watch (2004) *Living in Fear, Child Soldiers and the Tamil Tigers in Sri Lanka*. Human Rights Watch, n. 19, p. 4.

<sup>29</sup> Chakma, Suhas (ed.) (2006) *SAARC Human Rights Report*. New Delhi: Asian Centre for Human Rights. pp. 104-05.

<sup>30</sup> Human Rights Watch, (2008) *Trapped and Mistreated, LTTE Abuses Against Civilians in the Vanni*. USA: Human Rights Watch. pp. 2-3.

<sup>31</sup> *Ibid*, p. 5.

<sup>32</sup> *Ibid*, p. 7.

to have said that if persons called up for its (LTTE) services fled, it would arrest upto 10 members of those person's relatives and use them in hazardous forced labor, building military reinforcements on the frontlines. An international humanitarian official reported that when a 21 year old man went into hiding after the LTTE tried to recruit him, the LTTE arrested his relatives including his wife, brother and all other male relatives and used them in hazardous labor until he came out of hiding and agreed to fight for the LTTE. It was also reported that LTTE had asked even those who were UN humanitarian workers in the Vanni region Tamils to join them.<sup>33</sup>

LTTE's demands on the civilian population under its control were not limited to forced recruitment only. The LTTE required all families to donate labor mostly in projects involving hazardous task of building LTTE defenses. Civilians including Internally Displaced Persons (IDPs) were also required to do forced labor for the LTTE for 10 days every 3 months. The LTTE termed it voluntary service. If anyone wanted to be exempted from such labor a sum of Sri Lankan Rupees 5000 had to be paid to the LTTE. In the final stages of the war, the LTTE refused to accept exemption payments from civilians in the region, especially in Vanni. Reports also suggest that the LTTE used forced labor as punishment. International humanitarian law during internal armed conflicts places prohibitions on the use of such forced labor. Relevant provisions of the Fourth Geneva Convention of 1949, which is reflective of customary international law, provides that civilians may not be compelled by the parties engaged in the conflict to work which is directly related to the conduct of military operations, or work that would involve in any

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<sup>33</sup> *Ibid*, p. 8.

form of military operations. For any work, payment of wage is required.<sup>34</sup> However, these international norms and standards were reportedly violated by the LTTE.

Freedom of movement was reportedly restricted by the LTTE in the north and east of Sri Lanka. It was reported that the LTTE imposed strict regulations if anyone wanted to leave the areas under its control to government controlled areas since 1995. The LTTE also used a coercive pass system to prevent civilians from leaving areas that were under its control. Anyone between 12 to 35 years of age which was later extended to 45 years, wishing to temporarily leave LTTE controlled areas were required to leave a guarantor. If the person after leaving the area did not return within the stipulated time, the guarantor of that person was often used in hazardous labor for the LTTE as punishment till the person returned. The LTTE had a Transport Monitoring Division (TMD) to handle this issue.<sup>35</sup>

As the war between the Government of Sri Lanka and the LTTE was in progress, civilians faced extreme hardships caused by the LTTE. While the LTTE territory diminished, the civilian population was forced into smaller space. It was reported that in violation of the laws of war, the LTTE refused to allow civilians to leave the war zone. It was also alleged that the LTTE repeatedly fired on those trying to reach government held territory and deployed its forces near densely populated areas to prevent people leaving the region under its control. As the LTTE retreated in the face of the Sri Lankan Army's offensive, it is alleged that the LTTE forced civilians to retreat with it, which not only increased danger for them but also made them move further away from desperately needed

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<sup>34</sup> *Ibid*, pp. 10-12.

<sup>35</sup> *Ibid*, pp. 14-15.

humanitarian assistance.<sup>36</sup> There were reports that, when members of the International Committee of the Red Cross and the United Nations went to LTTE controlled areas of Puthukudiyiruppu in Mullaithivu district, to fetch about 300 patients who needed immediate treatment, they were turned back by the LTTE. It was also reported that the patients were held captive at gunpoint as human shield.<sup>37</sup>

In 2008, the Sri Lankan Government withdrew from the cease fire agreement with the LTTE that was signed in 2002. Following this full scale war started in the northern province to crush the LTTE. In the fighting that took place between the LTTE and the Sri Lankan armed forces, it was reported that the government forces were steadily capturing those areas under the control of the LTTE. On May 17, 2009, the Sri Lankan Government officially stated that it had captured all the areas under the control of the LTTE and claimed that V. Prabhakaran the leader of the rebel organization was dead along with his son Charles Anthony. During the final stages of the war it was reported that the LTTE had fired upon unarmed civilians who were trying to leave the region into government controlled areas.<sup>38</sup>

Thus, throughout its existence, the LTTE had committed various forms of human rights abuses. It is also evident from its activities that the LTTE has shown little regard for humanitarian laws and human rights. The LTTE, which grew as a byproduct of the state's repression of Tamil minorities, claimed to work for their rights by creating a separate state

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<sup>36</sup> Human Rights Watch (2008) *War on the Displaced, Sri Lankan Army and LTTE Abuses Against Civilians in the Vanni*. New York: Human Rights Watch. pp. 1-5.

<sup>37</sup> *The Hindu*, 'LTTE Holds 300 Patients at Gunpoint' 29/01/09.

<sup>38</sup> <http://www.defence.lk/>. 12/09/09.

for the Tamils in the north and east of Sri Lanka. But what appeared is that the LTTE in pursuit of its objectives had violated the rights of the people living in the region. The LTTE seemed to have denied the rights of the Tamils living in the north and east of Sri Lanka during its existence particularly during the last phase of war. Having discussed the various charges of human rights abuses against the Government of Sri Lanka and the LTTE, the following chapter would analyze the various factors responsible for such violations of human rights in the north and east of Sri Lanka.

**CHAPTER - IV**

**FACTORS RESPONSIBLE FOR HUMAN RIGHTS**

**ABUSES IN TAMIL AREAS OF SRI LANKA**

## CHAPTER – IV

### FACTORS RESPONSIBLE FOR HUMAN RIGHTS ABUSES IN TAMIL AREAS OF SRI LANKA

In chapters two and three, detailed accounts of the various charges against the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) have been made respectively. In the light of those charges, the objective of this chapter is to examine the various factors responsible for violations of human rights in the north and east of Sri Lanka. After its independence in 1948, Sri Lanka witnessed a fundamental shift in its political order, with violence emerging as the main characterizing factor in the state-society relationship. In Sri Lanka, institutional arrangements of the democratic state have survived many political conflicts and tensions. However, it no longer rests on the social consensus that was negotiated repeatedly in the aftermath of independence. These democratic institutions, which exist at present, have ceased to be formal and constitutionally grounded and non-associated with Parliamentary democracy.<sup>1</sup> Sri Lanka's political conflict or political violence has been accepted as a legitimate mode of political behaviour whether by the state or non-state forces. The militaristic capacity of the state along with the passing of legislation to suppress the demands of the Tamils, and the will to conduct a prolonged war in the north and east of Sri Lanka has increased human rights violations.<sup>2</sup>

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<sup>1</sup> Rupesinghe, Kumar and Khawar, Mumtaz, (eds.) (1996) *Internal Conflicts in South Asia*. Oslo: Peace Research Institute. pp. 118-19.

<sup>2</sup> *Ibid*, p. 121.

### **Factors Responsible for Human Rights Abuses in Tamil Areas of Sri Lanka**

As regard the factors responsible for human rights abuses in the Tamil Areas of Sri Lanka particularly in the northern and Eastern Provinces, there are three important dimensions, (i) the State's repression of the Tamils, (ii) the armed rebellion of the Tamils in response to the State's repression, and (iii) the state's response to the armed rebellion of the Tamils. Soon after independence from the British in 1948, the state's repression of the Tamils started through the government's policies relating to language, citizenship, and employment in government sectors and civil services.

When the State enacted legislations such as (i) The Ceylon Citizenship Act Number 18 of 1948, (ii) The Ceylon Parliamentary Elections Act No. 3 of 1949, (iii) The Official Languages Act of 1956 and (iv) the Standardization Policy that sidelined the Tamils in Sri Lanka, to give more privileges were given to the Sinhalese. The Tamils felt that it was their right to demand equal treatment and opportunity in society. This however, led to anti-Tamil riots in which many Sri Lankan Tamils were killed by the Sinhalese. Therefore, the Tamils demanded federal autonomy for the regions inhabited by them in the northern and eastern provinces of Sri Lanka. These demands made by the Tamils were again meted out with violence being perpetrated against the Tamils. Following these events, the Tamil leadership felt that the only way to achieve and enjoy their legitimate rights was through the establishment of a separate state of Tamil Eelam. However, the Tamil political leadership was not able to achieve anything with regard to their demands, neither federal autonomy nor a separate state of Tamil Eelam. This led a group of Tamil youth to believe that a separate state of Tamil Eelam could be achieved only through an armed struggle. The

armed struggle to achieve a separate state of Tamil Eelam was spear headed by the LTTE from the year 1976. When the armed struggle for the establishment of Tamil Eelam started, the Government of Sri Lanka enacted legislations such as the Prevention of Terrorism Act and the Emergency Regulations. The state also used its armed forces in the region to suppress the demand for the separate state of Tamil Eelam, which resulted in various forms of human rights abuses. To understand the various factors responsible for human rights abuses, the ethnic conflict between the Sinhalese and the Tamils, and the demand for a separate state of Tamil Eelam is necessary.

### **The Ethnic Conflict**

The ethnic conflict between the Sinhalese and the Tamils in Sri Lanka can be traced back to their differences in language, religion, culture and customs. The Sri Lankan Tamils claim that they are a separate nation with their Tamil language, Hindu religion, culture and heritage and history of independent political organization in separate sovereign kingdoms in the northern and eastern parts of Sri Lanka for centuries. Similarly, the Sinhalese too are a separate nation with their Sinhala language, Buddhist religion, culture and heritage and history of monarchical rule in a number of Sinhalese kingdoms in the west, central and southern areas of Sri Lanka for centuries. Because of their particular past history, and their national-ethnic differences and the occupation of separate homelands, each possesses separate and distinct national consciousness and owes its loyalty first to its own homeland, and then to Sri Lanka. The British, who ruled Sri Lanka from 1796, brought the Sinhalese and the Tamil nations together in 1833 for the purpose of administrative convenience. In 1948, the British granted independence to Sri Lanka leaving the two nations, Sinhalese and

Tamils, yoked together in a Unitary State structure. In 1946, The Sinhalese and Tamil Political elites had agreed for a Constitutional settlement in which the Sinhalese upper middleclass political leadership promised a just and fair government with sharing of power based on partnership, in perfect amity and unity. They adopted the independence Constitution (Soulbury Constitution) which enabled the balance of rights between the Sinhalese and Tamil peoples.<sup>3</sup>

The independence Constitution, which is also known as the Soulbury Constitution of 1947, had definite safeguards for the minority ethnic and religious groups in Sri Lanka. The unexpressed premise of the Soulbury Constitution was a consociational<sup>4</sup> arrangement between the English-educated elites of the island's principal groups, (i) Sinhalese, (ii) Tamils, (iii) Muslims and (iv) Burghers. The Constitution provided for weightage in representation including appointed members (not more than six) in the house of representatives and prohibiting legislation that would discriminate against any of the minority groups (Section 29 (2) (b) of the Soulbury Constitution).<sup>5</sup>

After independence, the new nation-state of Sri Lanka hurriedly passed citizenship and franchise laws. The Ceylon Citizenship Act Number 18 of 1948 created two types of citizenship, (i) citizenship by descent and (ii) citizenship by registration. In both cases, documentary proof of citizenship was required for applicants, a procedure that disqualified

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<sup>3</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. London: Zed Books, Ltd. pp. 3-10.

<sup>4</sup> Consociationalism means a form of government that provides confederal arrangements by granting territorial autonomy. Consociationalism is a form of government involving guaranteed group representation, and is often suggested for managing conflict in deeply divided societies.

<sup>5</sup> Wilson, Jeyaratnam A. (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict*. London: C. Hurst and Co. Ltd. p. 34.

the majority of Indian Tamil<sup>6</sup> settlers who were illiterates and did not have such evidence.<sup>7</sup> The Citizenship Act of 1948 denied a million Indian origin Tamils their basic right to citizenship rendering them stateless. This was followed by their disfranchisement. Thus, seven Members of Parliament representing the Tamils were relieved of their seats in the next general elections of 1952 thereby depriving the Indian origin Tamils of any representation in the Parliament of Sri Lanka. The pressing question for the Sri Lankan Tamils was, whether they should cooperate with the Senanayake led government, or sit in opposition or rely on them and campaign for the right to self-determination. During the crucial 1948-1956 period, Tamil opinion was divided. G. G. Ponnambalam of the Tamil Congress joined the Senanayake government in 1948, while Chelvanayakam another Tamil party leader and others opposed this decision and split from the Tamil Congress to form the Tamil Federal Party (FP).<sup>8</sup>

The federal party had four principal objectives. The first was a federal union of Sri Lanka, comprising of the two Tamil-speaking northern and eastern provinces along with the remaining seven Sinhalese provinces. Secondly, all state aided colonisation of the Tamil areas by Sinhalese should cease. Thirdly, to foster unity among Tamil speaking people of Sri Lanka (Sri Lankan Tamils, Indian Tamils and Muslims). Fourthly, Sinhala and Tamil were to be recognized as official languages of the country on an equal footing.

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<sup>6</sup> In Sri Lanka, there are two groups of Tamils, (i) the Sri Lankan Tamils and (ii) the Indian Tamils. The Sri Lankan Tamils are those indigenous people who are believed to have migrated from south India during the 10th century B. C. The Indian Tamils are those people who were taken by the British to Sri Lanka as plantation workers from 1837 onwards.

<sup>7</sup> Wickramasinghe, Nira (2006) *Sri Lanka in the Modern Age: A History of Contested Identities*. Honolulu: University of Hawaii Press. p. 171.

<sup>8</sup> Wilson, Jeyaratnam, A. (2000) *Sri Lankan Tamil Nationalism: Its Origins and Developments in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*. London: C. Hurst and Co. Ltd. p. 79.

In these objectives, there was evidence of sections of the Sri Lankan Tamil population imagining themselves as a nation within a short span of time which turned into defensive nationalism in the later years in the politics of Sri Lanka. The Federal Party failed to make an impact in the general elections of 1952, because the Tamils at that time believed in a future that lay in a unitary state. However, in 1956, the Federal Party swept to victory in the Tamil-speaking areas while the coalition led by Solomon West Ridgeway Dias (S. W. R. D.) Bandaranaike, Mahajana Eksath Peramuna (MEP) which obtained power, won all its seats in the Sinhalese Provinces and none in the Tamil areas.<sup>9</sup>

In June 1956, Prime Minister Bandaranaike introduced in the House of Representatives, a bill to make Sinhala the only official language of Sri Lanka. Sri Lankan political parties such as The Mahajana Eksath Peramuna (MEP) and the United National Party (UNP) supported the language bill. The Lanka Sama Samaj Party (LSSP), Communist Party (CP), Federal Party and the Tamil Congress (TC) opposed it. Though the bill was a short one with only three clauses, it gave rise to the longest debate in the annals of Sri Lanka's legislature. In commending the Sinhala only Act of 1956, Bandaranaike said "the fact that in towns and villages, in business, houses and in boutiques most of the work is in the hands of the Tamil-speaking people, this will result in a fear and I do not think that this is an unjustified fear of the inexorable shrinkage of the Sinhalese language". The Sinhala only bill was passed in the teeth of opposition by all the Tamil MPs within the house.

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<sup>9</sup> *Ibid*, pp. 82-83.

To quote Dr. N. M. Perera, leader of the Lanka Sama Samaja Party:

“The LSSP’s demand for Sinhalese and Tamil to be made as the official languages flows from the very concern for the interests of the people who speak these languages. We have been for swabhasha that is Sinhalese and Tamil since 1935.”

M. Sivasithamparam of the Tamil Congress commented:

“The result of the government’s policy of language: One language two countries; two languages one country”.<sup>10</sup>

The above quotations show that it was only the Sinhalese who favoured the Sinhala only language policy. It also revealed that the language policy would result in dividing the country.. In June 1956, the FP staged a sit-down protest against the Official Language Act (Sinhala Only Act). It was organized at Galle Face Green on the principles of *Satyagraha*<sup>11</sup>, but organised Sinhalese mobs attacked the *Satyagrahi*’s and injured many. This sort of organized violence was perpetrated against the Tamils in Colombo and Gal Oya in the eastern province.<sup>12</sup>

For the Tamils, the implication of the Sinhala Only Act was starkly clear. It amounted to the betrayal of the promises held out to them during the transfer of power

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<sup>10</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. n. 3. pp. 100-02.

<sup>11</sup> Satyagraha is a philosophy and practice of nonviolent resistance developed by Mohandas Karamchand Gandhi. Gandhi deployed Satyagraha in the Indian independence movement and during his earlier struggles in South Africa. The word Satyagraha is derived from two Sanskrit words ‘Satya’ which means truth and ‘Agraha’ which means insistence or holding firmly to.

<sup>12</sup> Wilson, Jeyaratnam, A. (2000) *Sri Lankan Tamil Nationalism: Its Origins and Developments in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*. n. 8. p. 84.

from the British in 1948. It meant that the Tamils would be at a great disadvantage economically, in future employment and eventually in professions as well. But more importantly, once the language became the determinant of national consciousness, there was in addition the threat to the integrity of the indigenous Tamils, and to their identity as a distinct ethnic group, in Sri Lanka. The Federal Party in April 1956, at a convention held in Trincomalee made a list of demands on behalf of the Tamils. The list consisted of regional autonomy for the northern and eastern provinces under a federal constitution; parity of status for the Sinhalese and Tamil languages and a satisfactory settlement with regard to the problem of the Indian origin Tamils. The Sinhalese on the other hand were alarmed by the implications of these demands put forward by the Tamils. The fact is that the Sinhalese always had a minority complex vis-à-vis the Tamils, though they are a majority in Sri Lanka, they felt encircled by more than 50 million Tamils of Tamilnadu in India. Though the Tamils of Sri Lanka showed no signs of developing links with the Tamils in Tamilnadu during the early years of independence, the Sinhalese always feared this possibility. The Federal Party's campaign for federalism and the attempt to espouse the cause of the Indian origin Tamils in the country added substance to these fears and thus the programme of action outlined by the federal party in 1956 was regarded as having ominous long term dangers for Sri Lanka.<sup>13</sup>

To grant some of the demands of the Tamils and the Federal Party, a series of meetings were held between Bandaranaike and members of the cabinet representing the government on one side and S. J. V. Chelvanayakam and MPs of the Federal Party

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<sup>13</sup> Silva, De, K. M. (ed.) (1964) 'Discrimination in Sri Lanka'. in "Case Studies on Human Rights and Fundamental Freedoms", 3(2): pp.552-53.

representing the Tamils on the other side. Discussions between the two groups led to an agreement called the Bandaranaike-Chelvanayakam Pact (B-C Pact) of 1957. Most important of the agreement in the Bandaranaike-Chelvanayakam Pact was that regional councils would be established in the Tamil areas, almost on the lines of those recommended by the Donoughmore Commission<sup>14</sup>. According to the pact, the northern province was to constitute one regional council and the eastern province was to be divided into two or more councils. They were to be allowed to amalgamate even beyond provincial limits. The regional councils were to have wide powers over specified issues including agriculture, co-operatives, land and land development, colonization, education, health, industries and fisheries, housing and social services, electricity, water schemes and roads. With regard to colonisation and resettlement schemes, it was agreed that the regional councils would have the power to select those land which was to be resettled. The Federal Party on its part agreed to drop its demand for parity of status if (i) recognition of Tamil as the language of the national minority of Sri Lanka and (ii) Tamil would be the language of government administration in the northern and eastern provinces with provision for Sinhalese people in the region.<sup>15</sup>

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<sup>14</sup> The Donoughmore Commission arrived in Sri Lanka in 1927 which was responsible for the creation of the Donoughmore Constitution. The Donoughmore Constitution was in effect in Sri Lanka during the period 1931-47. The British government through this commission introduced a form of communal representation which would enable a representation, to the Tamil community. Having noted that the island was facing power struggles between competing ethnic groups, it devised a system of executive committees that would control all government departments. The commission also rejected the principle of communal representation. Every parliamentarian in Sri Lanka would sit on one of these committees, ensuring that no one ethnic group could control all levers of power and patronage. Instead, all executive decisions would require a measure of consensus among the different ethnic representatives.

<sup>15</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. n. 3. pp. 110-11

Tamil opposition to the Language Act led to the Tamil Language Special Provisions Act in 1958, which allowed applicants for civil services to take examinations in Tamil as long as they later developed proficiency in Sinhala. It also permitted the use of Tamil in higher education and allowed Tamil speaking bureaucrat's reasonable time to learn Sinhala.<sup>16</sup> As soon as the contents of the B-C Pact were released, the forces of Sinhala only were up in arms to oppose it, along with the support of the United National Party. Bandaranaike could not even table the Bill in Parliament. On April 9, 1958, a group of Bhikkus (Buddhist Monks) staged a *Satyagraha* in the private residence of Bandaranaike in protest against the B-C Pact and Bandaranaike abrogated the pact dramatically by tearing it in front of the Bhikkus.<sup>17</sup> Many observers found it difficult to understand the government's failure to implement the B-C Pact. The simple reason was that the Sinhalese-Buddhists were claiming the whole island for Sinhalese people and Buddhist religion. The Sinhalese were beginning to deny any legitimate place for anyone other than Sinhalese-Buddhists, and for any cause other than Sinhala-Buddhism. National-ethnic rights, national education, public and defense services and even business to serve Sinhala-Buddhism were their demands. Sri Lankan politics thereafter was a story of how this position turned into a different reality.<sup>18</sup>

Abrogation of the B-C Pact led to inter ethnic tensions between the Sinhalese and Tamils, which led to the anti-Tamil riots of 1958. Certain conditions of the B-C Pact such as providing powers to the regional councils and recognition of Tamil as the language of administration in the northern and eastern provinces seemed to have led to the outbreak of

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<sup>16</sup> Oberst, Robert, C. (1988) 'Federalism and Ethnic Conflict in Sri Lanka', *Publis*, 18 (3): 175-93.

