ETHNIC CONFLICT AND HUMAN SECURITY: WITH REFERENCE TO THE RIGHT TO LIFE IN SRI LANKA
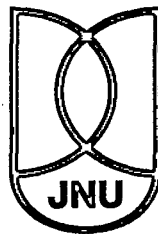
Dissertation submitted to
Jawaharlal Nehru University for the award of the degree of

MASTER OF PHILOSOPHY

Submitted by
Shashank Pratap Singh

SOUTH ASIAN STUDIES
CENTER FOR SOUTH, CENTRAL,
SOUTH EAST ASIAN AND SOUTH WEST PACIFIC STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067
INDIA
2008

DECLARATION

I declare that the dissertation entitled, "ETHNIC CONFLICT AND HUMAN SECURITY: WITH REFERENCE TO THE RIGHT TO LIFE IN SRI LANKA" submitted by me for the award of the degree of Master of Philosophy (M.Phil.) of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this or any other University.

SHASHANK PRATAP SINGH

CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

Prof. P. Sahadevan

(Supervisor)

Centre for South, Central, South East
Asian and South West Pacific Studies
School of International Studies
Jawaharlal Nehru University
New Delhi - 110067

Prof. P. Sahadevan

(Chairperson)

Centre for South, Central, South East
Asian and South West Pacific Studies
School of International Studies
Jawaharlal Nehru University
New Delhi - 110067

ACKNOWLEGEMENT

CONTENTS

ABBRIVIATIONS

AHRC	Asia Human Rights Commission
B-C Pact	Bandaranayke-Chelvanayakam Pact
BOI	Board of Investigation
CAT	Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment
CFA	Ceasefire Agreement
CID	Committee for the Investigation of Disappeared
CoI	Commission of Inquiry
CRD	Committee for Rational Development
DDC	District Development Council
ENDLF	Eelam National Democratic Liberation Front
ENLF	Eelam National Liberation Front
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
EROS	Eelam Revolutionary Organization of Student
ERs	Emergency Regulations
GDP	Gross Domestic Product
GISP	Governance and Institutional Strengthening Project
HRC	Human Rights Commission
HRCSL	Human Rights Commission of Sri Lanka
HRTF	Human Rights Task Force
ICCPR	International Convention on Civil and Political Rights
ICRC	International Committee of the Red Cross
IIGEP	International Independent Group of Eminent Persons
IPKF	Indian Peace Keeping Force
JVP	Janatha Vimukthi Peramuna
LTTE	Liberation Tigers of Tamil Eelam
NGOs	Non-Governmental Organisations
NPC	National Police Commission
PLOTE	People's Liberation Organization of Tamil Eelam

PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
RAW	Research and Analysis Wing
SAARC	South Asian Association of Regional Co-operation
S-C Pact	Senanayke-Chelvanayakam Pact
SIDA	Swedish International Development Agency
SLFP	Sri Lankan Freedom Party
SLMM	Sri Lankan Monitoring Mission
TELO	Tamil Eelam Liberation Organization
TULF	Tamil United Liberation Front
UDHR	Universal Declaration of Human Rights
UN WGEID	United Nation Working Group on Enforced and Internally Displaced Persons
UNDP	United Nations Development Programme
UNGA	United Nation General Assembly
UNP	United National Party
UTHR(J)	University Teachers for the Human Rights (Jaffna)

Introduction

The 1990 saw many shifts in international politics following end of the cold war, disintegration of the Soviet Union and fall of the Berlin Wall. These have ended the bipolar politics and gave way to the rise of new threats and conflicts in addition to many unresolved ones. Simultaneously, globalization has changed the nature of conflict from inter-state to intra-state. In these circumstances, the role of states has undergone a change and the traditionally accepted conception of power is contested. These developments necessitate a new thinking that would address problems related to development and security.

The concept of human security emerged in this environment. In 1994, the United Nation Development Program (UNDP) first identified human security as a "way to go from here". Thus, it's *Human Development Report* sought to broaden the traditional notion of security focused on military balances and capabilities to a concept that included 'safety from such chronic threats as hunger, disease and repression' as well as protection from sudden and hurtful disruption in the pattern of daily life. Thus, the notion of human security can be broadly defined as the protection of individuals from risks to their physical or psychological safety, dignity and wellbeing.

Human security was broadly defined as 'freedom from fear and freedom from want' and characterized as 'safety from chronic threats such as hunger, disease and protection from sudden and harmful disruption in the pattern of daily life- whether in homes, in jobs or in communities' (UNDP, 1994).The UNDP's people centred approach to security was developed with seven universal and interdependent components, namely – economic, food ,health, environmental, personal, community and political security .This approach to the human security was not only concerned with gross violations of human rights, armed conflict and natural disasters, but also encompassed wide-ranging aspects of underdevelopment: inequality, public health, international crime, population growth and environmental degradation.

In recent decades, armed conflict has taken a different shape, often rooted in religious or ethnic discord. Individuals are increasingly the principal victims, targets and instruments of these conflicts. The forced exodus, the appalling brutality, the state- sponsored murders and disappearances perpetrated against thousands of

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innocent people – all of this underscores the fact that in our world, civilians suffer the most from violent conflicts. Civilian causalities and mass displacement are no longer mere by-product of the today's conflicts, but often explicit in the strategy of the combatants. Sectoral drift of the state is another reason behind the growing insecurity during armed conflicts. When states are externally aggressive and internally repressive or too weak to govern effectively, they threaten the security of people.

Ethnic differences have become the single most important source of large scale violence in the post colonial plural societies. The key feature of ethnic violence is the widespread violations of right to life. Incidentally, it is after the Second World War that the protection of right to life and responsibility to protect has become a global concern. The Sri Lanka is one of the most noted examples in the series of conflict with tragic implications for the affected populations.

Human insecurity in Sri Lanka has persisted against the background of armed opposition to the government. When Sri Lanka (then Ceylon) gained independence from the Great Britain in 1948, it inherited under the Soulbury Constitution of 1946, a democratic system functioning within a unitary state framework. Demands by minority Tamil politicians in the last year of British rule for a system of government which would grant greater autonomy to minority areas were rejected and since then, have remained a source of political tension in Sri Lanka. The Tamil separatist demand has in part been fuelled by disputes over the allocation of resources within the state, as well as access for Tamil to education and jobs in the State sector. The State has increasingly been perceived by the Tamil minority as being identified with the majority Sinhalese interests and Buddhism. In 1978, several violent attacks against the police force in Jaffna had occurred which were attributed to the formation of Liberation Tigers of Tamil Ealam (LTTE). In the following years, other Tamil separatist groups were formed in northern Sri Lanka to engage in armed opposition to the government and the scale of such opposition mounted despite government attempts to suppress the Tamil separatist movement by force.

This ethnic insurgency and counter-insurgency, began in 1983, have great impact on human security. Armed opposition groups and security forces both violated the Right to Life of the citizens. From 1983 to 2005, about 9000 people have been

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disappeared. From 1987 to 2002; about 11000 people have been detained by security forces and about 700 by the LTTE. Most of them have been extra-judicially executed. The present phase of escalation of hostilities has become the deadliest period of the island's history. The report of the University Teachers for the Human Rights (UTHR-J) estimates that the current phase of the conflict has cost over 5,000 lives and displaced more than 30,000 people in the east and the north. About 26 people in 2003, 11 in 2004, 21 in 2005 and 134 in 2006 have been killed. Since early 2006 to May 2007, about 1500 people have been killed. About 87 youths have either been abducted or displaced in the first 69 days of 2007, records of the Jaffna Human Rights Commission reported that about 55 civilians were killed, 105 injured and 16 reported missing in military operations carried out by security forces in July 2007. In the month of August 2007, more than 50 persons have been killed and 38 disappeared. In the October, 2007, 53 persons have been killed.

