

**HUMAN RIGHTS AND DOMESTIC CONFLICT
A CASE STUDY OF SRI LANKA 1983-1993**

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CERTIFICATE

Certified that the dissertation entitled "HUMAN RIGHTS AND DOMESTIC CONFLICT, A CASE STUDY OF SRI LANKA 1983-1993" submitted by SIV HAUGAN in partial fulfilment of the requirements for the award of degree of MASTER OF PHILOSOPHY (M.Phil) is her original work to the best of my knowledge. This dissertation was completed under my supervision and guidance. The author is responsible for the contents of this dissertation.


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PREFACE

Sri Lanka is one of the few countries which did not have a violent political tradition. It never even had a militant nationalist movement. After independence, Sri Lanka gained reputation for being a model Third World democracy and had a formal legal framework for the protection of human rights.

During the 1970's this image of a "Third World ideal state" shattered with the growth of Tamil militancy, the rise of left-wing militancy in the south, and the government's violent attempts to curb these uprisings. Sri Lanka has since independence faced two domestic conflicts which have implicated massive human rights violations. The anti-systemic JVP insurgency, first in 1971 and again 1987-89, and the ethnic secessionist Tamil insurgency which have been active since the late 1970's.

In international circles, Sri Lanka is being seen as a frequent violator of human rights, and is one of the few countries in the world against which a resolution has been passed at the United Nations Sub Commission on Minorities.

The objectives of this study are to examine why Sri Lanka which has been formally committed to the protection of

human rights has failed to do so. This will be analyzed in the broader conceptual framework of human rights violations and domestic conflicts in post-colonial Third World states.

As this study's aim is to assess the human rights situation in the context of domestic armed conflicts, its main focus will be on violations of the most basic human rights; the right to life, the right to be recognized as a person before the law, the rights to equal protection in law and freedom from arbitrary arrest and torture.

CHAPTER:-1 Will aim to define, analyze and discuss the human rights concept. It will outline briefly the philosophical background to the human rights concept, touch upon the UN declarations on human rights, and discuss human rights in north-south relations. A brief introduction to human rights and domestic conflicts in South Asia will be given.

CHAPTER:- 2 Will look into the role of human rights in the Sri Lanka constitution, and how this has changed during the period of study; 1983-1993. It will also seek to analyze the role of the Judiciary and judicial institutions in Sri Lanka in terms of protection of human rights.

CHAPTER:-3 Will outline the background to the domestic conflicts, including a brief account of historical

aspects relevant to understand the present situations. It will also aim to examine the human rights violations by the Tamil militant groups and the JVP.

CHAPTER:-4 Will look into the Sri Lankan state's response to the insurgences in the country, and how this response through emergency regulations and use of force have affected the human rights situation.

CHAPTER:-5 Will examine, how United Nations, international human rights organisations and aid donor countries have reacted to Sri Lanka human rights record, and the government's reply to these statements. It will also give a brief account of the human rights movement in Sri Lanka.

CHAPTER:-6 Conclusions

For the completion of this work I am grateful to several people. First and foremost I would like to express my profound sense of gratitude to my supervisor, Dr. Nancy Jetly-for going through all my drafts and giving critical comments and suggestions. Without her cooperation and scholarly aptitude it would not have been possible to complete this dissertation.

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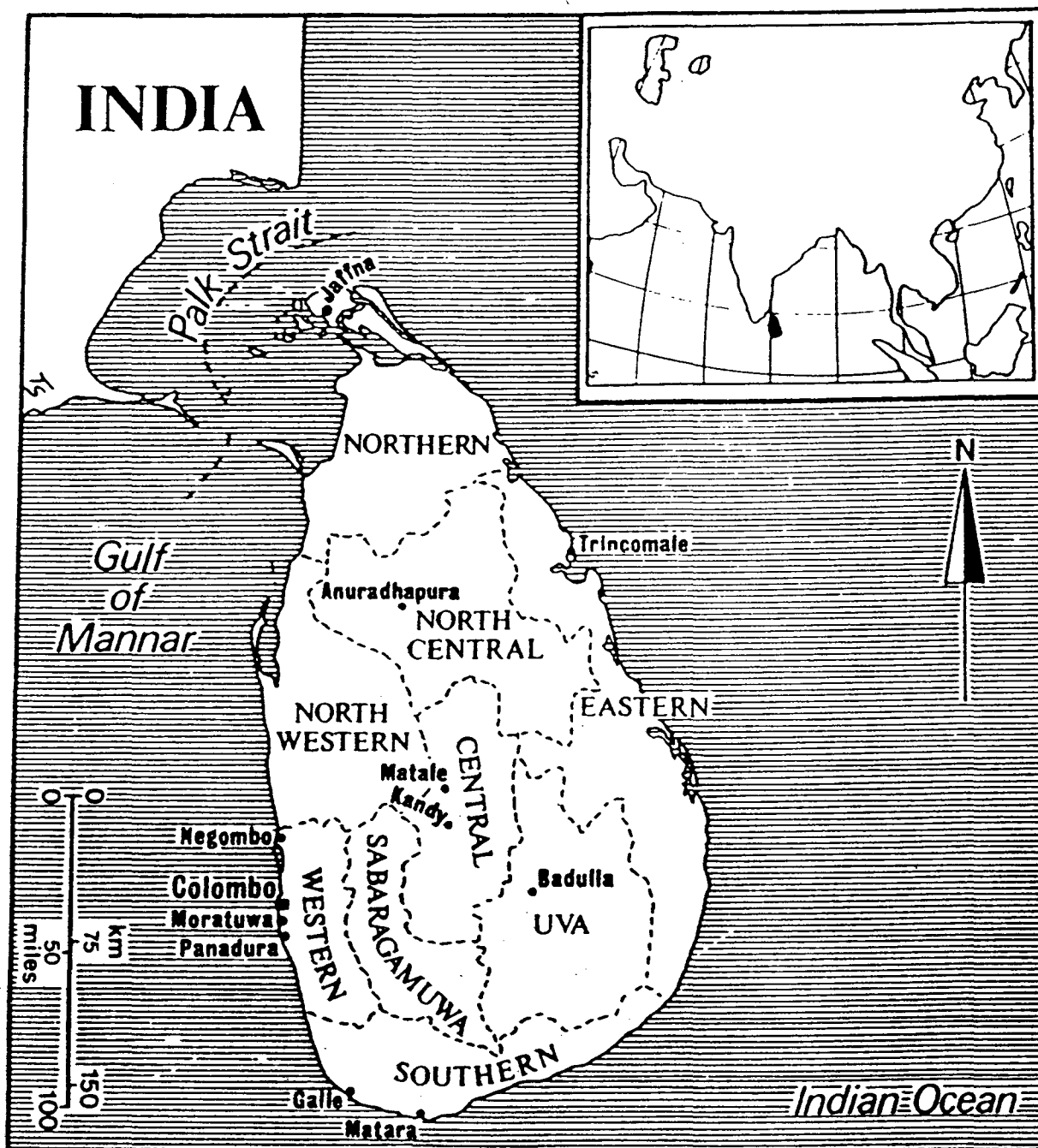
The library staff at JNU and at Teen Murti Library were always very helpful.

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My husband, Amit, familymembers and my friends; CU, Pema, Vimmy, Ashima, Kamalimi, Devika, Gayatri, Suri and Anula have always inspired and encouraged me for completion of this work.

Siv Haugan
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SRI LANKA



Sri Lanka (From Andreassen, B.A. and A. Eide, 1988)

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CHAPTER I
INTRODUCTION

Many countries continue to be beset by internal strife, putting aside the national and international instruments of law which they have ratified. This can be seen as the function of the states' response to the stresses of economic development and as an outcome of the complex processes of state formation. Laying down of fundamental rights, and implementation of fundamental rights have therefore been two separate aspects of many countries.

In many Third World countries, there are, together with the growing demands for democracy and participation, ethnic and religious minorities demanding greater autonomy and recognition. This often leads to ethnic tensions and insurgent activities. This is in many cases partly an outcome of the previous colonial powers' policy of favouring certain ethnic communities, and by their demarcation of borders which did not take ethnic complexity into consideration. The ethnic and social tensions get compounded by severe poverty and unemployment in many parts of the Third World. In situations where insurgency is threatening the very existence of the state, many governments claim that the national security interests must be given priority over the human rights of the individual.

THE HUMAN RIGHTS CONCEPT

The idea that human beings have rights as humans is a staple of contemporary world politics, international conventions, both global and regional, state it formally.

Today "right" is understood to mean "entitlement." But the word "right" as it was first used by the ancient Greeks, meant "obligation". They spoke of what we call human rights as duties that define us as humans. Since we live in communities, such duties are to participate in what defines and drives society. ¹

A right as a justified claim suggests social acceptance of the right. The existence of the social sanction might be said to entitle the bearer of a right to have certain expectations about its enjoyment.²

When one adds "human" to "rights", human rights become the rights that everyone has by virtue of their humanity.

Since all human beings have the same basic nature, the rights based on this nature must be universal and held equally by all.³

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1. Far Eastern Economic Review (Hong Kong) 17 June, 1994.
 2. R.J. Vincent, Human Rights and International Relations, (New York, 1986) p.9.
 3. Jack Donnelly, The Concept of Human Rights (London, 1985), p.9.

The notion of human rights stems from a specific tradition of political philosophy that began with Spinoza and matured in the writings of Locke, Montesquieu, Rosseau and Kant. They were teaching that all legitimate governments derive its authority solely from the consent of the governed, that each sane adult, possesses certain claims or rights that cannot be taken away.⁴

Throughout the seventeenth century, subjective individual rights came to be recognized. Foremost among the proponents of natural rights doctrine was John Locke. Locke argued that all individuals were endowed by nature with the inherent rights for life, liberty and property which were their own and could not be removed or abrogated by the state. Where the ruler of the state broke the social contracts by violating the natural rights of the individual, subjects were free to remove the ruler and replace him or her with a government which was prepared to respect those rights.

While Rousseau followed the main thrust of Locke's social contract theory, he declared that far from creating

4. C.Orwin, "The Philosophical Foundation of Human Rights" in M.F. Plattner, Human Rights in our time. (Colorado, 1984), p.64.

individual natural rights, natural law conferred inalienable sovereignty on the citizens of a state as a whole.

Thus, whatever rights were derived from natural law dwelt within the people as a collective and could be identified by reference to the general will. It will be readily apparent that the general will was not an absolute quality and could either transform itself or be transformed by a persuasive leader.

Kant developed his ideas from a more general appreciation of the non - empirical natural law and natural rights tradition. The basis of Kant's theory was the categorical imperative, that is, the absolute moral good which is identifiable in the exercise of the virtuous will by all rational individuals.

By definition human rights are not earned, bought or inherited. Human rights are possessed by everybody in the world because they are human. People are equally entitled to them regardless of their gender, race, colour, national origin, age, class or religious or political creed.⁵

Those entitled to rights are not members of this or that society but of community of humankind. There is some question about full membership in this community, for exam-

5. David Selby, Human Rights (Cambridge, 1987), p.8.

ple for children, or the insane. And there is some doubt as to whether groups can claim human rights as a group. But the basic qualification for being entitled human rights is to belong to the human race⁶

The human right to life may be judged to outrank, in a situation where there is a contest between them; a right under a particular civil law.

In the case of claiming, asserting, demanding, enjoying, protecting and enforcing a right, the assertive end of this spectrum is the more prominent when it comes to human rights. Very often, human rights are appealed to when the claims they encompass are not locally acknowledged in positive law. The argument is, first that they should be so acknowledged. Enforcement would then be the next step. The problem with enforcement is that its absence has led sceptics to doubt the existence of human rights - since they take enforcement to be the mark of any rights. But it is quite possible to have a right to something without the right being enforced. As Jack Donnelly has pointed out; if my car is stolen and the thief is not apprehended, I still have a right to the car. This is what he call the 'possession - paradox' having a right to something but not having

6. Vincent, n. 2, p.10.

it in the sense of enjoying the object of it, which he suggests is characteristic of human rights.⁷

There is the question of the location of the duties that correlate with human rights. In this regard it has been argued that there are universal human rights in a strong and a weak sense. Rights in the strong sense are held against everybody else. Rights in the weak sense are held against a particular section of humanity. Everyone has a right to life against everyone else, there is a general duty to respect it. But if everyone holds economic and social rights, it is against a particular government. All human rights are said to have three correlative duties: duties to avoid depriving, duties to protect from deprivation and duties to aid the deprived. According to circumstances, the duty - bearers may be different (individuals, nations, exploititative companies) and the particular duty varies from situation to situation.⁸

Some human rights are more basic than other. The right to life is the most basic of all, without it all other rights are in jeopardy. Amongst other basic human rights are the right to be recognised as a person before the law, the

7. Donnelley, n.3, pp.16-17.

8. Vincent, n.2, p.11.

right to equal protection in law and freedom from arbitrary arrest and detention. Basic human rights provide the foundation upon which the enjoyment of other human rights depends.

In the traditional human rights discourse, human rights violations are directed by the state against the individual citizen. But situations can also be more complex, in many situations militant groups, have also violated human rights, either directed towards the state or towards or other militant groups civilians. Human rights abuses can also be directed at a collective level, for example within the framework of ethnic conflict, where they are singled out in terms of ethnic identification, and not directed only at individuals.

UN DECLARATIONS ON HUMAN RIGHTS

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10 December 1948, as a common standard of achievement for all peoples and all nations. The Declaration was not legally enforceable, but its influence was far reaching. It was the first international statement on human rights which listed rights in a systematic manner.

As it was recognized by the UN General Assembly at the outset that the Universal Declaration was not intended to

create legally binding obligations on the member states, it set out to complete the drafting of an internationally binding treaty which would not only transform the rights referred to in the Declaration into positive law, but would also provide institutions and mechanisms for supervision and enforcement. This task proved to be more difficult than originally envisaged since a dispute arose between members of the Commission about the relationship between civil and political rights on the one hand and economic and social rights on the other, and also over the appropriate means for implementation, supervision and protection. It was finally decided that instead of a single treaty or covenant being drafted to protect both categories of rights, two covenants would be prepared, each devoted to the different groups of rights. On 16 December 1966, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights were voted upon and adopted by the UN General Assembly, but did not enter into force until a full decade later in 1976. The Universal Declaration and the two Covenants make up the International Bill of Rights. The two Covenants differ from the Universal Declaration in a number of ways. They are legally binding upon states ratifying them. They also introduce a new right: the right of all peoples and nations to self determination. They also set up

a machinery for the international, supervision of human rights. The Covenant of Civil and Political Rights provided for the setting up of a Human Rights Committee. This Committee supervises the human rights performance of states which have signed the Covenant. The supervisory machinery set up by the Covenant on Economic, Social and Cultural Rights is less developed, largely because the rights laid down are seen as targets to aim, rather than standards achievable straight away.

There has been some debate within the United Nations and other international fora as to how to distinguish between civil and political rights, economic and social rights, and collective rights. Civil and political rights include the rights to life, liberty, security of the person, privacy and property, the right to marry and found a family, the right to a fair trial, freedom from slavery, torture and arbitrary arrest, freedom of movement and to seek asylum, the right to a nationality, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of assembly and association, and the right to free elections, universal suffrage and participation in public affairs.⁹ Economic and social rights include the right to work and for

9. Vincent, n. 2, p.11.

a just reward, the right to form and join trade unions, the right to rest and leisure, the right to a standard of living, the right to social security, the right to education, and the right to participation in the cultural life of a community.¹⁰ Civil and political rights are universal in the wider sense. They are the rights held against everyone else. Economic and social rights are universal in the narrower sense. Everybody has them, but they impose duties on particular governments.