<sup>17</sup> Wickramasinghe, Nira (2006) *Sri Lanka in the Modern Age: A History of Contested Identities*. n. 7. p. 80.

<sup>18</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. n. 3. p. 113.

violence. There were three phases of violence during the 1958 anti-Tamil riots in Sri Lanka. The first phase of violence was during May 22 to 25, in the north central province of Sri Lanka where Tamils attacked the security personnel. The second phase of violence was between May 25 to 26, in which Sinhalese attacked Tamils in Colombo, Kalutara, Matura and Badulla. The third phase of violence was because of rumors of Tamil atrocities against Sinhalese in Tamil areas, which led to extreme violence against Tamils in Sinhala areas. Governor General Sir Oliver Goonetilleke declared a state of emergency on May 27, 1958, to quell the riots and detained prominent members of the Federal Party.<sup>19</sup>

Though the Sinhala Only Act allowed for English and Tamil to be used in government affairs or correspondence till 1960, opposition to this act led to the creation of the Language Special Provisions Act of 1958, but this act was not implemented till 1966. When the United National Party led government passed the Act, it provided for the use of Tamil as the language of correspondence between the government and Tamil-speaking people in the northern and eastern provinces of Sri Lanka. Although the Act was passed, it was never fully implemented. The leaders of Tamil United Liberation Front (TULF) challenged the United Front (UF) government and the United National Party to implement it. In 1972, the United Front government, which comprised of the Sri Lanka Freedom Party, Communist Party of Sri Lanka and Lanka Sama Samaj Party, promulgated the new Republican Constitution, which gave official status of the Sinhala language. When the United National Party came to power in 1978, it replaced the 1972 Constitution. The Tamil United Liberation Front again lobbied for equal status of the Tamil language in the 1978

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<sup>19</sup> Wilson, Jeyaratnam, A. (2000) *Sri Lankan Tamil Nationalism: Its Origins and Developments in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*. n. 6. pp. 272-73.

Constitution. Although, the 1978 Constitution made Tamil as one of the official languages, it failed to provide equal status for the Tamil language. It was believed that these legislations were enacted to establish Sinhalese-Buddhist culture dominant in Sri Lanka which the Tamils perceived as a threat to their culture and identity in society.<sup>20</sup>

The Federal Party, which sought to protect the interests of the Tamil community with regard to their culture, habits, customs, language and religion, felt threatened by the new development of policies made by the government. The Federal Party Since its first convention asserted that, the Tamil speaking people in Sri Lanka constituted a distinct nation. In this connection the Federal Party said that (i) the Tamils had a separate historical past in Sri Lanka atleast as early as that of the Sinhalese, (ii) the Tamils were a linguistic entity entirely different vis-à-vis the Sinhalese and (iii) the Tamils who lived in the north and east, constituted over one third of the Sri Lankan population. The Tamils also saw themselves as culturally different from the Sinhalese. The Federal Party's response to the threat faced by the Tamils was to demand the creation of a linguistically based federal system similar to that of Switzerland, with small cantons representing the Tamil areas. The federal division of the country as demanded by the Federal Party was a direct response to the nationalistic policies of the Sinhalese majority. However, the Federal Party was not successful in achieving anything in favor of their demands. The promulgation of the new Constitution in 1972 by the United Front government also failed to address the Tamils' demand for federalism. The Federal Party made efforts to unite all other Tamil parties in Sri Lanka such as All Ceylon Tamil Congress and formed Tamil United Liberation Front (TULF) in 1976. After the formation of the Tamil United Liberation Front, the demand for

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<sup>20</sup> Oberst, Robert, C. (1998) Federalism and Ethnic Conflict in Sri Lanka. n. 16. pp. 175-93.

federalism was replaced with the demand for the creation of an independent state of Tamil Eelam. At the TULF's first convention on May 14, 1976, the party stated that:

“the Tamils of Sri Lanka by virtue of their language, religion, culture and their history of independent existence as a separate state over a distinct territory for several centuries till the advent of the British, by their will to exist as a separate entity themselves in their own territory are a distinct nation from the Sinhalese who are using the power they have wrongly usurped to deprive the Tamil nation of its territory, language, citizenship, economic life, opportunities in employment and education thereby destroying all the attributes of nationhood of the Tamil people. This convention resolves the restoration and reconstitution of the Free, Sovereign, Secular, Socialist state of Tamil Eelam. This has become inevitable in order to safeguard the very existence of the Tamil nation in this country”.<sup>21</sup>

Thus, the demand of the Tamils for Federal autonomy in Sri Lanka gradually transformed into a demand for a separate state of Tamil Eelam. This growth seemed to have risen due to the deprivation faced by the Tamils under the Sinhalese leadership who sought to establish their (Sinhalese) dominance in the country. The demand for the separate state of Tamil Eelam developed due to the failure of the state to guarantee the legitimate rights of the Tamils in Sri Lanka.

### **The Demand for Separate State of Tamil Eelam**

The manifesto of the Tamil united Liberation Front (TULF) for the general elections of 1977, sought a mandate from its voters for the creation of an independent, sovereign state of Tamil Eelam. Tamil Eelam constituted the traditional homeland of the Tamil speaking people in the country (the north and east). The TULF's call in 1976, for an independent state of Tamil Eelam represented a shift from the struggle for equality to an

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<sup>21</sup> *Ibid*, pp. 175-93

assertion of freedom, from the demand for fundamental rights to the assertion of self-determination. When minority rights, which were incorporated in the Soulbury Constitution of Sri Lanka, prohibiting discriminatory legislation was undermined, and minority electoral representation staying below that envisioned at the time of independence, the Tamils felt that there was no other alternative other than the establishment of Tamil Eelam for the full realization of their rights. This became evident in the 1970's, when both the Sri Lanka Freedom Party (SLFP) and its allies and the United National Party were able to garner large Parliamentary majorities sufficient to marginalize the minority Tamils. Both the Sri Lanka Freedom Party in 1972 and United National Party (UNP) in 1978 being Parliamentary majorities ratified and enacted two constitutions without participation of the elected Tamil representatives, thus marginalizing the Tamils. Though the 1978 Constitution recognised Tamil as an official language, it was seen by the Tamils as less than their demands and they also had lost faith in the country's institutions, which had failed to address their earlier demands.<sup>22</sup>

When the Tamil United Liberation Front altered the parameters of Tamil politics in Sri Lanka from federalism to a commitment to separatism and the promotion of a new Tamil state called Eelam, it was committed to achieve Tamil Eelam through Constitutional means and became the main opposition party in Sri Lankan Parliament after the general elections of 1977. In the early 1970s, rising unemployment among educated and qualified Tamil youth created an increasing disillusionment with mainstream politics and this group justified the demand for a separate state of Tamil Eelam through armed struggle. The

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<sup>22</sup> DeVotta, Neil (2000) 'Control Democracy, Institutional Decay and the Quest for Eelam: Explaining Ethnic Conflict in Sri Lanka', *Pacific Affairs*, 73(1): 55-76.

Federal Party and the Tamil United Liberation Front became increasingly unpopular among the Tamil youth because of the failure to achieve any of their demands through constitutional methods. As a result, in 1972, an extremist group of Tamil youth formed the Tamil New Tigers (TNT) in Jaffna peninsula. These boys had been radicalized while in jail on minor charges that arose from protests against various United Fronts (UF) governments' policies on education, language and culture that were perceived as discriminating against the Tamils. The TNT, which grew in size and strength, renamed the organization as the Liberation Tigers of Tamil Eelam (LTTE) on May 5, 1976. As the political process became more polarized under J. R. Jeyewardene, the violence of the LTTE also grew on the other hand. On May 22, 1978, the Sri Lankan government proscribed the LTTE and other similar organizations following the breakdown of law and order on the Jaffna peninsula. The LTTE responded to this by blowing an Air Lanka Aircraft on the runway in Colombo airport on September 7, 1979. The cycle of violence and counter violence escalated and on June 19, 1979, the government passed the Prevention of Terrorism Act (PTA) and declared a state of emergency in northern Sri Lanka.<sup>23</sup>

The Prevention of Terrorism Act Number 48 of 1979 must be noted that it was a law made by the government to be applied only against the Tamils. The fact that this law was directed particularly against the Tamils is evident in the Preamble, which clearly states: "Public order continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change in Sri Lanka". The Act declares that

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<sup>23</sup> Bullion, Allan, J. (1995) *Sri Lanka and the Tamil Crisis, 1976-1994, an International Perspective*. London: Pinter. n. 1. pp. 89-91.



grievances should be redressed by Constitutional means. On the contrary, the Tamils were not seeking any governmental change but they were seeking their national freedom that arose due to the failure of their efforts to get their rights in relation to language, religion, employment, citizenship and franchise. According to this law, the Minister-of-Defence can order the arrest of any person and detain him or her incommunicado without trial for 18 months.<sup>24</sup> It also provided that such an order shall be final and shall not be called in question by any court or tribunal by way of writ or petition. There was also no remedy against torture or death during this long period in detention. No sooner was this act enacted; the President declared a state of emergency in the Tamil areas from July 11, 1979, and the Sri Lankan army was deployed in the north and east of Sri Lanka with orders to wipe out the terrorists demanding for a separate state of Tamil Eelam.<sup>25</sup>

Following these developments, the Tamil United Liberation Front negotiated an agreement with President J. R. Jeyewardene and a stop-gap solution was made which resulted in the creation of District Development Councils (DDCs) scheme in 1980-1981. The objectives of the DDCs were improvement of administrative efficiency at the district level, encouragement of people's participation in governance, and most importantly, diffusion of ethnic tension. In respect of the first two objectives, the system worked satisfactorily. However, even before the DDCs were implemented, the Tamil United Liberation Front had expressed its strong misgivings about it. The Tamil United Liberation Front said that in any case this system was not structured to promote decentralization of power. The Tamil United Liberation Front could not accept the DDC's, because the

<sup>24</sup> *Prevention of Terrorism Act 1979, Sri Lanka.*

<sup>25</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. n. 3. pp. 201-03.

President of Sri Lanka and the government would be involved in matters relating to its policy formulation, implementation and funding. Further, since the whole idea was conceived within the framework of a unitary state and there was no feature of federal structure and this model offered to the Tamils was unacceptable.<sup>26</sup>

Following these developments in Sri Lanka, the country was rocked by anti-Tamil riots in July 1983, all efforts to resolve the ethnic conflict through Constitutional and political means came to a grinding halt. Anti-Tamil riots had taken place earlier also, but none matched the intensity of the 1983 riots in Sri Lanka. The ethnic conflict since then developed into warfare between the Government of Sri Lanka and the LTTE and other groups such as the Tamil Eelam Liberation Organization, Peoples Liberation Organization of Tamil Eelam, Eelam Peoples Revolutionary Liberation Front and Eelam Revolutionary Organization of Students.<sup>27</sup> During the 1983 anti-Tamil riots and the government's warfare against the Tamil groups, it was noticed that many middle-class Tamils took asylum in western and European countries and started lobbying for protection of their rights.<sup>28</sup>

Anton Balasingham, a leader and political ideologue of the LTTE explained the background of the development of the above situation. He stated, "plunged into despair of unemployed existence, frustrated without the possibility of higher education; angered by the imposition of the Sinhalese language, the Tamil youth realized that the redemption to

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<sup>26</sup> Wickramasinghe, Nira. (2006) *Sri Lanka in the Modern Age: A History of Contested Identities*. n. 7. p. 97-98.

<sup>27</sup> Tambiah, Stanley, J. (1996) *Leveling Crowds: Ethno Nationalist Conflicts and Collective Violence in South Asia*. California: University of California Press. p. 82.

<sup>28</sup> Wilson, Jeyaratnam, A. (2000) *Sri Lankan Tamil Nationalism: Its Origins and Developments in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*. n. 8. pp. 122-23.

their plight lay in revolutionary politics, that should pave the way for a radical and fundamental transformation of their miserable conditions of mounting national oppression, the youth rightly perceived that armed struggle was the only means to achieve total independence of their nation”.<sup>29</sup>

In this connection, to reiterate the governments stand towards the Tamil militant organization, President Jeyewardene brought about the Sixth Amendment to the Constitution of Sri Lanka in August 1983. This amendment required all members of the Parliament and government officials to take an oath for the protection of the Unitary Constitution of Sri Lanka. Thus, by one stroke of the legislative pen he forced all MPs belonging to the Tamil United Liberation Front out of Parliament since they refused to subscribe to the oath. The military arm of the Tamil resistance now secured a control of Tamil politics as they proved far more inflexible than the Tamil United Liberation Front who pursued Constitutional and political means to achieve the rights of the Tamils. The Tamil militants did not trust any Sinhalese led government because of the failure to make any concession for the Tamils through Constitutional means.<sup>30</sup>

Therefore, to solve the growing armed resistance by the Tamils, new round of talks began in July 8, 1985 in Thimpu, Bhutan. Talks between the Government of Sri Lanka, the Liberation Tigers of Tamil Eelam (LTTE), Eelam Peoples Revolutionary Liberation Front (EPRLF), Tamil Eelam Liberation Organization (TELO), Eelam Revolutionary Organization of Students (EROS) and the Tamil political party, Tamil United Liberation

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<sup>29</sup> *Ibid*, p. 124.

<sup>30</sup> *Ibid*, pp. 139-40.

Front (TULF), took place during July 8-13 and August 12-17. The Sri Lankan Government came to Thimpu without any fresh proposals different from those discussed during the All Party Conference in 1984.<sup>31</sup> During the talks, the Tamils presented four demands: (i) recognition of the Tamils as a distinct nationality; (ii) establishment of a homeland comprising the areas considered as the traditional homeland of the Tamils; (iii) the right of self-determination for the Tamil nation, and, (iv) the right to full citizenship of the Tamils living in Sri Lanka. The Tamils, in other words, demanded the creation of a single linguistic unit by merging the Tamil speaking areas of the north and east of Sri Lanka with greater devolution of power. However, the Talks failed due to the tough stands taken by both the LTTE and the Government of Sri Lanka. The Sri Lankan Government rejected all the demands made by the Tamils except for the issue regarding the right to full citizenship for the Tamils living in Sri Lanka. After the failure of the Talks, military pressure escalated against the Tamils because of the increased deployment of the armed forces in the northern and eastern provinces that were under the control of the LTTE. With the situation worsening, the Indian Government attempted to make a political solution and succeeded in committing the Sri Lankan Government to the principle of a provincial council that would provide legislative and executive powers for all the nine provinces in Sri Lanka. However, the Sri Lankan Government remained firmly opposed to the merger of the Tamil speaking areas of the north and the east of Sri Lanka. On the other hand, for any political settlement, the LTTE insisted on the acceptance or creation of a single region as the homeland of the Tamils by the Government of Sri Lanka. This demand was supported by other Tamil groups as well.

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<sup>31</sup> Wilson, Jeyaratnam, A. (1988) *The Break-Up of Sri Lanka: The Sinhalese-Tamil Conflict*. n. 5. pp. 185-87.

During the South Asian Association for Regional Cooperation (SAARC) Summit in 1985, following a meeting with Prime Minister, Rajiv Gandhi, President Jayewardene offered more concessions with the promise to trifurcate the existing eastern province into (i) a Tamil majority Batticaloa province, (ii) a Sinhala majority province in Trincomalee, and (iii) a Muslim majority province in Amparai. However, as no offer was made for the merger of the northern and eastern provinces as one unit, the LTTE considered the offer as inadequate. Nevertheless, a major objective of India's mediation effort was achieved in the aftermath of the SAARC Summit through the consensus which emerged between Sri Lanka and India on December 19, 1985. In this regard, the Sri Lankan Government agreed to excise the Sinhalese people from the Amparai district of the eastern province to increase the percentage of the Tamils living in the region. Further, as per the proposal, institutional linkage was to be created between the northern and eastern provinces through establishment of a common University, a common planning commission and an inter-ministerial committee to co-ordinate the various functions of the commission. By 1987, Sri Lanka's ethnic conflict had deteriorated into a dangerous situation as the Jayewardene government pursued its military option against the Tamil community. On January 1, 1987, the LTTE started carrying out its plan to take over the civil administration in the northern province which was already under its military control. This was seen by the Sri Lankan Government as a unilateral declaration of independence, and therefore, imposed a ban on the supply of fuel and other essential commodities to the Jaffna peninsula, and stepped up military action both in the north and the east of Sri Lanka in which more than 200 Tamil civilians were killed.<sup>32</sup>

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<sup>32</sup> Rao, Venkateshwar, P. (1988) 'Ethnic Conflict in Sri Lanka: India's Role and Perception', *Asian Survey*, 28(4): 419-36.

Towards the end of May 1987, the army and LTTE engaged in fierce fighting in the Jaffna area. Several towns were brought under the control of the security forces which were earlier controlled by the LTTE. About 500 civilians were killed in the fighting for which the Sri Lankan Government claimed no responsibility. On the other hand the Government of Sri Lanka declared that Jaffna had to be captured and civilian casualties in the process cannot be avoided.<sup>33</sup> This act of Sri Lanka which caused civilian casualties and hardships was severely condemned and criticized by India. Following this, on June 3, 1987, India sent food supplies and relief materials to the people of Jaffna in a flotilla of 19 boats flying Red Cross flag. However, Colombo rejected the supplies and blocked these boats from entering into the territorial waters of Sri Lanka. Condemning Colombo's act, India sent five Indian Air force planes escorted by Mirage 2000 fighter jets and dropped food supplies and relief materials in and around Jaffna region. Sri Lanka termed this act of India as naked violation of its sovereignty and territorial integrity. However, Colombo lifted the six-month old economic embargo on Jaffna and ceased military operations. This served as a prelude to the Indo-Sri Lanka Accord of 1987.<sup>34</sup>

India and Sri Lanka engaged in diplomatic negotiations regarding the solution of the ethnic conflict in Sri Lanka that resulted in the signing of the Indo-Sri Lankan Accord in Colombo on July 29, 1987 by Rajiv Gandhi and Jayewardene. The Indo-Sri Lankan Accord agreed upon four points: (i) an immediate ceasefire effective within 48 hours after the signing of the agreement, (ii) surrender of arms by the Tamil militants and withdrawal of the Sri Lankan army to its barracks within 72 hours of the ceasefire, (iii) combining of

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<sup>33</sup> *Ibid*, pp.425-26

<sup>34</sup> *Ibid*, pp. 427-29.

the northern and eastern provinces into a single administrative unit with an elected provincial council consisting of one Governor, one Chief Minister and a board of ministers, and, (iv) a referendum before December, 1988, in the eastern province to decide whether it should be merged with the northern province as a single administrative unit. It was also agreed that the Implementation of all the above mentioned points were to take place under the supervision of India. This agreement also included a commitment that India would assist Sri Lanka only on request in implementing its provisions. However, it should be noted here that this agreement was a bilateral one and it did not involve the Tamils in Sri Lanka. Although, the agreement was approved by the LTTE very reluctantly, it was bent on floundering the agreement on the slightest pretext. Finally, the LTTE declared war on the Indian Peace Keeping Force (IPKF) in October 1987, stating that it failed to protect Tamil lives from Sinhalese attacks.<sup>35</sup>

The Indian Peace Keeping Force (IPKF) withdrew from Sri Lanka in March 1990. From the beginning of 1990, until June the same year, a defacto ceasefire existed between the Sri Lankan army and the Tamil Tigers. After the IPKF withdrew from Sri Lanka, the Sri Lankan army occupied the eastern province which was officially united with the northern province. While the northern province is virtually 100 percent Tamils, the east comprises of Tamils, Muslims and Sinhalese. The Sinhalese in the eastern province were largely settlers relocated by Sinhalese governments as part of the policy of colonisation. The Tamils see this as part of a conspiracy to deprive them of their homelands and for the Sinhalese it is simply part of a plan to settle landless Sinhalese peasants. In June 1990, it was alleged that the LTTE started killing Muslims in the eastern province presumably to drive them away. The Tamil Tigers claimed that they were not responsible for the killings,

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<sup>35</sup> *Ibid*, pp. 433-36.

but stated that the government used this as an excuse to start attacking the LTTE again. When the Sri Lankan government decided to attack the LTTE in the northern province it had to do so only through aerial bombing as the LTTE was in complete control of the region. These aerial bombings, which were intended to destroy LTTE bases, caused many civilian casualties. Although, the government dropped warning leaflets prior to its attacks, the civilians in the region had relatively short time to get out of their homes. Tamil sources claimed that because of this offensive attack by the government in the north, more than one million Tamils became homeless and refugees. As the war against the LTTE intensified in late 1990, civilian casualties also increased. The Tamil civilians who were previously anti-LTTE saw no choice but to support the Tigers. Expatriate Tamils all over the world who had earlier withdrawn their support to the LTTE now started to support it.<sup>36</sup>

Because of the heavy destruction caused by the war, there was widespread national and international support for Norway's initiative in the late 1990s, to facilitate peace negotiations between the LTTE and the Sri Lankan Government. Although, the LTTE refused to surrender its arms and formally renounce Eelam, it did not affect the talks between the two parties. The government was of the opinion that the present time was a transitional phase in the politics of the Sri Lanka, and the situation would normalize with the creation of the provincial police force and the installation of new provincial government in the Tamil speaking areas. The LTTE, on the other hand, said that (i) the dissolution of the northeast provincial council, (ii) the holding of fresh elections for the council and (iii) the repeal of the Sixth Amendment to the Sri Lankan Constitution were prerequisites for it to enter the political mainstream and work towards the solution of the conflict in the island.

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<sup>36</sup> Singer, Marshall, R. (1991) 'Sri Lanka in 1990: The Ethnic Strife Continues', *Asian Survey*, 31(2): 140-45.

Although, the government seemed to have been favorably inclined to consider the repeal, it was constrained by virtue of the fact that it did not command the required two-thirds majority in Parliament. The Sri Lankan Government also felt that the repeal of the Sixth Amendment would result in the endorsement of the separate state by itself, which was contrary to the oath of allegiance to preserve the unity of the nation. The big question in Sri Lankan politics during the mid 1990s was why the LTTE refused to accept a negotiated solution when the government was willing grant concessions to the Tamils and end the conflict. It is said that the LTTE leadership did not accept a negotiated settlement to the Tamil problems at that period of time on the assumption that the Sri Lankan Government was luring them into a peace trap to weaken their morale as a militant organization.<sup>37</sup>

What implies here is that the LTTE's goal was not to achieve any form of federal solution to the ethnic conflict in Sri Lanka. Its ultimate goal was to achieve a separate sovereign, independent state of Eelam. It is also evident that the government on the other hand was willing to grant the Tamils of Sri Lanka a form of federalism within the unitary state structure of Sri Lanka, with an intention of bringing about a peaceful solution to the ethnic conflict.