The Sri Lankan state has given some fundamental rights in the chapter 3 of its constitution but does not include right to life explicitly. Under Article 15, several of these rights can be curtailed for reasons such as national security, racial and religious harmony and the interest of the national economy. Also, Sri Lankan government acceded to the International Convention on Civil and Political Rights (ICCPR) in 1980 and is responsible to the international community for upholding the provisions of the convention. Article 6 of the convention asserts the Right to Life. It says that "every human being has the inherent Right to Life. This right shall be protected by law and no one shall be arbitrarily deprived of his life".

In the security discourse, state has prime responsibility to protect its citizens and preserve its territorial integrity. It is the responsibility of state not only to provide immediate physical security but also give each individual the opportunity to make his own future more secure. However, in multiethnic societies, the minority community complains that they are politically underrepresented, socially excluded and economically disadvantaged. Also, they talk of traditional rights: right to use of language, to freedom of religion, preservation of ethnic identity and to autonomy. When these traditional rights are suddenly called into question, they challenge the legitimacy of state itself and hence the state considers it as a direct challenge to its authority and integrity.

In these circumstances, national security prevails over human security in state's actions. As a consequence, the broad framework of a new social contract is actually being negotiated by means of violence. In this sense, violence is also a means by which the contending parties are engaged in the negotiating process. The obvious consequence is a diabolical cycle of violence in further human insecurity: the violation of right to life. Further, in some of the cases, the misbehaviour of the armed forces and police has served to provoke guerrilla misbehaviour. This has resulted in a never ending spiral of violence, with innocent civilians on both sides as causalities.

The focus of the present study is on both situation and protection and promotion of human security in Sri Lanka. It analyses various dimensions of the violations of right to life in the island state as a result of ethnic violence. The protective mechanisms available at both internal and international levels are also examined. In the process, the study intends to answer the following questions: What are the political, economic and socio-cultural underpinnings of violence by both the Sri Lankan State and the Tamil militants? What are the various forms and patterns of ethnic violence in the island state? What are the various dimensions of violations of right to life as a result of ethnic violence? What are the forces involved in such violations? What are the various available mechanisms for protection of right to life in the island? Are they effective? If not, why? What is the role of international community in protection of right to life? How does the international pressure work? And what are the steps taken by the Sri Lankan government in maintaining good human rights record as a result of such pressure?

In this context, the present study seeks to test the following two hypotheses: first, "the gap between theory and practice of human security is wider in countries affected by ethnic violence", second, "international pressure works as an effective mechanism to check human rights abuses especially in small states".

The proposed study is divided in five chapters. In chapter1, the key concepts like, 'ethnic violence' and 'human security' have been defined. It constructs an analytical framework. It deals with the patterns of violence by both the state and non-state actors and the consequent various dimensions of human insecurity in multi-ethnic states. The emphasis will be on ethnic states. Chapter 2 examines the origin,

forms and patterns of ethnic violence in Sri Lanka. The focus is on the developments in the 1980's. In this context, the specific role of the state and the armed opposition groups has been critically examined. Chapter 3 focuses on various dimensions of violation of the right to life in Sri Lanka as a result of ethnic violence. A special attention has been made on extra-judicial killings, disappearances and torture etc. In Chapter 4, various mechanisms that exist within Sri Lanka for protection of right to life have been examined. The constraints, under which these mechanisms work, have also been examined. The conclusion summarizes the findings of the previous chapters. Besides this, it testifies the hypotheses. The chapter suggests the ways and means to strengthen human security in Sri Lanka.

The proposed study adopts historical - analytical method. The historical method helps to magnify the grave condition of right to life in the Sri Lankan context. It is also helpful to identify the steps taken by the government to protect its citizen's lives. The analytical method is helpful to make the conclusion, considering the respective facts and information and various reports of human rights organizations. The required data for the study has been collected from both primary and secondary sources. In this regard, the human rights violations reports by various national and international organizations, Country reports on human rights and government documents provided valuable information, various books and articles on ethnic conflict and human rights in general and Sri Lanka in particular have also been consulted to broaden the understanding of the subject. The study has also been accompanied by various information and data collected through internet.

Chapter-1

Ethnic Violence and Human Security: An Analytical Framework

In recent years, human insecurity as a result of violent conflicts has received much scholarly attention. After the Second World War, various new states in Asia and Africa have been emerged as a resultant process of decolonisation. These newly independent states focussed primarily on security of state rather than security of citizens. Also, the politics of these states has been shaped by the aspirations of majority and they became ethnically biased states. Minority's grievances have resulted in ethnic conflicts. These states have often seen ethnic problems as threat to their territorial integrity. States deal with problems of ethnic minorities in a high handed manner. Secessionist forces respond to state repression with counter violence resulting in militarization of the whole society. The consequence is human insecurity in its worst form.

What is the idea of human security? How did it evolve and what is the present state? What is ethnic violence? How should it be approached? Is there any linkage between ethnic violence and human security? The purpose of this chapter is to develop a theoretical framework by addressing these questions and look at human security situation in Sri Lanka within this framework.

In common usage, the word "security" denotes freedom from various risks. The Oxford English dictionary defines security as "The condition of being protected from or not exposed to danger; safety or freedom from care, anxiety or apprehension; a feeling of safety or freedom from or absence of danger". Most writers agree that security is a "contested concept". There is a consensus that it implies freedom from threats to core values(for both individuals and groups) but there is a major disagreement about whether the main focus of inquiry should be on 'individual', 'national' or 'international' security. For much of the cold war period, most writings on the subject were dominated by the idea of national security, which was largely defined in militarized terms. The main area of interest for both academics and statesmen tended to be on the military capabilities that their own state should develop to deal with threats that faced them. In this classical formulation, security is about how states use force to manage threats to their territorial integrity, their autonomy and their domestic political order, primarily from other states. Security studies and security establishments have long been focused on foreign and defence policy mechanisms to avoid, prevent and if needed, win interstate military disputes

(Baldwin, 1997: 117-141). The proponents of traditional security assume that sovereign states, as the principal actor in international relations, work within an atmosphere of anarchy at the international level.

1.1 Development of the Idea of Human Security

The classical formulation of security has been criticized for being ethnocentric (culturally biased) and too narrowly defined. In fact, the end of the cold war has unleashed a debate that has been growing for years, provoked by scholars and practitioners increasingly dissatisfied with traditional conception of security[19]. Bary Buzan, for example, argues for a view of security which has political, economic, social and environmental as well as military aspects and which is also defined in broader international terms. According to him-

> "In the case of security, the discussion is about the pursuit of freedom from threats. When the discussion is in the context of international system, security is about the ability of states and societies to maintain their independent identity and their functional integrity". (Buzan, 1983:214-42)

However, this focus on the tension between national and international security is not accepted by all writers on security. There are those who argue that the emphasis on the state and inter-state relations ignores the fundamental changes which have been taking place in world politics, especially in the aftermath of the cold war. The dual process of integration and fragmentation which characterize the contemporary world mean that much more attention should be given to 'societal security'. Growing integration in regions like Europe is undermining the classical political order based on nation states. At the same time, the fragmentation of various states, like the Soviet Union and Yugoslavia, has created the problems of new boundaries, minorities and organizing ideologies which are causing increasing regional instability (Waever, 1993: 196). The security scenario in the contemporary world is further complicated by several hypotheses emanating from the West as End of History (Francis Fukuyama), End of Ideology (Daniel Bell) and Clash of civilisation (Samuel P. Huntington).