It should be noted that the alleged division between civil and political rights on the one hand and economic, social and cultural rights on the other, is difficult, and cannot be entirely sustained by reference to the two UN Covenants. Both Covenants, for example deal with rights involving freedom of association and family matters which may be categorized as hybrid rights, since they exhibit characteristics of both classes of rights. The existence of these hybrid rights makes it apparent that any classification and hierarchical ranking of rights in international law is not easy, and that it may be questionable whether there is any real utility in attempting to do so.

10. Ibid.

International human rights laws are usually worded in a very general way, and the norms are so sweeping and demanding, that they constitute more an ideal of world reform to be realized over considerable time, than a programme of governmental policy which can be implemented tomorrow by court order. ¹¹

Although African, Asian and South American states in large numbers have signed the Universal Declaration on Human Rights, many in the West hold that they are hardly paying attention to the notion of human rights.

The response of some Third World governments has been to point out the extreme poverty facing their peoples. Given the situation, they see their main priority as the achievement of basic needs for survival. The achievement of basic rights, they argue, is a necessary pre-condition to the enjoyment of a wider spread of liberty and security-oriented rights. ¹²

HUMAN RIGHTS IN NORTH-SOUTH RELATIONS

'North' and 'South' are terms established in the contemporary vocabulary of international politics, but the

11. David Forsythe, Human Rights and World Politics (London, 1981), p.3.

12. Selby, n. 5 , p.23.

membership of each group is not always clear. South is not a homogeneous grouping in world politics.

Intellectual objections to the concept of human rights are fairly well known. First it is the argument that human rights is a Western imposition on non-European cultures. The second objection to human rights is that developing countries cannot always afford "luxuries" such as human rights. If human rights and development rights are seen to exist upon the same plane, then it is reasonable that in the greater interest of the country, priority will be given to development rights. Many developing countries are also facing internal turmoil due to economic stresses or ethnic conflict, and will in situations of insurgency at a serious level often give priority to national security interests over the individuals human rights.

In the debate about human rights in North-South relations, individualism and liberty have been ranged against collectivism and equality, Civil and political rights against economic and social rights. The countries of the Third World have stressed the economic aspects of the right of self-determination, that they may freely pursue their economic, social and cultural development and freely dispose

their natural wealth and resources. ¹³ In the Western liberal tradition; rights are entitlements or claims which the individual person has against the state. This conception has led many Western governments and human rights advocates to deny the status of human rights to claims they deem to be too vague or not amendable to enforce against the state; such as economic rights and collective rights to development. Some of the human rights treaties already reflect a broader conception of rights, than originally envisaged by Western liberal theory¹⁴

There are also cultural reasons why many Third World countries tend to pay less heed to individual liberties. Asian philosophers and religions have traditionally emphasized the concepts of harmony and order within society. Characteristically they have also laid great emphasis upon an individual's duty to avoid disturbing harmonious social relationship through self assertion.

Western observers who chose to measure the human rights record of Third World societies, using individual liberty as their yardstick, may thus be guilty of judging another culture by the standards of their own. But despite philo-

13. Vincent, n.2, p.79.

14. Welch, Claude and Leary, eds., Asian Perspectives on Human Rights. (Oxford, 1990), p. 58

sophical and conceptual differences between Western and Asian conceptions, the use of the term "human rights" has taken hold in Asia. Both Asians and Westerns are human beings and they can agree on minimal standards of civilised behaviour that both would like to live under; for example: there should be no torture, no slavery, no arbitrary no killings, no disappearances and no imprisonment without careful review.

In the North South context the criticism of human rights abuses have usually been by countries and organisations in the developed countries. It has been argued that these countries should review their own human rights record before criticizing the human rights record of developing countries. Several of the governments of developed countries in the forefront of highlighting human rights abuses in the Third World have committed human rights violations in their own countries, for example against the indigenous population of their land, and against immigrants. It can therefore be questioned what right these countries have to criticize the human rights situation in less developed countries which are facing severe economic and social stresses partly due to colonial exploitation by developed countries. In the context of human rights, it is significant to note that the industrially advanced countries of the North have reached a level

of socio - economic development where they could concentrate on the realisation of the so - called civil and political rights. And they apply their own yardstick in regard to developing countries. Little attention is paid to the fact that the developing countries of the South have a very different socio economic environment. Some scholars have also claimed that Western countries, on the one hand have established a relatively high degree of enjoyment of human rights in their own territories and are on the other hand, profiting from violations of human rights occurring elsewhere, or promoting systems of injustice, making profits from sales of arms or from exploitative activities of trans-national corporations.

DOMESTIC CONFLICTS AND HUMAN RIGHTS IN SOUTH ASIA

Most of the countries in South Asia have ratified the UN human rights instruments, but the implementation machinery is very weak, and this is reflected in the high rate of human rights violations in this region. Despite the vast array of international measures, gross violations of human rights are widely rampant. Arbitrary arrest, long term detention without trial and political disappearances are common in many countries. The continuing armed domestic conflicts have resulted in severe violations of human

rights. The social, economic and political tensions of various kinds in South Asia, have manifested themselves in violent public agitations, and official counter violence has frequently been used to curb these agitations.

Protest movements and political agitations for economic demands of linguistic, ethnic and regional groups are a common feature in South Asia. These movements and agitations arise because of the real or perceived sense of socio-economic inequalities, deprivation and discrimination. This is a manifestation of the distortions in the patterns and processes of development. The phenomena of growing economic disparities and massive poverty in South Asian countries have tended to spark off and aggravate ethnic conflicts and as a consequence produce conditions of political instability. Inherent in the movements of protest and dissent have been the issues pertaining not only to the nature of the political system, but also those related to the socio-economic inequities.

A major cause for all domestic conflicts/insurgences is socio-economic factors. This is related to the process and level of development which has a potential to disturb social balance, and become a source of conflict.

South Asian domestic conflicts can be grouped under two broad categories; namely the systemic and ethnic conflicts¹⁵. The category of systemic conflicts can, according to S.D.Muni¹⁶, result from two distinct political objectives; the short term objective of sharing power within the given constitutional and political structure, and the long term objective of transforming the basic power relations. Examples of this type of domestic conflict is the struggle in Nepal by the outlawed political parties to replace the Panchayat system by a multi-party system, Naxalite uprisings in India and Nepal, and the JVP revolts in Sri Lanka. This category of conflicts generally carries ideological overtones according to the political affiliation of the forces behind the attempted revolts. The Naxalite revolts in India and Nepal between the mid-1960's and the mid-1970's, and also the JVP uprisings in Sri Lanka had radical left orientation.

According to S.D. Muni's classification of domestic conflicts¹⁷, the second category of conflicts in South Asia

15. S.D. Muni, "Dimensions of Domestic Conflicts in South Asia", in Urmila Phadnis, S.D. Muni, Kalim Bahadur, eds., Domestic conflicts in South Asia, Vol.1, (New Delhi, 1986), p.58.

16. Ibid.

17. Ibid, p.59.

are those related to ethnic or other forms of sectarian identities. One of the main causes behind ethnic conflicts is the sense of deprivation and discrimination regarding a share in political, administrative and economic power, suffered by a caste, religious, linguistic or regional group, which begins to protest.

The extent of deprivation varies from situation to situation. It is relative to how strongly the group senses its deprivation. It depends of the position of other social groups. The sense of deprivation becomes a force for social mobilization and conflict generation. Ethnic conflicts in many cases leads to separatist and secessionist movements, like in the case of Tamil Elam in Sri Lanka and Khalistan in India. Separatist demands have come from various ethnic groups in South Asia. The impulses for the break - up of Pakistan have been the perception of the Punjabi domination of the Centre. While the movement in Sind has been acute, that of the Pathans and Baluchis have been long - drawn. And even between the Baluch and Pathans, the feeling of alienation and the relative sense of deprivation appears to be far more intense among the Baluchis than amongst the Pathans in view of the fact that in the power cake, while the Pathans do have a certain representations the Baluch share has been negligible. The structures of ethnic conflict management in

Pakistan seem to have been increasingly weakened through the virtual negation of the federal structure, provincial autonomy, electoral processes as well as the dynamics of party politics.¹⁸

Urmila Phadnis¹⁹ argues that the greater the concentration of an ethnic group within a territorial confine, the greater is its potential for demand - articulation and aggregation, e.g. the East Pakistan - West Pakistan conflict, the Sinhalese- Tamil conflict in Sri Lanka, the Tamil Nadu, Nagaland, Punjab and Assam situation in India. Insurgences in Pakistan has been mostly due to secessionist demands. India has been facing insurgent movements almost since independence in the form of Naga and Mizo nationalism in the north-east.

State responses to insurgences in South Asia have been varied. At the same time there is a common trend in the responses among all countries. The first approach is cooperation or accommodation. This approach is applicable mostly in the case of ethno-nationalism. In India, the Mizo National Front (MNF) was adjusted back to the Parliamentary process by giving substantial concessions, in terms of

18. Urmila Phadnis, "Ethnic Conflicts in South Asia," n.15,

19. Ibid, p. 109.

political power. The other approach is to suppress insurgent groups, even to the extent of elimination by strong counter insurgent tactics.²⁰

In South Asia there has been a strengthening of the coercive organs of state apparatus, due to the increasing frequency and intensity of domestic conflicts. As a consequence this has led to a decrease in developmental and welfare expenditures.

In all the South Asian countries legislative acts and constitutional provisions have been established to curtail civic rights and political freedoms. A number of anti-terrorist measures have augmented the state's capacity to curtail freedoms and basic right.

20. Ajay D. Behera, JVP, A study of its tactics, strategy and ideology, M.Phil dissertation, Jawaharlal Nehru University, (New Delhi, 1991), p.21.

CHAPTER II

**FORMAL PROTECTION OF HUMAN
RIGHTS IN SRI LANKA**

On paper Sri Lanka has a relatively sophisticated network for human rights protection, including a Bill of Rights, a Supreme Court, Commissions and Conciliation Boards. But against this formal presence of rights, is the stark reality where there are violations of human rights by many actors.

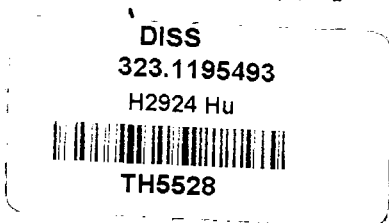
The problem of government in plural societies is basically one of seeking to do justice between the different groups and communities which exist within the state.¹ In particular the task of all the organs of government, including the judiciary is to seek to translate the theory of democracy and protection of fundamental rights into practice.

ROLE OF HUMAN RIGHTS IN THE SRI LANKAN CONSTITUTION



Sri Lanka, unlike India did not adopt a Bill of Rights at independence. The belief was that Sri Lanka would naturally adhere to British convention and tradition in which the rule of law and the principles of natural justice play an intrinsic part. Deriving directly from the peculiar "unwritten" character of the British Constitution, the

1. H.L.De Silva, "Pluralism and the Judiciary in Sri Lanka", in Neelam Tiruchelvam and Radhika Coomaraswamy, eds, The Role of the Judiciary in Plural Societies. (London 1987), p.80.



← 21

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constitutions adopted by British colonies in Asia and in the Caribbean on independence, were due to their written form quite unlike the original. Rules which at Westminster were observed without being specifically laid down, were considered necessary by the post-colonial states to be explicitly spelt out. As a consequence, these constitutions often contained a list of fundamental rights, as of Directive Principles of State Policy, and what was created, therefore was a remodelled vision of the Westminster system.²

For twenty-five years (1947-1972), Sri Lanka had a Westminster style Constitution which was considered, colonial, in that it had been bequeathed by the imperial power and it owed allegiance to a foreign monarch represented by a Governor-General. There was a widespread conviction that the Constitution as a liberal democratic framework with roots in Western social revolution, was superimposed on a society which still accepted hierarchical notions arising from Sinhalese religion and culture, and on

2. Saul Rose, "The New Constitutions in South Asia: Westminster Remodelled," Round Table (London), Vol.32, No.252, October 1973, p.441.

an economic system in which wealth was concentrated in the hands of a few.³

The only fundamental rights provision in the first Constitution of Sri Lanka was a guarantee of equal protection of the minorities.

Section 29(2) of The Constitutions, 1948, in effect prohibited either the conferment of a benefit on a particular community which was denied to other communities or the imposition of a disability on a single community with which disability other communities were not burdened. Protection of community rights, as distinguished from individual rights, was the aim of that provision. There is not a single judicial decision which invalidated legislation as being in conflict with Section 29(2), although it was seriously thought that the Official Language Act of 1958 would have come under judicial censure.⁴ But this clause proved to be ineffective, when the two major acts; Ceylon Citizenship Act

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3. L.M.Jacob, "Systemic Challenges in Sri Lanka in", K.Bahadur, S.D.Muni, V.Phadnis (eds.): Domestic Conflicts in South Asia. (New Delhi, 1986), p.144.
 4. M.J. Anton Cooray, "The Role of the Judiciary in the Protection of Fundamental Rights: The American and Sri Lankan Models Compared", Indian Journal of American Studies (Hyderabad), vol. 19, nos. 1&2, Winter & Summer 1989, p.40.

of 1948 and the Official Language Act of 1956⁵ were passed by the Sinhalese dominated government.

Despite constant violent attacks on its integrity from various interests, the Soulbury Constitution of 1948, remained in force for a period of 25 years without fundamental changes. Its survival may be contributed to its comparatively flexibility.

The 1972 Constitution⁶ unlike the 1948 Constitution incorporated chapters on Fundamental Rights and Freedoms. However these were not justiciable. The statement of Fundamental Rights and Freedom which spells out all the normal democratic principles was followed by an extensive list of restrictions. As the Principles of State policy include the establishment of a socialist democracy, the implication had been that the Constitution would give priority for implementation of 'socialist' policies over maintenance of Fundamental rights and principles.⁷

While the First Republican Constitution introduced a Bill of Fundamental Rights in 1972, the ordinary courts lost their power to question the legality of statutes passed by

5. See Chapter 1, p.5 for more details.

6. Constitution of Ceylon 1972, Department of Government Printing (Colombo, 1972), p.32.

7. Jacob, n.3, p.149.

the National Assembly. The result was that while legality of government action could be tested in courts of law using constitutional provisions as the determining criteria, such action, however unconstitutional, was immune from judicial censure so long the action had been authorized by legislation.⁸

The 1978 Constitution was to radically alter the structure of government. The UNP under the leadership of J.R.Jayawardene won the 1977 elections, and by introducing a new Constitution in 1978, his mission can be seen as an attempt to move beyond the apparent contradiction between liberal democratic participation, and stability for national development.⁹

The concern with stability was to find expression in the introduction of a Presidential system of government, and an electoral scheme of proportional representation.¹⁰ The Constitution of 1978 is a "hybrid" cross between the French and British styles of government, with a little bit of US

8. Cooray, n. 5, p.37.

9. Radhika Coomaraswamy, Sri Lanka, The Crisis of Anglo-American Constitutional Traditions in a Developing Society, (New Delhi, 1984), p.41.