Thereafter, fierce fighting continued between the LTTE and the Sri Lankan government forces. The LTTE won an impressive victory over the Elephant Pass in April 2000. After this, discussions took place between Prabhakaran the LTTE leader and Erik Solhiem, Norwegian Foreign Minister regarding the modalities of a ceasefire agreement

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<sup>37</sup> Kodikara, Shelton, U. (1993) *External Compulsions of South Asian Politics*. New Delhi: Sage Publications. pp. 228-30.

leading to negotiations between the LTTE and Sri Lankan Government. The LTTE initially proposed a temporary ceasefire on its own, which was to be followed by the evacuation of almost 35,000 Sri Lankan troops from Jaffna peninsula. The government rejected this demand of the LTTE. Following another meeting between the LTTE and Solheim in November 2000, Prabhakaran agreed to a unilateral ceasefire from December 21, 2000. On April 2001, after the LTTE ended its unilateral ceasefire, the Sri Lankan military launched a major offensive attack to recapture the strategic Elephant Pass as this connects or links the Jaffna Peninsula to the southern mainland. The Tamil Tigers put up strong resistance against the attack in which the Sri Lankan army suffered heavy casualties. The LTTE then attacked the International Airport in Colombo destroying half of the fleet of Air Lanka and eight military fighter planes following which the government retaliated with air strikes against LTTE bases in the north. In the aftermath of these incidents, a no-confidence motion took place against the government headed by Chandrika Kumaratunga in June, 2001. Kumaratunga forged an alliance with Janatha Vaimukthi Peramuna and continued in power till October 2001. The President however, was forced to dissolve the Parliament later in December, 2001 and call for fresh elections. The elections of December 2001, resulted in a change of government and Ranil Wickramasinghe of the United National Front (UNF) became the President of Sri Lanka. The new government proposed peace negotiations with the LTTE and therefore, as a prelude ceasefire was observed for one month. The government also lifted the economic embargo on the LTTE controlled areas.<sup>38</sup>

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<sup>38</sup> Ganguly, Rajat, (2004) 'Sri Lanka's Ethnic Conflict: At a Crossroad Between Peace and War', *Third World Quarterly*, 25(5): 903-17.

The Norwegian sponsored peace process was again initiated following the ceasefire on February 23, 2002. Subsequently a Memorandum of Understanding (MOU) was signed between the LTTE and the Sri Lankan Government. As a result, the government lifted the economic embargo on the northern and eastern provinces and the major roadway (A9 highway) linking the north with central and southern Sri Lanka was opened by the LTTE after many years. Both sides agreed to abjure hostile and violent acts towards each other and to allow civilians to enter into their respective territories. The Government of Sri Lanka conceded control over the north and east to the LTTE and authorized the retention of arms and military bases in areas under its control. The Tigers were also allowed to open political offices and to carry out mobilizational works and political activities.

A major splash in the news was created when V. Prabhakaran, the leader of the LTTE, called for an international press conference at his jungle redoubt<sup>39</sup> in Killinochchi, northern Sri Lanka. More than 250 domestic and international journalists attended the press conference called by the LTTE. This press conference served as the vehicle for the leader of the Tigers to present their views directly to the national and international communities and to reassert its objectives for the Sri Lankan Tamils. Prabhakaran, the LTTE leader, reiterated his continued commitment to the Thimpu principles, the right to nationhood of the Tamils, a homeland and self-determination. He demanded lifting of the ban on the LTTE by the Sri Lankan government before talks could begin and refused to abandon the demand for a separate state and all forms of violence until a satisfactory permanent solution

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<sup>39</sup> Redoubt is a temporary or supplementary fortification, typically square or polygonal and without flanking defences.

was achieved. He also called the killing of Rajiv Gandhi, the former Prime Minister of India, as a tragic incident and called on the journalists to forget the past.<sup>40</sup>

Between February 2002 and April 2003, representatives of the LTTE and the Sri Lankan Government held several rounds of Norwegian facilitated peace talks aimed at resolving the ethnic conflict. However, slowness and the complex nature of negotiations coupled with contradictory signals emanating from both sides, the peace process was severely strained by 2003. In April 2003, the LTTE abruptly suspended the peace talks on ground that the resettlement of the displaced Muslims expelled by them would not be possible until the Sri Lankan army was withdrawn from the High Security Zones (HSZ) in Jaffna. The LTTE suspended the peace talks to use pressure tactics to win major concessions from the Government of Sri Lanka such as recognition of the sea tigers as a *de facto* naval unit. The Government of Sri Lanka on the other hand refused to grant such concessions as it posed a threat to the territorial integrity of the nation. The impasse continued and some feared a return to war as the LTTE did not show interest in toning down its demands. In early February 2004, President Kumaratunga called for fresh elections. The United People's Freedom Alliance came to power after the elections and criticized the Norwegian-facilitated peace process for taking an undesirable turn and setting out a path for the establishment of a separate state.

In March 2004, a serious split in the LTTE's main organization led by Prabhakaran in the northern region and its eastern unit led by Muralithatran alias Colonel Karuna was reported. It was reported that Karuna broke away from the LTTE because he alleged that

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<sup>40</sup> Shastri, Amita (2002) 'Sri Lanka in 2002: Turning the Corner', *Asian Survey*, 43(1): 215-21.

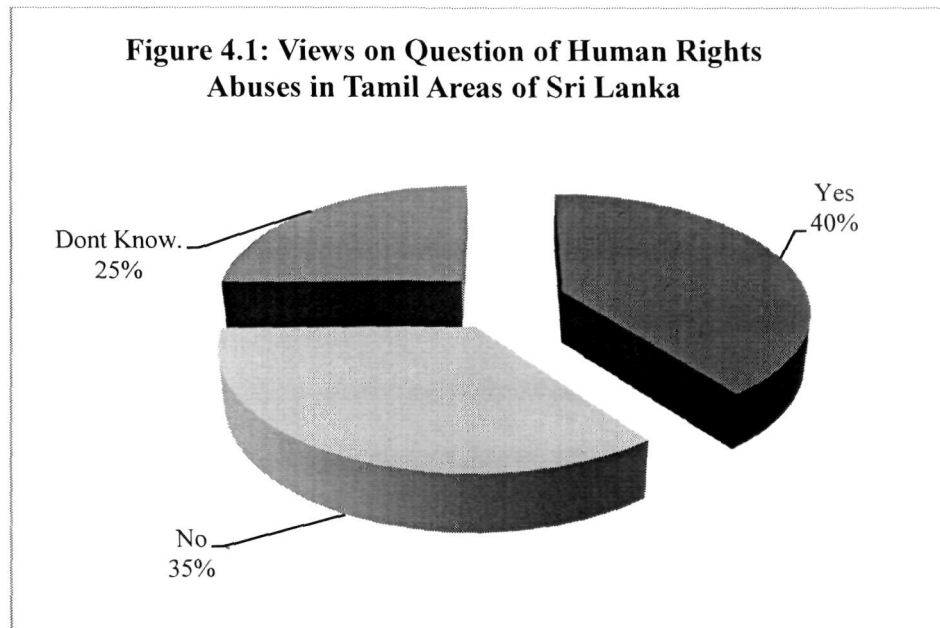
they (LTTE in the north) were ignoring the interests of the Tamils living in eastern province. On the other hand it was said that the real reason Karuna broke away was because the LTTE's intelligence wing was closing in on him for alleged financial misappropriation and personal misconduct. As is its practice, the LTTE expelled Karuna and asked his forces to surrender to the LTTE in the north. Previous dealing with insubordination among its ranks, led most the fighters under the control of Karuna to surrender to the LTTE under Prabhakaran following which Karuna fled the region.

In an environment of ethnic polarization and political uncertainty, one cannot be optimistic that either the Sri Lankan Government or the LTTE will be making any kind of political compromise necessary for peace process. The most fundamental difficulty of Sri Lanka's ethnic conflict is the deep distrust and contempt with which the Government of Sri Lanka and the LTTE view each other. From Colombo's perspective, meaningful negotiations are possible only after the LTTE renounces its goal of achieving the separate state of Eelam. However, government sources believed that this was not possible as long as Prabhakaran remained its supreme leader.<sup>41</sup>

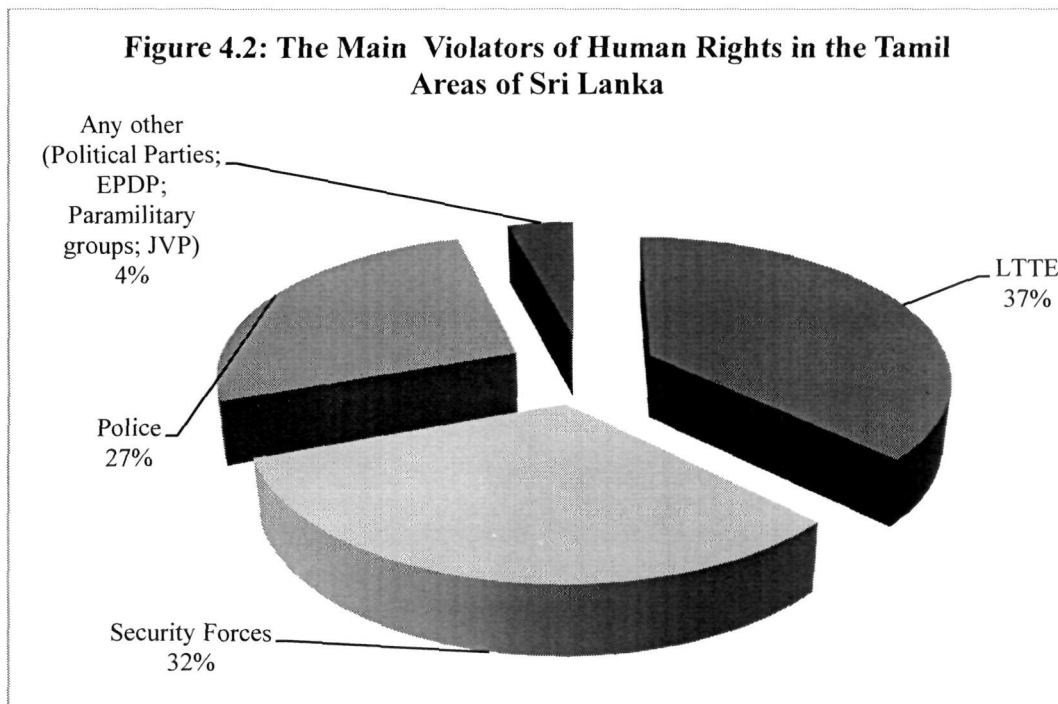
In the process of fierce fighting that took place between the LTTE and the Sri Lankan armed forces during 2008 till May 2009, which ultimately resulted in the defeat of the LTTE, many innocent civilians were killed and rendered homeless thereby causing human rights abuses.

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<sup>41</sup> Ponnambalam, Satchi (1983) *Sri Lanka: National Question and the Tamil Liberation Struggle*. n. 3. pp. 93-117.



According to Figure 2.1, the views expressed by the respondents revealed that are human rights abuses in the Tamil areas of Sri Lanka. 68 percent of the respondents agreed to the fact that human rights abuses occur in the Tamil areas of Sri Lanka. 15 percent said that there are no human rights abuses while 17 percent did not know whether human rights abuses were committed in the region. Thus, according to the figure, it is clearly revealed that human rights abuses are committed in the Tamil areas of Sri Lanka.



Opinions expressed by the respondents revealed that the LTTE, Security forces, Police and Sri Lankan political parties such as Eelam Peoples Democratic Party and the Janatha Vaimukthi Peramuna were the main violators of human rights in the Tamil Areas of Sri Lanka. 37 percent of the respondents felt that it was the LTTE while another 32 percent said that the security forces were the main violators of human rights in the Tamil areas of Sri Lanka. Further, 27 percent of the respondents said that it was the police while the remaining 4 percent of the respondents felt that political parties such as Eelam Peoples Democratic Party and Janatha Vaimukthi Peramuna were the main violators of human rights in the Tamil areas of Sri Lanka.

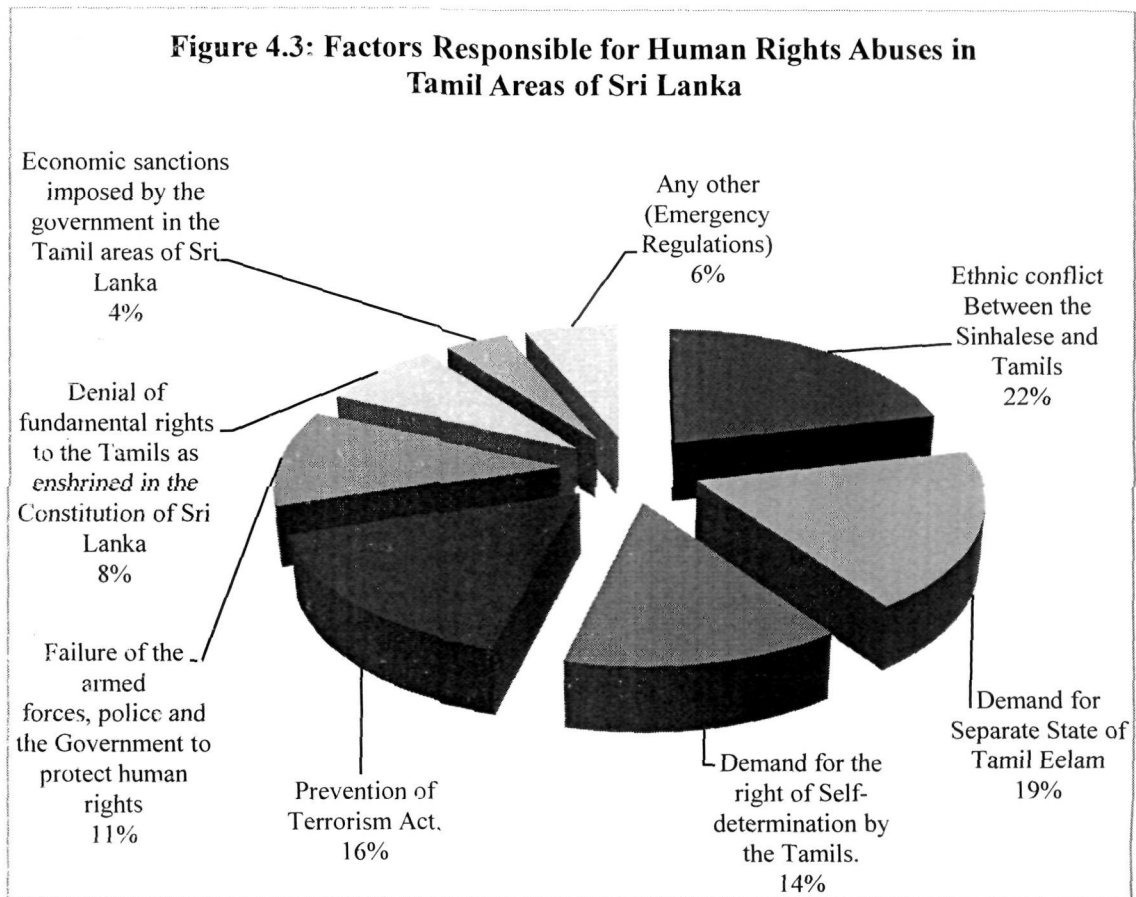


Figure 4.3 revealed clearly the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 22 percent of the respondents said that the ethnic conflict between the Tamils and Sinhalese while 19 percent expressed that the demand for a separate state of Tamil Eelam were the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 16 percent of the respondents felt that it is the Prevention of Terrorism Act while the demand for the right of self-determination was expressed by 14 percent of the respondents. Failure of the government, armed forces and the police were stated by 11 percent and another 8 percent of the respondents felt that denial of fundamental rights to the Tamils as enshrined in the Constitution of Sri Lanka were factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 6 percent of the

respondents expressed that Emergency Regulations was responsible for human rights abuses and the remaining 4 percent felt that it was economic sanctions imposed by the Government of Sri Lanka in Tamil areas as a factor responsible for human rights abuses in the Tamil areas of Sri Lanka.

Thus, we can understand that the ethnic conflict and the demand for separate state of Tamil Eelam are the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. It is also revealed that the ethnic conflict itself arose due to denial of the legitimate rights of the Tamils living in Sri Lanka after independence in 1948. This chapter revealed that after independence, the Sri Lankan state resorted to repression of its Tamil minorities by enacting legislation that favored the Sinhalese majority on issues relating to language, employment and education. When demands for equality made by the Tamils in Sri Lanka were meted out with violence, it gradually transformed into a demand for the creation of a separate state of Tamil Eelam. The demand for separate state of Tamil Eelam arose because the Sri Lankan state failed to address the demands for equality made by the Tamils in Sri Lanka. When efforts to achieve the legitimate rights of the Tamils failed through constitutional means, the Tamils felt that the only way to achieve their demands was through armed struggle. Thus, after the Tamils in Sri Lanka engaged in armed struggle, the Sri Lankan state tried to suppress these demands through military force which resulted in human rights abuses in the Tamil areas of Sri Lanka. This also suggests that human rights abuses occurred in the Tamil areas of Sri Lanka due to the sphere of violence. Sphere of violence in this context suggests that the Sri Lankan state after independence enacted legislation which denied the rights of the Tamils which resulted in the ethnic conflict

between the Sinhalese and the Tamils in Sri Lanka. The ethnic conflict gradually turned into the demand for separate state of Tamil Eelam through armed struggle headed by the LTTE. To the demand of Separate state of Tamil Eelam, the Sri Lankan state responded through military means which led to the ultimate defeat of the LTTE in May 2009, which resulted in various forms of human rights abuses in the Tamil areas of Sri Lanka.

Further, it is revealed that legislations such as the Prevention of Terrorism Act and the Emergency Regulations enacted to suppress the armed rebellion of the Tamils were factors responsible for human rights abuses in the Tamil areas of Sri Lanka. These legislations enabled the security forces to evade accountability and continue to abuse human rights of the people living in the region. Complete disregard by both the parties for human rights abuses is also another factor. People's unawareness of the rights guaranteed is also a factor responsible for violations of human rights.<sup>42</sup>

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<sup>42</sup> Based on interviews conducted in Sri Lanka between 27/09/08- 26/10/08.

## **CHAPTER - V**

# **HUMAN RIGHTS: NON-GOVERNMENTAL AND STATE ORGANIZATIONS IN SRI LANKA**

## **CHAPTER – V**

### **HUMAN RIGHTS: NON-GOVERNMENTAL AND STATE ORGANIZATIONS IN SRI LANKA**

In the preceding chapters, various forms of human rights abuses committed by the Government of Sri Lanka (GOSL) and Liberation Tigers of Tamil Eelam (LTTE), and the factors responsible for such abuses have been discussed. In this chapter, the role of the Human Rights Commission of Sri Lanka and various Non-Governmental Organizations (NGOs) organizations working for the protection of human rights in the northern and eastern provinces of Sri Lanka have been examined. However, before the discussion on the role human rights non-governmental organizations (HRNGOs) in protecting and promoting human rights in Sri Lanka's north and east, a brief discussion of human rights non-governmental organizations (HRNGOs) in general is necessary to better understand their role.

A non-governmental organization (NGO) is a nonprofit entity whose activities are determined by the collective will of its members who belong to one or more communities with which the NGO cooperates.<sup>1</sup> Though there may be no universally accepted definition of NGOs, there is a widespread agreement that their numbers, influence and outreach are at unprecedented levels. In 1948, the United Nations granted 48 NGOs with consultative status who were formally accredited to co-operate and consult with the United Nations

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<sup>1</sup> Goel, O. P. (2004) *Strategic Movement and Policy Issues of NGOs*. Delhi: Isha Books. pp. 228-29.

Economic and Social Council (UN ECOSOC). In 1998, there were more than 1500 such groups with varying degrees of participation and access.<sup>2</sup>

NGOs differ from state organizations which are primarily motivated by the need for social coercion. In contrast, NGOs are interested mainly in building communities for which they do not rely upon either coercive forces or profit making. Rather NGOs rely primarily on solidarity between the members of civil society and this solidarity is nurtured by them through decentralized management sustained by voluntary local participation.<sup>3</sup>

There are various types of NGOs. Some NGOs operate at national, local and some at international levels. NGOs can contribute to human resource development by their very existence and through development and introduction of new technologies.<sup>4</sup> They are sometimes the most appropriate agents for initiating development. NGOs are primarily interested in community building and empowering the poor. NGOs can be more efficient and responsive in meeting the needs of the poor because they are located closer to them than governmental agencies. They are more aware of the particularities of local resources and constraints which can make them more innovative in designing development projects. Such close proximity to these groups who need development, makes NGOs more transparent, accountable and more effective than government agencies at times.<sup>5</sup>

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<sup>2</sup> *Ibid*, p. 229.

<sup>3</sup> Sanyal, Bishwapriya (1997) 'NGO's Self- Defeating Quest for Autonomy', *Annals of the American Academy of Political and Social Science*, 5(54): 21-32.

<sup>4</sup> Dharmarajan, Shivani (2001) *NGOs as Prime Movers, Sectoral Action for Social Development*. New Delhi: Konark Publishers. p. 1.

<sup>5</sup> Goel, O. P. (2004) *Strategic Movement and Policy Issues of NGOs*. n. 1. p. 28.