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[19] See, for instance, Steve Smith, "The Increasing Insecurity of Security Studies: Conceptualizing Security Studies in the Last Twenty Century", in Critical Reflections on Security and Change, ed., Stuart Craft and Terry Terriff (London: Frank Cass, 2000), pp.72-101; Emma Rothschilled, "What is Security?" Daedalus, 124(Summer,1995)

For some, the classical formulation is too unilateralist in a world where interdependence is knitting nations together and there are weapons of mass destruction. This unilateralist notion of security gives way to cooperative security[20]. My security today is not only a function of my wellbeing today, but also the prospects of avoiding states of great deprivation in the future (King and Murray 2002: 592). For others, the scope of security to military threats from other states is very narrow approach. Threats may include environmental, economic and cultural threats. In addition, threats to territorial integrity and political order must be reckoned not just from other states but also from various non-state actors and even natural catastrophes. This much more expanded notion of security which broadens the instruments and sources of threats may be called comprehensive security[21]. A third and more fundamental critique suggests that security cannot be restricted to the wellbeing of the state. From this perspective what should be central is the protection and welfare of the individual citizen or human being. A conception of security that is centred above all on the sanctity of the individual may be called human security. (Bajpai; 2003: 196).

A decade after its emergence, human security remains a contested concept in its definition, its scope and its utility. Proponents see it as a timely, necessary and helpful expansion of traditional security concerns and as a useful tool for shaping foreign policy. On the other hand, the concept has been rejected as far too universalistic. Critics have pointed at conceptual flaws and have argued that securitizing issues does not serve the victims of insecurity but rather creates false priorities and hopes (Khong, 2001: 234). It has been viewed as being contrary to the national interest of states and as weakening foreign policy choices, because it would seem to open the way to justifying humanitarian intervention or to forcing states into undertaking actions abroad that are against their national interests.

Definitions range from narrow concepts focusing on physical integrity to a broad understanding that also encompasses psychological and emotional aspects of security. The Commission on Human Security has defined human security as

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[20] On cooperative security, see Janne Nolan, ed., Global Engagement: Cooperation and Security in the 21st Century (Washington, DC: The Brookings Institution, 1994).

[21] On comprehensive security, see Muthaih Alagappa, "Asian Practice of Security: Key Features and Explanations", in Muthaih Alagappa, ed., Asian Security Practice: Material and ideational influences (Stanford: Stanford University Press, 1998), pp.624-29.

"protecting the vital core of all human lives in ways that enhance human freedoms and human fulfilment". Human security means protecting people from severe and pervasive threats, both natural and societal, and empowering individuals and communities to develop the capabilities for making informed choices and acting on their own behalf.

Although, there is no commonly accepted definition of human security, roughly three categories seem to emerge: a narrow approach that relies on natural rights and the rule of law anchored in basic human rights; a humanitarian approach that understands human security as a tool for deepening and strengthening efforts to tackle issues such as war crimes or genocide and finally preparing the ground for humanitarian intervention; and a broad approach that links human security with the state of the global economy, development and globalization. More importantly, human security can be understood in very different ways: as a political agenda for governments; as a rallying cry that unites ad hoc or sustained coalitions of states on single issues; as a common concern that brings together single-issue civil society groups under a uniting umbrella; as an academic problem; as a new research category; or as an emerging normative framework in international relations. It is the latter that is of interest here.

Human security challenges our approach to security in at least two ways: it shifts the focus towards the individual and it bases security firmly on common values. Rather than providing security for abstract entities- the state, the nation- human security focuses on the security- the well being, safety and dignity- of individual human beings. Indeed, it seems obvious that in today's world of rising non-traditional, non-conventional and trans-national threats, the protection of borders and the preservation of territorial integrity cannot be the ultimate goal of security. The twin forces of globalization and localization make traditional notion of national security look like outdated concepts, and together they call for a rethinking of our understanding of security. It is a concept based on common values rather than national interest. Bringing to the forefront the safety of individuals and communities and their qualities of life and their dignity allows changes to happen that would otherwise have been shielded behind territorial sovereignty, political independence and national interest.

The first major statement concerning human security appeared in the 1994 Human Development Report, an annual publication of the United Nations Development Programme (UNDP)[22]. The UNDP's 1994 definition of human security remains the "most widely cited and most authoritative" formulation of the term (Cockell, 2000: 21). The publication offers a qualifying discussion castigating at the same time, the inadequacies of earlier thinking on the subject as-

"The concept of security has for too long been interpreted narrowly as security of territory from external aggression or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation states than to people. Forgotten were the legitimate concerns of ordinary people" (UNDP, 1994: pp.22).

This critique is clear and forceful, but the report's subsequent proposal for a new concept of security –human security – lacks precision: "Human Security can be said to have two main aspects. It means, firstly, safety from such chronic threats as hunger, disease and repression. And secondly, it means protection from sudden and hurtful disruption in the patterns of daily life- whether in homes, in jobs or in communities (Ibid., pp. 23). The scope of this definition is vast: Virtually any kind of unexpected or irregular discomfort could conceivably constitute a threat to one's human security. The Report insists that the referent object of human security is individual or people. In support of this contention, the report cites the founding document of the UN and its original delineation of security as "freedom from fear" as also "freedom from want" and the "equal weight to territories and people". Unfortunately, during the Cold War, security thinking had tilted towards the protection of territory but after the Cold War, the Report proposes, it is time to redress the balance and include the protection of people (UNDP, 1995: 229). The report identifies seven specific elements that comprise human security as:

Economic Security: assuring every individual a minimum requisite income.

Food security: guaranteeing "physical and economic access to basic food."

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[22] From here, UNDP will stand for United Nations Development Report.

Health security: guaranteeing a minimum protection from disease and unhealthy lifestyle.

Environmental security: protecting people from the short and long term ravages of nature and deterioration of the natural environment.

Personal security: protecting people from physical violence whether from the state, from external states, from violent individuals and substate actors, from domestic abuse from predatory adults or even from the individual himself (as in protection from suicide).

Community security: protecting people from loss of traditional relationships and values and from sectarian and ethnic violence.

Political security: assuring that people live in a society that honours their basic human rights.

1.1.2 Canadian- Middle Power's Approach

Canada has made two major·statement of its position (1997 and 1999) and along with Norway organized a middle power's conference in Lysoen in Norway (1999), which largely affirmed its viewpoint[23]. Axoworthy argues that a people centred view of security includes security against economic deprivation, an acceptable quality of life and a guarantee of fundamental human rights (Axworthy, 1997; 186). In 1999, he concedes that security between states remains a necessary condition for the safety and security of people, but argues that since the cold war, it is increasingly clear that "national security" is insufficient to guarantee people's security. The Lysoen declaration argues that the fundamental values of human security are freedom from fear, freedom from want and equal opportunities. The Canadian - middle power approach is concentrated on the goal of 'freedom from fear', calling for 'safety for people from violent and non- violent threats- a condition, characterized by freedom from pervasive threats to people's rights, their safety or even their lives. Its approach to human security is based on five priorities: (a) public safety (b) protection of

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[23] In 1996, Canadian Foreign minister Lloyd Axworthy in an address to the Fifty-first UN General Assembly first broached the idea of human security on behalf of his government. See Axworthy, "Canada and Human Security", 1997: pp.184.

civilians (c) conflict prevention (d) governance and accountability (e) peace support operations. Canada played a leading role in the campaign banning the deployment of landmines under the Ottawa Convention[24] and the creation of International Criminal Court in 1998[25].

Among the threats to key values, the 1997 paper cites the income gap between rich and poor countries, international conflicts and state failure, transnational crime , the proliferation of the weapons of mass destruction, religious and ethnic discord, environmental degradation, population growth, ethnic conflict and migration, state repression, the widespread use of anti - personnel land mines and child abuse.