10. Constitution of the Democratic, Socialist Republic of Sri Lanka 1978, Department of Government Printing (Colombo, 1978), Article 99.

thrown in.¹¹ There are many reforms in the Constitution which are more democratic in character than the 1972 Constitution; a fundamental rights chapter, the right to challenge executive action, a more independent judiciary, an independent public service and more equitable language and citizenship provisions, but the center of power had shifted to the personality of the Executive President. It did declare that Sinhala and Tamil both should be recognised as national languages of Sri Lanka, but Sinhala remained the sole official language. Official documents could be published in both languages, both languages may be used in Parliament, and students may be taught and examined in the language of their choice. Government service, however, was still to be dependent on a working knowledge of the official language. The new Constitution dropped the requirement of standardization of examination scores for university entrance but maintained the quota system that limits the number of Tamils that may be admitted.

Many scholars felt that this shift has led to a more authoritarian form of governance, than a Constitution which makes Parliament the supreme organ of state power. J.R.Jayawardene, the Chief architect of the Constitution,

11. A.Jeyaratnam Wilson, The Gaullist System in Asia. The Constitution of Sri Lanka 1978 (London, 1980), p. 54.

stated that a proper balance between democratic participation and stability for the implementation of development projects would be realized in a Presidential system of government.¹²

The Second Republican Constitution of Sri Lanka 1978, containing a Bill of Rights, and the 1972 Constitution, also denies to courts of law any jurisdiction to question validity of legislation passed by Parliament. Thus neither the 1972 Constitution nor the 1978 Constitution had a 'justiciable' Bill of Rights, a term which connotes the existence of judicial review of legislation. In place of judicial review the present Constitution of Sri Lanka has conferred a special jurisdiction on the Supreme Court to determine the constitutionality of Bills before Parliament. The present Constitution then goes on to provide a special remedy to be obtained directly from the Supreme Court for a breach of a fundamental right or a language act.

The 1978 Constitution of the Democratic, Socialist Republic of Sri Lanka enshrines a series of fundamental rights in a separate chapter. Most of the rights enumerated are the conventional rights found in most other constitutions.

12. Coomaraswamy, n.9, p.41.

The 1978 Constitution's fundamental rights chapter, stresses that all persons have right to Freedom from torture, Freedom of thought, conscience and religion, Right to equality before the law, Freedom from arbitrary arrest, detention and punishment, Freedom of speech, assembly, association, occupation, movement etc.¹³

This chapter of the Constitution outlines the restriction to the exercise and operation of the fundamental rights. It is outlined that the fundamental rights are not absolute, and are subject to certain restriction: national security, social and religious harmony, parliamentary privilege, contempt of court and public health and morality.

There are, however, a few fundamental rights in the Sri Lankan Constitution which are absolute; Freedom from torture and Freedom of thought, conscience and religion.¹⁴

Certain clauses such as those relating to religion, freedom of thought, conscience and freedom from torture have been safeguarded by being amenable to change only after referendum. However, certain questionable provisions have also been retained or incorporated in the 1978 Constitution.

13. Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, n.9, Chapter 3, Article 10-14.

14. Ibid.

All pre-existing laws and punishments have been declared valid, even if they are inconsistent with fundamental rights. The result is, for instance, not only the continued use of lashing as a punishment, but permission to extend such punishment to cover any offence.¹⁵

Soon after the inauguration of the Constitution of 1978, the government on the plea that the new constitutional framework required a recognition of the judiciary, dropped a number of judges and appointed new ones. There were also ignoring rules of seniority. This led to a widespread feeling that the judiciary was gradually being "packed" with the "right type of people". In the process, its credibility as well as autonomy eroded considerably.¹⁶

AMENDMENTS

The 1978 Constitution has been fundamentally altered after the introduction of several amendments.

The first amendment allowed for the deprivation of civic liberties of Mrs. Bandarnaike, the leader of the opposition party. The second amendment provided for the expulsion of members from a political party. The third

15. James Manor, "A New Political Order for Sri Lanka", The World Today (London) vol.35, no.9, September 1979, p.378.

16. Urmila Phadnis, Sri Lanka: Crisis of Legitimacy and Integration, unpublished, (New Delhi, 1987), p.34.

amendment gave the President the right to determine the time of the presidential election. The fourth amendment provided for extension of the first Parliament, and was introduced after the referendum of 1982. These amendments could be seen to serve the tactical advantage of the government.¹⁷

After the 1983 violence, President Jayawardene announced a Cabinet decision to bring in what in the event became the Sixth Amendment, designed to ensure that even peaceful supporters of separatism could not sit in the Parliament and that "those who advocate the separatism of the country lose their civic rights and cannot hold office, cannot practice professions, cannot join governments or organisations in this country".¹⁸

This amendment contributed to make the Tamil militants the spokespeople for the Tamil people as the Tamil Parliamentary opposition was banned through the Sixth Amendment.

But thereafter the 13th and 16 amendments were major concessions to Tamil demands, one granting linguistic equal-

17. Radhika Coomaraswamy, "Use of Usurption of Constitutional Ideology" in D.Greenberg, S.Kafe, M.B.Olivers, S.C. Wheatly, eds., Constitutionalism & Democracy (Oxford, 1993), p.165.

✓18. Radhika Coomaraswamy, "The Civil Liberties and Human Rights Perspective" in KM De Silva, ed., Sri Lanka Problems of Governance (New Delhi, 1993), pp. 154-155.

ity, the other granting devolution. For the first time, were the principles of pluralism and devolution recognised. Since pluralism is now constitutionally enacted it would be difficult to reduce its effects, much less to eliminate it altogether, especially after years of brutal ethnic conflict.¹⁹

The tenth amendment removed the safeguards against the extension of Emergency powers after 90 days without parliamentary majority, which the ruling party itself had build into the Constitution.

In 1990 the 17th Amendment to the Constitution was forwarded as a bill which would bring Sri Lankan law more into conformity with the International Covenant on Civil and Political Rights. The 17th amendment, emerging from the recommendations of the All Party Conference was supposed to establish access to justice as a fundamental right; expand freedom of speech to include freedom of publication and information; to ensure that at of the time of arrest a person shall be informed of the reason for his/her arrest in the presence of a lawyer, enable anybody other than the individual affected to bring action in the courts, and finally introduce the broader term of state action as the

19. Ibid.

basis for fundamental rights, rather than executive and administrative action.²⁰

However, there were criticisms against the 17th Amendment. The Civil Rights Movement of Sri Lanka wrote in one report²¹: "In a number of substantial aspects of the draft of the 17th Amendment to the Constitution, the draft falls short of providing the basic protection of human rights recognized by international law, in particular as formulated in the International Covenant on Civil and Political Rights, to which Sri Lanka is a party". The bill was, however, never enacted.

From the 1970's there has been a strong rise of Tamil nationalism in the north and the east, and also rise of Sinhala nationalism and revolutionary action in the southern part. The reasoning and discourse of these movements have nothing in common with the institutions and style of government which the Anglo-American Gaullist Constitution envisages. The constitutional order appears formal, and civil

20. Radhika Coomaraswamy, "Sri Lankan Judiciary and Fundamental Rights: A Realist Critique" in N.Tiruchelvam and R.Coomaraswamy, eds., The Role of Judiciary in Plural Societies, (London, 1991), p.158.

21. Civil Rights Movement of Sri Lanka, file: E02/11/91.

society rests on religious and customary norms outside this liberal framework.²²

COMPLIANCE WITH INTERNATIONAL LAW

The fundamental rights set out in Articles 10 to 14 in Chapter 111 of the 1978 Constitution follow some, but not all provisions of Part 111 of the International Covenant on Civil and Political Rights, which Sri Lanka accepted on 11 June, 1980.

On the same date, Sri Lanka also acceded to the International Covenant on Economic, Social and Cultural Rights.²³ Many of the provisions of that covenant are reflected in Article 27 of Chapter VI of the Constitution, under the heading "Directive Principles of State Policy and Fundamental Duties". However, unlike the civil and political rights set out in Chapter III, these rights are not justiciable: Article 29 provides that: "The provisions of this chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal. No question or

22. Ibid., p. 145.

23. See Chapter I for more details.

inconsistency with such provisions shall be raised in any court or tribunal".²⁴

Sri Lanka has a wholly dualist legal system, in which international law has no domestic effect unless and until the Legislative expressly "transforms" or "incorporates" it into domestic law. There is therefore no procedure by which a Sri Lankan court, could test the conformity of any Sri Lankan law or of its executive or administrative actions, with the international human rights treaties by which the Republic is bound, that can only be done by a competent organ at the international level.²⁵

THE ROLE OF THE JUDICIARY IN PROTECTION OF HUMAN RIGHTS IN SRI LANKA

The Bill of Rights in the 1972 and 1978 constitutions leave implementations of these provisions to the Supreme Court. According to Article 127(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, the Supreme Court of Sri Lanka is the final court of civil and criminal jurisdiction. Its several special jurisdictions

24. Constitution of the Democratic, Socialistic Republic of Sri Lanka, 1978, Department of Government Printing (Colombo, 1978), Chapter VI, Article 29.

25. Paul Sieghart, Sri Lanka: A Mounting Tragedy of Errors. International Commission of Jurists, (London, 1984), p.23.

include Fundamental Rights jurisdiction. Fundamental Rights jurisdictions are exercised by the Supreme Court in the first instance.

The quality of fundamental rights is not determined so much by the potentialities inherent in the formal legislation as in the reality of specific cases decided by actual courts.²⁶

It is interesting to see the type of cases which did not come up before the courts. For six years during the period of the Republican Constitution (1972-78), not one case of fundamental rights was decided by the Supreme Court. Of twenty cases reported on fundamental rights, filed before the Supreme Court during the period April 1979 to December 1981, only one case was decided in favour of the citizen who brought their grievances before the judiciary.²⁷ Between 1978 and 1983, only one case with regard to ethnic rights had appeared before the courts, although the country was to erupt into civil war over the ethnic question. The case

26. Coomaraswamy, n.18, p. 152.

27. Coomaraswamy, n. 20, p. 107.

concerned the writing of a cheque in Sinhalese to a Tamil recipient.²⁸

Sri Lanka was on the verge to face a youthful ethnic rebellion from the north and a southern insurgency in the rural areas of the south, therefore it is remarkable that no important cases in either of these areas reached the courts. Despite the nature of the political crisis in Sri Lanka during the 1983-1993 period, only a few cases with regard to torture, arrest and detention have come before the Sri Lankan Supreme Court. In the case of torture, most of the cases have been dismissed on the grounds that there^{is} insufficient evidence. In such a context, only an extreme case of torture (where there is physical mutilation of the body certified by a doctor), will be decided in favour of the petitioner. Amnesty International and other human rights organizations have documented that new torture methods do not leave marks on the human body. In Sri Lanka the victims have the burden of proof. If the custodial offices had the burden of proof, then it is most likely that several cases on torture in custody might have led to different results. These facts are strengthening the claim by many scholars that the legal process has been removed from the reality of

28. Ibid.

the land, and has not become a forum for the non-violent settlement of important issues which were politically explosive.

According to Radhika Coomaraswamy the courts have in the last few years become moderately activist, because after witnessing the excesses during civil war, fundamental rights have become more meaningful and real.²⁹

Coomaraswamy argues that a right consciousness has not developed in Sri Lanka for several reasons. First it is the lack of legal discourse or doctrine in Anglo-American constitutionalism which deal with the dilemmas of development. The lack of "public interest" legal skills has also resulted in a dearth of lawyers who can argue a persuasive, but radically different legal discourse.³⁰

In evaluating the role of the judiciary in the protection of fundamental rights in Sri Lanka, one also has to consider the fact that Sri Lanka has had a Bill of Rights only since 1972, and that the Sri Lankan judges have had only two decades experience in dealing with issues relating to fundamental rights. One also has to consider the limitations placed on judicial functions in Sri Lanka, due to the political conflict situation in the country.

29. Ibid.

30. Coomaraswamy, n.1. p. 155.

CHAPTER III

DOMESTIC CONFLICTS IN

SRI LANKA

Sri Lanka is one of the few countries which did not have violent political tradition. It never even had a militant nationalist movement. Until the 1970's, Sri Lanka was seen as a "model Third World plural society". It was boasting of parliamentary democracy, a welfare state, a tolerant Buddhist ethos under where religious and ethnic groups lived in peace for most of the time.

During the 1970's this image of a "Third World ideal state" shattered with the growth of Tamil militancy, the rise of left wing militancy in the south, and the government's violent attempts to curb the uprisings. Sri Lanka has since independence faced two domestic conflicts which have resulted in massive human rights violations. The anti-systemic JVP insurgency; first in 1971 and again 1987-89, and the ethnic / secessionist Tamil insurgency which has been witnessed since the late 1970's

Insurgency and human rights are closely inter-linked. Insurgents will perceive that they have been deprived of their political, economic or socio-cultural rights, and thereby take to weapons. The insurgents activities usually implies human rights violations, like killing of innocent civilians etc. The government usually responds to insurgent activities, by counter violence, arbitrary arrests etc.

To get a better understanding of the human rights situation in Sri Lanka, this chapter will look into the roots of the domestic conflicts; to analyse which factors gave rise to (i) the militant groups in the Tamil conflict, and the human right violations by those, and (ii) to the rise of the JVP in the southern conflict, and related human rights violations. To get a better understanding of the Sri Lankan human rights situation this chapter will also examine the socio economic situation in Sri Lanka.

BACKGROUND TO THE TAMIL INSURGENCY

The ethnic/secessionist domestic conflict of Sri Lanka derives out of a sense of deprivation among the Tamil minority, which consists around 18 percent of Sri Lanka's population.

Buddhist legends tell that the Sinhalese were the early migrants into Sri Lanka, and that they came from those regions that constitute Orissa and Bengal in India today. According to Buddhist mythology, the Sinhala race was founded by Vijaya, grandson of the union between a North Indian king and a lioness. Vijaya is believed to have arrived in Sri Lanka in 500 BC with 700 Aryans.

It is claimed that Buddha visited the island thrice, and this legend is the basis of the Sinhala claim that as

Aryans from North India they have inherited a much older culture and civilization than the Tamils who are descendants of Dravidian settlers from peninsular (south) India. But there are Tamil historical chronicles that claim Tamils are the pre-Sinhala Dravidian indigenous inhabitants of the island.¹

Since 1892, the British ruled Sri Lanka as a Crown Colony. For the first time the British brought the island under a unified structure and a centralized administration.

During British rule there was not much overt antagonism between the Tamils and the Sinhalese. There were communal riots involving Sinhalese, but the conflicts were either between Buddhists and the Catholics (1883, 1903), or between Sinhalese and Muslims (1915).

This violence in a significant way was the manifestation of the Sinhalese self-perception of being economically and politically deprived vis-a-vis the Muslims and the Christians. The Sinhalese also nursed a sense of insecurity and deprivation vis-a-vis Tamils who were perceived as a cultural extension of a huge Tamil population in India. This sense of insecurity led the Sinhalese leadership in the post

1. S.D.Muni, Pangs of Proximity: India and Sri Lanka's Ethnic Crisis (New Delhi, Oslo, 1993), p.40.

independence period, to initiate moves and policies to the disadvantage of the Tamils.²

The British rulers encouraged the Tamils who belonged to the arid and underdeveloped tracts of northern Sri Lanka, to look to the English systems of education and professions for economic advancement. The recognition of the Tamil share of the professions was a major concession to the Tamils, and therefore a counterpoise against the Sinhala majority. Entry into the professions was a means of social mobility, and the British encouraged them because of their policy of playing them against the Sinhala majority. The British also contributed to divide the Sri Lankan population on communal and ethnic lines.