NGOs mainly work as social pressure groups and serves as a forum for exchange of views on domestic issues such as spousal abuse, dowry deaths, alcoholism, human rights and developmental issues. Though NGOs may be effective in improving the situation on such issues, they have various limitations in pursuing their objectives. One of the main limitations that NGOs suffer is their inability to cooperate with other similar organizations and institutions and governmental agencies.<sup>6</sup> Specifically governmental organizations are more authoritative in standard-setting and norm generating but are weak in monitoring and enforcement of state behavior. NGOs have freedom from government control and it enables them to function as an effective watchdog against human rights violations.<sup>7</sup>

### **NGOs and Human Rights**

NGOs in the field of human rights are of two types which may exist in a country. They are human rights international non-governmental organizations (HRINGOs) and local or regional human rights non-governmental organizations (HRNGOs). These organizations take their cue from the most widely endorsed international declarations to promote and protect human rights. Some HRINGOs are the Amnesty International (AI), the Human Rights Watch (HRW), Minority Rights Group (MRG), the Anti-Slavery Society (ASS), the International Committee of Red Cross (ICRC), the International Commission of Jurists (ICJ), etc. These groups have a specific objective to protect human rights. There are also HRNGOs whose human rights concerns are more general. Some of these groups are International League for Human Rights, International Commission of Jurists, etc. These NGOs work to uphold those rights which are listed in the International Covenant on Civil

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<sup>6</sup> *Ibid*, pp. 29-31.

<sup>7</sup> Thakur, Ramesh (1994) 'Human Rights: Amnesty International and the United Nations', *Journal of Peace Research*, 31(2): 143.

and Political Rights (ICCPR). Amnesty International concentrates on activities to promote freedom from torture and the death penalty. The International Committee of Red Cross is concerned with rights in armed conflicts and with the rights of political prisoners. Non-specialist organizations like the International Commission of Jurists have also been primarily concerned with civil and political rights. The commission's dedication to the universal acceptance of justice has meant that the procedures associated with the Rule of Law, might be held to be more substantive to notions such as distributive justice.<sup>8</sup>

HRNGOs have been instrumental in the global expansion of human rights issues in the post World War II scenario. Organizations such as Amnesty International and Human Rights Watch have played key roles in the formative years of global human rights by promoting international human rights instruments and publicizing gross human rights violations in various countries. HRINGOs' critical and unsparing reports of local human rights practices all over the world have been essential in the proceedings of United Nations human rights instruments such as the Commission on Human Rights<sup>9</sup> and the Human Rights Council (HRC). Many HRINGOs namely, International Save the Children, (General Status) Amnesty International, Human Rights Watch, International Commission of Jurists, Human Rights Advocates (Special Status), Minority Rights Group (Roster Status), etc,

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<sup>8</sup> Vincent, R. J. (1986) *Human Rights and International Relations*. Great Britain: University of Cambridge Press. p. 97.

<sup>9</sup> The United Nations Commission on Human Rights was a functional commission within the overall framework of the United Nations from 1946 until it was replaced by the United Nations Human Rights Council on March 15, 2006. It was a subsidiary body of the United Nations Economic and Social Council. It was also assisted in its work by the office of the United Nations High Commissioner for Human Rights. The United Nations Commission on Human Rights was the principal mechanism and international forum concerned with the protection and promotion of human rights.

have also gained consultative status in the United Nations (UN) and have been actively promoting their visions of human rights in the new century.<sup>10</sup>

Article 71 of the United Nations Charter creates provisions for consultations between the Economic and Social Council and non-governmental organizations. Article 71 implemented by the Economic and Social Council (ECOSOC) is regulated by the ECOSOC Resolution 1296 (XLIV) of May 23, 1968. It establishes a formal system that enables NGOs with consultative status to obtain any one of the three types of the consultative status with the United Nations namely (i) General, (ii) Special and (iii) Roster. Consultative status of HRINGOs enables their representatives, subject to conditions and restrictions, to present reports to those organizations (UN, OAS, Council of Europe, and UNESCO) which help in formulating their agenda for the promotion of human rights practice in different countries. General status applies to large international non-governmental organizations whose interests cover most of the Economic and Social Council's Agenda. They can speak before delegates, circulate statements upto 2000 words long and place items on the agenda. They are expected to submit a quadrennial report outlining their contributions to the United Nations. Special status concerns with special competence in some fields of activity of the Council. Non-governmental organizations with special status are also expected to submit quadrennial report, but they cannot place items on the agenda. Written statements are limited to 500 words only. Non-governmental

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<sup>10</sup>Kiyoteru, Tsutsui & Min Wotipka, Christine (2004) 'Global Civil Society and the International Human Rights Movement, Citizen Participation in Human Rights International Non-governmental Organizations', *Social Forces*, 83(2): 587-91.

organizations with Roster status are concerned with one or more specific issues. They may attend meetings, but cannot speak or circulate statements.<sup>11</sup>

The existence of the consultative system has encouraged the creation of more NGOs and the adoption of similar consultative systems by other international and regional organizations which have resulted in the increase of more HRNGOs.<sup>12</sup> Consultative status under Article 71 of the Economic and Social Council means that HRNGOs are allowed to sit as observers at public meetings of the Council and the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It also allows HRNGOs, in accordance with the rules established by the Council, to make oral statements and submit written documents. Interventions by HRNGOs at such meetings call for attention to the human rights situation in different countries and also call for investigations to be carried out by the United Nations. They also assist in the actual drafting of declarations and treaties. HRNGOs may also submit reports on alleged violations of human rights, for confidential consideration by the Sub-Commission and the Commission under the '1503' procedure<sup>13</sup>. The views of HRNGOs are also sought on a wide range of issues for decisions to be taken by the General Assembly, the Economic and

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<sup>11</sup> Dharmarajan, Shivani (2001) *NGOs as Prime Movers, Sectoral Action for Social Development*. n. 4. pp. 209-10.

<sup>12</sup> *Ibid*, p. 210.

<sup>13</sup> The 1503 procedure is the oldest human rights complaint mechanism in the United Nations system. Under this procedure the Commission on Human Rights, a political body composed of State representatives, generally deals with situations in countries rather than individual complaints. The procedure was substantially amended in 2000 by the Economic and Social Council to make it more efficient, to facilitate dialogue with the Governments concerned and to provide for a more meaningful debate in the final stages of a complaint before the Commission on Human Rights. Under the 1503 procedure, the Commission has the mandate to examine a consistent pattern of proven gross violations of human rights and fundamental freedoms occurring in any country of the world. Any individual or group claiming to be the victim of such human rights violations may submit a complaint, as may any other person or group with direct and reliable knowledge of such violations. Where an NGO submits a complaint, it must be acting in good faith and in accordance with recognized principles of human rights. The organization should also have reliable direct evidence of the situation it is describing.

Social Council, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities.<sup>14</sup>

HRNGOs resemble domestic pressure groups or lobbies. HRNGOs play an important role in protecting and promoting human rights. Governments which violate human rights always try to evade or make sure that the applicable international human rights norms, institutions and procedures remain weak and ineffective. HRNGOs provide the needed counterpoint to these governmental attitudes and deserve much of the credit for the progress that has been made in recent decades in human rights issues. NGOs employ various methods in pursuit of their goals which differ from one group to another. Some groups resort to only one or a limited number of techniques or activities, be it the preparation of reports, the filing of complaints with international organizations, the promotion of international legislation, lobbying before international and national bodies. Others may use all of the above tools to the protection of specific groups or specific concerns.<sup>15</sup>

The discussion in the preceding pages shows that NGOs play an important role in protecting and promoting human rights through various methods. Though it appears that NGOs have been effective in promoting human rights, it is also noticed that HRNGOs have their own limitations while pursuing their objectives. In third world countries like Sri Lanka where human rights abuses are increasing due to internal armed conflicts, examining the role of HRNGOs in protecting and promoting human rights will provide a better

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<sup>14</sup> United Nations (1987) *Human Rights Questions and Answers*. New York: United Nations. p. 45.

<sup>15</sup> Dharmarajan, Shivani (2001) *NGOs as Prime Movers, Sectoral Action for Social Development*. n. 4. p. 211.

understanding on the issues in specific situation. Therefore, in this chapter, the role of HRNGOs working for the protection and promotion of human rights in the north and east of Sri Lanka has been discussed.

### **Human Rights NGOs in Sri Lanka**

Sri Lanka, since the early 1970s faced armed rebellion (LTTE) which came as the response to the state's repression on Tamil minorities. The armed rebellion also threatened the territorial integrity of Sri Lanka. The state's response to the armed rebellion was to suppress militancy with its military forces. In such a situation where the state and the armed group, namely the LTTE, showed total disregard to human rights, HRNGOs in Sri Lanka seemed to have played a role in the protection and promotion of human rights in the northern and eastern provinces.

Sri Lanka has a long tradition of NGOs and voluntary welfarist associations, but the 1980s and the 1990s saw a rapid growth of foreign aid funding and a corresponding growth in NGOs whose activities included development of economic, religious and political concerns and their intellectual approaches span a spectrum from political advocacy to neutral humanitarianism. Some NGOs were seen working closely with the Government of Sri Lanka while others keep a distance from governmental programmes. There has also been a proliferation of NGOs in Sri Lanka which have diverse backgrounds, agenda and activities. Based on their objective and activities, HRNGOs in Sri Lanka can be divided into first and second generation HRNGOs. NGOs in Sri Lanka which functioned before the armed conflict were primarily church-based, welfare and charity organizations. Those

NGOs which came into being after the conflict intensified in the 1980s was due to the availability of foreign funding since the early 1990s. In addition to local HRNGOs, a number of HRINGOs worked in Sri Lanka such as Save the Children Fund (SCF), Amnesty International, Human Rights Watch, Peace Brigades International (PBI), etc. Most of these organizations started to work as relief agencies in the north and east of Sri Lanka. Some of these NGOs like SCF and Oxfam have moved into development and rehabilitation activities. Apart from the International Committee of Red Cross (ICRC), few HRINGOs were involved in protection and promotion of human rights in the areas of conflict resolution.<sup>16</sup>

HRINGOs which worked in Sri Lanka such as the Amnesty International, Human Rights Watch, and Peace Brigades International are no longer present. This is due to the Sri Lankan Government's demand that if they wished to remain and work in Sri Lanka, they have to submit their reports to the government authorities prior to their publication.<sup>17</sup> The only HRINGO which is present in Sri Lanka and has its offices and personnel functioning at present is the International Committee of the Red Cross (ICRC). Although, offices of the ICRC are present in Sri Lanka, it is confined to exchanging the bodies of between the LTTE and Government of Sri Lanka's and vice-versa, who were killed during combat.<sup>18</sup>

In Sri Lanka there are more than thirty local HRNGOs working for the protection and promotion of human rights. However, about five HRNGOs work actively on human

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<sup>16</sup> Goodhand, Jonathan and Lewer, Nick (1999) 'Sri Lanka: NGOs and Peace-Building in Complex Political Emergencies', *Third World Quarterly*, 20(1): 69-87.

<sup>17</sup> News Release: *International Human Rights NGOs Forced to Leave by Sri Lankan Government*. London: Peace Brigades International. 24/04/98.

<sup>18</sup> Based on an interview with a Professor in Colombo University, Sri Lanka on 4/10/ 08.

rights issues in the north and east of Sri Lanka. Therefore, in this chapter, the role of the of five major HRNGOs and their role in protecting and promoting human rights in the north and east of Sri Lanka have been discussed in detail. The five NGOs are, (i) the Home for Human Rights (HHR), (ii) the Law and Society Trust (LST), (iii) the Information Monitor (INFORM), (iv) the Center for Policy Alternatives (CPA) and (v) the Consortium of Humanitarian Agencies (CHA).<sup>19</sup>

### **Home for Human Rights (HHR)**

Home for Human Rights (HHR) was established in 1977 by three attorneys concerned about human rights violations in the Jaffna region. It was one of the first legal aid organization created to support victims and survivors of the conflict between the government of Sri Lanka and the LTTE. At present the HHR has five field offices which provide a wide range of services to victims or survivors of human rights violations.<sup>20</sup> The field offices are in Akkaraipattu, Batticaloa, Hatton, Jaffna and Mannar with its head office in Colombo.<sup>21</sup>

### **Law and Society Trust (LST)**

The Law and Society Trust (LST) was founded in 1982, by Neelan Tiruchelvam, who was a member of Parliament of Sri Lanka. He was assassinated by an LTTE suicide bomber in July 1999. The Law and Society Trust was formed to create a society free from

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<sup>19</sup> Based on the field survey to Sri Lanka between 27/09/08 to 23/10/09.

<sup>20</sup> Based on an interview with the Executive Director of the Home for Human Rights on 12/10/08.

<sup>21</sup> *Ibid*,

war discrimination and social injustice and based on human dignity for all citizens of Sri Lanka. It has its office in Colombo.<sup>22</sup>

### **Information Monitor (INFORM)**

Established in 1989, the Inform Human Rights Documentation Center works primarily as a documentation center on human rights violations. The organization is based in Colombo and collects information of alleged human rights violations in Sri Lanka. The information collected is published in its monthly reports.<sup>23</sup>

### **Centre for Policy Alternatives (CPA)**

The Centre for Policy Alternatives (CPA) was formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening. CPA is committed to programmes of research and advocacy. CPA is an independent non-partisan organization which is funded by the international and bilateral funding agencies and foundations.<sup>24</sup>

### **Consortium of Humanitarian Agencies (CHA)**

The Consortium of Humanitarian Agencies (CHA) was formed in 1997. The Consortium of Humanitarian Agencies is an association of agencies working to support the work on human rights issues in Sri Lanka. It functions as a network of humanitarian agencies and has a full-fledged secretariat. CHA has its offices in Amparai, Badulla,

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<sup>22</sup> Based on an interview with the Chairman of the Law and society Trust on 28/09/08.

<sup>23</sup> Based on an interview with the Executive Director of INFORM on 03/10/08.

<sup>24</sup> <http://www.cpalanka.org/index.php>. 26/06/09.

Batticaloa, Galle, Hambantota, Jaffna, Kalutara, Mannar, Matara, Puttalam and Trincomalee districts of Sri Lanka.<sup>25</sup>

### **Common Objectives of the HRNGOs**

In Sri Lanka HRNGOs have the following objectives: (i) providing human rights education, (ii) counseling victims of human rights violations, (iii) providing rehabilitation to the victims, (iv) providing socio-economic development at the grassroots level, (v) documentation of human rights abuses, (vi) conducting research on human rights issues, (vii) to contribute to public accountability in governance creating awareness in society in respect of public policy and implementation and (viii) to provide policy alternatives aimed at safeguarding and strengthening democracy, pluralism, the rule of law, human rights and social justice.<sup>26</sup>

### **Role of HRNGOs in Sri Lanka**

HRNGOs in general have the grass-roots knowledge and direct contact with the victims and have established relations and trust with victim communities and other civil society groups, including religious groups, unions and other institutions. The following are the different ways in which HRNGOs potentially play a role in protecting and promoting human rights:

- Document patterns of violations.
- Conduct forensic examinations.

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<sup>25</sup> Based on an interview with the Director of the Consortium of Humanitarian Agencies on 05/10/08.

<sup>26</sup> Based on an interview with the executive members of various HRNGOs in Sri Lanka between 27/09/08 to 06/10/08.

- Publish reports and other information on violations.
- Submit information on violations of the norms of the national courts or the International Criminal Court (ICC).
- Provide *general legal memoranda* and research assistance to national courts or the International Criminal Court.
- Monitor national proceedings on human rights violations and report to the public or to the International Criminal Court.
- Explain the International Criminal Court the role of the Office of the Prosecutor (OTP) to affected communities.
- Advise the Office of the Prosecutor on communication with victims and witnesses in affected communities.
- Provide the International Criminal Court with information regarding displacement of people and flows of refugees.
- Identify potential witnesses and act as a channel to reach and gain trust of such individuals for the Office of the Prosecutor.
- Advise the Office of the Prosecutor on witness protection.
- Provide support to victims or witness such as psychological, medical and humanitarian support after they have been interviewed by the Office of the Prosecutor.
- Organize victims for the purpose of participation and reparations.
- Provide training to those lawyers who might represent victims or suspects accused.

- Act as *amicus curiae* (friend of the court) in court proceedings.<sup>27</sup>

Notwithstanding the stated role and functions, HRNGOs in Sri Lanka, play a limited role in protecting and promoting human rights. This is because of governmental restrictions placed on these organizations to work primarily in the north and east of Sri Lanka. HRNGOs in Sri Lanka (i) receive complaints on violations of human rights, (ii) investigate those complaints received on alleged violations, (iii) provide legal aid for individual victims of human rights violations, (iv) co-ordinate work with national and international HRNGOs, (v) publish reports on human rights violations and (vi) provide education on human rights to civilians as well as government personnel.<sup>28</sup> HRNGOs in Sri Lanka provide human rights education by conducting seminars, conferences, workshops and awareness programmes. Participants to these educational programmes are mainly students and teachers from schools, colleges and universities and also, human rights activists, social workers, civil servants, armed forces personnel, victims of human rights abuses, community leaders, leaders of political parties, etc. These programmes are usually conducted two to three times in a year.<sup>29</sup> Only the Consortium of Humanitarian Agencies conducts such programmes every three months and organizes open discussions annually.

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<sup>27</sup> Human Rights First (2004) *The Role of Human Rights NGOs in Relation to ICC Investigations, Discussion Paper*. New York: Human Rights First. pp. 4-5.

<sup>28</sup> Based on interviews conducted with executive members of HRNGOs in Sri Lanka between 27/09/08 to 24/20/08.

<sup>29</sup> Based on interviews with executive members and general secretaries of HRNGOs in Sri Lanka between 27/09/08 to 24/20/08.

### **Limitations of the Role of HRNGOs in Sri Lanka**

Although HRNGOs are expected to make significant contributions for the betterment in the practice of human rights, there are a number of important factors which place limitations on their role in protecting, promoting and investigating human rights violations. Firstly, HRNGOs and activists are not trained in documenting and investigating human rights violations. Though they might be trained in some cases their role, however, in documenting and investigating human rights violations it is different from that of the International Criminal Court or of any court whether national or international. Secondly, a particular concern of HRNGOs is protecting confidential relationships including the identities of sources. HRNGOs are understandably concerned with the security of individuals with whom they interact. Often HRNGOs have longstanding presence in the area where violations take place and have a strong interest in preserving their long term ability to protect and support victims of human rights violations. It should also be noted that HRNGOs are always not able to operate freely and in many countries such as Sri Lanka, they are vulnerable to interference in their work from government officials and non-official agencies. Thus, they may not be in a position to operate independently and impartially. For instance, in any given conflict, a HRNGO may be closely associated with one party to the conflict or have a particular political or other agenda which could carry a bias in their documentation of human rights violations.<sup>30</sup>

In Sri Lanka, HRNGOs suffer from other limitations as well which prevent them from functioning effectively. The most important factor in the limitations for HRNGOs is security concerns. HRNGOs are often placed in precarious conditions with regard to their

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<sup>30</sup>Based on an interview with the Executive Director Consortium of Humanitarian Agencies on 03/10/08.

security. If a HRNGO is said to sympathize with the rights of the Tamils in Sri Lanka, they are often labeled as traitors to the nation and receive threats to their life from paramilitaries and other governmental agencies. It is also alleged that anyone who sympathizes with the rights of the Tamils, he or she is labeled as supporters of LTTE.<sup>31</sup> Therefore, they receive threats and warning letters from various agencies of the government such as the police, army personnel, special task force, political party leaders, etc. HRNGOs in Sri Lanka lack funding, professionalism and lack of coordination with other human rights agencies. The other factor which prevents these organizations from functioning effectively is the restrictions placed by the government to work in these vulnerable regions of north and east of Sri Lanka on grounds of war and security reasons.<sup>32</sup> Censorship is another important factor which hampers the work of these organizations. It is also found that HRINGOs such as Amnesty International, Peace Brigades International, etc, left Sri Lanka due to censorship of their work by the government. Peace Brigades International (PBI) stated in its news release that HRINGOs are forced to leave Sri Lanka because of the demand by the Sri Lankan Government to submit its report and findings before publication. This demand made by the GOSL is understood by the HRNGOs as a move to censor such reports before release.<sup>33</sup> HRNGOs also state that most of the civilians in the conflict zones do not have any knowledge of the existence of such organizations leave alone accessing their support.<sup>34</sup>

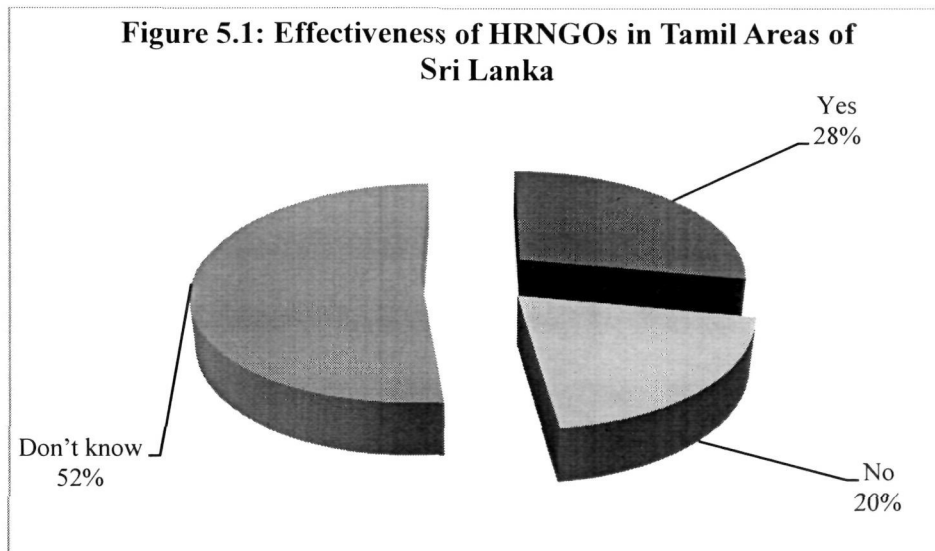
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<sup>31</sup> Based on an interview with the executive director of Centre for Policy Alternatives in Colombo on 1/10/08.