The 1999 Canadian Paper includes three major principles that might guide actions. First, the international community must consider coercion including the use of sanction and force if necessary. Second, new security policy agenda must promote norms/institution and the use of developmental strategies. The Lysoen declaration lists ten areas in which norms were required: anti-personal land mines, small arms, children in armed conflict, international humanitarian and human rights law, international criminal court proceedings, exploitation of children, safety of humanitarian personnel, conflict prevention, transnational organized crime and resources for development. The third principle is to construct a coalition of states, international organizations and NGOs that would promote development and help enforce agreed upon norms (DFAIT, 1999: 4).

1.1.3 Japanese Approach

However, Japan promoted a broader conception of human security as it "comprehensively covers all the measures that threaten human survival, daily life and dignity- for example, environmental crime, illicit drugs, refugees, poverty, anti-personnel landmines and imperious disease such as AIDS and strengthen efforts to confront these threats". The Japanese government endorsed more comprehensive

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[24] In December 1997, the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction was signed. It entered into force on March 1, 1999 and by the beginning of May 2000, 94 states have agreed to be legally bound by the Convention.

[25] The International Criminal Court is authorized only to examine cases that occurred after its statute entered force; hence it will only consider crimes in Darfur after 1st July, 2002.

definition of human security based on Asian Values and greater focus on freedom from fear. To add credibility to its initiative, Japan established a Commission on Human Security and set up the largest trust fund in the United Nations. Article 9 of the Japanese Constitution prohibits the use of force to solve disputes; leaving Japan with self defence forces only for international security purposes. Japan has been one of the leading countries to provide leadership and funding for human security, prompted by its desire to attain a permanent seat in the UN (Chenoy, 2007:30).

1.1.4 Criticisms

The concept of human security has been criticized by the opponents on following two grounds. First, the concept lacks a precise definition. Existing definitions of human security tend to be extraordinarily expansive and vague, encompassing everything from physical security to psychological well being, which provides policymakers with little guidance in the prioritization of competing policy goals and academics little sense of what, exactly, is to be studied. Second, the term appears to be slippery by design. Cultivated ambiguity by a jumbled coalition of middle power states renders human security an effective campaign slogan but it also diminishes the concept's usefulness as a guide for academic research or policymaking.

While answering the criticism concerning the broadness of the concept, the proponent argue that the multidimensional approach of human security is both an advantage and a necessity – an advantage because it offers scope for an integrated approach and transverse analysis as opposed to the current, compartmentalized studies on security, development, human rights, peace. It is necessity because without this integrated approach, it would be impossible to efficiently counter threats which are intrinsically linked. The concept is resolutely ambitious and this is one of its strongest points.

Human security-as both an academic concept and a political agenda that takes up, reinforces and underlines ongoing developments in international law- has the potential to become a new organizing principle of international relations. In this respect, human security seems to be a natural step in further moving international law beyond being concerned with national security toward including the fate of

individuals as the ultimate beneficiaries of law. As a value-based approach to security with a focus on the individuals as the ultimate beneficiaries of international law, human security will continue to normative changes in the international legal order.

1.2 Ethnicity

The term 'ethnicity' is complex because it has both racial and cultural overtones. Derived from the Greek word 'ethnikos', the term refers to: (a) nations not converted in Cristianity, geathens, pagans; (b) races or large groups of people having common traits and customs, or (c) groups in an exotic primitive culture. According to Urmila Phadnis, an ethnic group can be defined 'as a historically formed aggregate of people having a real or imaginary association with a specified territory, a shared cluster of beliefs and values connoting its distinctiveness in relation to similar groups and recognized as such by others (Phadnis, 1989:13). Ethnicity may also be viewed 'as a device as much as a focus for group mobilization by its leadership through the selective use of ethnic symbols for socio-cultural and politico-economic purposes. An ethnic group is one whose members differ from members of other groups with regard to one or more ascriptive characteristics (race, language or religion) and whose members typically feel solidarity with other members of their group and different from members of other groups (a we-they feeling). The members of ethnic group are often seen, correctly or incorrectly, to have descended from common ancestry, and groups are thus thought of as extended kinship groups, united by blood. More commonly, ethnicity is understood as a form of cultural identity, albeit one that operates at a deep and emotional level. An "ethnic" culture encompasses values, traditions and practices but crucially it also gives a people a common identity and sense of distinctiveness, usually by focusing on their origins and descent. The majority agree on defining a conflict as ethnic "if the contending actors or parties identify themselves or one another using ethnic criteria" (Gurr, 2000; 65)

"Essentialist" or "Primordialists"[26] argue that collective identities and deeply rooted historical continuities are nurtured by early socialization and reinforced by collective sanctions. Its basic assumption is that ethnic conflicts of today between the

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[26] See, Clifford Greetz (1973), The Interpretation of culture, New York: Basic and Walker Conor (1994), Ethno-nationalism, Princeton: Princeton University Press.

groups can be traced back to older animosities. Such animosities are based on inherent ethnic differences. These intrinsic group differences activate prejudices and trigger violence over and again superseding rationality. To "instrumentalist"[27], ethnic identities and solidarities are fluid, pragmatic and opportunistic, often constructed by ethnic entrepreneurs irrespective of their belief in ethnicity to justify demands for political and especially material advantages. In other words, ethnicity is strategically manipulated by the elite for the sake of power irrespective of their belief in the ethnic categories. Thus, they create cleavages or build bridges according to the gains or losses from such manipulation. According to "constructivists"[28], ethnic identities were constructed in recent history and ethnicity is a modern phenomenon. To them, in earlier days, identities operated on a small scale and were flexible, but, in modern times, with development of printing press and capitalism (print capitalism), the identities got wider and institutionalized. Thus, even individual conflicts can be blown up into a larger conflict by interested groups or elites by constructing a master narrative. The "institutionalists"[29] link ethnic identities to the political system and in a particular country. Ethnically plural countries require different type of institutions from that of mono-ethnic societies. Thus, an unexamined transference of political systems or institutional forms of governance regardless of ethnic categories in a particular society can be a serious cause of ethnic conflict. At the same time, a careful institutional choice would mitigate conflict. Ethnicity is thus, an aspect of social relationship between agents who consider themselves as being culturally distinctive from members of other groups with whom they have a minimum regular interaction.

Ethnic conflicts manifest and constitute dialectic (Tambiah, 1989:482). On the one hand, there is a universalizing and homogenizing trend that is making people in

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[27] See, Russell Hardin (1995), One for All: the logic of Group conflict, Princeton: Princeton University Press, Ronald Rogowski and E.Teriyalcia (1985), New Nationalism of Developed West, London: Routledge and Micheal Hechter, "Explaining Nationalist Violence" Nations and Nationalism, vol.1, No.1.

[28] See, For instance, Eris Hobsbawm and Terence Ranger (1983), The Invention of tradition, Cambridge: Cambridge University Press, Linda Cookey Britons(1983), Forging the nations: 1707-1837, New Hanan:Yale University Press and Benedict Anderson (1983), Imagined communities, London: verso

[29] See, for instance, Arendt Lijphart (1977), democracy in Plural Societies: A Comparative Analysis, New Hanon: Yale University Press and Donald Horowitz (19985), Ethnic Groups in conflict, Berkeley: California University Press.

contemporary societies and countries more and more alike in wanting the same material and social benefits of modernisation. On the other hand, these same people also claim to be different, and not necessarily equal, on the basis of their inscriptive identity, linguistic differences, ethnic membership and right to the soil. In this latter incarnation, they claim that these differences and, not those of technical competence or achievement, should be the basis for the distribution of the modern benefits and rewards (Tambiah, 1989:347).