Representation on the basis of religion and ethnicity was introduced on the plea that it would help democratic institutions in a country with racial and religious differences.

In the 1920s, separate and distinctive political demands by various political groups, each designed to safeguard and promote sectarian interests, all under the plea of 'national interest', became the trend. The people of Ceylon were divided along ethnic lines, and again along lines of

2. Ibid., p. 42.

religion. All this reinforced ethnic and religious divisions and inhibited the growth of political parties across them.³

Sri Lanka's independence in 1948, was in many ways a by-product of India's freedom struggle. Independence was gained in a peaceful way, without violent or non-violent struggle.

Since Sri Lanka's independence in 1948, various Sinhala dominated governments have systematically pursued politics to discriminate against Tamils in the areas of land, language and economic opportunities.⁴

The periods 1956-65 and 70-77, represents the swing of the political pendulum to the left-oriented parties, with the Sri Lankan Freedom Party (SLFP) as the dominating party. The periods: 1948-56, 60-65, 1977-94, represents the movement to the right, dominated by the United National Party (UNP). Both SLFP and UNP are Sinhala dominated parties, and all the governments since independence has pursued a policy of Sinhalization to a greater or lesser extent.

The first UNP regime (1948-56) pursued a policy of land colonization which altered the demographic balance in the northern and north-eastern Sri Lanka, to the disadvantage of

3. Mohan Ram, The Fractured Island (New Delhi, 1989), p.32.

4. Muni, n.1, p.42.

the Tamils. The motive was to change the electoral balance by settling Sinhalese in these areas.

In 1956 the SLFP won the elections. In the election campaign the SLFP was advocating the primacy of Sinhala as the sole official language in the place of English, and among the earliest measures of the new government headed by Bandarnaike, was the 'Sinhala Only Bill'. After Mr. Bandarnaike's election victory in 1956, Buddhist militancy penetrated all Sinhalese institutions, and found in media and education an influential vehicle.⁵ The first serious divide between the Sinhalese and the Tamil came when Sinhala was introduced as the official language, upsetting the parity between Tamil and Sinhalese. Such a move symbolized a reassertion of Sinhalese nationalism, and a new dignity to its Sinhalese educated middle strata, with race, religion and language providing a strong conglomerate to such a Sinhala consciousness, marked by a thrust of its distinctiveness as well as its pre-eminence vis-a-vis other minority communities.⁶

5. Eric Meyer, "Seeking the Roots of the Tragedy", in James Manor, Sri Lanka in Change and Crisis (London, 1984), p. 149.

6. Urmila Phadnis, "Role of State in Sri Lanka's Ethnic Conflict", part 2, Mainstream (New Delhi), vol. 29, no. 6, 1 December 1990, p.21.

While the Muslims seemed to reconcile with the situation, this situation was perceived as catastrophic by the Tamils. Denial of Tamil as an official language was perceived as a slur to their language which is one of the oldest languages. The Tamils had so far been an advantaged community, with a high share in governmental jobs as well as some other prestigious professions like law and medicine.

In the Sri Lankan situation with the state as the largest employer, the Tamils feared that with the replacement of English by Sinhalese as the official language, their employment prospects would shrink. That their fears were well founded was evident from their shrinking number in government jobs. After 1960 the mother tongue became the mode of instruction from school to university level, and therefore it became increasingly difficult for the university educated Tamil youth to cope with the challenges in the job market.

Added to this, the UNP government which came to power in 1965, decided to replace merit as the criteria for admission, by a system of weightage which worked in favour of Sinhalese than for students writing in Tamil. The result of this new admission policy, was a rapid decline to Tamil students in the science based courses they before had done

very well in. Initially, the Tamils of Indian origin had been deprived of their right to citizenship and had been disenfranchised. Now, the Tamils, ethnic and immigrant, were being stripped of their languages rights.

In the years since late 1950's, the Sinhalese ideology has stood as a potent counter-ideology to the more cosmopolitan, secularist conception of Sri Lanka as a heterogeneous civil society. For a time from the early 1960s to the early 1970s, it appeared that the latter view might prevail as the Sinhalese became preoccupied with economic issues, and as their dominance in the political system made them feel less insecure than before 1956. But this change did not take place. Mrs. Bandarnaike's SLFP-led government between 1970-77 responded to and in turn catalyzed Sinhalese chauvinism by pursuing a number of policies which were patently discriminatory against Tamils, particularly in the field of education.⁷

The 1972 constitution made Ceylon a republic. It gave constitutional status to Sinhala as the sole official language, as enacted in 1956. Pluralistic Ceylon was transformed to an ethnocentric Sri Lanka. Buddhism became the only religion receiving state support.

7. Meyer, n. 5, p.9.

The Tamil reaction to the governments policy grew more militant in the 70s. Violence had occurred between Tamils and Sinhalese before also. In 1957, Sinhala mobs had several times attacked the Tamils. In the late 50s, the Sinhala reaction to the Tamil party: the Federal Party had turned violent, and Tamils in the northern and northeastern provinces responded also with violence. Finally the government clamped an emergency on the country in May 1958. Over 10.000 Tamils were shipped from Colombo to the safety of Jaffna.

When the Tamils in the north reacted angrily to the 1972 constitution, substantial contingents were sent to the north with orders to crack down. The security forces were overwhelmingly Sinhalese, and they came to be perceived by the Tamils as a heavy handed army of occupation. As a result, the main Tamil party, the Federal Party, demanded a Tamil state (Eelam). The Tamil Eelam demand assumes that Sri Lanka is an island with two nations within one geographic entity and state. The Federal Party changed its name to the Tamil United Liberation Front (TULF).

At the same time, groups of more radical youths took to arms, and organised themselves into a separatist guerrilla group called the Tamil Liberation Tigers, and started violent attacks against the security forces.

Jayawardene's UNP government came to power in 1977. Sri Lanka was rocked by violence in the wake of the 1977 elections. Initially directed against the main loser-the SLFP and its allies, by the winner UNP, it turned out to take an anti-Tamil turn with widespread killings, assault, rape and damage to Hindu temples, during August-September 1977.

Mrs. Bandarnaike's 1972 constitution was replaced, and it sought to balance liberation and democratic provisions against the need for more forceful, authoritarian leadership. Tamil was made a national 'language, and although Sinhalese remained the only, official language', provisions were made for the official use of Tamil in Tamil-majority areas. The estate Tamils were granted many, but not all of the civil rights enjoyed by citizens.

The 1978 constitution also created a strong executive presidency. J.R. Jayawardene was soon elected President by the Parliament, although future Presidents would be popularly elected. Proportional representation for parliamentary and local elections was introduced. In addition to the constitutional changes, Jayawardene's government promised that Development Councils would be created in every district (country) on the island. This proposal was meant to concede the demand of the Tamil-majority areas for greater autonomy.

It might also be argued that the radical liberalization of the economy after 1977 was a further concession to the Tamils, since it implied free competition in the market and a decline in state power - power which often had been used to aid Sinhalese at Tamil's expense.⁸

However most Tamils by the time had come to the conclusion that these initiatives taken by the Jayawardene government, had little impact in practice. The District Development Councils had less autonomy from the central government than Tamils had hoped. Tamils were further unhappy by the harsh and undisciplined behaviour of the overwhelmingly Sinhalese security forces in Tamil areas, particularly in Jaffna district. By 1981, even the neutrality of the armed forces, which had been severely strained by the ethnic conflict, was fast ending.

The reasons for the government's inability to contain the Tamil militancy were partly because of contending perceptions for a solution within its own party, and partly due to the pressures and pulls from the major opposition party - the SLFP - trying as the UNP had done in the past, to make political gains out of the ethnic issue through its politi-

8. Ibid., p. 12.

cal intransigence.⁹ The initial flare-up in 1981, unlike in 1977, was not in the Sinhala majority areas, but in the Jaffna peninsula and in the northern province. The 1977 and 1981 riots were the first time when Sinhala-Christians joined the attacks on Tamils, which meant that the country was seeing a social polarization across the barriers of religion (a good proportion of the Tamils are Christian).

In 1979, the insurgents hit-and-run activities coupled with bank robberies, resulted in the proscription of the Tamil Tigers, the Prevention of Terrorism Act in 1979 and the promulgation of emergency in Jaffna in 1979. By this time the dialogue between Colombo and the TULF had virtually broken down. The military operations in Jaffna had become increasingly harsher with a sudden snoop on the civilians, and burning down of public places, like Jaffna library. Tamil guerrillas, which had quietened after the 1981 riots, resumed their activities to become more dramatic than ever in 1983. The government forces pushed their campaign against the guerrillas in the northern provinces. The major explosion in the conflict came on 23 July 1983.

A Tamil guerrilla assault unit had mined the Palay - Jaffna road, and was waiting to ambush the Four, Bravo

9. Phadnis, n. 6, p.22.

patrol of the Sri Lankan army. The jeep leading the army convoy blew up. The anti-Tamil programme which began the next day in Colombo was to be a watershed in the ethnic conflict.

The week long looting and killing took place only in Colombo and other places where Tamils were in the minority. 3000 Tamils died in the riots. After the 1983 holocaust, the war between the state and the Tamils was joined in earnest. Hundreds of Tamil homes and shops were looted and burnt. The Tamil people fled from their homes to various refugee camps, some of which came under attack by the Sinhalese mobs.¹⁰

Elements of the armed forces and police seemed reluctant to prevent the activities of gangs of anti-Tamil rioters.

A large number of Tamil-owned houses and business establishments located in Sinhalese majority areas were completely destroyed.¹¹

Various political groups from Tamil Nadu urged the Indian government to intervene militarily to ensure the secu-

10. Satchi Ponnambalam, Sri Lanka: National Conflict and the Tamil Liberation Struggles, (London, 1983), p.225.

11. K.M. De Silva, Sri Lanka, A History (Delhi, 1987), p.245.

rity of Tamils in Sri Lanka. The Indian government refused to send its forces to Sri Lanka, but the Indian Prime Minister Indira Gandhi indicated that India could not remain indifferent to the breakdown of law and order in a neighbouring country.¹²

The riots of 1983 had hardened attitudes. In the late 1984 the separatists groups began a series of attacks and bombings. In the violence, over 400 persons - Sinhalese, Tamils and Muslims died. Anti-separatist Tamils were ruthlessly killed. Sinhalese villages in the north were attacked by armed terrorist groups, and by the end of the year 24,000. Sinhalese were in state refuge camps. The armed forces in their turn often shot first and asked questions later.¹³ There was a total breakdown of law and order.

HUMAN RIGHTS VIOLATIONS BY THE TAMIL MILITANT GROUPS

The Tamil grievances leading up to military resistance and demand for a separate state originated in experience of discrimination and state violence. Sinhala-dominated governments have since Independence in 1948 pursued policies of ethnic preferential treatment which by Tamils have been seen

12. Ibid., p.244.

13. Ibid., p.245.

as attempts to erode their political base, as well as denying them equal access to employment and economic opportunities.

It is often assumed that the strength of an insurgent movement is positively related to the repression to which the population is subject.¹⁴

While this generally might be true, in the Tamil context, at least from the mid-80's the relation between repression and an individual deciding to take up arms is often an indirect phenomenon, mediated by many unconnected factors. This has particularly been so in the context of Tamil militants, because those joining the insurgency have mainly been teenagers.

By 1985 disillusionment had crept in among the Tamil militants, although the repression by the Sri Lankan state remained a reality. By then many of the mature militants started leaving and the new militants recruited were very young.¹⁵ The problem was exacerbated when the LTTE had cracked down on other militant groups, and the number of militants opposing Sri Lankan forces diminished sharply.

The articulate sections of society were to a lesser extent joining the Tamil militant groups in the late 1980's.

14. University Teachers for Human Rights, Report No.2 (Jaffna, 1989), p. 16.

15. Ibid.

Most children and youth who got involved in carrying out the armed struggle for the Tamil militant groups were unaware about the values involved or the cause they were fighting on behalf of.¹⁶

In the first phase up to 1985, the militancy was relatively unquestioned and recruitment was fairly easy. Then came a phase of internal killings, disillusionment and withdrawal of the more mature and articulate. Recruitment from the mature and educated has since the mid-80's been a minority phenomenon. Even when committed to the LTTE in some way, most will have certain doubts about the LTTE's politics. They would often play a role in recruiting and pepping up "child-warriors". But when they saw trouble, they were quite likely to take the alternative of going abroad as many have done.

The Tamil militant movement grew rapidly after the persecution of Tamils in July 1983¹⁷. Until then, recruits had tended to be slightly older, now large numbers of school students joined one or other of the militant groups. Gradually the movement grew more militaristic and authoritarian.

16. Ibid, p.17.

17. See Chapter 2 for more details.

At the height of the insurgency, at least five major organizations and perhaps 30 splinter groups were active.¹⁸

Internal dissent within militant groups was dealt with ruthlessly, and the LTTE set about eliminating its rivals. By late 1986, the LTTE had virtually eliminated the People's Liberation Organization of Tamil Eelam (PLOTE) and the Tamil Eelam Liberation Organization (TELO), killing many of its members.¹⁹

INTER TAMIL RIVALRY

At the end of the year, LTTE had also taken over the Eelam People's Revolutionary Liberation Front (EPRLF) camps in Jaffna, though in the East, where the EPRLF had considerable support, sporadic fighting continued. Many members of the public, often from the poorer sections of society, sheltered TELO and EPRLF members on the run. Some were later to do the same for LTTE members when they in turn were targeted. This internal fighting weakened the militant movement, and the Sri Lankan armed forces made considerable

18. Marshall R. Singer, "Tamil Sinhalese Ethnic Conflict : Alternative solutions", Asian Survey (Berkeley California), Vol. 32(8), Aug. 1992 p 418.

19. Times of India (New Delhi), 16 December, 1986.

headway in 1987. At the same time the LTTE gained a reputation for military success and sometimes suicidal valour.²⁰

The LTTE is thought to have executed a number of Tamil civilians accused of helping the security forces. In January 1992 the LTTE publicly executed two alleged traitors, and in February 1992, executed three civilians in Mullaittivu District for allegedly passing information to the security forces. In December the LTTE announced that it had executed nine more "traitors" in Jaffna.²¹

Among the thousands of prisoners believed to have been held by the LTTE were Sri Lankan police and military personnel, Tamils perceived as traitors to the LTTE cause because they were believed to have provided information to government forces, Tamils who had criticised LTTE policies, Tamils who were members of rival Tamil militant groups in the past, and Tamil and Muslim hostages held for ransom. Relatives of LTTE deserters who have escaped, or of people who have fled to evade conscription, are also said to have been detained.²²

20. University Teachers of Human Rights (Jaffna), Someone Else's War (Colombo, 1994), p. 3.

21. US Department of State, Human Rights Country Report, Sri Lanka 1993 (Washington, 1993), p. 26.

22. Amnesty International, Assessment of the Human Rights Situation 1993 (London, 1993), p.14.

The LTTE has gradually adopted the same ideology and measures towards the Muslims as earlier practiced by the Sinhala state towards the Tamil minority. The Muslims, the third party to this conflict, of whom one-third have been settled in the Eastern Province and whose mother-tongue is Tamil have been exposed as traitors of the Tamil cause.²³

In 1990 the LTTE began a purge of all Muslims living in the North. The ethnic cleansing thereafter continued in the Eastern province in an effort to clear it of non-Tamils. The Muslims became the target of gruesome massacres by the LTTE, which in 1992 compelled some Muslim political leaders to discuss the need of declaring, 'Jihad', holy war, to defend their religion.