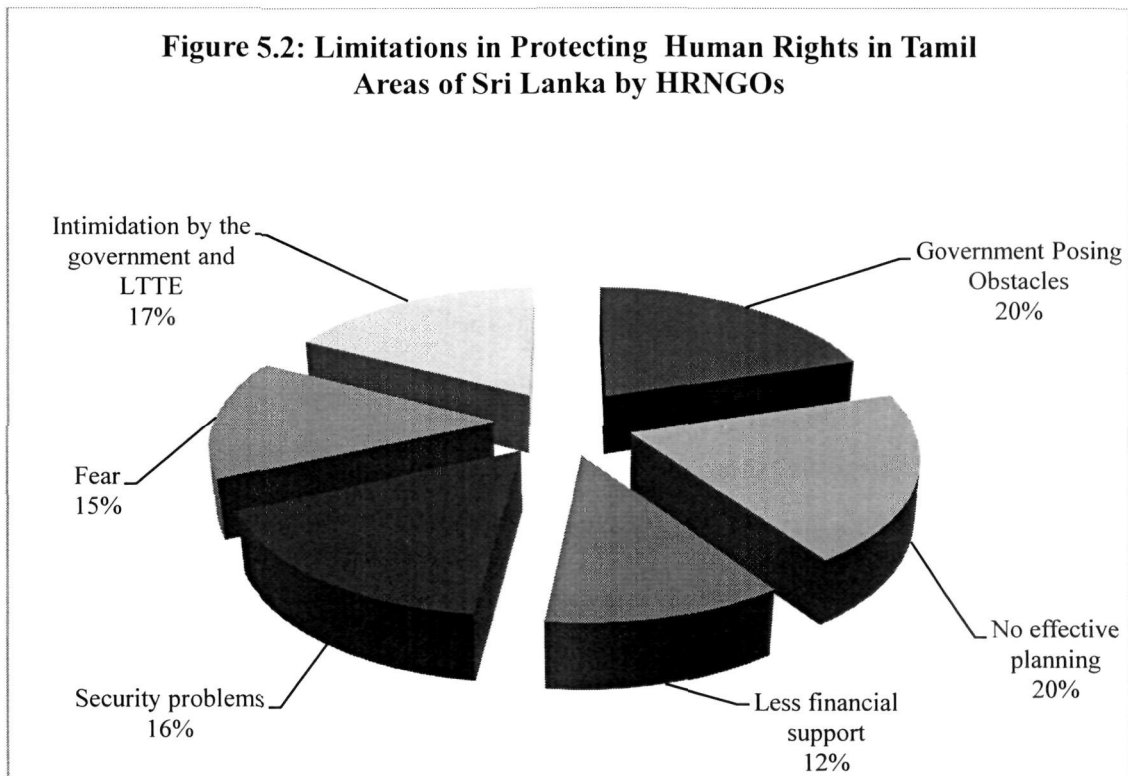
<sup>32</sup> Based on an interview with the executive director of Home for Human Rights in Colombo on 29/09/08.

<sup>33</sup> Dharmarajan, Shivani (2001) *NGOs as Prime Movers, Sectoral Action for Social Development*. n. 4, pp. 209-10, and also based on interviews with Executive Directors and General Secretaries of Various NGOs in Sri Lanka between 27/09/08 to 24/10/08.

<sup>34</sup> Based on interviews with Executive Directors and General Secretaries of various NGOs in Sri Lanka between 1/10/08 to 6/10/08.



Various views expressed by the respondents revealed that HRNGOs in Sri Lanka are not very effective in protecting and promoting human rights in the north and east. 28 percent of the respondents felt that the HRNGOs are effective in protecting and promoting human rights whereas 20 percent said that they are not effective in the Tamil areas of Sri Lanka. The remaining 52 percent of the respondents said they are not aware about the effectiveness of the HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka. Therefore, we can understand that the people in Sri Lanka feel that the HRNGOs in Sri Lanka do not play an effective role in protecting and promoting human rights in Sri Lanka.



With regard to the limitation faced by HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka various opinions were expressed by the respondents. 20 percent of the respondents said that the government posed obstacles while another 20 percent stated that there is no effective planning made by HRNGOs in Sri Lanka to protect and promote human rights in the Tamil areas of Sri Lanka. 17 percent of the respondents said that intimidation by the government and the LTTE was one of the limitations faced by HRNGOs in Sri Lanka while 16 percent of the respondents stated that HRNGOs faced security problems while working for the protection and promotion of human rights in the region. 15 percent of the respondents said that fear was another limitation while the remaining 12 percent of the respondents stated that HRNGOs lacked proper financial support to protect and promote human rights in the Tamil areas of Sri Lanka. Thus, Figure

5.2 clearly revealed the various limitations faced by HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka.

Hence, from the discussion it is revealed that HRNGOs in Sri Lanka are not very effective in protecting and promoting human rights in the Tamil areas of Sri Lanka. Although, HRNGOs in Sri Lanka have represented many cases in relation to human rights violations in the courts, they have not been able to achieve any positive results for the victims they have represented. For example, the Nallaratnam Singarasa vs Attorney General of Sri Lanka, case, where the victim (Nallaratnam Singarasa) was represented by the Home for Human Rights and other lawyers did not produce any positive results for the victim. Although, it was alleged that charges against Singarasa were fabricated by statements which were obtained through torture, they were accepted by the Supreme Court of Sri Lanka as *prima facie* evidence against him.

### **Major State Organizations and Human Rights**

National Human Rights Commissions have been established in several parts of the world. The first human rights commission was set up in Saskatchewan (Canada) in 1947 and since then several countries have established similar commissions. Human rights commissions gained importance after United Nations began to actively promote the creation of such organizations. It was after the Centre for Human Rights in Geneva organized a meeting in 1991 to discuss on issues relating to national human rights organizations that active promotion for the establishment of such organizations developed. One of the results of this meeting was a statement of principles entitled “Principles

Relating to the Status and Functioning of National Institutions for the Protection of Human Rights” which also is known as the Paris Principles. The Paris Principles emphasizes that, human rights commissions should operate freely from government interference and they should have necessary resources and infrastructure to function effectively. The Paris Principles also draw attention to the flexibility of human rights commissions and emphasizes that the members of these commissions should be drawn from different segments of society. Some HRINGOs like Amnesty International emphasizes that while human rights commissions can be an important mechanism for the protection of human rights, they can never replace, and should not in any way diminish the legal structures enforced by an independent and impartial judiciary. However, one potential problem is that for many governments establish human rights commissions to boost its human rights practice in the eyes of the global community.<sup>35</sup>

In the Middle East and North Africa, these National Human Rights Institutions emerged since the 1990s. For example, National Human Rights Commissions were established in Morocco (1990), Tunisia (1991), Algeria (1992), Palestine (1993), Yemen (1997), Jordan (2000), Qatar (2003), Egypt (2003), and Saudi Arabia announced in 2003. Even Iraq’s Interim Constitution calls for the creation of a National Human Rights Commission in Article 50.<sup>36</sup> National Human Rights Institutions were also established in South Asian Countries. For example, National Human Rights Commissions were also established in Pakistan (1987), India (1993), Sri Lanka (1996), Nepal (2000), and

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<sup>35</sup> Gomez, Mario (1998) ‘Sri Lanka’s New Human Rights Commission’, *Human Rights Quarterly*, 20(2): 281-302

<sup>36</sup> Cardenas, Sonia and Flibbert, Andrew (2005) ‘National Human Rights Institutions in the Middle East’, *Middle East Journal*, 59(3): 411-36

Bangladesh (2008).<sup>37</sup> National Human Rights Institutions are becoming increasingly active in the emerging global network of sub-state actors committed to human rights and interacting regularly with foreign counterparts and with international and local non-governmental organizations. Despite the resilience of authoritarianism and the persistence of human rights violations in the region, National Human Rights Institutions, sometimes even improve the conditions faced by individuals and groups.<sup>38</sup> After the World Conference on Human Rights in Vienna (1993) which called for the creation of National Human Rights Institutions, many nations around the world, responded by establishing them. Although, few government sponsored human rights institutions existed during the cold war, their proliferation accelerated dramatically with the surge of democratization in the 1990s. Since then, at least 100 countries had established a National Human Rights Institution or were in the process of creating one.<sup>39</sup>

National Human Rights Institutions (NHRI) are sometimes called National Human Rights Commissions (NHRC). They are quasi-official organizations, or permanent bodies established by the states to implement internationally recognized human rights norms within their domestic jurisdictions. Despite their apparent similarities, these institutions can vary considerably, as state institutions reconstitute international standards to meet local needs and often to suite a range of underlying political purposes. In general, however all National Human Rights Commissions have the dual task of protecting and promoting human rights norms. Protection refers to investigation and redress of human rights

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<sup>37</sup> Asian Center for Human Rights (2008) *South Asia Human Rights Index*. New Delhi: Asian Center for Human Rights. p. 113.

<sup>38</sup> Gomez, Mario (1998) 'Sri Lanka's New Human Rights Commission', *Human Rights Quarterly*, 20(2): 281-302.

<sup>39</sup> *Ibid*, pp.281-302

violations, including punishing the perpetrators and compensating victims. Promotion involves human rights education, such as training personnel, formulating school curricula, and building awareness of human rights issues. While some institutions include a more traditional ombudsman function focused on addressing administrative abuses, others have considerable powers of investigation and legal standing. Still others are entrusted only to perform a weak advisory function.

Although, it is difficult to assess the full effects of these institutions clearly, their existence is nonetheless paradoxical. On the one hand, states creating them are often the principal violators of human rights in their nation. In such cases national leaders may be motivated by a desire to appease critics, while controlling the human rights agenda. It is often found that National Human Rights Commissions created by the states tend to be organizationally weak and substantially ineffective. On the other hand, even when National Human Rights Commissions are constrained severely in what they can do, their very existence may limit state action with regard to human rights issues in many ways. By committing formally to international norms or inserting talk for human rights into public discourse, states with National Human Rights Commissions are legitimizing the idea of human rights and perhaps unwittingly, contributing to the construction of new social demands. While it is unclear if National Human Rights Commissions will close the gap between human rights rhetoric and practice in specific instances, these institutions do generate demonstrable and potentially vital pressures for social and political change.<sup>40</sup>

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<sup>40</sup> Cardenas, Sonia and Flibbert, Andrew (2005) 'National Human Rights Institutions in the Middle East', *Middle East Journal*, 59(3): 411-36.

A Human Rights Commission (HRC) is a state sponsored and state funded entity set up under an act of Parliament or under the Constitution with the broad objective of protecting and promoting human rights. With this overall objective in mind, a Human Rights Commission may perform a range of functions. These functions include, dispute resolution through adjudication or mediation, human rights education documentation and research, advising governments on human rights issues, and setting human rights standards.<sup>41</sup>

### **Human Rights Commission of Sri Lanka**

Sri Lanka, which has been experiencing ethnic conflict and armed resistance from the Tamil minorities in the north and east since independence, has been witnessing various forms of gross human rights abuses committed by both the government and the armed group, the LTTE. In July 1996, the Sri Lankan Parliament passed legislation for the establishment of a permanent Human Rights Commission. The Human Rights Commission of Sri Lanka (HRCSL) Act No. 21 of 1996 contemplated an institution that would perform a broad range of functions, such as investigating and mediating human rights violations and advising the government on appropriate legislative and administrative procedures.<sup>42</sup> The draft legislation on human rights commission was prepared by the Law and Society Trust, Colombo, a human rights non-governmental organization based in Colombo in early 1990. This draft law was discussed at an All Party Conference (APC) which was modified by the Legal Draftsman Department and discussed further at several subsequent sessions of the All Party Conference. This draft after discussions emerged as the Human Rights

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<sup>41</sup> Gomez, Mario (1998) 'Sri Lanka's New Human Rights Commission', *Human Rights Quarterly*, 20(2): 281-302.

<sup>42</sup> *Ibid*, pp. 281-302.

Commission of Sri Lanka Act No. 21 of 1996.<sup>43</sup> It was expected that the Human Rights Commission would play a vital role in promoting and protecting human rights in Sri Lanka. The HRCSL's mission was to protect and promote human rights by adhering to universally recognized norms and principles with a special emphasis on the fundamental rights guaranteed under the Sri Lankan Constitution for the citizens of Sri Lanka.<sup>44</sup>

### **Powers and Functions of the Human Rights Commission of Sri Lanka**

The functions of the Human Rights Commission of Sri Lanka are to: (i) inquire and investigate complaints regarding procedures, with a view to ensuring compliance with the provision of the constitution relating to promoting respect for and observance of fundamental rights, (ii) examine complaints regarding infringements or imminent infringements of fundamental rights, (iii) advise and assist the government in formulating legislation and administrative directives and procedures in the furtherance of fundamental rights, (iv) make recommendations to the government regarding measures which should be taken to ensure that national laws and administrative practices in the country are in accordance with the international human rights norms and standards, (v) make recommendations to the government to accede to treaties and other international instruments in the field of human rights, and, (vi) promote awareness through education about human rights.<sup>45</sup>

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<sup>43</sup> *Ibid*, pp.281-302.

<sup>44</sup> Based on an interview with the Chairman of the Human Rights Commission of Sri Lanka.

<sup>45</sup> Article 10 (a- f) Human Rights Commission of Sri Lanka Act, No. 21, 1996. Sri Lanka.

Article 11 of the Human Rights Commission of Sri Lanka Act (1996) states that for the purpose of discharging its functions, the commission may exercise any or all of the following powers:

- Investigate any infringement or imminent infringement of fundamental rights in accordance with the succeeding provisions of this act.
- Appoint sub-committees at the provincial level to get reports on the status of human rights.
- Intervene in any proceedings relating to infringement or imminent infringement of fundamental rights before any court, with the permission of that particular court.
- Monitor the welfare of persons detained either by a judicial order or regular visits to places of detentions.
- Undertake research on human rights and its violations in Sri Lanka.
- Promote awareness of human rights, by conducting programmes, seminars and workshops and to disseminate and to distribute the results of such research.
- Do all such other things that are necessary or conducive to discharge its functions.<sup>46</sup>

The Human Rights Commission of Sri Lanka Act of 1996 has also empowered the commission to intervene in ongoing litigation or to initiate new litigation. The Human Rights Commission with the permission of the court can intervene in any proceeding where an infringement or imminent infringement of a fundamental right is disclosed. In addition, when an investigation conducted by the Human Rights Commission discloses an

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<sup>46</sup> Article 11 (a- h) Human Rights Commission of Sri Lanka Act, No. 21, 1996, Sri Lanka.

infringement or imminent infringement of fundamental rights, the Commission may refer the matter to any court having jurisdiction to hear and determine such matter in accordance with the rules of the court as prescribed.<sup>47</sup> The Human Rights Commission also has the power to initiate investigations where there is an alleged human rights violation. The Commission may also take the help of HRNGOs, local bar associations and other civil society groups to facilitate investigations of human rights violations being perpetrated against particular groups.<sup>48</sup>

When an investigation into a complaint received by the Human Rights Commission of Sri Lanka discloses infringement of a fundamental right, the commission can refer the matter for mediation or conciliation.<sup>49</sup> When attempts for mediation or conciliation fail, the commission can pressurize the authorities to take necessary action relating to prosecution or other proceedings that can be instituted against those infringing fundamental rights. The commission may also refer the matter to any court having jurisdiction to hear and determine such matter in accordance with such rules of the court as prescribed. The Human Rights Commission can make recommendations to the appropriate authority to prevent or provide remedy for such infringement or the continuation of such violations.<sup>50</sup>

The Human Rights Commission of Sri Lanka Act also assigns a very specific power to the Commission, in relation to supervising the arrest and detention of persons under the Emergency Regulations or the Prevention of Terrorism Act. According to the legislation,

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<sup>47</sup> Article 15 (3) (b) Human Rights Commission of Sri Lanka Act No. 21, 1996. Sri Lanka.

<sup>48</sup> Gomez, Mario (1998) 'Sri Lanka's New Human Rights Commission', *Human Rights Quarterly*, 20(2): 281-302.

<sup>49</sup> Article 15 (3) Human Rights Commission of Sri Lanka Act, No. 21, 1996. Sri Lanka.

<sup>50</sup> Article 15 (3) (a) (b) (c) Human Rights Commission of Sri Lanka Act, No. 21, 1996. Sri Lanka.

the person making such arrest or detention is under the duty to inform the Commission of the arrest or detention forthwith and in any case not later than 48 hours from the time of arrest or detention. The place at which the person detained is also to be informed to the Human Rights Commission of Sri Lanka.<sup>51</sup>

From the discussion of the powers and functions of the Human Rights Commission of Sri Lanka, it is clear that the role of the commission in protection of human rights is very significant. The provisions of the Human Rights Commission of Sri Lanka Act No. 21, enables the commission to play an effective and important role in protecting and promoting human rights in Sri Lanka. However, although the Human Rights Commission of Sri Lanka has enough powers to play a vital role in the protection and promotion of human rights, it has not been able to function in the manner as expected. The Human Rights Commission of Sri Lanka has not been able to achieve much success due to the war between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. In such a situation where the government is skeptical about publishing reports of blatant violations of human rights, by its agencies, the Human Rights Commission of Sri Lanka has been merely playing the role of documentation of human rights violations. The Human Rights Commission of Sri Lanka has published its reports and findings on human rights violations in Sri Lanka. The Commission's functions are also limited because of the government's interference into the commission's activities. The Human Rights Commission of Sri Lanka also stands degraded because of its inefficiency in protecting and promoting human rights

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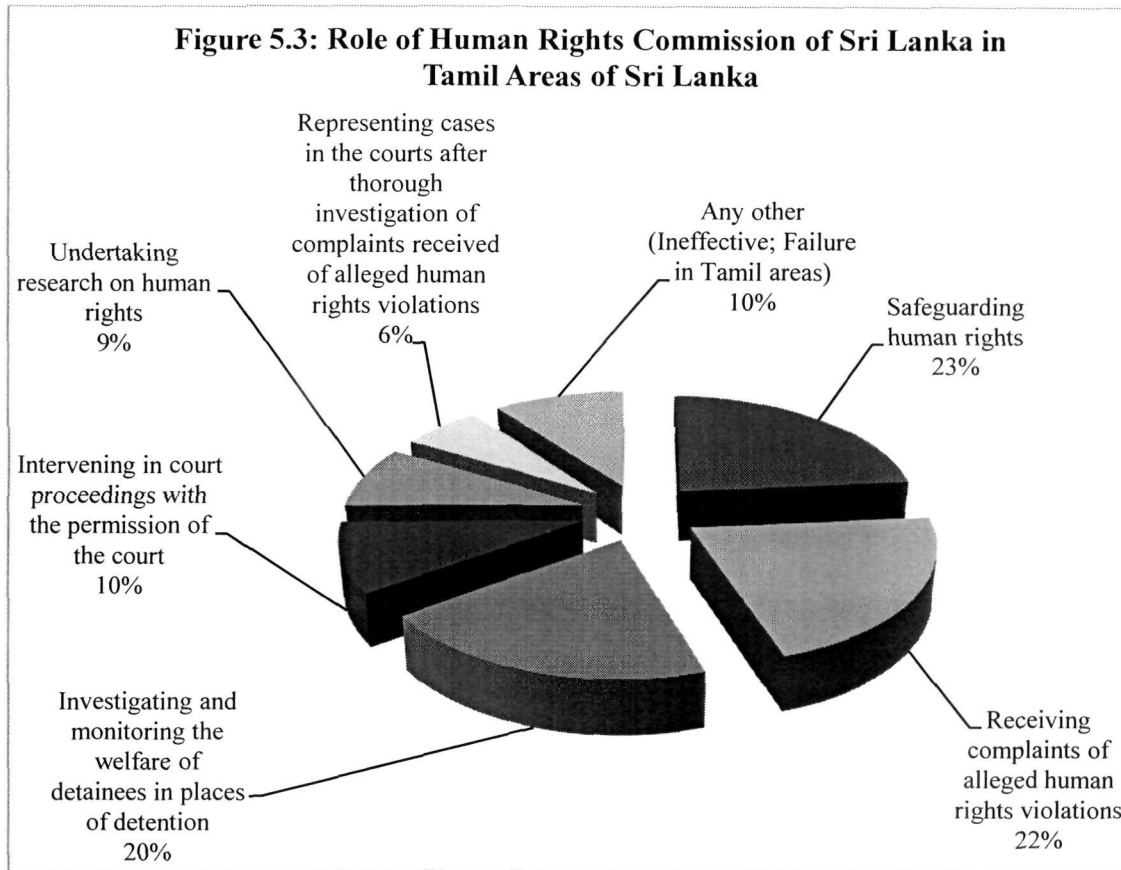
<sup>51</sup> Gomez, Mario (1998) 'Sri Lanka's New Human Rights Commission', *Human Rights Quarterly*, 20(2): 281-302.

despite the powers and functional capabilities provided for the Commission in the HRCSL Act No.21 of 1996, in the country.

The HRCSL's powers and functions are limited because it does not have the authority to arrest or punish a person found guilty of violating human rights. The HRCSL can only recommend to the Courts in Sri Lanka to take necessary action against the perpetrator of such violations. In this connection, fundamental rights case No. BC/02-11/04, is relevant. This case was relating a Tamil woman who complained to the Batticaloa High Court stating that she had been tortured and raped by the police after her arrest. She also alleged that twelve police officers had raped her continuously one after the other. Following the complaint made by the Tamil woman, the Judge ordered that she be examined by the Judicial Medical Officer, Batticaloa. Upon examination, the Judicial Medical Officer's report disclosed 22 marks of injuries on her body and 4 on her breasts alone. The report further stated that rape was possible. The HRCSL in this case recommended that Rupees Two Lakhs be awarded to the victim as compensation and the perpetrators be punished accordingly. However, the perpetrators were not punished and the compensation was not paid fully to the victim.<sup>52</sup>

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<sup>52</sup> Farook, A. A. M. (2006) 'Human Rights Commission's Recommendation Flouted: No Prosecution in Custodial Rape Case', *Beyond the Wall*, 4(1): 7-9.



When asked about the role of the Human Rights Commission of Sri Lanka, opinions expressed by the respondents were varied. However, the opinions expressed revealed that the human rights commission of Sri Lanka is involved in safeguarding human rights, receiving complaints of alleged human rights violations, investigating and monitoring the welfare of detainees in places of detention, intervening in court proceedings with the permission of the court, representing cases in the courts after thorough investigation of complaints received on alleged human rights violations and also a failure in the Tamil areas of Sri Lanka.

23 percent of the respondents said that safeguarding of human rights was the primary role and 22 percent stated that the commission receives complaints of alleged human rights violations. 20 percent of the respondents said that the commission was involved in investigating and monitoring the welfare of detainees in places of detention while another 10 percent said that the commission intervenes in Court proceedings relating to human rights violations with the permission of the Court. The Human Rights Commission of Sri Lanka was thought to be a failure in the Tamil areas of Sri Lanka by 10 percent of the respondents. 9 percent of the total respondents said that the Commission was involved in undertaking research on human rights issues throughout Sri Lanka and also in the Tamil areas of Sri Lanka. The remaining 6 percent of the respondents said that the Human Rights Commission of Sri Lanka represents cases in the Courts after thorough investigations of complaints received on human rights violations.