Ethnicity is constructed out of the material of language, religion, culture, appearance, ancestry, or regionality. The location and meaning of particular ethnic boundaries are continuously negotiated, revised, and revitalized, both by members of ethnic groups as well as by outside observers. Ethnic identity is most closely associated with the issue of boundaries. Ethnic boundaries determine who is a member and who is not and designate which ethnic categories are available for individual identification at a particular time and place. Debates over the placement of ethnic boundaries and the social worth of ethnic groups are central mechanisms in ethnic construction. Ethnicity is created and recreated as various groups and interests put forth competing visions of the ethnic composition of society and argue over which rewards or sanctions should be attached to which ethnicities.

Boundaries, and thus identities, are constructed by both the individual and group as well as by outside agents and organizations. Governments routinely reshape their internal ethnic maps by their immigration policies. Immigration is a major engine of new ethnic group production as today's immigrant groups become tomorrow's ethnic groups (Hein, 1994). Around the world, immigrant populations congregate in both urban and rural communities to form ethnic enclaves and neighborhoods, to fill labor market niche, sometimes providing needed labor, sometimes competing with native-born workers, to specialize in particular commodity markets, and as 'middlemen'. Whether by accident or design, whether motivated by economics, politics, or kinship, immigrant groups are inevitably woven into the fabric of ethnic diversity in most of the world's states. It is also through immigration that both domestic and foreign policies can reshape ethnic some way.

The organization of political access along ethnic lines can also promote ethnic identification and ethnic political mobilization. As Brass notes, "the state. . .is not simply an arena or an instrument of a particular class or ethnic-group. . .the state is itself the greatest prize and resource, over which groups engage in a continuing struggle" (Brass,1985:29). Much ethnic conflict around the world arises out of competition among ethnic contenders to control territories and central governments. The civil war in the former republic of Yugoslavia is a clear example of ethnic political competition. The long-standing grievances of the various war-ring linguistic and religious groups there did not erupt into combat until the Soviet Union lifted the threat of intervention in the late 1980s and opened the door to the possibility of ethno-political competition. The result was an armed scramble for territory based on a fear of domination or exclusion by larger, more powerful ethnic groups. The construction of ethnic boundaries through individual identification, ethnic group formation, informal ascriptions, and official ethnic policies illustrates the ways in which particular ethnic identities are created, emphasized, chosen, or discarded in societies as the result of processes of negotiation and designation, ethnic boundaries wax and wane. Individual ethnic identification is strongly limited and influenced by external forces that shape the options, feasibility, and attractiveness of various ethnicities.

The construction of ethnic boundaries through individual identification, ethnic group formation, informal ascriptions, and official ethnic policies illustrates the ways in which particular ethnic identities are created, emphasized, chosen, or discarded in societies. Ethnic boundaries wax and wane as the result of processes of negotiation and designation. Individual ethnic identification is strongly limited and influenced by external forces that shape the options, feasibility, and attractiveness of various ethnicities. Culture is constructed in much the same way as ethnic boundaries are built, by the actions of individuals and groups and their interactions with the larger society. Ethnic boundaries function to determine identity options, membership composition and size, and form of ethnic organization (Nagel, 1994:156). Boundaries answer the question: Who are we? Culture provides the content and meaning of ethnicity; it animates and authenticates ethnic boundaries by providing a history, ideology, symbolic universe, and system of meaning. Culture answers the question: What are we? Groups construct their cultures in many ways which involve mainly the reconstruction of old culture and the construction of new culture. Cultural

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reconstruction techniques include revivals and restorations of historical cultural practices and institutions; new cultural constructions include revisions of current culture and innovations-the creation of new cultural forms. Cultural construction and reconstruction are ongoing group tasks in which new and renovated cultural symbols, activities, and materials are continually being added to and removed from existing cultural repertoires (Davis, 199936).

1.3 Ethnic Violence

Violence is generally seen as some form of physical injury inflicted on others. In simple terms, when there is use of violence in ethnic conflicts, it becomes ethnic violence. Ethnic violence entails use of force, specifically, against a particular ethnic group or individual belonging to that group. Thus, ethnic conflicts may exist without ethnic violence but ethnic violence necessarily involves ethnic conflicts. (Varshney, 2002: 25).Work on ethnic violence has emerged from two largely non-intersecting literatures: studies on ethnic conflict and studies of political violence. Only recently have the former begun to attend to the dynamics of violence and latter to the dynamics of ethnicization (Brubaker and Laitin, 1998: 423).

Rational choice theory assumes that ethnic violence, like all human interaction, is the result of individual's rational pursuit of universal interests such as wealth, power and security. Rationalist logic is based on the instrumentalist approach which understands ethnicity as a tool used by individuals, groups or elites to obtain some larger, typically material end (Lake and Rothchild, 1998: 5-6). Two different models explain how this process works. The pure-uncertainty model argues that even if neither side in conflict wants war, uncertainty and insecurity can cause it to erupt. One reason is information failure- ethnic groups are uncertain of each other's present intentions hence they may overestimate the adversary's hostility, escalating conflict in response- and second is the absence of credible commitment- even if parties bargain in good faith; they may not be able to credibly commit to implement a deal in the future (Fearon, 1995: 385-388). The elite – predation model assumes that masses do not want violence but elites do, adding two more elements to the pure-uncertainty model, two more elements: predatory elites and mass uncertainty. Leaders who fear losing power may "gamble for resurrection" by resorting to predation- provoking

ethnic conflict to try to change the agenda towards issues that favour their remaining in power(Figueiredo and Weingast, 1999: 262-263).

The symbolic explanation is based on the myth-symbol complex.[30] According to this model, the critical causes of the extreme ethnic violence are group myths that justify the hostility, fears of group extinction and a symbolic politics of chauvinist mobilization. The hostile myths, in this view, produce emotion - laden symbols that make mass hostility easy for chauvinist elites to provoke and make extremist policies popular (Kaufman, 2001: 3-5). It also assumes that the more a groups' myth and symbol focuses on group hostility vis-à-vis another, the greater the probability of a violent conflict with that adversary and the greater the likely intensity of the violence (Kaufman, 2006: 51). Though, a group mythology that justifies hostility is not a sufficient precondition for violent ethnic conflict, the theory suggests a second, emotional precondition: ethnic appeals are successful in producing extreme violence only if the group feels that its existence is threatened (Ibid, pp.53). It also talks about the third pre – condition, political opportunity, which consist of two elements. First, there must be enough political space (whether the result of political freedom, state breakdown or foreign support) to mobilize without facing effective repression. Second, is the territorial base: ethnic rebels cannot mobilize unless they are either territorially concentrated in some region or have a territorial base in a neighbouring country (Toft, 2003)

The way in which power is distributed among different groups in the society is important in analyzing conflicts between various groups. Society distributes power unequally so that some enjoy relatively greater degrees of power than others, thereby triggering a feeling of deprivation among the latter. Since, power in concrete terms determines the degree of mobility and economic prosperity which social groups or the individuals who comprise the groups could achieve, it is easy to understand how deprivation or the perception of it could lead to frustration resulting in aggression and violence. This is explained by the theory of "relative deprivation"[31], which holds that

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[30] Myth –symbolic complex was coined by Anthony D. Smith. It identifies which elements of shared culture and what interpretations of history bind the group together and distinguishes from others.

[31] This school of thought is rooted in the theories of the collective action formulated by French Sociologist Emile Durkheim. It was first advocated by Robert Ted Gurr.

the greater the gap between what is actually enjoyed by an individual or group and what he expects to have, the greater would be the degree of frustration. The capacity, either of the individuals or of government to fulfil rising expectations becomes paradoxically a potent source of feelings of deprivation and ultimately violence. When the gap is not bridged, the very reforms of the government result only in pushing the expectation further. In this regard, rapid changes are more provocative than slower ones (Richardson, 1990). While relative deprivation theory emphasizes on exogenous fluctuations in explaining violence, the resource mobilization theory cites organized activity as a primary cause for the outbreak of violent conflict. It focuses on the ability of social movement promoters to gain and manipulate resources of power to organize, to recruit members from existing voluntary associations and to provide individual incentives or coercion that motivates participation in social movement activities (Kerbo, 1985: p. 646).