Since 1991, the LTTE has employed new tactics to hit the enemy, namely killing prominent leaders through suicide bombers. The first victim was India's Prime Minister Rajiv Gandhi in May 1991. Later that same year the State Defence Minister was killed in Colombo followed by further bomb attacks killing top military leaders in 1991-1992. The political killings of the Democratic United National Front (DUNF) leader and former Security Minister, Lalith Athulath-

23. R. Hoole, "Massacre of Muslims: The Meaning for Tamils", Pravada (Colombo), vol.2, no.2, February 1993.

nudali, in April 1993, and a few days later of President Premadasa, according to analysts, did not however, cause the chaos most likely intended.²⁴

In February 1993, the LTTE released a Press Release in response to repeated accusations of human rights violations:

"While it is true that the LTTE is in control of territory in the North-East, the character of the control exercised by a guerrilla organisation cannot be equated to the control exercised by the established Sri Lankan government structure..... It is a fact that some Tamil groups actively engaged along with the government forces and have been sent to infiltrate the areas within LTTE control and gather intelligence and do sabotage and it has become necessary to apprehend such spies..... .The LTTE wish to say that it will not be deterred by attempts of faceless persons or organisations to tarnish its image, but will continue to strive for human rights and the right to self determination of the Tamil people".²⁵

BACKGROUND TO THE JVP INSURGENCY

The arithmetic of the southern conflict mainly refers to the dynamics income and unemployment, to areas of affluence and areas of poverty in Sri Lanka.

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24. Bendigt Olsen, "Sri Lanka", in Human Rights in Developing Countries Yearbook 1994. (Oslo, 1994), p. 168.
 25. Press Release, International Secretariat, Liberation Tigers of Tamil Eelam. London 22.02.1993, in University Teacher for Human Rights, Report no. 11. (Colombo, 1993), p. 100.

Most historians are of the perception, that before colonial rule there was generally peace as long as there was harmony and unity in the socio-economic life of what was basically a self-sufficient peasant economy.

With the advent of British rule and the impact of a plantation economy based on the exploitation of cultivable land for commercial purposes, there was a dissipation of the old peasant economy.²⁶

The accompaniments of plantation economy were: better roads, a money economy, English education and a modern form of government which provided health service to the people.

By the time Sri Lanka achieved independence, the government programmes that were to become the main components of the social welfare policies in the period after independence, had already commenced. There was a steady expansion of the government health services.

In 1945, the government decided to provide universal free education up to the university level. During the 1950's and 1960's the main elements of the social welfare package developed into a comprehensive programme. The system of mass free education led to the establishment of educational facilities, spanning the entire island.

26. Mick Moore, The State and Peasant Politics in Sri Lanka (Cambridge, 1985), p.54.

UNEMPLOYMENT

In the mid 60's the process of development, with its emphasis on social well being, had itself generated a new set of problems. The economy was not expanding fast enough in those sectors which could accommodate those who had got the advantages of the increased access to education facilities.

During the 1960s, there was an unprecedented growth of unemployment among the young educated population.²⁷ The rate of unemployment among the population in the age group 15-30 rose to intolerably high levels, the highest in Asia.

High expectations had been generated by the spread of free education from primary to tertiary levels. While, the younger generation remained restive.

During the 1960's, a massive unemployed work force had grown, with no early prospect of participating in productive social activity. In such a situation, a movement the Janatha Vimukthi Peramuna, (JVP) aiming for the violent overflow of the system emerged. The majority of the followers were unemployed youth. The violence itself seems to have had its

27. Although the economy grew at an annual average of approximately 4,5 percent during the 1950s and 1960s the work force grew at approximately 2,1 percent between 1958-71, whereas employment grew at only 1,1 percent.

roots in the pattern of development, that stressed social welfare, and did not give the needed priority to growth and employment creation.

Sometimes the youth, after completing their education which had always in the past led to employment as a clerk or a school teacher; were almost compelled to return to the paddy fields. Even that option was not always open.²⁸

Robert Kearney applies Ted Gurr's theory about the rising levels of expectations unmatched by improvements in perceived circumstances as an impetus to political violence, to the Sri Lankan situation.²⁹

The sense of deprivation and disillusionment was much greater among Sinhalese youths than among youths belonging to the ethnic minorities. The Sinhalese expectations had been much greater as a result of larger number of them coming out from Universities with the introduction of the Sinhala language as a medium of instruction.³⁰ The suspected insurgents were more educated than the general male population of comparable age. Many of the suspected insurgents

28. Robert Kearney, "Educational Expansion and Politics Volatility in Sri Lanka", Asian Survey (Berkeley, California), vol.15, no.9, September 1975, p.721-744.

29. Ted Robert Gurr, Why Men Rebel (Princeton, 1974), p.124.

30. Kearney, n.28, p.741.

held employment that fell far short of their aspirations and expectations.

Many youths who obtained secondary or even higher education by 1971 were probably the first members of their families ever to receive education beyond the primary level. The generational difference in educational attainment may have contributed to an undermining of parental authority and defence for the older generation and its values and norms of behaviour. This also possibly spread among youths disillusionment with the existing social and political order associated with the older generations. The increased education may have also fostered among youth some amount of radicalism. The JVP drew its militant cadres mainly from the frustrated segments of unemployed educated youth, in the predominantly rural areas of the country.

The traditional left in Sri Lanka displayed three significant features which roused the disillusionment of the youth who supported the JVP. These were; one, the leadership of the old Left still came from the privileged class; two, their base was limited only to the urban working class; and three, the peasantry was completely neglected by the Left parties.³¹

31. Politicus, "The April Revolt in Ceylon", Asian Survey, (Berkeley, California), vol.12, no.3, March 1972, p.265.

The 1970 elections were won overwhelmingly by the SLFP-LSSP-CP United Front (UF). UF used Sinhala-Buddhist election rhetoric and promised the Sinhala rural areas much incentives, including free education and socialism.

When the UF government failed to live up to its promises, one result was the rising up of the Sinhala youth in an armed rebellion under the JVP. Dissatisfaction with the government has been the JVP's main mobilisation point. The JVP was a self-proclaimed Marxist Leninist group that had been in existence since around 1965, and had been organized in the Sinhala rural areas. The JVP was addressing the dangers of Indian expansionism, and the Tamil estate workers were identified by the JVP as the "fifth column" of Indian expansionism.³²

The insurrection was an attack on the ruling elite, not merely the party in power. In a wider context, the 1971 insurrection should be regarded as a violent reaction by Sri Lanka's rural population against the political and economic domination of the urban ruling class.³³

32. G.Anandalingam and Mary Abraham, "Left-Wing Politics and Ethnic Conflict in Sri Lanka", South Asian Bulletin (Albany, New York), vol.VI, no.2, Fall 1986, p.41.

33. Eduardo Marino, Political Killings in the South of Sri Lanka, International Alert, (London, 1989), p.12.

The JVP insurrection was put down ruthlessly by the UF government. More than 8000 youths were killed,³⁴ and 14.000 were detained. The government also set into motion emergency regulations under which many Tamil student militants were also put in prison.³⁵ Amnesty International's reported from Sri Lanka in 1971:

"As to the amateur insurrection of 1971, the government of Mrs. Bandarnaike has seriously overreacted to attacks by untrained lads using home made weapons on police stations, by detaining 16,000 persons without trial, and prolonging the state of emergency long after the handful of leading conspirators were safely behind bars. During the state of emergency of 1971, the security forces murdered and tortured thousands of victims."³⁶

The JVP was consequently banned in 1971. Six years later in 1977 when the JVP was legalised, it emerged as a moderate leftist party, claiming that it would function only within a democratic parliamentary process. In 1983, it was proscribed again on charges of being involved in anti-Tamil riots. The JVP began preparing for an armed struggle from

34. Ibid.

35. Anandalingam and Abraham, n.32, p.41.

36. Amnesty International Report 1971 (London, 1972), p. 183.

at least 1983,³⁷ when they were proscribed by the UNP government. In 1982 the JVP contested the presidential election. The identity of its election and polling agents throughout the country was officially recorded. The intelligence services of the government took advantage of this information to monitor the JVP membership when it went underground.³⁸ It was not until late 1986 that the first murder by the security forces of a known JVP member took place.³⁹ By 1987, it had again grown into a full insurgent movement threatening the Sri Lankan state. The methods adopted during this period were different - it was a full-fledged guerrilla warfare.

HUMAN RIGHTS VIOLATIONS BY THE JVP, II PHASE.

The violence and visibility of the Tamil-Sinhala war since the early 1980's, had made most people inattentive to continued and evolving cleavages among the Sinhalese themselves. Suddenly, in mid-1987, the Sinhalese were killing each other and few understood why.

Put down militarily in 1971, the JVP had been reintegrated into mainstream Sinhalese society. The hard core

37. Marino, n.33, p. 5.

38. Ibid.

39. A lecturer at Ruhunu University in the Deep South was murdered.

leadership had remained underground, organizing a new generation of unemployed youth, and in retrospect, were presumably waiting for another chance to overthrow the government.

In order to understand why thousands of youths, particularly the educated unemployed rural youth supported the JVP, it is necessary to probe into the genuine grievances and the problems faced by the Sri Lankan youth. Those who were attracted to the JVP policy happened to be primarily educated unemployed rural youth.

There were one million two hundred thousand unemployed persons in Sri Lanka in the late 1980's. There were another half a million who were casually or temporarily under-employed. This includes forty nine percent of Sri Lanka's youth population which is six percent of Sri Lanka's total workforce. The JVP vehemently criticized the government as being responsible for the unemployment situation.

Seventy six percent of Sri Lanka's youth population lives in the rural areas. At rural level, virtually no English is taught. This closes a large percentage of avenues securing a job.⁴⁰

40. Rohan Gunaratna, Sri Lanka-A Lost Revolution, The Inside Story of the JVP. (Colombo, 1990), p.63.

In the 1971 insurrection, the JVP sought to "save the country" from Western imperialism and "Indian expansionist designs". In 1987-1989, they again sought to save the country from an trinity of American imperialism, Indian imperialism and Tamil expansionism.⁴¹

In both insurrections, they had put forward a bogey of "state repression" to justify to their own cadres the need to resort to violence. The JVP leadership insisted almost pedantically that it was the enemy who had forced them to resort to violence. After an attack by the DJV (JVP's military wing), on the National Artillery Force Training Centre 1. November 1988, following press release was issued:

"The motives of the operation are as follows:.....To ensure liberation of the motherland, defeating all forces detrimental to her independence, the freedom of her people....., safeguard, encourage and strengthen the struggle of the Proletarian, Youth and other Patriotic forces who are sacrificing their lives for the independence and sovereignty of our motherland. Although we did not intend to harm any of the security forces personnel we were forced to do so because they violated our orders. We are pleased to announce that the above operation was a total success. Furthermore we inform all citizens with great patriotism that the weapons and ammunition taken into our possession in this operation will be used for the

41. C.A. Chandraprema, Sri Lanka, The Years of Terror, The JVP insurrection 1987-89, (Colombo, 1991), p.118.

liberation of the motherland and the protection of the independence and rights of her people."⁴²

There is an element of pacifism in the Sinhala mind which seeks to conform to the peaceful and non-aggressive ethics of Buddhism. But violence in self-defence has always been considered justifiable. For instance, Sinhala tradition condones the use of any kind of violence to protect Buddhism and the Sinhala nation from danger.⁴³ Popular Buddhism has a strong emphasis on the punishing of wrongdoers. The JVP also believed in administering summary "punishments" on its opponents. Hundreds of civilians suspected of having passed information on JVP activities to the security forces, were brutally killed.⁴⁴

In addition to being ultra-leftist, the JVP is also ultra-nationalistic, seizing on anti-Tamil feelings and anti-Indian sentiments to build support.

After the landing of the Indian Peace Keeping Force (IPKF) in 1987, the JVP was able to capitalize on the strong anti-Indian sentiments among the Sinhalese to build support

42. Press Release 01.11.1988 from the "Joint Commanding Headquarters of the Patriotic Peoples Armed Troops", in Rohan Gunaratna, n. 40, p. 231.

43. Chandraprema, n. 41, p. 118.

44. Ibid.

among the people. The concession to India in 1987, proved to be too much for the great number of Sinhalese Buddhists who were already unhappy about the provincial council reform.⁴⁵ In JVP's view, the government who had been yielding to Indian demands for power internally, was now also yielding to Indian demands for power externally. The MSV-SLFP-JVP led masses came then into the roads. It was then that the killings and counter-killings began to take place.

As long as they had a common militant enemy to fight, the Sinhalese were, or appeared to be united in communal and military terms, despite their traditional bitter political divisions. But as soon as the Indo-Sri Lankan Accord of 1987 gave hope for a possible peace settlement with the Tamils, the Sinhalese turned their aggressiveness upon themselves.

In the first two years after the signing of the Accords, more than 7,500 Sinhalese were killed. Until the attacks on the JVP by the army and the "death squads", most of those who had died were innocent people whom the JVP wanted to intermedicate. They were frequently local officials or national politicians who supported the Accords, or party workers who supported the SLFP in the election cam-

45. The government proposed in mid 1986 to grant some autonomy to the Tamils through Provincial Councils.

paign. They were also ordinary people trying to vote during the election or trying to go to work during one of the work stoppages ordered by the JVP.⁴⁶

Most of the JVP killings seem to have been motivated by an instinct of national and cultural preservation and pride, defence of the motherland and Sinhala Buddhism under siege, rather than by any clear revolutionary intent. It is thus that killings of those Sinhalese who were perceived as facilitators of Tamil separatism and the military intervention by India, are thus explained as killings to punish "country traitors".⁴⁷

JVP/DJV

Concerning the direct responsibility of the JVP for the assassinations in the South it would appear that JVP and Deshapremi Janata Vyaparaya (DJV, Patriotic People's Movement) overlap to a very great extent.⁴⁸ The DJV has been a clandestine paramilitary organisation, in existence since mid-1987, set to oppose by force Tamil separatism and to

46. Mashall R. Singer, "New Realities in Sri Lankan Politics", Asian Survey (Berkeley, California), vol. XXX, no.4, April 1990. p. 414.

47. Marino, n.33, p. 5.

48. Although JVP often have denied this, and President Premadasa put it in doubt.

resist and push back the military and political intervention of India.