Although, the respondents stated the various functions of the Human Rights Commission of Sri Lanka they also said that it should or ought to perform the functions as provided in the Human Rights Commission of Sri Lanka Act No. 21 of 1996. They also stated that the commission has failed to protect and promote human rights effectively in the Tamil areas of Sri Lanka.

Thus, from the discussion on the role of major HRNGOs and state organizations it is seen that the legal framework for the protection of human rights is very strong. But whether it is of HRINGOs, HRNGOs or the Human Rights Commission of Sri Lanka, their practical role is very limited in the protection and promotion of human rights. HRNGOs

also state that the presence of HRINGOs is necessary to improve the situation in the north and east of Sri Lanka. It was also stated by HRNGOs, that human rights abuses could be prevented effectively if HRINGOs and their offices were present in these regions. While these groups were present, both the government agencies and the LTTE were found to have refrained from abusing human rights atleast to a certain extent.<sup>53</sup> Therefore, the role of HRNGOs and major state organizations in protecting and promoting human rights in the north and east of Sri Lanka appears to be very limited though their legal framework is very strong.

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<sup>53</sup> Based on an interview with a professor in Peradeniya University, Kandy on 6/10/08, Sri Lanka.

## **CHAPTER – VI**

## **CONCLUSION**

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Human rights has grown through the ages and gained immense importance in present times. The concept of human rights has developed to the extent wherein every individual human being seems to have received attention to his or her right of being treated with dignity atleast in principle. As discussed, the traditional international law contributed to the development of various doctrines and institutions which were designed to promote and protect different groups of people such as minorities, native populations, foreign nationals, victims of large scale violations, combatants, children, women, migrants and many others. The legal principles, which arose through the international law, laid the conceptual and institutional foundation for the development of the concept of present day human rights.

Human rights, thus, in its historical evolution over the years has transformed itself where the individual human being has received increased recognition of his or her rights and obligations. The issue of human rights arises when there is a violation or denial of such rights to a person or group of persons, community, etc. Human rights evidently gained immense importance in the aftermath of the Second World War wherein millions of people were killed brutally. Although, human rights has gained immense importance in

everyday life, it cannot be assumed that violations of human rights do not occur. Massive violations of human rights continue to occur in many parts of the world, more particularly in the third world countries where internal ethnic conflict is one of the major problems. In this context, most governments continue to violate human rights on a large scale in the name of preserving the territorial integrity of their nation and further practice impunity for such actions. But the fact is that such governments have increasingly been forced by both internal and external factors to answer for such actions to the international community. Infact, this has to an extent, prevented the actions of governments to continue with such violations of human rights without being responsible for their actions in this regard. However, albeit, not all cases contribute to an improved human rights scenario, that is to say that not all governments do really respect universal human rights norms, but continue to violate human rights on a large scale with impunity. It cannot be also said that human rights are violated by governments and its agencies only, but there are many instances where non-state actors such as armed groups, revolutionaries, terrorists, liberation organizations, guerillas, militants, extremists, insurgents, separatists, etc have been involved in such violations.

Another important aspect is that universal human rights norms or standards do not have any binding effect on non-state actors. These groups or organizations show no respect for human dignity, rights and life. Human rights violations committed by these groups are rarely reported in detail, whereas abuses committed by the state and its agencies in most cases have been published and these states receive wide condemnation. Contrary to this is the fact that human rights violations or abuses committed by non-state

actors in most cases are not revealed or widely published. This can be due to the lack of credible evidence and also because of the fear that whoever reports about such violations may be under threat from these groups or agencies.

In the present study, human rights abuses committed by the state and non-state actors in the Tamil areas of Sri Lanka have been examined. In Sri Lanka, human rights violations began since the achievement of independence from the British in the year 1948. After independence from the British, structural violence which eventually led to the ethnic conflict and the demand for separate state for Tamil Eelam by the Tamils and later by the LTTE since the late 1970s have been seen to be the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. Further, this study has also found various other factors which have contributed to the increased human rights abuses in the Tamil areas of Sri Lanka, in the context of the charges of human rights violations alleged against the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE). In this study, the role of the Human Rights Commission of Sri Lanka (HRCSL) and various Human Rights International Non-Governmental Organizations (HRINGOS) and Local Human Rights Non-Governmental Organizations (HRNGOS) in protecting human rights in the region has also been examined. The study has been divided in six chapters:

*Chapter- I Introduction: Concept of Human Rights*, discusses the evolution, concept and definition of the term 'Human Rights'. The growth of the term is traced back to the

early Greek thought, the natural law and natural rights theory. Although natural rights was prominent in the Seventeenth Century political debates of the British, the growth and importance of modern day human rights can be seen in the French Revolution and American Declarations. However, human rights gained immense importance in the aftermath of the Second World War where millions of people lost their lives. Horrified by the devastation of life due to the Second World War, members of the United Nations (UN) took a pledge to take measures for the achievement of universal respect and observance of human rights and fundamental freedoms for all. Three years after its formation in 1945, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (December 10, 1948), where respect and observance of human rights and human dignity were declared as the foundation for freedom, justice and peace in the world. The declaration covers two international Covenants, (i) International Covenant on Civil and Political Rights (ICCPR), and (ii) International Covenant on Economic, Social and Cultural Rights (ICESCR). The Universal Declaration of Human Rights UDHR, ICCPR, and ICESCR were examined in this chapter. Further, human rights with particular reference to Sri Lanka and the provisions for the protection and promotion of human rights mentioned in the Sri Lankan Constitution were discussed. A list of various international human rights declarations, conventions, covenants and treaties which Sri Lanka has signed and ratified has been made.

***Chapter - II: State and Human Rights Abuses***, discusses the various charges of human rights abuses alleged against the Government of Sri Lanka (GOSL) and its agencies. Protection and promotion of human rights over the years has received international

concern. This has also brought about greater concern for the better treatment of nationals within the territory of any sovereign state. It is also evident that when the treatment of nationals within the territory of any state assumes brutal forms, it constitutes massive and flagrant violations of human rights and the issue ceases to be the sole concern of the state or a nation.

The Government of Sri Lanka is allegedly charged in committing various forms of human rights abuses by the international community and various human rights organizations both at local and international levels. The charges of human rights abuses against the state range from structural violations to war crimes. These include discrimination, repressive legislations such as Prevention of Terrorism Act and Emergency Regulations, arbitrary arrests, extrajudicial killings, political killings, physical torture, involuntary or enforced disappearances, keeping the arrested incommunicado without trial for long periods, and impunity. While legislations are enacted by the Government of Sri Lanka, the execution of these laws is carried out by the security forces, special task force and police. The execution of such laws has been in most of the times beyond the jurisdiction prescribed thereby resulting in serious human rights abuses. Further, on most cases the state has remained silent with regard to such abuses committed by the security forces, special task force and police or any other state agency.

These various forms of human rights abuses seem to have occurred due to the government's inability to address the Tamil minority's demand vis-à-vis the Sinhalese for

equality. Since independence, Sri Lanka has been ruled by the Sinhalese majority. The Sinhalese led Government enacted discriminatory legislations namely Citizenship Act of 1948, The Ceylon Parliamentary Elections Act No. 3 of 1949 and Language Act of 1956, and standardization policy favoring the Sinhalese majority and sidelining other groups especially the Tamil minority group. The Tamils demanded equal recognition of their language and parity of status in society. But on the contrary, the government made Sinhala language the only official language. This made official correspondence for the Tamils almost impossible. Discriminations were also made on matters relating to admissions to educational institutions, employment and recruitment in civil services. Standardization of marks was also made to exclude the Tamils from getting entry into government services and educational institutions where Tamils had to score more marks. However, the Tamils under their political leadership till the early 1970s demanded redressal for their grievances through constitutional means like *Satyagraha* (Passive resistance) and organizing protests movements. The government responded to the above demands with repressions and violence using Sinhalese mobs in both the Tamil areas as well as in other parts of Sri Lanka. Following these events, the Tamil political leadership demanded federal autonomy in the northern and eastern provinces which are inhabited by the Tamils. These demands were also not addressed by the Government of Sri Lanka which ultimately resulted in the armed struggle against the state to achieve separate nationhood for the Tamils.

When the demand for equality and federal autonomy of the Tamils turned into a demand for separate independent state, the Government of Sri Lanka resorted to enacting

legislations such as Prevention of Terrorism Act and Emergency Regulations (PTA and ER) to suppress the demands made by the Tamils. These two legislations enabled the government forces to act with complete impunity. To a great extent, these two acts were found responsible for human rights abuses as the security forces were allowed to act with complete authority thereby causing various forms of human rights violations in the Tamil areas of Sri Lanka.

State agencies involvement in enforced disappearances is another issue that has raised wide attention in the local, national and international levels. On ground of enforced disappearances, the state has been criticized by many Non-Governmental Organizations. Various reports of Human Rights Non-Governmental Organizations and also the Human Rights Commission of Sri Lanka suggest that disappearances were happening frequently in these regions. These organizations have made estimates of about 30,000 official and 60,000 unofficial, of the number of disappearances in the Tamil areas.

Torture is also another charge made against the Government of Sri Lanka. Torture is an enabled tool in Sri Lanka to gather information about the Liberation Tigers of Tamil Eelam (LTTE). A list of various methods of torture has been made. Reports of various Human Rights International Non-Governmental Organizations (HRINGOs) and Local Human Rights Non-Governmental Organizations (HRNGOs) revealed that torture is used to extract information and confessions during interrogations. According to section 16 of the Prevention of Terrorism Act (PTA), any confession is *prima facie* (Primary)

evidence and the burden of proving that the confession was obtained through torture lies on the suspect. In some cases when it was established that those statements made by the accused was due to torture, the accused is released and awarded compensation too. But such individuals were reported to have developed neuro-psychological problems, depression, permanent physical disabilities and various other forms of physical complications. It has also been reported that torture victims range from even 14 years of age both men and women. Impunity is another issue which helps the government agencies to act without responsibility for their actions in abusing human rights.

*Chapter- III: LTTE and Human Rights Abuses*, deals with the various charges of human rights violations alleged against the Liberation Tigers of Tamil Eelam (LTTE) and a brief analysis on the growth of the LTTE and its demands. Also, a list of various armed groups which sprung up with similar demand and were later eliminated by the LTTE has also been made. This is evident through the internecine fighting that took place between these groups in the early 1970s to gain supremacy, in which the LTTE was successful. When the other groups saw that they were no longer able to fight the LTTE, they either took to mainstream politics or disbanded their groups. The LTTE grew as a byproduct of Sinhalese discriminatory policies which sidelined the Tamils. The LTTE which was earlier known as the Tamil New Tigers (TNT) comprised of unemployed Tamil youth. The Tamil New Tigers reformed as the Liberation Tigers of Tamil Eelam (LTTE) on May 5, 1976. This change was mainly due to the failure of the moderate Tamil political parties who demanded recognition of the rights of the Tamils through Constitutional means. Thus, Tamil youth thought that an armed struggle was the only way to achieve the

legitimate rights of the Tamils in Sri Lanka. The objective of the LTTE was to achieve a separate state of Tamil Eelam in Sri Lanka comprising the areas in which the Tamils were a majority mainly in the northern and eastern provinces. In pursuing this objective, the LTTE is said to have violated or abused human rights in the Tamil areas of Sri Lanka. These charges include suicide bombing, child recruitment, conscription, restricting the freedom of movement, kidnapping, political assassinations, extortion, etc. The LTTE is also charged of flouting peace talks and rejecting peaceful settlements which might have been possible if the LTTE had not pulled out of the peace talks at the most crucial times of negotiations. In pursuit of the LTTE's uncompromising commitment and demand for separate state, the LTTE had carried out series of violent activities against the state authorities and civilians. These activities are said to have contributed to various charges of human rights abuses.

In this chapter, a list of suicide missions carried out by the LTTE, one in every year has been shown (1987-2009). The LTTE's political assassinations have also been listed in this chapter. This chapter according to various reports of Human Rights International Non-Governmental Organizations and Local Human Rights Non-Governmental Organizations revealed that the LTTE had violated various freedoms guaranteed in universal human rights instruments. The LTTE is also charged of denying peaceful existence in the region for civilians in the Tamil areas of Sri Lanka. Reports of various Human Rights Non-Governmental Organizations suggest that the LTTE had forced people into hazardous labor in the name of voluntary service or pay a sum of Sri Lankan Rupees 5000. Even children were said to have been used in hazardous military

works such as building bunkers, digging trenches during war times, etc. Human rights instruments such as the Fourth Geneva Convention provide that no one especially children and women shall be forced into military services during war times. During the final stages of the war between the Sri Lankan armed forces and the LTTE in May 2009, civilians were reportedly prevented by the LTTE from leaving the region even to those who needed immediate medical attention. It was also reported that the LTTE was using unarmed civilians as human shields against the onslaught of the Sri Lankan Army (SLA). Reports of various human rights organizations such as Amnesty International, Human Rights Watch and Asian Human Rights Commission revealed that the LTTE showed complete disregard to human rights during the final stages of the war.

*Chapter- IV: Factors Responsible for Human Rights Abuses*, has discussed the various factors responsible for human rights abuses in the Tamil areas of Sri Lanka. Having examined the various charges of human rights abuses, the objective of this chapter was to study and understand the various factors responsible for such abuses in the Tamil areas of Sri Lanka. The study revealed that the ethnic conflict and the demand for separate state of Tamil Eelam as the primary factors responsible for human rights abuses in the Tamil areas of Sri Lanka. Sri Lankan Government's legislations such as Prevention of Terrorism Act and Emergency Regulations (PTA and ER) were also found to be factors responsible for human rights violations in the Tamil areas of Sri Lanka. It is through these two acts that impunity continues to occur in the Tamil areas of Sri Lanka. Impunity is another factor which contributes to human rights abuses in these regions. When the demands for equality of the Tamils were not redressed by the Government of Sri Lanka,

it led to the ethnic conflict between the Sinhalese and the Tamils. The conflict later led to the demand for separate state of Tamil Eelam. The response of the state to the demand for separate state of Tamil Eelam was in the form of military suppression. The above four aspects namely the suppression of the Tamils after independence from the British in 1948, the ethnic conflict, the demand for separate state of Tamil Eelam and the response of the Sri Lankan State to the demand resulted in a sphere of violence and were found to be the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka.

*Chapter-V: Human Rights: Major Human Rights Non-Governmental and State Organizations in Sri Lanka*, discusses about Non-Governmental Organizations (NGOs), Human Rights International Non-Governmental Organizations (HRINGOs) and Local Human Rights Non-Governmental Organizations (HRNGOs). In this chapter, the role played by the Human Rights Commission of Sri Lanka and Human Rights Non-Governmental Organizations in protecting and promoting human rights in the Tamil Areas of Sri Lanka has been examined. Although there are many Human Rights Non-Governmental Organizations, five of them were selected for the purpose of the study. These organizations were selected for study as they had their offices in the Tamil areas of Sri Lanka and they are well known human rights organizations in Sri Lanka. They are, Home for Human Rights (HHR), Law and Society Trust (LST), Center for Policy Alternatives (CPA), Information Monitor (INFORM) and Consortium of Humanitarian Agencies (CHA). The study revealed that Human Rights Non-Governmental Organizations play a limited role in protecting and promoting human rights in the Tamil areas of Sri Lanka. Human Rights Non-Governmental Organizations only publish reports

on human rights violations committed by the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). Human Rights Non-Governmental Organizations have represented several cases regarding human rights violations, but they were not very successful in achieving a positive result for the victims.

In addition, the role of State human rights organization namely the Human Rights Commission of Sri Lanka (HRCSL) has been examined in this chapter. The Sri Lankan Parliament passed an Act in July 1996, (The Human Rights Commission of Sri Lanka Act No.21 of 1996) that called for the establishment of a permanent Human Rights Commission for the nation. According to this Act, the Human Rights Commission of Sri Lanka is expected to be an institution that would perform a broad range of function from investigating to mediating for protection and promotion of human rights and also advising the government for appropriate legislative procedures. The Human Rights Commission of Sri Lanka is the only organization in Sri Lanka which has the authority to visit and investigate the condition and treatment of detainees in detention centers. However, the Human Rights Commission of Sri Lanka also plays a very limited role in protecting and promoting human rights. The incapability of these organizations to protect and promote human rights in the region has also been examined in this chapter.

***Chapter-VI: Conclusion***, summarizes the study and highlights the major findings. It also makes some suggestions in order to prevent further human rights abuses in the Tamil areas of Sri Lanka. The following are the major findings of the study:

## **Findings of the Study**

An analysis of various definitions made by different scholars and writers revealed that human rights are inherent in human nature and they are claims made by human beings for the better fulfillment of human development. The study also revealed that when there is large scale violation or denial of such rights it constitutes abuses of human rights.

Human rights abuses in Sri Lanka emerged immediately after the achievement of independence in 1948 where the rights of Tamil minorities were denied. Prior to independence in 1946, the Sinhalese and Tamil Political elites had agreed for a Constitutional settlement before independence. The Sinhalese upper middleclass political leadership promised for a just and fair government and power sharing on the basis of partnership and unity. After independence, the Sri Lankan Government passed The Ceylon Citizenship Act Number 18 of 1948 and franchise laws which denied a million Tamils their basic right to citizenship rendering them stateless. This was followed by their disfranchisement. In June 1956, the then Prime Minister Bandaranaike introduced a bill in the House of Representatives to make Sinhala the only official language of Sri Lanka. The Bill was supported by the Mahajana Eksath Peramuna (MEP) and the United National Party (UNP), and opposed by the Lanka Sama Samaj Party (LSSP), Communist Party (CP), Federal Party (FP) and the Tamil Congress (TC). When the Tamils in Sri Lanka saw that the agreement made between the Sinhalese before

independence was not adhered to, they demanded for recognition of their legitimate rights through *Satyagraha* and constitutional means. However, these demands were meted out with violence against the Tamils in both the Tamil areas and other regions in which the Sinhalese were a majority. Thus, structural violence gradually turned out to be direct violence against the Tamils in Sri Lanka. Following these events the Tamils under the leadership of the Federal Party (FP) demanded for federal autonomy for the regions in which Tamils were a majority. The demand for federal autonomy was also made through constitutional means but was suppressed with violence against the Tamils in Sri Lanka. These developments led to the feeling that the only way to achieve their legitimate rights was to demand a separate state of Tamil Eelam through armed struggle which was spearheaded by the Liberation Tigers of Tamil Eelam (LTTE) from the mid 1970s.

The above events show that since independence the conflict between the Tamils and Sinhalese gradually transformed itself into armed conflict thereby violating human rights of innocent civilians in the Tamil areas of Sri Lanka. The study revealed the following as major factors responsible for human rights abuses in the Tamil areas of Sri Lanka: (i) the ethnic conflict between the Sinhalese and the Tamils, (ii) the demand for separate state of Tamil Eelam (iii) repressive legislations such as Prevention of Terrorism Act (PTA) and Emergency Regulations (ER), (iv) complete disregard for human rights by both the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), (v)

lack of awareness about human rights, (vi) condonation of human rights violations by the Sri Lankan Government when committed by its agencies especially within the parameters of the war against the Liberation Tigers of Tamil Eelam.

- The study revealed that it is the sphere of violence which has resulted in various forms of human rights abuses in Tamil areas of Sri Lanka. Sphere of violence in this context has four aspects namely, (i) state repression of the Tamils after Independence from the British in 1948 leading to (ii) the ethnic conflict between the Sinhalese and the Tamils in Sri Lanka which gradually transformed into (iii) the demand for separate state of Tamil Eelam for which (iv) the state responded through military suppression towards the demand.
- Although the main objectives of the Human Rights Commission of Sri Lanka are to protect and promote human rights, its activities have been found to be in favor of the government rather than protecting and promoting the cause of human rights for common citizens. The Human Rights Commission of Sri Lanka is the only organization which has the authority to visit and investigate the conditions of those in detention centers but it is not found capable of doing any appreciable work in the promotion of human rights as the Commission has to work alongside the government agencies. The Human Rights Commission of Sri Lanka can investigate and monitor human rights in the country but it has to depend upon the government agencies to implement its recommendations, thus making it

impossible to protect human rights. Moreover, the members of the Human Rights Commission of Sri Lanka are mostly Sinhalese and they carry a biased attitude towards the issue of human rights particularly in the Tamils areas of Sri Lanka.

- The Human Rights Commission of Sri Lanka receives complaints regarding alleged abuses of human rights from groups of persons and also from individuals. The Commission investigates into such complaints and publishes its findings on various alleged human rights violations and complaints annually. Further, the Commission also sends its recommendations and findings on any human rights violation to the Supreme Court of Sri Lanka for necessary action. The Commission has no authority beyond reporting on human rights violations and recommending the Supreme Court for taking necessary action such as compensation, convicting or pronouncing a sentence on a perpetrator of human rights abuses. As such, the role of the Human Rights Commission of Sri Lanka has been found to be very limited.
- HRINGOs and HRNGOs were also found to play a very limited role in the region with regard to protecting and promoting human rights. The study revealed that HRINGOs do not have their presence in Sri Lanka except for the International Committee of the Red Cross (ICRC) which plays the only role of exchanging bodies of the deceased who were engaged in battle (GOSL-LTTE and vice-versa) or were victims in the crossfire.

- HRNGOs can only receive complaints, investigate and make suggestion and recommendations to improve the situation and also publish reports about alleged violations of human rights. They do not have any legal binding either on the LTTE or the Government of Sri Lanka.
- Human rights abuses in the context of Tamil areas of Sri Lanka could have been avoided if the Sinhalese led governments in the aftermath of independence adhered to the constitutional agreement made between the Sinhalese and the Tamil political leadership. Following the various demands of the Tamils, the government instead of addressing these issues, tried to suppress them through violence which became more counter-productive. This is evident in the anti-Tamil riots that took place in Sri Lanka (1956, 1977, 1981 and 1983).
- Further, human rights abuses could have been avoided in these regions had the LTTE agreed to a peaceful solution through negotiations. The LTTE was never willing to receive any form of solution less than that of a separate state of Tamil Eelam. The strong resort of both the Government of Sri Lanka and the LTTE to use violent methods if avoided could have minimized human rights abuses to a great extent. Following the defeat of the LTTE in May 2009 by the Government of Sri Lanka, the rights of the Tamils at present are at great risk of being violated

as in the early years of independence. Had the LTTE agreed to federal autonomy or anything less than just separate State of Tamil Eelam, the violence and human rights abuses could have been minimized. In Sri Lanka the human rights situation would have been better if human rights international non-governmental organizations and their offices were present. When these organizations were present in Sri Lanka both the Government of Sri Lanka and the LTTE abstained to a certain extent from violating human rights which were so overt in nature after their withdrawal from Sri Lanka.