Considering the shortcomings of the above two theories, Ted Gurr and Mark Lichback evolved a new 'Mobilisation of Discontent Model'[32]. To them, violent conflict is the result of stress (short term fluctuations in economic and political performance) and strain (long term structural source of collective deprivation). An ethnic militant group mobilizes ethnic dissidents based on the presence of both "stress" and "strain" in the system, attributed to the bad governance of the "other". The number of dissidents mobilized by a militant group and the group's persistence is directly proportional to the intensity of the violence. In other words, the more the number of dissidents and the persistence of the ethnic groups, the higher the intensity of ethnic violence.

Ethnic violence takes various forms: civil war, communal riots, genocide and mass killing. Civil war is marked by widespread conflict between highly organized militants and heavily armed military units. It is a fight for control of state. Communal rioting is of two types. The first involves clashes between civilian crowds: the violence is spontaneous and the weapons used are often small. In this kind of communal rioting, there is a widespread willingness to attack members of the other community simply because of their ethnic identity. The other does not involve

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[32] See, for instance, Robert Ted Gurr and Mark Lichback (1986), Forecasting Internal Conflicts: A Comparative Analysis of empirical Theories, Comparative Political Studies.

confrontations between rival crowds but rather clashes between soldiers and police and civilians of one ethnic community together with some looting and property damage.

Genocide is an attempt to eliminate, directly by killing them or indirectly by creating conditions (e.g., starvation) that lead to their death, a whole group of people. The U.N. Genocide Convention, which defines genocide as "acts committed with the intent to destroy in part or in whole a national, ethnic, racial, or religious group as such," does not cover the killing of members of a political group (Harff & Gurr, 1990).Some scholars have also offered a categorization of genocide. For example, Smith (1999) has proposed five types: retributive, institutional, utilitarian, monopolistic and ideological. In part, these different types imply different motives but influences and motives are often multiple and often overlaps across the different types. According to Smith, "the most frequent source of genocide in the 20th century has been the monopolization of power (p.7) that is the question of who will have power and who will rule. Large numbers of people without the apparent purpose of eliminating the whole group can be regarded as mass killing. The purpose of mass killing may be to eliminate the leadership of a group, or to intimidate the group, and in general to re-establish dominance. Although the number of people who are killed can be much smaller in mass killing than in genocide, it can also be very large.

1.4 Linking the Violent Conflict and Human Security

In recent decades, armed conflict has taken a different shape, often rooted in religious or ethnic discord. Individuals are increasingly the principal victims, targets and instruments of these conflicts. The forced exodus, the appalling brutality, the state- sponsored murders and disappearances perpetrated against thousands of innocent people – all of this underscores the fact that in our world, civilians suffer the most from violent conflicts. Civilian causalities and mass displacement is no longer mere by-product of the today's conflicts, but often explicit in the strategy of the combatants. Sectoral drift of the state is another reason behind the growing insecurity during armed conflicts. When states are externally aggressive and internally repressive or too weak to govern effectively, they threaten human security.

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Since, end of the cold war, there has been a visible increase in the civil wars which are often driven by forces in the neighbouring countries. Such regionalization and transnationalization means that civil wars are extremely difficult to resolve in isolation because they are part of "regional conflict formations"[33]. They also generate grave human insecurity and violations of international humanitarian law both within and across state boundaries, which means that not only do complex conflict formations have to be resolved, but overlapping and competing claims regarding abuse and accountability will present themselves within and across the countries.

Human insecurity is both cause and consequence of conflict and intertwines with other causes of conflict[34]. Human insecurity can emerge as a result of violent conflicts. A conflict may have been undertaken by the parties primarily out of concern to promote a political/ideological agenda, or to promote the welfare of one ethnic/economic/social group, or over access to resources. Conflicts over access to resources have a great toll in the cost of human life.[35] The vast majority of harm has come to civilians, either as incidental victims or, more frequently, as victims deliberately targeted in the pursuit of resources. Violations may include torture, and disappearances, but also frequently war crimes, crimes against humanity, and even genocide.

Violent conflicts destroy the pre-conditions upon which the security of humans can be assured. These pre- conditions are; a society based on mutual trust and respect for each other's religion, culture and life style, a democratic and welfare state which acknowledges and protects the basic rights of its citizens and a vibrant society.

Violent conflicts always create an atmosphere where one sees other as one's enemy. This type of state of suspicion erodes the trust and respect for each other.

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[33] On regional conflict formations, see the work of Barnett Rubbin at New York University's Center on International Cooperation, at

http://www.cic.nyu.edu/archive/conflict/conflict project.html.

[34] For examination of the myriad of conflict as well as their various phases and evolving dynamics, see Chandra Lekha Sriram and Karin Wermester, eds., From Promise to Practice: Strengthening UN Capabilities for the Prevention of Violent Conflict (Boulder, CO: Lynne Reinner 2003).

[35] As diamonds in Sierra Leone, timber in Liberia, coltan in the Democratic Republic of Congo and oil in Sudan

Also, violent conflicts always lead to the militarization of whole the society where violence is seen a normal course of social life to solve the problems. The relationship among communities becomes hostile.

Here, to examine the role of state is also inevitable. Generally, it is presumed that the state is the only institution which resorts to "violence" to establish and sustain order in society. It is defined as "that public authority which enjoys a monopoly on coercive power (Keane, 1986: 179). Added to these, is the Weberian description of the justification of the state as "the monopoly agent of legitimate violence"[36]. The coercive character of the state has two distinct form of coercion. The first is organically built into the institutions of police, army and persons. These law and order institutions are built on the principle of coercion to protect the Benthamite idea of equality, freedom and property of all citizens. It is through this that the coercive apparatus of the state derives legitimacy. On the other hand, the various national security and emergency laws constitute especially the conjectural form of coercion. These laws invest enormous powers in police, armed forces and prison houses. Thus, different conjunctures are used to reorder the coercive character of the state and articulate it on a full scale. (Pathak, 1990: 27)

Thus, it is assumed that the state in any society is the ultimate arbiter of inter-group disputes, setting the rules of the competitive game and stepping into the fray forcibly if rules are violated and civil peace thereby jeopardized. But in reality multi-ethnic societies, state authorities often align with one ethnic community and view the perpetuation of unequal distributions of power among various ethnic groups as ensuring the state's own hegemony. In turn, the coercive arms of State- the police and the military are also likely to be recruited and deployed with conscious attention to ethnic composition that will be politically optimal for the central government (Enloe, 1977: 138).

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[36] Quoted in Julious Gould and Wiliam L. Komb (1974), A Dictionary of Social Sciences, UNESCO, pp.690

In many parts of the world, where there is conflict in one form or the other, the State has assumed a partisan role and has itself perpetuated violence. On doing so, it has intensified the counter violence of groups which initially challenged its authority and in the dialectic of inevitability, caused the state to resort to violence in the first instance. The states that successfully employ violence against a dissident ethnic group tend to create structures that could implicit violence. But these structures are rarely dismantled even when the threat from the dissidents are no more. As such both the memory of using violence and the meant to deploy it are available for future government (Gurr, 1988, 46-49).

Finally, the relatively new phenomenon of terrorism/insurgency has considerably changed the character of contemporary state. The modern terrorist/insurgent does not target the state but society (Singh, 1993: 314-318). The state is generally not able to target him in normal circumstances without causing enormous collateral damage, even affecting civilians. The former action is labelled terrorism and when the state uses force to deal with the situation, the collateral damage is generally called human rights violations. Inevitably, therefore, in a terrorized society the normal rule of law, the foundation for the practice of right to life, becomes incapable of dealing with the terrorist- dominated social structure and states take resources to extra-legal means.