The old JVP quest for revolution found in the Indo-Lankan Accord, a new opportunity-nationalist rather than social-to subvert the government. The nationalistic DJV, a direct reaction against the Indo-Lankan Accord, found in the JVP a useful ally. In many cases, the JVP leadership appears to have made the choice of targets for assassination, and in most of the cases, DJV personnel appear to have been the executer.⁴⁹

The JVP/DJV to a large extent directed their attacks to non-military and non-state-persons and groups. They have been stabbing, hacking, shooting, buying and lamp posting many civilians totally outside the armed and para military forces and the government machinery. When the latter proved resilient, the JVP/DJV moved to attack their relatives. In order to compel civilian obedience, they flung bombs at buses and shops. Terroristic sadism had reached the point of murdering funeral assistants and mourners of its victims.⁵⁰

49. Marino, n.33, p. 8.

50. Marino, n.33, p.5.

If the JVP/DJV had limited their attacks to military and other state targets, then their professed disassociation from terrorism might have been understandable, and their human rights discourse might have gained some credibility. Amnesty International⁵¹ reported that JVP/DJV were widely believed to be responsible for thousands of murders. The victims included people perceived as "traitors", prisoners, security forces personal and their families, senior public officers, broadcasters and left-wing opposition activists, including some Buddhist monks. Through a sustained campaign of enforced work stoppages, burning down of government installations etc., the JVP was seeking to bring the administration of the country to a halt. In an attempt to prevent, according to government figures, the JVP murdered 6.517 people between late 1987 and March 1990⁵²

When the Sri Lankan government army appeared to be making concessions to the Tamils in the North and the East, many Sinhalese would react in the South. The boiling point came when the government proposed to grant some autonomy to the Tamils through Provincial Councils. The JVP sensed the

51. Amnesty International Report 1990. (London, 1990), p. 210.

52. R. Cheran, W. Keller, M. Mertsch, R. Rajanayagam: A Decade of Conflict, Sri Lanka 1983-93, Sud Asian Buro (Amsterdam, 1993), p.11.

negative reaction from the Buddhists and shifted its political priorities. Now the national question and the unity of the country took precedence over the social question and class struggle.

The war between the state and a political party resulted in the death of not only those fighting each other, but also the extreme poor. Many of them were abducted on false information given to the security forces and they were later found killed. Many of those who joined the JVP were prompted by certain socio-economic and political factors. They firmly believed that the JVP offered them and the country a better future.

After protracted efforts, In November 1989 and the following months, government forces succeeded in taking into custody many of the leaders of the JVP, including its leader Rohana Wijeweera and its General Secretary Upatissa Gamanyake, most of whom were summarily executed without trial. JVP was then ultimately quelled and peace returned to the South.

The violations of civil and political rights and the communal unrest are rooted in a social situation in which economic, social and cultural rights have been denied. Major factors behind the violence is due to economic injustice and the lack of equal opportunity.

In spite of poverty alleviation programmes, there has been no improvement in the poverty situation in two decades.⁵³ The poorest third of the nation can be described as malnourished.⁵⁴ The rural sector does not provide sufficient opportunities for income-generating work. Income is therefore irregular and variable. Yet the population is relatively well educated, healthy and youthful. It suffers from chronic underemployment and it is not possible to utilize the productive potential of the considerable human and natural resources. Unemployment is particularly prevalent among youth which is a significant factor behind youth unrest. The economic and social rights contained in the Constitution, function as directive principles, not as fundamental rights. The only exception is Article 14 of the Constitution which guarantees the freedom to engage in any profession.

The primacy of the ethnic conflict and the JVP insurgency have put all other human rights issues into the background. Whereas in many Asian countries innovative action has been taken to combat social and economic injustice, the situation in Sri Lanka is quite different.

53. The Canadian Human Rights Mission to Sri Lanka, Report, (Toronto, January, 1992), p.26.

54. Ibid.

In the urban areas the concept of rights has been ingrained for a long time because Sri Lanka has had a vibrant working class movement. The strength of these rights, whether in courts of law or in agitation, has been greatly dependent on the success of Marxist and left-wing political parties.

The majority of NGO's operating in Sri Lanka operate in the rural sector. Since 1956, the spread of education and mass communication to rural areas has created high expectations and a better awareness of rights in these areas.

Although Sri Lanka has a very low per capita income, which places it among the 36 poorest developing nations in the world, it has a high level of literacy and education, low infant mortality rates and a relatively high average life expectancy.

Sri Lanka has, however, major problems of poverty and unemployment, affecting in particular the farmers in the South. The implications of the structural adjustment programmes of the World Bank and the "open market" economic policies of the government may have led to increased disparities between the rich and the poor. This would continue to rise the potential for endemic conflict in Sri Lankan Society.

CHAPTER IV

**HUMAN RIGHTS AND STATE
RESPONSE**

The social, economic and political tensions of various kinds in South Asia, have manifested themselves in violent public agitations, and official counter violence has frequently been used to curb these agitations. These situations usually implies massive violations of basic human rights.

One observer of the situation in Sri Lanka¹, has classified the violence as three different types. Each type of violence has a different underlying basis. The first; "Communal violence" occurs when the individuals of one ethnic groups attack members of another ethnic groups. In Sri Lanka there have been four major outbreaks of communal violence between the Sinhalese and the Tamils, which occurred in 1958, 1977, 1981 and 1983. The widespread acts of communal violence have for the most part been attacks against the Tamil people and their property. Much of it appeared to have been sparked of by the terrorist activities in the North against police and army personnel.

1. "Human Rights Crisis Sri Lanka: Its Background and Possible Solutions". Denver Journal of International Law and Policy. (Denver), vol.15, no. 2,3, Winter 1987, pp.366-367.

The second type of violence can be labeled political violence or "terrorism". This form of violence perpetrated by Tamil youths, began substantially in 1977.²

The third recognizable form of violence in Sri Lanka is "state terrorism", or violence by police and security forces. This type of violence has been a recurring theme since 1974, but has grown in intensity along with the increase in political violence. State terrorism is especially reprehensible, as many aspects of it are strictly forbidden under the international law of human rights. Terrorism in Sri Lanka has been recognizable on two levels: that perpetrated by the Tamil groups and the JVP/DJV, as well as the policies promulgated and sanctioned by the government designed primarily to act as "counterterrorism". These two levels are recognizable in that their perpetrators are employing different means available to either group, as well as in the different ends sought by either groups. These have led to the violation of basic human rights in Sri Lanka.

2. Another significant element of violence which is an offshoot of this political violence is the result of inter group rivalry.

PUBLIC EMERGENCY

In the period 1983 onwards, the government has been engaged in emergency action. The state governance in time of peace is quite different from the governance when the state is directly under threat of violent uprising against the state. Fundamental rights have always been the first to suffer in such a context.

Two laws regulate the national security of Sri Lanka: The Public Security Ordinance (PSO) No.25 of 1947 and The Prevention of Terrorism Act (PTA) No.48 of 1979. The government of Sri Lanka passed the Prevention of Terrorism Act to meet the crisis of violence by gangs and youth in the North. The Act gives broad powers of investigation to the police, detention of up to 48 hours before being produced in Court, refusal of bail, no jury.

The PTA, initially in force for one year at the time, became through the 1982 Amendment ³ a permanent law. Not depending on the existence of a State Emergency, a broad range of activities can be defined, 'terrorist' or, 'subversive'

3. 6th Amendment of the 1978 Constitution of Sri Lanka, Department of Government Printing (Colombo, 1982).

and made punishable under the PTA. This applies even to non violent advocacy of secession.⁴

The enactment of the PTA was initially supported by political forces of the South as the prime purpose of the PTA was to halt the separatist Tamil militants operating in the North. In a few years it came to be used also for eradicating the militancy in the South.

The PTA enables a police officer to search without a warrant, arrest and hold a person in detention (incommunicado) for up to 18 months without being produced in courts. The courts have no power to inspect the site where he/she is held. Also covered by the PTA is the publication of any matter likely (in the opinion of the government) to be divisive between racial or religious groups.⁵

All offenses under the PTA may be tried without preliminary inquiry or an indictment before a Judge of the High Court, sitting alone without a jury. This is contrary to the Evidence Ordinance dating back to the British colonial period, under which no confession made in police custody was

4. Bendigt Olsen, "Sri Lanka", in Human Rights in Developing Countries Yearbook 1994 (Oslo, 1994), p.358.

5. Brian Senewiratne, Human Rights Violations in Sri Lanka. (Brisbane, 1984), p.19.

admissible in evidence unless it was made in the presence of a Magistrate.⁶

The Public Security Ordinance (PSO) has been amended several times, and the PSO today entitles the executive to issue Emergency Regulations with the force of laws, bypassing the normal legislative process through the Parliament.

The extensive and wide powers vested in the President prohibit any court of law to call into question, the existence or imminence of a state of public emergency. The proclamation has only to be sanctioned monthly by the Parliament, which due to the majority of the ruling party was a matter of prolonging the state of Emergency. Except for the fundamental principles of the constitution, the Emergency regulations have the effect of overriding existing laws.

Except for a six months break in 1989 and a short period during the elections in 1990, the nationwide State of Emergency has been in force since 1983. The Emergency Regulations give ample powers to search, arrest and detention to the police and security forces ⁷, thereby violating

6. Paul Sieghart, Sri Lanka: A Mounting Tragedy of Errors. (London, 1984) p.31.

7. The People's Alliance (PA) which came to power in 1994 has lifted the State of Emergency Regulations in most areas of Sri Lanka, except in the North and East.

basic human rights. The regulations cover a wide range of activities, some with only remote or no relevance to national security.

Many amendments, rules and orders related to the exercise of emergency power have also been made over the years without proper publicity or availability of relevant issues of the Gazette of the Government Publication Bureau.⁸ After repeated complaints by local human rights organizations, the Sri Lanka Representative announced in March 1993, at the 49th Session of the UN Commission on Human Rights, that a consolidated version of all current Emergency Regulations would be compiled and made public.⁹

As promised in Geneva, the government undertook a more far reaching revision which resulted in the Emergency Regulations No.1 of 1993, gazetted on 17 June, 1993. The revisions conform to a greater extent than before to international human rights standards, especially related to arrest.

8. Civil Rights Movement of Sri Lanka, The inaccessibility of Emergency Regulations. Doc E01/2/92, February 1992.

9. National statement by the Hon. Attorney-General, Tilak Marapana Leader of the Delegation of Sri Lanka of the 49th Session of the UN Commission on Human Rights, Geneva, March 11th, 1993, published in Law and Society Trust Review 16th March 1993, Volume III, Issue No.55, p.465.

However, several other provisions remained unaddressed, in particular Regulation 17, authorizing preventive detention of a person indefinitely, merely on suspicion of what he might do. The conditions of detention have not been guaranteed by any legally binding minimum rules; nor has normal law relating to inquests into death in custody been reestablished.¹⁰

GOVERNMENT FORCES

Everywhere in the world, the police and security personnel have heavy responsibilities which sometimes may result in injuries and fatalities in the course of legitimate self defence, or defence of others in the face of armed resistance to authority.

When examining the allegations of serious human rights violations by the Sri Lankan government, it is important to keep in mind the unique characteristics of state terror. The concept of state terror is a means through which a state itself copes with a perceived internal or external terrorist threat. The methods of state terror may be either legal or extralegal, but the techniques employed in the pursuit of

10. Amnesty International: Sri Lanka Recent Changes for Emergency Regulations, A1 Index ASA 37. (London, 1993), p.9.

this activity are especially illuminating concerning the possible existence of a policy of state terror against a particular group within the country's boundaries. The state has some very powerful tools at its disposal to achieve its goals. It may employ discriminating legislation, fail to provide protection against the crimes, and may order arbitrary or mass arrest.

There are various avenues available to the state which pursues the practice of terror against its inhabitants. Particular policies undertaken by the Sri Lankan government include the anti-terrorist campaign which began intensively in 1978, the Prevention of Terrorism Act of 1979, and particular emergency regulations which have given rise to numerous reports of human rights abuse by government officials.¹¹

In addition to the "state sanctioned" human rights abuses, there is also a formidable element of backlash in the Sinhalese majority population which has been largely uncontrolled in the ranks of the military and in the civilian sector.¹² The armed forces and the police in particular, have been allowed by the government to fight terrorism

11. See chapter 2 for more details about these legislations.

12. Human Rights Crisis in Sri Lanka, n.1 p.369.

outside the constitution and even outside the limits of the Prevention of Terrorism Act (PTA).¹³

This has been the policy in dealing with the Tamil militant secessionists in the North and the East since the early 1980's - from mid 1987, the same policy was followed in dealing with the Sinhala militant nationalists in the South and West of Sri Lanka.

In a newspaper interview¹⁴, President Jayawardene admitted that his government, which had ruled through emergency laws for five and a half year, had presided over what he described as a very regrettable assault on human rights, first in the North and East, and more recently against the JVP. He said that although the armed forces were under, perfect control; they had been allowed to do various things which are against human rights. "This is very regrettable, but it cannot be helped. Either we have to give in, hold up our arms and say: Come and run the country, or we have to run it".

13. Eduardo Marino, Political Killings in the South of Sri Lanka, International Alert (London, 1987), p.5.

14. The Times (London), 17 December, 1988.

THE ARMY

The only function performed by the Sri Lankan army since independence has been to give aid to the civil power to maintain internal security in times of trouble.

Though armies are used for that purpose in many parts of the world, it is a function that they are unqualified to perform. While policemen are trained to protect the State's citizens in peacetime, the basic training of all armed forces is to kill the State's enemies in wartime, and the Sri Lankan army is no exception.¹⁵

In a war, each side seeks to pursue the patriotic aim of defending its national territory and heritage against a foreign aggressor, sparing no degree of force or violence in the defence of those values. To transfer those objectives to a conflict between citizens of a single country leads to escalate such a conflict into civil war in the true sense, that is, the division of the nation into two groups, so hostile, that each treats the other as a foreign aggressor. An army that has no wars to fight, no foreign enemy to oppose, is apt to fret when confined to barracks.¹⁶

15. Sieghart, N.6, p. 69.

16. Ibid., p.70.

Prior to the JVP insurrection of 1971, the Sri Lankan army had been completely ceremonial. Its soldiers marched in parades on national holidays, but they had never been called upon to fight, and they were not trained for conflict. The 1971 insurrection was put down by the army. Since then, and particularly since the Tamil insurgency from 1983 to 1987, the Sri Lankan army has been transformed into a much more professional, disciplined fighting force. It has also increased in size by approximately 250% since 1983. The expansion of the army in the 1980's has seen a change in its institutional psychology. The Sri Lankan army has developed into an institution of great importance in Sri Lanka.

The top officers of the Sri Lankan army are presumed by the government to be completely loyal. It is the company grade officers who are thought to be both less disciplined and less loyal to the government.¹⁷

While they were in the field actually fighting the Tamil militants, they were the ones who felt the government had put unnecessary restraints on them, regarding the amount of force they were allowed to use, according to

17. Marshall R. Singer, "Tamil Sinhalese Ethnic Conflict: Alternative Solutions" Asian Survey (Berkeley, California), vol. 32, no. 8, August. 1992, p. 418.

Marshall Singer¹⁸, The official government policy has been to restrain the troops from using excessive force against civilian population. This was however, frequently not done in practice, and the government never reprimanded overtly violent or zealous forces.

Over the years, the armed forces have been given the freedom to interfere with anything from the transport of essential goods and medicines. Ten years of armed conflict has led to an organic growth of the armed forces with opportunities for rapid promotion. While most analysts agree that the military has never dictated politics, it is well known that the officers use the, 'demoralizing' argument against the Government, to claim that punishment of army personnel for human rights abuses would decrease loyalty and skills.