### **Suggestions**

The study revealed various charges and factors responsible for human rights abuses in the Tamil areas of Sri Lanka. Therefore, in the light of the findings the following suggestions have been made to bring about the solution to the ethnic conflict and prevent further human rights abuses in the Tamil areas of Sri Lanka.

- After independence of Sri Lanka in 1948 the Sri Lankan State failed to accommodate the minority Tamils which resulted in the ethnic conflict between the Sinhalese and the Tamils of Sri Lanka. The ethnic conflict when aggravated compelled the Tamils of Sri Lanka to demand for a separate state of Tamil Eelam under the leadership of the Liberation Tigers of Tamil Eelam (LTTE). Following this demand, there was continued war between the Government of Sri Lanka and the LTTE which resulted in various forms of human rights abuses in the Tamil

areas of Sri Lanka. Therefore, it is suggested that the government should take necessary steps to accommodate the Tamils in granting them equal rights vis-à-vis the Sinhalese and prevent the recurrence of the ethnic conflict in the country.

- Enacting Legislations such as, The Prevention of Terrorism Act and the Emergency Regulations, by the Government of Sri Lanka has resulted in various forms of human rights abuses such as arbitrary arrests and detentions, torture and extra-judicial killings, etc, in the Tamil areas of Sri Lanka. Further, some provisions of these two legislations enabled the security forces to dispose the bodies of those who died whilst in custody or during interrogation. Therefore, it is suggested that some provisions in the Prevention of Terrorism Act and the Emergency Regulations should be removed or repealed so that arbitrary arrests and detention and extra-judicial killings will be prevented. It could also prevent statements obtained through torture whilst in custody to be accepted as *prima facie* evidence.
- As total lack of awareness with regard to human rights and its related issues was found among the people living in the region, it is suggested that efforts to educate them through human rights awareness programmes will help in protecting their rights from being violated. Further, including human rights as a subject in the curriculum of Schools and higher education will promote awareness about their rights among the people living in the Tamil areas of Sri Lanka. Besides these measures, local human rights non-governmental organizations could play a very

important role in educating people in the Tamil areas by conducting open air programmes by screening movies and documentaries relating to human rights.

- Human rights abuses were committed by the security personnel in the Tamil areas of Sri Lanka because they did not have sufficient knowledge on issues relating to human rights. Therefore, it is suggested that imparting human rights education and their psychological makeup during training period can go a long way in protecting human rights before being posted.
- Human Rights International Non-Governmental Organizations do not have their offices in the Tamil areas and also in the other regions of Sri Lanka. Therefore, it is suggested that the Government of Sri Lanka, create an atmosphere that would be conducive to allow the human rights international non-governmental organizations to have their offices in the Tamil areas and other parts of Sri Lanka whereby they would be able to function independent of any governmental or external interference. This will help such organizations in documenting human rights abuses and bringing the matter to the attention of the international community.
- Sri Lanka has signed and ratified most of the important international human rights instruments like the International Covenant on Civil and Political Rights (1980), Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994), etc. Although, Sri Lanka is party to most of the important international human rights instruments, human rights are violated more

particularly in the Tamil areas of Sri Lanka by the government and its agencies which shows non-adherence to these international human rights instruments. Therefore, it is suggested that the international community pressurize the Government of Sri Lanka take necessary steps to adhere to the principles established in the international human rights instruments.

- As the Government of Sri Lanka and its agencies practiced impunity even in cases where human rights violations were proved, no legal or corrective measures were seen to have been meted out on those caught violating human rights. Thus, it is recommended that the government take strong measures to stop impunity for human rights violations committed by its agencies. It is also suggested that any individual, security personnel, or any governmental organization, found guilty of violating human rights should be dealt as per the human rights law.
- The standardization policy in Sri Lanka was found to be discriminatory in nature. This policy enables the Sinhalese to procure admissions in educational institutions and into civil services or any other government employment by scoring lower percentage of marks vis-à-vis the Tamils in Sri Lanka. Thus, it is suggested that the Sri Lankan Government make necessary provisions to enable the Tamils of Sri Lanka to have equal opportunity without discrimination in admissions to educational institutions and employment in government services.
- The Unitary State Structure of Sri Lanka has been found to have curtailed the minority aspirations of development, equal rights and equal representation in the

Sri Lankan society. In the light of this, it is suggested that the Sri Lankan Government change the Unitary State Structure into a federal or quasi-federal form of government by which the minority aspirations for their equal rights, representation and development is realized adequately.

- During the final war between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam since 2005 till May 2009, all infrastructure, such as educational institutions, hospitals, etc, were closed down or destroyed due to heavy fighting and shelling of the region leaving millions of Sri Lankan Tamils homeless without any basic necessities such as water, food, shelter, etc. Therefore, the Government of Sri Lanka should speed up rebuilding infrastructure in the region including rehabilitation process, developmental and educational works, hospital and health care, etc. Further, it is important that the Government of Sri Lanka take all precautionary measures to detect and remove landmines placed by the LTTE in the region at the earliest to prevent human casualties and make the region conducive for secured living.

## **APPENDICES**

## APPENDIX-I

### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

#### PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore

The General Assembly

Proclaims this Universal Declaration Of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**

Everyone has the right to life, liberty and security of person.

**Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### **Article 16**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### **Article 17**

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

#### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### **Article 20**

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

#### **Article 21**

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### **Article 23**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

#### **Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **Article 25**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## **APPENDIX-II**

### **PREVENTION OF TERRORISM ACT NO. 48 OF 1979**

#### **PREAMBLE**

AN ACT TO MAKE TEMPORARY PROVISION FOR THE PREVENTION OF ACTS OF TERRORISM IN SRI LANKA, THE PREVENTION OF UNLAWFUL ACTIVITIES OF ANY INDIVIDUAL, GROUP OF INDIVIDUALS, ASSOCIATION, ORGANISATION OR BODY OF PERSONS WITHIN SRI LANKA OR OUTSIDE SRI LANKA AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Parliament of the Democratic Socialist Republic of Sri Lanka continues to affirm that men and institutions remain free only when freedom is founded upon respect for the Rule of Law and that grievances should be redressed by constitutional methods:

AND WHEREAS public order in Sri Lanka continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and who have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers, and witnesses to such acts and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to State property and other acts involving actual or threatened coercion, intimidation and violence:

AND WHEREAS other democratic countries have enacted special legislation to deal with acts of terrorism:

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, and shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may appoint by Order published in the Gazette.

#### **PART I**

##### **OFFENCES**

2. (1) Any person who -

(a) causes the death of any specified person, or kidnaps or abducts a specified person, or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or

(b) causes the death of any person who is a witness to any offence under this Act, or kidnaps or abducts or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or

(c) commits criminal intimidation of any special person or a witness referred to in paragraph (b); or

(d) commits the offence of robbery of the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society; or

(e) commits the offence of mischief to the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society or to any other public property; or

(f) without lawful authority imports, manufactures or collects any firearms, offensive weapons, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or

(g) possesses without lawful authority, within any security area, any firearms or any offensive weapon, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or

(h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups; or

(i) without lawful authority erases, mutilates, defaces or otherwise interferes with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place; or

(j) harbours, conceals or in any other manner prevents, hinders or interferes with the apprehension of, a proclaimed person or any other person, knowing or having reason to believe that such person has committed an offence under this Act,

shall be guilty of an offence under this Act.

(2) Any person guilty of an offence specified in -

(i) paragraph (a) or (b) of subsection (1) shall on conviction be liable to imprisonment for life, and

(ii) paragraphs (c), (d), (e), (f), (g), (h), (i) or (j) of subsection (1) shall on conviction be liable to imprisonment of either description for a period not less than five years but not exceeding twenty years.

(3) In this section -

(i) “proclaimed person” means any person proclaimed by the Inspector-General of Police by Proclamation published in the Gazette to be a person wanted in connection with the commission of any offence under this Act; and

(ii) “security area” means any area declared by the Minister by Order published in the Gazette to be a security area if he is satisfied that by reason of any unlawful activity there is in such area a reasonable apprehension of organised violence.

3. Any person who -

(a) does any act preparatory to the commission of an offence; or

(b) abets, conspires, attempts, exhorts or incites the commission of an offence; or

(c) causes the death of any person, or commits any attack upon any person whomsoever in the course of committing any offence under this Act, which act would, under the provisions of the Penal Code, be punishable with death or with a term of imprisonment of not less than seven years,

shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period of not less than five years but not exceeding twenty years where the offence is one specified in paragraph (a) or (b), or to imprisonment for life where the offence is one specified in paragraph (c).

4. Where any person is convicted by any court of any offence under section 2 or section 3, then, in addition to any other penalty that the court shall impose for such offence -

(a) all property movable and immovable, of that person shall, by virtue of such conviction, be deemed to be forfeited to the Republic; and

(b) any alienation or other disposal of such property effected by such person after the date of coming into operation of this Part shall be deemed to have been, and to be, null and void.

5. Any person who -

(a) knowing or having reasonable cause to believe that any person -

(i) has committed an offence under this Act, or

(ii) is making preparation or is attempting to commit an offence under this Act,

fails to report the same to a police officer; or

(b) having in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence under this Act fails to report the same to a police officer,

shall be guilty of an offence and shall, on conviction be liable to imprisonment of either description for period not exceeding seven years.

## PART II

### INVESTIGATION OF OFFENCES

6. (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary -

(a) arrest any person;

(b) enter and search any premises;

(c) stop and search any individual or any vehicle, vessel, train or aircraft; and

(d) seize any document or thing,

connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.

(2) Any person who obstructs or hinders any police officer lawfully exercising any power conferred on him by or under subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment of either description or a period not exceeding seven years.

7.(1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person:

Provided that, where the Attorney-General consents to the release of such person before custody before the conclusion of the trial, the Magistrate shall release such person from custody.

(2) Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial:

Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorize such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody.

(3) A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section -

(a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation; and

(b) may obtain a specimen of the handwriting of such person and do all such acts as may reasonably be necessary for fingerprinting or otherwise identifying such person.

8. Any police officer may at any stage of an investigation or trial produce before any Magistrate any person conversant with any fact relating to the commission of any offence under this Act, and the Magistrate shall thereupon record the statement of such person upon oath.

### **PART III**

#### **DETENTION AND RESTRICTION ORDERS**

9. (1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time:

Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.

(2) (a) At any time after an order has been made in respect of any person under subsection (1), the Minister may direct that the operation of such order be suspended and may make an order under subsection (1) of section 11.

(b) The Minister may revoke any such direction if he is satisfied that the person in respect of whom the direction was made has failed to observe any condition imposed or that the operation of the order can no longer remain suspended without detriment to public safety.

10. An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

11.(1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in the commission of any unlawful activity referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of -

(a) his movement outside such place of residence as may be specified; or

(b) the places of residence and of employment of such person; or

(c) his travel within or outside Sri Lanka; or

(d) his activities whether in relation to any organisation, association or body of persons of which such person is a member, or otherwise; or

(e) such person addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organisation, association or body of persons, or from taking part in any political activities,

and he may require such person to notify his movements to such authority, in such manner and at such times as may be specified in the order.

(2) Where the Minister makes a restriction order in respect of any person while an order of detention in respect of such person is in force, such restriction order shall, unless otherwise specified, take effect upon the expiry of the detention order.

(3) Every order made under subsection (1) shall be in force for such period, not exceeding three months, as may be specified therein:

Provided, that the Minister may, by order in writing, extend such period from time to time for periods not exceeding three months at a time so however that the aggregate of such periods does not exceed eighteen months.

(4) Where an order is made under subsection (1), the Minister may by notice in writing served on the person to whom such order relates, vary, cancel or add to any prohibitions

or restrictions imposed by such order on such person and the prohibitions or restrictions so varied or added to shall, unless earlier cancelled, continue in force for the unexpired portion of the period specified in such order or the period as extended under subsection (3).

(5) An order made by the Minister under subsection (1) shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

12. Any person who contravenes or acts in breach of any prohibition or restriction imposed on him by an order under section 11 shall be guilty of an offence and shall on conviction be liable to a term of imprisonment of either description for a period of five years.

#### **PART IV**

##### **ADVISORY BOARD**

13. (1) There shall, for the purposes of this Act, be established an Advisory Board consisting of not less than three persons appointed by the President.

(2) Any person in respect of whom any detention order or restriction order has been made shall be informed of the unlawful activity in connection with which such order has been made and such person or any other person on his behalf may make representations to the Advisory Board.

(3) Every meeting of the Advisory Board held to consider such representations shall be presided over by a Chairman nominated from among the members by the Minister and it shall be the duty of the Chairman to advise the Minister in respect of such representations.

(4) The Minister may make rules in relation to the hearing and disposal of any representations that may be made by any person in respect of any such order.

#### **PART V**

##### **PROHIBITION OF PUBLICATIONS**

14. (1) Notwithstanding any Order made under section 1, the provisions of subsection (2) shall come into operation only upon an Order made in that behalf by the Minister from time to time and published in the Gazette for such period as may be specified in the Order.

(2)(a) No person shall, without the approval in writing of a competent authority, print or publish in any newspaper any matter relating to -

(i) the commission of any act which constitute an offence under this Act or the investigation of any such offence; or

(ii) incitement to violence, or which is likely to cause religious, racial or communal disharmony or feeling of ill-will or hostility between different communities or racial or religious groups.

(b) No person shall, without the approval in writing of a competent authority, distribute or be concerned in the distribution of any newspaper printed or published in Sri Lanka or outside Sri Lanka in respect of any matter the printing and publication of which is prohibited under paragraph (a).

(3) Any person who commits any act in contravention of any of the provisions of subsection (2) shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period not exceeding five years.

(4)(a) Where any person is convicted of an offence under this section, the court may, in addition to the punishment it may impose for that offence under subsection (3), order that no person shall print, publish or distribute or in any way be concerned in the printing, publication or distribution of any such newspaper for such period as is specified in such order and that the printing press in which such newspaper was printed shall, for such period as shall be specified in such order, not be used for any purpose whatsoever or for any such purpose as is specified in the order.

(b) Where any proceedings have been instituted against any person for the commission of any offence under this section, it shall be competent for the court to make an interim order that the printing press in which it is alleged that such newspaper or publication was printed shall not be used for any purpose whatsoever or for any such purpose as is specified in the order, until the conclusion of the trial.

15. (1) Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury or before a High Court at Bar by three Judges without a jury, as may be decided by the Chief Justice. The provisions of sections 450 and 451 of the Code of Criminal Procedure Act, No. 15 of 1979, shall, mutatis mutandis, apply to the trial of offences under this Act by the High Court at Bar and to appeals from judgements, sentences and orders pronounced at any such trial held by the High Court at Bar.

[The above sub-section was introduced by Amending Act 22 of 1988]

(2) Upon the indictment being received in the High Court against any person in respect of any offence under this Act or any offence to which the provisions of section 23 shall apply, the court shall, in every case, order the remand of such person until the conclusion of the trial.

15A. (1) Where any person is on remand under the provisions of sub-section (2) of section 15, or section 19(a), notwithstanding any other provision of this Act or any other law, the Secretary to the Ministry of the Minister in charge of the subject of Defence may, if he is of the opinion that it is necessary or expedient so to do, in the interests of national security or public order, make Order, subject to such directions as may be given by the High Court to ensure a fair trial of such person, that such person be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests.

(2) Any Order made by the Minister under sub-section (1) shall be communicated to the High Court and to the Commissioner of Prisons and it shall be the duty of such Commissioner, to deliver the custody of such person to the authority specified in such order and the provisions of the Prisons Ordinance shall cease to apply in relation to the custody of such person.

[Note: Section 15A was inserted by Amending Act 10 of 1982 w.e.f. 24 July 1979]

## PART VI

### TRIAL

16. (1) Notwithstanding the provisions of any other law, where any person is charged with any offence under this Act, any statement made by such person at any time, whether

- (a) it amounts to a confession or not;
- (b) made orally or reduced to writing;
- (c) such person was or was not in custody or presence of a police officer;
- (d) made in the course of an investigation or not;
- (e) it was or was not wholly or partly in answer to any question,

against such person if such statement is not irrelevant under section 24 of the Evidence Ordinance:

Provided, however, that no such statement shall be proved as against such person if such statement was made to a police officer below the rank of an Assistant Superintendent.

(2) The burden of proving that any statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant.

(3) Any statement admissible under subsection (1) may be proved as against any other person charged jointly with the person making the statement, if, and only if, such statement is corroborated in material particulars by evidence other than the statements referred to in subsection (1).

17. Notwithstanding anything to the contrary in any other law, the provisions of sections 25, 26 and 30 of the Evidence Ordinance shall have no application in any proceedings under this Act.

18.(1) Notwithstanding anything to the contrary in any other law -

(a) a statement recorded by a Magistrate, or made at an identification parade by a person who is dead or who cannot be found, shall be admissible in evidence notwithstanding that such person is not present or cannot or has not been cross-examined; and

(b) any document found in the custody, control or possession of a person accused of any offence under this Act or of an agent or representative of such person may be produced in court as evidence against such person without the maker of such document being called as a witness and the contents of such document shall be evidence of the facts stated therein.

(2) If in the course of a trial for an offence under this Act, any witness shall, on any material point, contradict either expressly or by necessary implication a statement made by him and recorded by a Magistrate or a statement made by him at any identification parade, it shall be lawful for the presiding Judge-

(a) to act upon such statement; and

(b) to have such witness at the conclusion of such trial arraigned and tried on an indictment which shall be prepared and signed by the Registrar of such court, for intentionally giving false evidence in a stage of a judicial proceeding.

(3) At any trial referred to in subsection (2) (b), it shall be sufficient to prove that the witness made the contradictory statement and it shall not be necessary to prove which of the statements is false.

19. Notwithstanding the provisions of any other written law -

(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal;

(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal:

Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of Appeal may deem fit, or vary or suspend any order referred to in paragraph (b).

20. Notwithstanding anything in the Code of Criminal Procedure Act, No 15 of 1979 -

(a) the provisions of section 303 of that Act shall not apply in the case of any person who is convicted;

(b) the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty,

by or before any court of any offence under this Act.

21. Every court shall give priority to the trial of any person charged with, or indicted for, any offence under this Act and to the hearing of any appeal from the conviction of any such offence and sentence imposed on such conviction.

## PART VII

### SPECIAL PROVISIONS

22. Any person who has committed any offence under section 296 or section 297 or section 300 of the Penal Code prior to the date of coming into operation of Part VI of this Act or has abetted or has conspired to abet the commission of any such offence prior to such date, in relation to any person who is a specified person or a person who was a witness to any offence which if such offence had been committed after the date of coming into operation of Part I of this Act would have constituted an offence under this Act shall, notwithstanding the provisions of any other law to the contrary, be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury.

23. The provision of sections 8, 16, 17 and 18 of this Act shall, *mutatis mutandis*, apply to and in relation to any act, or the trial for the commission of an offence in respect of any act, committed before the date of coming into operation of Parts I, II and VI of this Act, which act would, if committed after such date, have constituted an offence under this Act:

Provided, however, that no statement referred to in any such section shall be admissible unless such statement was made after the coming into operation of the aforesaid Parts of this Act.

24. Any person who commits an act in or in relation to any vessel or aircraft registered in Sri Lanka shall, if such act constitutes an offence under this Act, be guilty of an offence under this Act.

## PART VIII

### MISCELLANEOUS

25. Where an offence under this Act is committed by a body of persons, then if that body of persons is -

(a) a body corporate, every director and officer of that body corporate; or

(b) a firm, every partner of that firm; or

(c) a body unincorporate other than a firm, every officer of that body responsible for its management and control,

shall be deemed to be guilty of such offence:

Provided that no such person shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

26. No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act.

27.(1) The Minister may make regulations under this Act for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette.

28. The provisions of this Act shall have effect notwithstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

[Section 29 was repealed by Amending Act 10 of 1982, w.e.f. 24 July 1979]

30. The Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law, No 16 of 1978, is hereby repealed.

## PART IX

### INTERPRETATION

31.(1) In this Act, unless the context otherwise requires -

“competent authority” means any person appointed by the Minister by name or by office to be a competent authority for the purposes of this Act;

“co-operative union or co-operative society” includes any society registered or deemed to be registered under the Co-operative Societies Law, No 5 of 1972;

“document” has the same meaning as in the Penal Code;

“explosives” has the same meaning as in the Explosives Act;

“firearms” has the same meaning as in the Firearms Ordinance;

“local authority” means any Municipal Council, Urban Council, Town Council or Village Council and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council;

“newspaper” includes any journal, magazine, pamphlet or other publication;

“offensive weapon” has the same meaning as in the Offensive Weapons Act, No 18 of 1966;

“organisation” includes any movement, society, party, association or body or group of persons;

“printing press” includes any machinery, apparatus or plant capable of being used for printing, lithography, photography or other mode of representing or reproducing words in a visible form, or any type or other article belonging to such machinery, apparatus or plant;

“public corporation” means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

“specified person” means -

- (a) the President;
- (b) a Judge of the Supreme Court, Court of Appeal, High Court, District Court, Magistrate’s Court, Primary Court or any other Court of First Instance;
- (c) any representative or official of a foreign State or any official or other agent of an international organisation of an inter-governmental character;
- (d) a member of Parliament or of a local authority;
- (e) any member of a commission established under the Special Presidential Commissions of Inquiry Law, No 7 of 1978, or under the Commissions of Inquiry Act;
- (f) juror, counselor officer of court; and
- (g) any member of the Armed Forces, Police Force and any other Forces charged with the maintenance of public order.

“unlawful activity” means any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act in the commission or in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act.