However, in order to suppress the terrorism, government use draconian extra-legal methods and deprives the citizens of basic right to life. It loses, in the process, both legitimacy and political support when the security forces assume the role of prosecutor, judge and executor, it provides a base for launching a state-organised terror (Singh, 1992: 25-26).

There are a number of ways in which human insecurity can generate violent conflict. In the most general sense, grievances over the denial or perceived denial of rights can generate social conflict. This may be the case where there is systemic discrimination, differential access to education or health care, limits on freedom of expression or religion, denial of right to political participation, etc. These violations may seem relatively minor, in comparison of the some of the grave crimes we are familiar with such as war crimes and genocide, but they still generate grievances and

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social unrest. In weak, corrupt, abusive and collapsed or collapsing states, such conflict is more likely to become violent. That violence may be only sporadic, if serious, or it may give rise to more systemic opposition, including through the use of violence, and the formation of illegal armed groups or terrorist groups seeking to redress grievances. Armed conflict may also emerge where there are more serious condition of human insecurity – illegal detention, extrajudicial executions, disappearances, torture, widespread killings or even attempt at genocide.

1.5 Conclusion

The protection and promotion of the security of human has been a chronic problem faced by post world war societies. By giving higher priority to security and territorial integrity of the state than the protection of the security of humans, the state has paved the way for alienation and consequent militarization of the affected societies.

A state justifies violation of right to life and human insecurity not in normal circumstances but at times it becomes inevitable for it in the name of security and territorial integrity. The secessionist armed groups also justify violence in the name of "liberation" and "winning back their lost rights". The protection mechanism put in place by the ethnically divided state do not function at their optimal levels due to inherent bias of the state. Civil society and media in such societies also are less articulate in taking up cases for human rights safeguards. In this regard, international pressure in the form of international organizations legal regimes, donor community and world public opinion are effective, especially, if the country is small and economically dependent on foreign aid. From time to time, the state might try to assert its sovereignty but succumbs to international pressure due to its helplessness.

Chapter-2

Ethnic Violence in Sri Lanka: Patterns and Dimensions

The scale and intensity of social conflicts in south Asia has been high in recent decades. Earlier conflicts have become deeper entrenched and a majority of recent conflicts seem to be taking on a more protracted character (Rupesinghe, 1988: 337). In recent decades, South Asia in general and Sri Lanka in particular has witnessed violence as the main factor not only in state – society relations, but also in inter-group relations. Violence no longer constitutes a hidden dimension of state power in the countries of the region. Similarly, the way in which the subordinate ethnic groups and social classes relate to each other and negotiate with the state has come to be characterized by a recurrent propensity to use collective violence as a means of articulating their demands. They do not appear to see electoral or parliamentary tactics as a viable means of political mobilisation (Uyangoda, 1996: 121). Violence has become a norm in the contemporary political culture and it is a phenomenon normalized in all forms of political practice of the state as well as of counter- state formations. One disturbing aspect of the social acceptance of the political violence is that it prepares social space for long term processes of militarization at various levels (Ibid: 121).

Sri Lanka is arguably one of the most violent modern states in Asia (Kapaferer, 1994: 1). One can say that the state of violence in the modern state has reached a crescendo after growing steadily since independence. Over the past few years, the process of violence has been normalized in individuals as well as social relations in Sri Lanka. The militarisation of political conflicts has also been accompanied by the militarization of social and individual relations. Once a conflict is militarized, demilitarisation is enormously difficult. The Sri Lankan society has also accepted political violence as a legitimate mode of political behaviour, whether by the state or non-state forces.

It is generally asked why a state which did not have a violent political tradition is resorting to violence resulting in gross human insecurity? Is it not surprising why a society with a dominant religion - Buddhism – advocating non violence and compassion as its cardinal principles is afflicted with protracted and intractable

violence? Where do the roots of violence lie? What are the typologies? What are its forms and patterns? The proposed chapter will try to answer some of these questions.

2.1 Profile of Island

Sri Lanka (known as Ceylon till 1972) is like a 'tear drop in ocean' spreading across 65,610 sq. km (including territorial waters) in the Indian Ocean, adjacent to southern India separated by the Palk Straits with 29 km. of shallow waters at its nearest point. Sri Lanka having some of the world's finest harbour lies at the maritime highways of the Indian Ocean connecting the east with west.

Sri Lanka is a multi-ethnic society with a population of nearly 18,728,000[19]. The population of Sri Lanka is broadly divided into six categories: Sinhalese account for 74%, Sri Lankan Tamils 12%, Indian Plantation Tamils 5%, Muslims 7%, Burghers 1% and aboriginal tribes constitute insignificant numbers. Apart from these categories, there lie cross- cutting divisions in the society. On the basis of religion, the Sinhalese are either Buddhist or Christian, Tamils (both Sri Lankan and Plantation) or Hindus or Christians and all Muslims follow Islamic faith but are divided along sectarian lines. As for as language is concerned, Sinhalese mostly speak Sinhala which belongs to Indo-European group, Tamils speak Tamil, a Dravidian language and Muslims speak Sinhala and Tamil. On the basis of geographical location of population, Sinhalese could be 'Kanadian' or 'low country'; Sri Lanka Tamils geographically identify themselves as Jaffna Tamils, East cost or Batticaloa Tamils and Colombo Tamils; Plantations Tamils are settled in up-country. The Muslims are divided into eastern and mainland.

Sri Lanka is a unitary state with a multi party democratic system. It is governed by the second Republican Constitution adopted on 16th August, 1978. The present form of government is presidential. The President, elected directly by the people for a term of six years, is both the head of state and head of government. The legislature is unicameral with 225 members elected by a modified form of proportional representation system for a term of six years. The prime minister and other ministers of the cabinet are appointed by the President from the party or

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[19] As of 2001, see for details http://www.statics.gov.lk

coalition which has the simple majority in the parliament. The Supreme Court is at the apex of judiciary, which also include the Court of Appeal, High Court and Lower Courts. Along with the parliament, the Supreme Court enjoys the power to impeach the President on certain grounds.

2.2 Roots of Ethnic Violence

Some scholars trace the origin of the ethnic violence in Sri Lanka to ancient times when there were wars for the control of the island. However, a majority of the scholars hold the view that the contemporary violent Sri Lankan state is a post - colonial reconstruction of polity that had exploited the utility of violence through all phases of its transformations. The fact of the matter is that history is being used to rekindle and perpetuate the violence (Tambiah, 1996: 8-19). The origin of the ethnic violence in the island can be attributed to various factors that emerged from the Sri Lankan history.

2.2.1 Failure of Political Negotiations

Among the various reasons for the rise of Tamil militancy, the repeated failure of political negotiations concerning the place of Tamil language (and indirectly Tamil culture and the notion of a Tamil 'homeland') in Sri Lanka has historically been the most evident. In post independence period, Tamils were discriminated against by successive Sinhalese dominated governments in Sri Lanka. After obtaining independence from British rule in 1948, the governments in power adopted a series of Sinhalese-nationalist policies. The first instance was the new citizenship law of 1949 which made the bulk of the Indian Tamil population stateless. Later, in 1956, the Sinhala language was made the only official language of the country. Attempts by political leaders to find a solution to Tamil grievances were thwarted by the dominant chauvinistic forces in the Sinhalese society.

In 1957, the Ceylon Tamil leader S.J.V. Chelvanayakam entered into a pact with the (then) prime minister S.W.R.D. Bandaranayke to recognize Tamil as the language of administration in the north and east and provide a measure of autonomy for these regions. However, these attempts were not implemented by successive governments. Likewise, the 1965, Senanayke-Chelvanayakam Pact failed in 1968.