It is also believed widely that the government had unauthorised killer gangs to counter insurgency. Most of these groups belongs to the elite forces like the Special Task Force (STF), who operate in civilian clothes wearing masks. Green Tigers, Black Cats, Yellow Scorpions and People's Revolutionary Red Army (PRRA) emerged as a counter to the DJV's own death squads and have claimed responsibility

18. Ibid.

for the death of dozen of suspected JVP/DJV members. Their real identity is unknown, but there is little doubt that they have the state's approval, though the government denies rumors that they consist of members of some security units operating under cover.¹⁹

THE POLICE

The Sri Lankan police has long been under-paid, under-trained and under-strength. It is clear that the police for many years has lacked the skills which are essential to the performance of its functions. It seems to take the police an unreasonably long time to complete their enquiries, even into crimes which must have involved a large number of people, and where the evidence is to be found in one place.

Instead of understanding that mistakes and excesses by the police make the accomplishment of the government's mission more difficult, the tendency on the part of the government and parliamentary leadership has been to excuse and even justify mistake by the policy.²⁰ Statement from a senior member of the government, early in 1989:

19. Rohan Gunarasekera, "Sri Lanka's Security Nightmare", International Defence Review (Geneva), vol. 23, January 1990, p. 42, in Ajay K. Behra, A Study of its Tactics, Strategy and Ideology, M. Phil Dissertation, Jawaharlal Nehru University (New Delhi, 1990).

20. Marino, n.13, p.10.

"It has to be recognized that the police and the armed forces have been the first targets of the insurgents, and therefore we cannot but expect a violent reaction from them. It is also inevitable that at times of civil strife, the innocent are likely to suffer along with the guilty. Arrests are likely to be made on suspicion, which may turn out to be unfounded or based on false information given by someone bearing a personal grudge".²¹

Some of the main provisions of the Prevention of Terrorism Act (PTA) and other emergency regulations are - in the light of human rights organisations - "bad" laws which the police are instructed by the government and parliament to enforce. It may not legalise torture and arbitrary killing, yet it does not provide protection from torture and arbitrary killing.

Experience and evidence show that the PTA abets gross abuse of police power by deliberately leaving room for police methods which Sri Lankan constitutional law and international law explicitly prohibit.

GOONDAS

There is one more political and social, albeit wholly unofficial force responsible for human rights violations in Sri Lanka, and that is the so called "goondas". These are

21. Ibid.

essentially, organised gangs of hooligans available for hire by anyone whom it happens to ferment trouble in the streets.²²

It is freely admitted that every major political party has its own rented or rentable goonda contingent: there have been SLFP goondas, UNP goondas, and goondas serving other political interests. That they exist is not disputed: what is less clear is the extent of the damage they can inflict, and how it comes about that the groups hiring them, have seemed to enjoy a high degree of immunity from prosecution.

The communal violence which began in Colombo 24, July 1983 bears every appearance of having been started by hired groups of goondas, and that led to much loss of life, suffering and destruction of property. Despite long-drawn police enquiries, no one has yet been able to establish the hand behind the initial episode.

INDIAN PEACE KEEPING FORCE

It has come quite clear that after 1983, the Indian central government, Indian intelligence (The Research Analysis Wing, RAW) and the Tamil militant groups, were all

22. Senewiratne, n.5, p. 24.

supporting one or another of the Tamil militant groups with arms,²³

The militant groups, including the LTTE, were being supported more actively by India, since the intensification of the conflict and the breakdown of the mediation process towards late 1986. Besides the weapons, India already had a commitment to assist the militants through other material means. The Tamil Nadu Chief Minister M.G. Ramachandran gave an open grant of Rs. 4 crores (40 million rupees) to the two dominant militant groups, the LTTE and the EROS.²⁴ Why India decided to aid the militants in 1983, has never been completely clear. Part of the answer may lie in the fear of alienating Tamil Nadu state, at the same time India might have believed that the Sri Lankan government would make no concessions to the Tamil cause unless it was forced to do so. India's abiding interest in the internal developments in Sri Lanka was underlined by the presence of a sizable number of Indian citizens and "stateless" Tamil residents in Sri Lanka.²⁵

23. Singer, n.17, p.417.

24. S.D. Muni, Pangs of Proximity, India and Sri Lanka's Ethnic Crisis (New Delhi, Oslo, 1993), p.91.

25. Nancy Jetly, "India and Domestic Turmoil in South Asia", in Urmila Phadnis, Kalim Bahadur, S. D. Muni, eds., Domestic Conflicts in South Asia, (New Delhi, 1986), p.76.

Probably India's interest in supporting these groups varied as the groups themselves increasingly become implicated in drug smuggling charges in India, and as the LTTE began the slaughter of hundreds of Tamils who were part of other groups which the Tigers were struggling for power. When Rajiv Gandhi tried to get a peaceful settlement without success, and when it appeared in 1987 that the Sri Lankan army might destroy the LTTE, and thousands of Tamil civilians in the process, India intervened.

Jayawardene agreed to sign the Indo-Sri Lankan Accords of July 1987. When the terms of the Accords became known, there was shock among the Sinhalese. Most found the merger of the North and East completely unacceptable, and in addition the president had agreed to Indian troops coming to Sri Lanka. On the Sinhalese side, riots erupted in Colombo and elsewhere in the South. Sinhalese by thousands protested against "giving away too much to the Tamils."

Soon after the Indo-Lankan Accord was signed between Jayawardene and Rajiv Gandhi on July 29, 1987, around 6,000 Indian soldiers and paramilitary forces began arriving on the island to guard the cease-fire that came into effect within 48 hours of the signing of the agreement.

LTTE claimed that it had not been asked to be a party to the treaty and felt it was being imposed on them by India

without consultation. The other groups all more or less agreed to disarm, after receiving guarantees from the Indians that they would protect them from the LTTE. The LTTE refused to disarm, and continued to launch attacks against Sinhalese in the East.

When the Indian troops captured some high ranking LTTE lieutenants, who were smuggling arms into Sri Lanka, and tried to hand them over to the Sri Lankans, the LTTE turned on the Indian Army. The Indians then started "going after" the LTTE. The initial 10.000 IPKF soldiers quickly had to be augmented by another 40.000; still that was not enough.²⁶

It took the Indian Army over two months to take the Jaffna peninsula. Somehow the Tigers had managed to escape to the jungle to continue their fight as a guerrilla force. By August 1989 it was alleged that the IPKF itself had taken casualties of approximately 1000 dead and 4000 wounded.²⁷

The IPKF made its own contribution to continuing instability by supporting a Tamil fraction, the Eelam people's Revolutionary Liberation front (EPRLF) against the

26. Although 50.000 or so is the official figure used, LTTE sources claimed it was 120.000. A German scholar claims it was 70.000. See Dagmar Hellman Rajanayagam "The Tamil Militants: Before the Accord and After", Pacific Affairs (Manila), vol.61,no.4, (Winter 1988-89) p.603-19.

27. Singer, n.17, p. 422.

LTTE.²⁸ In late 1987 there were increasing allegations that members of the Indian Peace Keeping Force deployed in the North and East, were responsible for rape and other acts of brutality against Tamil civilians, including extra judicial killings.²⁹ Amnesty International reports³⁰ that "In the North and East hundreds of people are detained by the IPKF during 1988, and screened for links with the LTTE. Many prisoners were kept incommunicado for long periods and there were according to Amnesty International reports of torture inflicted by the IPKF."³¹

The largely Hindi-speaking IPKF, along with the Sinhalese speaking security forces had communication problems with residents in Sri Lanka's North and East, and this fact is supposed to have been a contributing factor to the allegedly human rights abuses committed by the IPKF.

The Indian Government announced that "the charges of rape and brutality made against the IPKF are fabricated and

28. Asia Watch, Human Rights Accountability in Sri Lanka (New York, 1992), p.11

29. Amnesty International Report 1988, (London, 1988), p.181.

30. Amnesty International Report 1989. (London, 1989), p.200.

31. Ibid.

unfair", and said that " most of these charges have been found to be baseless".³²

A controversy developed during the final phase of IPKF operations regarding the rearming of 'non - LTTE militant groups', and the raising of a new force which was called the Tamil National Army. The IPKF and the Indian official sources have denied they were supporting the Tamil National Army³³

But it is believed that this rearming of other militant groups was resorted to for the post IPKF withdrawal situation, where the LTTE, not having abandoned arms and still desiring to dominate the Tamil scene could become a threat to other militant groups, particularly the elected Provincial Council headed by the EPRLF. Once the IPKF realised that other militants armed in the name of Tamil National Army would not be able to withstand an LTTE onslaught and would surrender arms to the LTTE, these militant groups were again disarmed.³⁴

32. Ibid.

33. S.D. Muni, n.24, p.150.

34. Ibid.

CHAPTER V

HUMAN RIGHTS VIOLATIONS :
INTERNAL AND EXTERNAL
RESPONSE

Despite the high visibility and the play of forces which have kept Sri Lanka on the international agenda for the last decade, there has been a lack of local mobilisation. The classical paradigm of human rights action involves individuals or groups challenging the action of the state, using law and legal rights as the mechanism for articulating, mobilizing and seeking redress for violated rights. In this paradigm there are always two parties, the state and the aggrieved, where the aggrieved is the clear victim of state action.¹ In the Sri Lankan situation, there have often been more than two parties and some of the issues cannot be defined by existing norms.

When the international campaign on civil and political rights of the Tamil people was at its height, with allegations of torture, extra-judicial killings and the need for a political solution, many of the local human rights groups were split on how to articulate their anger.

The problem was that for the majority of Sri Lankans, except for some who belonged to the Tamil minority, separa-

1. Radhika Coomaraswamy, "The Civil Liberties and Human rights Perspective" in KM De Silva, Sri Lanka Problems of Governance, (New Delhi, 1993), p. 159.

tism, and the right to self determination were seen a "bad cause". The state was, therefore, supporting what in their impression was the long term benefit of the country; "the right cause"² When perceptions exist that the state is using force with regard to the "right case", then human rights work within the country becomes very difficult. As a result there has been relatively silent when the state has build up its arsenal, promulgated emergency regulations for arrest and detention, and where loopholes exist for extra judicial punishment. The belief that the end justifies the means becomes particularly acute in civil war where the stakes are extremely high. This was a real problem in Sri Lanka, especially during the period 1983-1987. There was a strong, dichotomy of perception between the international human rights community and the vast majority of Sinhalese even Sinhalese NGO's. With international criticism of Tamil militant groups beginning to get publicity in the news, the same dichotomy of perception is after-wards felt between the international community and some Tamil NGO's. The primacy of ethnic conflict has therefore disturbed human rights work, even in the area of civil and political rights.

2. Ibid, p. 161.

An added dimension to the problem has been the use of force by non-state actors such as Tamil militant groups and the JVP. When civil society is polarized like this, then the human rights work becomes very difficult.

Human rights activity was at its highest during the period 1983-1987 because the war was primarily fought in the north and the east, and civil society outside these regions still had some autonomy.

Some of the Sri Lankan NGO's have played a valuable role in defending human rights. Non-governmental human rights organizations such as the, 'Civil Rights Movement' (CMR), the 'Centre for Society and Religion' and the 'Movement for Inter Racial Justice and Equality' have worked persistently in monitoring human rights. The latter organization as well as 'Lawyers for Human Rights and Development', give legal assistance to victims of Human Rights abuses. Human Rights education is extended to police and army personnel by the 'Law and Society Trust'.

According to University Teachers for Human Rights, there has been a tendency for the activities in the field of human rights to concentrate primarily on meeting and talking to the international lobby "The intensive activities of various NGO's end up most of the time with having meetings

and conferences. It is also slowly and steadily absorbing individuals who are involved in these activities into continuous involvement in attending conferences, writing reports at a conceptual level and writing project proposals with little relevance and meaning to the concrete reality".³

External Response : United Nations and International Organisations.

Recent radical changes in the international environment, especially the demise of communist regimes in Europe, have given a boost to the worldwide movement for universal observance of and respect for human rights. With the disintegration of the Soviet Union, the only super power United States, now seeks the establishment of a "New World Order" laying specific stress on promotion of human rights, democratic values and free market. They also constitute the declared yardstick - for foreign aid and friendship.

With regard to violation of civil and political rights since 1981, Sri Lanka's record has been dismal and has attracted severe criticism in various international fora.

3. University Teacher for Human Rights (Jaffna) Report No 9 The Trapped People among Peace Makers and War Mon-
gers. (Jaffna, 1992), p. 5.

These culminated in a resolution adopted in 1987 at the UN Resolution of the Sub-Commission on the Elimination of Discrimination against Minorities. For the first time, Sri Lanka became the subject of a specific resolution sponsored by Argentina Canada and Norway during the 43rd session of the Human Rights Commissions held in February, March 1987.

The resolution reads as follows.

"Calls upon all parties and groups to respect fully the universally accepted rules of humanitarian law, calls upon all parties and groups to renounce the use of force and acts of violence and to pursue a negotiated political solution based on principles of respect for human rights and fundamental freedoms. Invites the Government of Sri Lanka to intensify its cooperation with the International Committee of the Red Cross to fulfill its functions of protection of humanitarian standards, including the provision of assistance and protection to victims of all affected parties and expresses the hope that the Government of Sri Lanka will continue to provide information to the Commission on Human Rights on this question.⁴

The consensus resolution was passed unanimously by 43 member states. Sri Lanka thereby suffered what was termed a major diplomatic setback with the passing of this resolu-

4. Hindu (Madras), 14 March, 1987.

tion. The resolution was the first of its kind to be passed by the UN Commission on Human Rights on Sri Lanka. Sri Lanka was in 1987 singled out by the UN as one of the countries of "special concern" over the issue of torture of prisoners in jail. The UN Commissions on human rights in all its reports since the mid-eighties have called upon the government to ensure full protection of Human Rights, and called upon the parties to respect fully the universally accepted rules of humanitarian law.⁵

In March 1991 Sri Lanka was again flayed on human rights abuses of a meeting of the Human Rights commission in Geneva. Sri Lanka's human rights record, particularly with regard to disappearances, extra judicial killings and torture came under critical light⁶ The Sri lankan government had sent its key adviser on international affairs, Mr. Bradman Weerakon to present the government's points and to lobby for a more sympathetic understanding of the governments predicament. Sri Lanka was at this time able to avoid a resolution by requesting the commission to send its

5. Forty-Ninth Session of the United Nations Commission on Human Rights; Human Rights Situation in Sri Lanka, (Geneva, February-March 1993), p.14.

6. (Indian Express) (Delhi) 18 March, 1991.

Working Group on Disappearances and the Working Groups on Extra Judicial Killings to visit Sri Lanka for the purpose of undertaking an on-the-spot assessment of the human rights situation.⁷

Amnesty International and other international organisations have also condemned Sri Lanka's human rights record. The following is a quotation from an Amnesty International report : "Grave human rights violations have been committed in Sri Lanka for several years in a a context of government measures to suppress armed opposition movements. Disappearances and extra judicial executions have been reported with increasing frequency since mid - 1983."⁸

Amnesty International has continuously since 1983 accused the Sri Lanka security forces of human rights violations. Amnesty International has criticized Sri Lanka for Human Rights abuses which have occurred in the context of the two domestic conflicts. In a Amnesty Report on Sri Lanka 1991, it was reported : "Entire families, from babies to villagers in their seventies have been arrested by the army have been killed in custody. The army, the paramili-

7. Ibid.

8. Amnesty International Report on Sri Lanka, 1990 (London, 1990), p. 10.

tary forces should be given clear instructions that no human rights abuse will be tolerated, and that those found responsible will be brought to justice.... Regardless of the atrocities committed by armed groups, it is clearly the responsibility of the government to safeguard the rights of its citizens".⁹

Apart from Amnesty International, organizations such as International Alert, International Commission of Jurists, Asia Watch and other international human rights organisations have analysed the Sri Lankan issue from the perspective of its living up to international norms of civil and political rights. In recent years, these reports which earlier used standard legal arguments have also attempted to politically understand the Sri Lanka context finding the classical human rights paradigm slightly constricting.