[This definition was inserted by Amending Act 10 of 1982, w.e.f. 24 July 1979]

(2) All words and expressions used herein and defined in the Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

## APPENDIX-III

### THE EMERGENCY (RESTRICTION ON TRANSPORT OF ARTICLES) REGULATIONS NO.1 OF 1991.

The articles specified in the schedule hereto shall be the articles which for the purposes of regulation 2 of the above mentioned regulations, are articles which are capable of being used in a manner harmful to national security.

General S. C. Ranatunga  
Secretary  
Minister of Defence

Colombo, August 09, 1991.

#### Northern Province

1. Arms/ Ammunition
2. Explosives
3. Toy guns
4. Electric Wire
5. Remote control devices
6. Electrical/ Electronic toys
7. Helmets
8. Binoculars
9. Telescopes
10. Compasses
11. Cloth material similar to those worn by security forces
12. Iron and Iron Rod
13. Aluminium/Aluminium ware
14. Empty Gunny Bags (Jute Bags)
15. Cement
16. Bicycle
17. Timber
18. Barbed Wire
19. Wire Cutters
20. Inflammable materials
21. Camphor
22. Coal
23. Urea fertilizers
24. Batteries of all Varieties
25. Radio spare parts
26. Electrical equipment
27. Plastic cans
28. Motor vehicle tyres
29. Motor vehicle spare parts
30. Motor cycles
31. Printing papers
32. Typing/duplicating sheets
33. Printing machines and other equipments used in printing
34. Roneo and Photostat machines
35. School Bags
36. Gold
37. Alcohol
38. Surgical equipment
39. Medicines
40. Petrol/Diesel Lubricants
41. Polythene/Polythene bags
42. Wax/Candles
43. Turpentine, Brasso, Shoe Polish
44. Soap
45. Chemicals
46. Soya based food
47. Sweets and confectionery

**Eastern Province**

1. Arms/Ammunition
2. Explosives

3. Urea fertilizer

## APPENDIX-IV

### AND THEN THEY CAME FOR ME: LASANTHA WICKRAMATUNGA

No other profession calls on its practitioners to lay down their lives for their art save the armed forces and, in Sri Lanka, journalism. In the course of the past few years, the independent media have increasingly come under attack. Electronic and print-media institutions have been burnt, bombed, sealed and coerced. Countless journalists have been harassed, threatened and killed. It has been my honour to belong to all those categories and now especially the last.

*I have been in the business of journalism a good long time. Indeed, 2009 will be The Sunday Leader's 15th year. Many things have changed in Sri Lanka during that time, and it does not need me to tell you that the greater part of that change has been for the worse. We find ourselves in the midst of a civil war ruthlessly prosecuted by protagonists whose bloodlust knows no bounds. Terror, whether perpetrated by terrorists or the state, has become the order of the day. Indeed, murder has become the primary tool whereby the state seeks to control the organs of liberty. Today it is the journalists, tomorrow it will be the judges. For neither group have the risks ever been higher or the stakes lower.*

Why then do we do it? I often wonder that. After all, I too am a husband, and the father of three wonderful children. I too have responsibilities and obligations that transcend my profession, be it the law or journalism. Is it worth the risk? Many people tell me it is not. Friends tell me to revert to the bar, and goodness knows it offers a better and safer livelihood. Others, including political leaders on both sides, have at various times sought to induce me to take to politics, going so far as to offer me ministries of my choice. Diplomats, recognizing the risk journalists face in Sri Lanka, have offered me safe passage and the right of residence in their countries. Whatever else I may have been stuck for, I have not been stuck for choice.

But there is a calling that is yet above high office, fame, lucre and security. It is the call of conscience.

The Sunday Leader has been a controversial newspaper because we say it like we see it: whether it be a spade, a thief or a murderer, we call it by that name. We do not hide behind euphemism. The investigative articles we print are supported by documentary evidence thanks to the public-spiritedness of citizens who at great risk to themselves pass on this material to us. We have exposed scandal after scandal, and never once in these 15 years has anyone proved us wrong or successfully prosecuted us.

The free media serve as a mirror in which the public can see itself sans mascara and styling gel. From us you learn the state of your nation, and especially its management by the people you elected to give your children a better future. Sometimes the image you see in that mirror is not a pleasant one. But while you may grumble in the privacy of your armchair, the journalists who hold the mirror up to you do so publicly and at great risk to themselves. That is our calling, and we do not shirk it.

Every newspaper has its angle, and we do not hide the fact that we have ours. Our commitment is to see Sri Lanka as a transparent, secular, liberal democracy. Think about those words, for they each has profound meaning. Transparent because government must be openly

accountable to the people and never abuse their trust. Secular because in a multi-ethnic and multi-cultural society such as ours, secularism offers the only common ground by which we might all be united. Liberal because we recognize that all human beings are created different, and we need to accept others for what they are and not what we would like them to be. And democratic... well, if you need me to explain why that is important, you'd best stop buying this paper.

The Sunday Leader has never sought safety by unquestioningly articulating the majority view. Let's face it that is the way to sell newspapers. On the contrary, as our opinion pieces over the years amply demonstrate, we often voice ideas that many people find distasteful. For example, we have consistently espoused the view that while separatist terrorism must be eradicated, it is more important to address the root causes of terrorism, and urged government to view Sri Lanka's ethnic strife in the context of history and not through the telescope of terrorism. We have also agitated against state terrorism in the so-called war against terror, and made no secret of our horror that Sri Lanka is the only country in the world routinely to bomb its own citizens. For these views we have been labeled traitors, and if this be treachery, we wear that label proudly.

Many people suspect that *The Sunday Leader* has a political agenda: it does not. If we appear more critical of the government than of the opposition it is only because we believe that - pray excuse cricketing argot - there is no point in bowling to the fielding side. Remember that for the few years of our existence in which the UNP was in office, we proved to be the biggest thorn in its flesh, exposing excess and corruption wherever it occurred. Indeed, the steady stream of embarrassing exposes we published may well have served to precipitate the downfall of that government.

Neither should our distaste for the war be interpreted to mean that we support the Tigers. The LTTE are among the most ruthless and bloodthirsty organizations ever to have infested the planet. There is no gainsaying that it must be eradicated. But to do so by violating the rights of Tamil citizens, bombing and shooting them mercilessly, is not only wrong but shames the Sinhalese, whose claim to be custodians of the Dhamma is forever called into question by this savagery, much of which is unknown to the public because of censorship.

What is more, a military occupation of the country's north and east will require the Tamil people of those regions to live eternally as second-class citizens, deprived of all self respect. Do not imagine that you can placate them by showering "development" and "reconstruction" on them in the post-war era. The wounds of war will scar them forever, and you will also have an even more bitter and hateful Diaspora to contend with. A problem amenable to a political solution will thus become a festering wound that will yield strife for all eternity. If I seem angry and frustrated, it is only because most of my countrymen - and all of the government - cannot see this writing so plainly on the wall.

It is well known that I was on two occasions brutally assaulted, while on another my house was sprayed with machine-gun fire. Despite the government's sanctimonious assurances, there was never a serious police inquiry into the perpetrators of these attacks, and the attackers were never apprehended. In all these cases, I have reason to believe the attacks were inspired by the government. When finally I am killed, it will be the government that kills me.

The irony in this is that, unknown to most of the public, Mahinda and I have been friends for more than a quarter century. Indeed, I suspect that I am one of the few people remaining who routinely addresses him by his first name and uses the familiar Sinhala address Oya when talking to

him. Although I do not attend the meetings he periodically holds for newspaper editors, hardly a month passes when we do not meet, privately or with a few close friends present, late at night at President's House. There we swap yarns, discuss politics and joke about the good old days. A few remarks to him would therefore be in order here.

Mahinda, when you finally fought your way to the SLFP presidential nominations in 2005, nowhere were you welcomed more warmly than in this column. Indeed, we broke with a decade of tradition by referring to you throughout by your first name. So well known were your commitments to human rights and liberal values that we ushered you in like a breath of fresh air. Then, through an act of folly, you got yourself involved in the Helping Hambantota scandal. It was after a lot of soul-searching that we broke the story, at the same time urging you to return the money. By the time you did so several weeks later, a great blow had been struck to your reputation. It is one you are still trying to live down.

You have told me yourself that you were not greedy for the presidency. You did not have to hanker after it: it fell into your lap. You have told me that your sons are your greatest joy, and that you love spending time with them, leaving your brothers to operate the machinery of state. Now, it is clear to all who will see that that machinery has operated so well that my sons and daughter do not themselves have a father.

In the wake of my death I know you will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry. But like all the inquiries you have ordered in the past, nothing will come of this one, too. For truth be told, we both know who will be behind my death, but dare not call his name. Not just my life, but yours too, depends on it.

Sadly, for all the dreams you had for our country in your younger days, in just three years you have reduced it to rubble. In the name of patriotism you have trampled on human rights, nurtured unbridled corruption and squandered public money like no other President before you. Indeed, your conduct has been like a small child suddenly let loose in a toyshop. That analogy is perhaps inapt because no child could have caused so much blood to be spilled on this land as you have, or trampled on the rights of its citizens as you do. Although you are now so drunk with power that you cannot see it, you will come to regret your sons having so rich an inheritance of blood. It can only bring tragedy. As for me, it is with a clear conscience that I go to meet my Maker. I wish, when your time finally comes, you could do the same. I wish.

As for me, I have the satisfaction of knowing that I walked tall and bowed to no man. And I have not travelled this journey alone. Fellow journalists in other branches of the media walked with me: most of them are now dead, imprisoned without trial or exiled in far-off lands. Others walk in the shadow of death that your Presidency has cast on the freedoms for which you once fought so hard. You will never be allowed to forget that my death took place under your watch. As anguished as I know you will be, I also know that you will have no choice but to protect my killers: you will see to it that the guilty one is never convicted. You have no choice. I feel sorry for you, and Shiranthi will have a long time to spend on her knees when next she goes for Confession for it is not just her own sins which she must confess, but those of her extended family that keeps you in office.

As for the readers of The Sunday Leader, what can I say but Thank You for supporting our mission. We have espoused unpopular causes, stood up for those too feeble to stand up for themselves, locked horns with the high and mighty so swollen with power that they have forgotten

their roots, exposed corruption and the waste of your hard-earned tax rupees, and made sure that whatever the propaganda of the day, you were allowed to hear a contrary view. For this I - and my family - have now paid the price that I have long known I will one day have to pay. I am - and have always been - ready for that. I have done nothing to prevent this outcome: no security, no precautions. I want my murderer to know that I am not a coward like he is, hiding behind human shields while condemning thousands of innocents to death. What am I among so many? It has long been written that my life would be taken, and by whom. All that remains to be written is when.

That The Sunday Leader will continue fighting the good fight, too, is written. For I did not fight this fight alone. Many more of us have to be - and will be - killed before The Leader is laid to rest. I hope my assassination will be seen not as a defeat of freedom but an inspiration for those who survive to step up their efforts. Indeed, I hope that it will help galvanizes forces that will usher in a new era of human liberty in our beloved motherland. I also hope it will open the eyes of your President to the fact that however many are slaughtered in the name of patriotism, the human spirit will endure and flourish. Not all the Rajapaksa's combined can kill that.

People often ask me why I take such risks and tell me it is a matter of time before I am bumped off. Of course I know that: it is inevitable. But if we do not speak out now, there will be no one left to speak for those who cannot, whether they be ethnic minorities, the disadvantaged or the persecuted. An example that has inspired me throughout my career in journalism has been that of the German theologian, Martin Niemoller. In his youth he was an anti-Semite and an admirer of Hitler. As Nazism took hold in Germany, however, he saw Nazism for what it was: it was not just the Jews Hitler sought to extirpate, it was just about anyone with an alternate point of view. Niemoller spoke out, and for his trouble was incarcerated in the Sachsenhausen and Dachau concentration camps from 1937 to 1945, and very nearly executed. While incarcerated, Niemoller wrote a poem that, from the first time I read it in my teenage years, stuck hauntingly in my mind:

*First they came for the Jews*

*and I did not speak out because I was not a Jew.*

*Then they came for the Communists*

*and I did not speak out because I was not a Communist.*

*Then they came for the trade unionists*

*and I did not speak out because I was not a trade unionist.*

*Then they came for me*

*and there was no one left to speak out for me.*

If you remember nothing else, remember this: The Leader is there for you, be you Sinhalese, Tamil, Muslim, low-caste, homosexual, dissident or disabled. Its staff will fight on, unbowed and unafraid, with the courage to which you have become accustomed. Do not take that commitment for granted. Let there be no doubt that whatever sacrifices we journalists make, they are not made for our own glory or enrichment: they are made for you. Whether you deserve their sacrifice is another matter. As for me, God knows I tried.

## APPENDIX-V

### Questionnaire (A)

*The information provided will be used exclusively for Ph. D. Research purpose only and the identity of the respondents will remain strictly confidential*

1. Age: \_\_\_\_\_ Sex: (a) Male (b) Female
2. Occupation: (a) Student (b) Employed (c) Security Agency (Please specify)  
(d) Human rights Activist (e) Teacher (f) Part time worker (g) Business (h) Farmer (i) Any other (Please specify) \_\_\_\_\_
3. Belong to: (a) Sinhalese (b) Sri Lankan Tamil (c) Indian Tamil  
(d) Any other (Please specify): \_\_\_\_\_
4. Do you think there are abuses of human rights in Tamil Areas of Sri Lanka?  
(a) Yes (b) No (c) Don't know
5. If yes, what according to you are the factors responsible for human rights abuses in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).  
(a) Ethnic conflict between the Sinhalese and the Tamils.  
(b) Demand for separate state of Tamil Eelam.  
(c) Demand for the right of self-determination by the Tamils.  
(d) Prevention of Terrorism Act.  
(e) Failure of the armed forces, police and the government to protect human rights.  
(f) Denial of fundamental rights to the Tamils as enshrined in the Constitution of Sri Lanka.  
(g) Economic sanctions imposed by the government in the Tamil areas of Sri Lanka.  
(h) Any other (Please specify) \_\_\_\_\_
6. According to you who are the main violators of human rights in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).  
(a) LTTE (b) Security forces (c) Police (d) Any other (Please specify) \_\_\_\_\_
7. Is the abuse of human rights increasing in the Tamil areas of Sri Lanka?  
(a) Yes (b) No (c) Don't know
8. If yes, why? (Please tick wherever appropriate).  
(a) Failure of the government to protect and promote human rights.  
(b) Lack of awareness  
(c) Absence of strong civil society  
(d) Disregard to human rights

- (e) Any other (Please specify) \_\_\_\_\_
9. Do you think that the Tamils in Sri Lanka face discrimination by the Sinhalese and the Government of Sri Lanka?(a) Yes (b) No (c) Don't Know
10. If yes, in which areas are they discriminated? (Please tick wherever appropriate).
- (a) In Language
  - (b) In Religion
  - (c) In Culture
  - (d) Employment in Government sectors/ Civil services
  - (e) Admission to educational institutions
  - (f) Any other (Please specify) \_\_\_\_\_
11. What are the activities of the government security forces in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).
- (a) Maintaining law and order
  - (b) Preventing Terrorist activities
  - (c) Providing relief to victims of human rights abuses
  - (d) Creating awareness about human rights among the armed forces and the police personnel on duty
  - (e) Instituting the Human Rights Commission for the protection and promotion of human rights
  - (f) Any other (Please specify): \_\_\_\_\_
12. What according to you are the atrocities committed by the security forces in the Tamil areas of Sri Lanka? (Please Tick wherever appropriate).
- a) Verbal abuse
  - b) Mass arrests
  - c) Keeping the arrested incommunicado without trial for long period
  - d) Physical torture
  - e) Rape
  - f) Impunity
  - g) Any other (Please specify) \_\_\_\_\_
13. What are the objectives and demands of the LTTE? (Please tick wherever appropriate).
- (a) The political representative of the Tamils.
  - (b) Social emancipation of the Tamils.
  - (c) Getting concessions from the government for the Tamils.
  - (d) Providing education regarding the Tamil culture and traditions.

- (e) A separate state of Tamil Eelam.
- (f) Federal autonomy for the Tamil areas.
- (g) Merger of the northern and eastern regions into a single administrative unit.
- (h) Permanent solution to the ethnic conflict if provided with substantial regional autonomy.
- (i) Any other (Please specify) \_\_\_\_\_

14. To achieve the stated objectives and demands, what are the activities of the LTTE in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).

- (a) Extortion.
- (b) Suicide bombing.
- (c) Physical torture.
- (d) Conscription.
- (e) Abduction (i) Tamils (ii) Sinhalese (iii) Others.
- (f) Rape.
- (g) Murder.
- (h) Political assassinations.
- (i) Recruitment of Child soldiers.
- (j) Any other (Please specify) \_\_\_\_\_

15. What is the support base of LTTE? (Please tick wherever appropriate).

- (a) Tamils in Sri Lanka.
- (b) Tamils in India
- (c) Tamil settlers in Europe
- (d) Tamils in Canada
- (e) European Union
- (f) Other Terrorist organizations in the world
- (g) Business
- (h) Any other (Please specify) \_\_\_\_\_

16. What has been the role of the Human Rights Commission of Sri Lanka in the Tamils areas of Sri Lanka?

- (a) Safeguarding human rights
- (b) Receiving complaints of alleged human rights violations
- (c) Investigating and monitoring the welfare of detainees in places of detention
- (d) Intervening in court proceedings with the permission of the court
- (e) Undertaking research on human rights
- (f) Representing cases in the courts after thorough investigation of complaints received of alleged human rights violations
- (g) Any other (Please specify): \_\_\_\_\_

17. Name some NGOs working for human rights in Sri Lanka.
18. According to you, are the human rights NGOs in the Tamil areas effective in protecting and promoting human rights?  
(a) Yes (b) No (c) Don't know
19. If no, what are their limitations for protecting and promoting human rights in the Tamil areas of Sri Lanka?
20. What are the contributions of NGOs working for the protection of human rights in the Tamil areas? (Please tick wherever appropriate).
- (a) Documentation of human rights abuses.
  - (b) Providing relief to victims after violence.
  - (c) Sending suggestions to the government and militant organizations to improve the human rights situation.
  - (d) Providing representation for the victims in the courts.
  - (e) Educating the people about human rights.
  - (f) Any other (specify)\_\_\_\_\_
21. What are the suggestions you would put forth for the improvement of human rights situation in the Tamil areas of Sri Lanka?

## APPENDIX-VI

### Questionnaire (B)

*The information provided will be used exclusively for Ph. D. Research purpose only and the identity of the respondents will remain strictly confidential.*

1. Name of your Organization: \_\_\_\_\_
2. Year of establishment: \_\_\_\_\_
3. Designation in the organization: \_\_\_\_\_
4. How many human rights organizations you know are working for the protection and promotion of human rights in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).  
(a) 5- 10 (b)10- 15 (c) 15- 20 (d) 20- 25(e) 25-30 (f) 30 and above
5. What are the main objectives of your organization? (Please tick wherever appropriate).
  - (a) Promoting human rights
  - (b) Providing human rights education to civilians
  - (c) Counseling human rights victims
  - (d) Providing rehabilitation to the victims of human rights abuses
  - (e) Political mediation between conflicting parties
  - (f) Promoting socio- economic measures at the local level
  - (g) Documentation of human rights abuses
  - (h) Working for Peace in the society
  - (i) Sending suggestions to the government and militant organizations to improve the human rights situation
  - (j) Any other (Please specify): \_\_\_\_\_
6. What are the challenges faced by the organization in protecting and promoting human rights in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).
  - (a) Lack of coordination with other human rights agencies (b) Competition with other human rights organizations (c) Lack of Funding and resources (e) Lack of professionalism (f)Censorship (g) Any other (Please specify): \_\_\_\_\_
7. What are the activities of your organization in protecting and promoting human rights in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).
  - (a) Receiving complaints on violations of human rights
  - (b) Investigating and finding remedies for the complaints received of alleged human rights violations
  - (c) Providing legal aid for victims of human rights abuses

- (d) Providing humanitarian aid to victims of human rights abuses
  - (e) Coordinating work with national and international human rights organizations for the protection and promotion of human rights
  - (f) Publishing reports on human rights violations
  - (g) Educating the people as well as the security forces
  - (h) Making appeals to the government
  - (i) Any other (Please specify): \_\_\_\_\_
8. What are the means adopted by your organisation to provide human rights education in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).
- (a) Seminars (b) Conferences (c) Workshops (d) Awareness programmes
  - (e) Any other (Please specify): \_\_\_\_\_
9. Who are the participants in the human rights education programmes conducted by your organization? (Please tick wherever appropriate)
- (a) Students (b) Teacher (c) University Students (d) University Teachers
  - (e) Human rights activists (f) Civil servants (g) Business men/ women
  - (h) Farmers (i) Police and armed forces personnel (j) Victims of human rights abuses (k) Any other (Please specify): \_\_\_\_\_
10. How many times such human rights educational programmes are usually conducted by your organization in a year?
11. After such programmes do you find any improvement in the human rights situation in the Tamil areas of Sri Lanka?
- (a) Yes (b) No (c) Don't know
12. If Yes, how?
13. If no, what are the reasons?
14. What are the achievements of your organization in protecting and promoting human rights in the Tamil areas of Sri Lanka? (Please tick wherever appropriate).
- (a) Successful in providing human rights education to the civilians and the security forces
  - (b) Successful in applying pressure on the government to prevent violation of human rights
  - (c) Successful in representating cases/ complaints received by the organization and getting compensation to the victims
  - (d) Any other (Please specify): \_\_\_\_\_

15. Are the contributions of other human rights NGOs similar to your organization?

(a) Yes      (b) No      (c) Don't know

16. If no, how are they different?

17. What would be your suggestions for the improvement of human rights situation in the Tamil areas of Sri Lanka by your organization?

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Concerned district officials, secretaries of the Sri Lanka Freedom Party (SLFP), United National Party (UNP), Tamil National Alliance (TNA), Dravida Munnetra Kazhagam (DMK), Pattali Makkal Katchi (PMK), Marumalarchi Dravida Munnetra Kazhagam (MDMK), leaders of refugee camps in Tamilnadu, Directors, Executive Directors and Secretaries of human rights non-governmental organizations in Sri Lanka (HHR, LST, CPA, INFORM, CHA) and chairman and general secretaries of the Human Rights Commission of Sri Lanka (HRCSL) were interviewed for collection of primary data.

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