All these reports pointed to the fact that the right to life was the fundamental right that was primarily affected in the last decade. For many years, since 1984, it has been generally believed in Sri Lanka that if one were young, male and against the establishment, one ran a high risk of being subject to arbitrary arrest and detention, and even to extra

9. Tribune (Chandigarh), 11 September, 1991.

judicial punishment. This was particularly true for Tamil youth during the period 1981-1987, and also for young in the south during the JVP crackdown of 1988/89 and again for Tamil youth since 1990.

Foreign Aid Donors

The end of the East-West conflict will not only influence North-South relations and financial transfers but also have an impact on the character of development cooperation, which has become more political than in the past.

Two strong trends towards a human rights oriented development cooperation can be observed : After more than ten years of structural adjustment efforts there is a growing consensus that economic reforms cannot succeed without political reforms based on the respect for Human Rights.¹⁰

There are a number of critical issues connected with a Human Rights oriented North-South cooperation. There is the question of the legitimacy of the interference in the internal political affairs of sovereign states. Another critical issue is the measurement of human rights abuses and the development of indicators to make the human rights perform-

10. Peter P Waller, "After East-West Detente : Towards a Human Rights Orientation in North-South Cooperation, Development, (Copenhagen), vol. 15, no. 1, 1992, p. 27.

ances of countries comparable. There is also the question of the consequences of human rights oriented cooperation for the North. That is related to the extent of non-developmental objectives such as commercial or strategic interests in North-South cooperation.¹¹

Whereas in the past the principle of non-interference in the internal political affairs was upheld as one of the great taboos in development cooperation, now, after the revolutions in Eastern Europe western politicians are openly demanding a political conditionality. They are increasingly demanding to connect development cooperation with at least the observance of basic human rights.

Sri Lanka has received economic assistance from several Western countries.¹² In 1992, Canada had taken the Sri Lankan Government to task for its human rights abuses, threatening to withhold economic aid until Sri Lanka improved its human rights record. The Scandinavian countries and the US had issued similar warnings.¹³

11. Ibid.

12. IN 1991 the total and transfer, bi and multilateral was 894,5 million USD, Source : OECD, Geographical Distribution of Financial Flows for Developing Countries 1988/1991, p. 121.

13. The Statesman (New Delhi), 4 February, 1992 4/2, 192.

The US has also been very active on this front. It has targeted Sri Lanka with the use of its "Aid-cum-Human Rights" diplomatic weapon. Of the South Asian Seven, Sri Lanka has been singled out as the most tempting target for Washington's policy of linking human rights conditionality to foreign aid.

In the 1980's Sri Lanka had been the highest per capita recipient of US aid in South Asia. It was only recently that Japan exceeded the US on economic assistance to Sri Lanka.

The US Ambassador-designate to Sri Lanka and Maldives Ms Teresita C. Schaffer said at a confirmation hearing at the Senate Foreign Relations Committee 21st May, 1992: "Sri Lanka has a long way to go on human rights, though there is some progress. We seek regional peace and stability. We stand for vigorous protection of human rights and will press all concerned to adhere to international standards in this area. Regarding allegations of human rights violations by the army in dealing with insurgency, the situation in Sri Lanka is a very troublesome. This has been a major item on the agenda between USA and Sri Lanka."¹⁴

14. The Statesman (New Delhi) 23 May, 1992.

Asia Watch, an international human rights group, urged in 1992, the Bush administration to put pressure on Sri Lanka, so that it fully implemented human rights reforms.¹⁵

Asia Watch said that the US should encourage Japan and other major aid donors to Sri Lanka to take a similar approach.¹⁶

At the Aid Consortium meeting in June, 1993, the donors commended the efforts made by the Sri Lanka government in monitoring human rights. While acknowledging the substantial reduction in the number of 'disappearances', concern continued to be expressed with regard to the general human rights situation in the country.

Government Stand

Since the end of 1990, after having renounced international monitoring of human rights for several years, the Government has manifested an important change of attitude towards international as well as national demands for investigation of alleged human rights violations. This came in response to criticism and pressure from the donor community,

15. News Time (Hydrabad), 11 February, 1992.

16. Ibid.

which after the outbreak of the second Eelam war in June 1990, reported gross human rights violations by government forces, as well as by the LTTE, and called for linking government accountability with foreign aid.

Upto 1990, the Sri Lankan government has mostly denied human rights violations by government forces. For instance, when the international human rights organisation Asia Watch in 1990 blamed both the army and the LTTE for severe human rights violations, the Sri Lankan embassy in Washington denied violations of human rights. The embassy official countered that Asia Watch allegations "do not seem in keeping with the facts."¹⁷ Amnesty International was also denied to send delegates to assess the human rights situation for several years. In 1986 the National Security Minister Lalith Athulathnudali tried to destroy Amnesty International's credibility at a UN symposium on human rights. He said : "If Amnesty International is to be accepted as an organisation whose approach is beyond question, it has to accept what he called the 'terrorist age' of human history". He argued that "disappearances" listed, in the AI. reports can take place for several reasons : " First,

17. Indian Express (New Delhi), 18 March, 1991.

when one joins a organisation one has to take a new name, secondly a large number of people has left Sri Lanka, and now claim to be refuges in several West European countries. Thirdly, terrorists kill each other."¹⁸

After a resolution was passed against Sri Lanka at the UN Human Rights Commission in 1987, the leader of the Sri Lankan delegation, Dr. H.W. Jayawardene made the following statement:

"I would like to refer to the genuine dilemma faced by legally constituted governments confronted with a serious outburst of terrorist violence by small groups calculated to destabilize the government and shatter its democratic structure. The established legal procedures have often demonstrated to be inadequate to meet this threat to law and order, including the protection of human rights. Responsible governments have an obligation to maintain law and order, and when the threat comes from a group which does not accept institutions established with national consensus or adopt orderly procedures for the grievances, what alternatives can such governments resort to."¹⁹

Invitations to assess the human rights situation were extended to Amnesty International which visited Sri Lanka in

18. Daily News (Colombo), 15 December, 1986.

19. News Time (Hydrabad) 15 March, 1987.

June 1991, with the objective of investigating extrajudicial executions, torture and , disappearances'. In the same year, at the invitation of the Government, the UN Working Group on Enforced or Involuntary Disappearances also visited the country. In addition to allowing international organizations to monitor the human rights situation, the Government's shift in attitude was manifested by the establishment of several national commissions and organisations with the purpose of protecting human rights. The special Task Force on Human Rights, was appointed by the President in November 1990 with the objective to advise the Government on strategies to meet and respond to international charges of Human Rights violations.

CHAPTER VI
CONCLUSION

Violations of basic human rights in Sri Lanka have to a large extent have been a direct consequence of the two domestic conflicts in the country since 1983; the Tamil military and the JVP insurgences and the government's counterviolence to curb the insurgency.

The roots of the two domestic conflicts have in both cases been a perception of deprivation of socio/economic and cultural rights. The Tamil uprising can be labelled an ethnic/secessionist domestic conflict, and derives out of a sense of deprivation among the Tamil minority. The Sinhalese politicians used their majority status to reduce Tamil representation in the legislature, disenfranchised nearly a million plantation Tamils, in 1956 made Sinhalese the only official language of the country and in 1971 the university entrance requirements for Tamils were changed to the disadvantage for Tamil students. The Sinhalese language requirements excluded many Tamils from public sector jobs. The grievances derived from this policy led the Tamil youth to form several militant groups, including the Tigers of Tamil Eelam (LTTE), and they resorted to violence to gain greater independence for Tamils.

The Tamil militant's violence was met by counterviolence from the government forces, and the conflict turned into civil war after 1983.

The rise of the Tamil militant groups can also be seen in context of the Sri Lankan government's nation building policy. After independence in 1948, Sri Lanka was faced by a situation where the structure of the society in many ways reflected the legacy of British rule. The colonial power's divide and rule policy had also to a certain extent affected Sri Lanka, and in many Sinhalese eyes the British had favoured the Tamil community. The Tamils had a high share of jobs in the bureaucracy and also in the professions. After independence the 'Sinhala' factor became important in the nation building process. This gave rise to a sense of alienation among the Tamils. As a Third World country Sri Lanka was facing the stresses of economic development, disparities in wealth and disparities between rural and urban life. These 'classical' Third World problems can be seen as the basis for the rise of the JVP.

The Tamil versus government conflict can be interpreted in the context of "fear perception". The Tamil minority perceive that their cultural identity is under threat from the political dominance of the Sinhalese majority of Sri Lanka. The Sinhalese on the other hand tend to see their cultural identity under threat, keeping in mind the large Tamil population of Tamil Nadu.

While the Tamil militants have been fighting for a separate state Eelam, the JVP insurgents aim was to overthrow the government. The JVP, insurgency can be classified as an 'anti-systemic' conflict. Similarly with the Tamil militants, the JVP cadres were frustrated youth with a feeling of having been deprived of their socio economic rights. The JVP cadres were Sinhalese youth, and most of them were educated but unemployed rural youth. The government's social welfare policy had enabled them, to achieve higher education, but due to the country's economic problems, the unemployment rate remained high. The JVP ideology was a combination of leftist ideology combined with Sinhalese nationalism. Among many Sinhalese there were a feeling that the government had given too many concessions to the Tamils, and with the entry of the Indian Peace Keeping Force in 1987, the JVP also feared what they called 'Indian imperialism'. Their activities turned increasingly militant, resulting in large scale violence.

In order to understand the rise of insurgency, some scholars have applied the theory of 'relative deprivation'. In this context it is seen that when certain improvements have been made for groups of people, their expectations will increase, and they will reach a high level of frustration when these expectations not are fulfilled, and this can give

rise to insurgency. In the case of JVP, the majority of the party's active members were the first in their families to get higher education. This led to high expectations for the future, and therefore increased frustration when they remained unemployed.

Among the Tamil militant groups the LTTE as an organisation matches the JVP in its extreme form of nationalism. Like the JVP it was formed partly because of their disillusionment with and distrust of electoral politics. There are many similarities in their actions. The LTTE set out to eliminate all opposing parties, organisations and individuals, which is also true of the JVP. It is speculated that the JVP made use of the experiences of the Tamil militants in fighting their own battle against the security forces.

The government forces have also been responsible for massive violations of human rights in the use of force to curb the militancy. In situations where insurgency is threatening the very existence of the state, the government is likely to claim that the national security interests must be given priority over the human rights of the individual. This has also been the case of the Sri Lankan government. Particular policies undertaken by the Sri Lankan government to curb militancy, include the anti-terrorist campaign which began intensively in 1978, the Prevention of Terrorism Act

of 1979, and emergency regulations which have given rise to numerous reports on human rights abuse by government officials. It has been claimed that the armed forces and the police have been allowed by the government to fight terrorism outside the constitution and even outside the limits of the Prevention of Terrorism Act (PTA). This has been the policy in dealing with the Tamil militant secessionists in the North and the East since the early 1980's, and from mid 1987 to 1989 the same policy was followed in dealing with the Sinhala militant nationalists in the South and West of Sri Lanka. The main provisions of the Prevention of Terrorism Act and other emergency regulations may not legalise torture and arbitrary killing, yet it does not provide protection from torture and arbitrary killing. Human rights organisations have claimed that the Prevention of Terrorism Act abets gross abuse of police power by leaving room for police methods which Sri Lankan constitutional law and international law explicitly prohibit.

We have seen in this study that the two domestic conflicts have resulted in a vicious cycle of retaliation. The violence in Sri Lankan civil society has been institutionalized. The insurgents have perceived that they have been deprived of their political, economic and socio-cultural Rights, and thereby taken to weapons. These militant activi-

ties have usually led to human rights violations of innocent civilians. The government has responded to the insurgency by counter violence, and thereby human rights violations. To a certain extent the militant groups and the government have been using the same methods against each other; arbitrary arrest, extra judicial killings and torture. International human rights organisations and foreign governments have criticized the Sri Lankan government for using the same methods as the terrorist organisations in the course of curbing the terrorists.

Human rights abuses committed within the framework of ethnic conflict are qualitatively different from other human rights abuses against persons in general. This is because they tend to be directed not only at individuals, but also at a collective level, singled out in terms of ethnic identification. The political struggles in Sri Lanka have not always taken place in the terms defined by human rights discourse, namely those of citizen versus the state. Both citizens and the state have been included in the ethnic communities. There has also been intra-group rivalry and human rights violations among the militant groups.

In mass based communal conflict, especially where the security forces are themselves affected by communal loyalties, there may not be any force capable of preventing human rights violations.

In Sri Lanka there has been a clear dichotomy between the formal commitment to protect human rights, and the actual commitment. After more than a decade dominated by insurgency, it has left the civil society brutalized, and thereby prevented effective initiatives to protect human rights.

One important factor behind the failure of protection of human rights in Sri Lanka has been the functioning of the judiciary. On paper Sri Lanka has a relatively sophisticated network for human rights protection, including a Bill of Rights, a Supreme Court, Commissions and Conciliation boards. Sri Lanka is also a signatory to the International Covenant on Civil and Political Rights and to the International Covenant on Economic, Social and Cultural Rights. But Sri Lanka has a wholly dualist legal system, in which international law has no domestic effect unless the Legislative expressively "incorporates" it into domestic law. The legal process in Sri Lanka has to a large extent been removed from the realities of the country, and has not been a forum for the non-violent settlement of important issues which have been politically explosive. Despite the nature of the political crisis in Sri Lanka during the 1983-1993 period, only a few cases with regard to torture, arrest and detention have come before the Supreme Court. In the case of torture, most

of the cases have been dismissed on the grounds that there were insufficient evidence. These facts are strengthening the claim by many scholars that the legal process has remained far removed from the ground realities.

Sri Lanka's human rights record has frequently been condemned by the United Nations, international human rights organizations and aid-donor countries. Sri Lanka has attracted severe criticism related to its human rights record in various international forum. This was reflected in a resolution adopted at the UN Sub-Commission on the Elimination of Discrimination Against Minorities in 1987. Sri Lanka suffered what was termed a major diplomatic setback with the passing of this resolution. Apart from Amnesty International and several other international human rights organisations have analysed the Sri Lankan issue from the perspective of its living up to international norms of civil and political rights. Sri Lanka remains dependent on received economic assistance from several Western Countries, and after the revolutions in Eastern Europe, Western politicians are openly demanding a political conditionality linked to aid. Sri Lanka has in recent years shown a greater willingness to be more transparent in the human rights record. Since the end of 1990 after having renounced international monitoring for several years the Government has manifested an important

change towards demands for investigation of alleged human rights violations. This came in response to criticism and pressure from the donor community. The International Committee of the Red Cross began operating in Sri Lanka in 1990 and in 1991. Amnesty International and the UN Working Group on Enforced or Involuntary Disappearance visited Sri Lanka on the invitation of the Government. Institutions such as the Human Rights Task Force have been established in Sri Lanka to protect the rights of arrested and detained persons. Although the situation on the ground continues to remain grim, this makes for greater hope for protection of human rights in Sri Lanka in the years to come.

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