These accords also involved other issues such as regional autonomy and the recognition of a Tami homeland. Both these attempts were opposed by the Sinhalese hardliners both from the political spectrum and Buddhists Sangh. In 1958, it was the UNP which opposed the B-C Pact and in 1965 it was the SLFP which opposed the S-C pact.

This was followed by the Republican Constitution of 1972 which gave pre-eminence to Buddhism and the Sinhalese language. The Constitution also centralized all power in Sinhala-dominated legislature. Fuelled by decades of marginalization, the 1970s brought a new sense of militancy to Tamil frustration. The resulting disturbances led to the strengthening of extremist youth groups within the Tamil community, including the LTTE. The deaths of government soldiers in Jaffna in 1983 sparked anti-Tamil riots throughout the country and deepened tensions between the two sides.

Here, police attack on the World Tamil Research Conference, held in January 1974 in Jaffna, was a remarkable point. The prime minister of the time, Mrs. Bandaranaike did not want the conference to be held in Sri Lanka (Sivanandan, 1975:22). When crowd spilled over the hall onto the esplanade on the last day, however, the police judged it to be an "unwarranted public meeting" and attacked them with catastrophic results, leading to nine deaths and dozens of injuries. This stunned the Tamil population which until then had never had to fear the police. For the young Tamils, this incident was than a clumsy insult to Tamil political culture; it was "a direct challenge to their manhood" (Amrithlingam, 1985: 42).

2.2.2 Buddhism and Violence

Contemporary Sinhalese Buddhism has moved towards openly advocating state violence along ethnic lines. In fact, the Sinhalese Buddhist historiography, tradition and ideology support ethnic political violence. It also presupposes an authoritarian state and not democracy and pluralism. But the disturbing aspect of this social acceptance of political violence is that it prepares social space for long term processes of militarization at various levels.

2.2.3 Education and Violence

Education has always been an important avenue for upward social mobility in Sri Lanka; the free education since independence has facilitated this process. Majority of the Sinhalese felt that the Sri Lankan Tamils were getting admitted into medical, engineering and other professional courses in far greater number, which was disproportionate to their population ratio. However, this perception was not based on facts. The total percentage of Sinhalese in university education was 82.4 in 1975 while at the same time the Tamils were 13.7%. In 1983 the ratio of Sinhalese was 75.0 and Tamils were 19.3. These facts clearly indicate that while the Sinhalese were represented in higher education more than their population, the Tamils were not represented to any significant extent (Report of the Committee for Rational Development, 1983).

'Standardisation' in university education, introduced by Mrs. Bandaranaike in 1973, was another factor which led to the formation of radical Ceylon Tamil groups in 1970. For a population, depended on education, oriented toward public services opportunities, 'standardisation' was a disaster, alienating young Sri Lankan Tamil men and women in particular (Sivathembly, 1986: 138).

Moreover, the free education system made an impact on different ethnic groups, especially for their upward social mobility. For the Sinhalese, free education increased their advancement while in the case of Sri Lankan Tamils; the benefits were severely curtailed by discriminatory policies that affected their entry into higher education and government services. The fundamental political problem in Sri Lanka lies in the majoritarian nature of the state.

2.2.4 Liberalization and Violence

In 1977 the UNP government introduced the policy of free market economy by liberalizing trade, deregulating private sector and dismantling many welfare measures and subsidies. It was assumed that a liberalized economy would give less chance to ethnic factors influential. However, this did not happen. The impact of liberalization on ethnic violence manifested in many ways-

Firstly, the liberalization process accompanied by unprecedented levels of aid flows did not actually reduce ethnically biased rent seeking from the state sector, but expanded it to new groups that benefited from the climate of heightened tensions and authoritarianism (Dunham & Jayasurya, Oxford Development Studies:28).Secondly, while the position of Sinhalese small scale industrialists became worse under the reforms as they could not compete with the cheap imports. The Tamil merchant class from Colombo appeared to have benefited from this move. Thirdly, some scholars believed that the sudden and unequal impact of the liberalization caused abrupt and disoriented social repercussions like social upheavals, poverty, lumpenisation and socio-political decay. They were subsequently accompanied by institutionalization of political violence and authoritarian measures used by the government to maintain stability conducive for open markets and to suppress opposition to reforms (Manor, 1984). Some authors traced that while liberal trade benefited the export of plantation crops like tea, rubber and coconut grown largely in Sinhalese dominated south, it resulted in a sharp decline of food crops like bananas, onions and chillies grown in Tamil majority region of north and east. High inflation buttressed with high cost of production relegated agriculture to a non profitable occupation (Abeysekera and Gunasinghe, 1987:142-143).

Ethnic violence exacerbated to new proportions after the opening up of economy. The free market policies also carried with it the tag of political stability. Ethnic conflict with violent overtones was seen as the main destabilizing factor. Therefore, the first step adopted by the government was a policy of accommodation. The new constitution enacted in 1978 gave Tamil the status of a national language. The District Development Council Bill that was enacted subsequently offered certain amount of autonomy to the districts and in turn, to the Tamils. At the same time, this policy of accommodation was not extended to the militants by engaging them in a political dialogue. Instead, the government responded with repressive measures. The state repression, to which the Tamil population knowingly or unknowingly was subjected, created enough social bases for Tamil militancy (Bose, 1994:92-102).

2.2.5 Failure of District Development Council

In the general election of 1977, the UNP election manifesto promised to seek a fair method for the devolution of power and to grant local autonomy along with due recognition of the Tamil language in appropriate sectors of government. By 1981, these aspirations were articulated in District Development Councils and despite much scepticism on the part of Tamil parliamentarians, there was hope that perhaps the councils would satisfy some of the major Sri Lankan Tamil concerns (Matthews, 1986: 32). The councils failed within two years. They were not appropriately financed, nor were they given enough time to be seriously regarded as a second tier of government by most Sinhalese parliamentarians (Matthews, 1982: 44).

In July 1983, the 6th amendment was introduced in the Sri Lankan Constitution, which prohibited anyone who subscribe to separatism from sitting in parliament. By the end of year, all fourteen TULF members of parliament were forced to resign, leaving the Sri Lankan Tamils of the north leaderless thus offering the initiative for political control to the militant groups, particularly the Liberation Tigers of Tamil Eelam (LTTE) led by the fiercely radical Velupillai Prabhakaran. This was the vital turning point towards a market reliance on militarization, sometimes with violence rather than a pursuit of nationalistic goals through political and constitutional means (Matthews, 1986: 37).

The escalation of the hegemony of Sinhalese-Buddhist nationalism resulted in Tamil's demand for a federal system of government in the 1950's. This demand later grew into the demand for a separate state in the 1970's. The 1970's also saw the aggravation of ethnic retaliation due to the introduction of new University admission policies which discriminated against the Tamils and greatly favoured the Sinhalese.

With the escalation of the ethnic conflicts, a new political leadership emerged in the Sri Lankan Tamil society and armed struggle became the dominant form of political struggle. As regards their social background, the leaders were less westernized than the earlier Tamil leadership and were based in the Northern Province, where there is a concentration of Tamil population. All these factors contributed to the strengthening of the Tamil demand that sought to control over the

north eastern part of the country where they had a majority and armed struggle became a popular mode of political action by the mid 1970's (ibid, 158).

The latter half of the 1970's saw increased violence by the Tamil militants. As a result, in 1979, the government enacted a prevention of Terrorism Act. This law was mainly directed against the Tamil militant youth. Military repression and Tamil violence continued in Jaffna. In 1981, anti-Tamil riots broke out resulting in a large scale loss of lives. Negotiations between the government and TULF leaders failed to make any headway.

Subsequently, the army also intensified its operations in Jaffna peninsula. Large scale human rights violations were also reported because of the army's activities. The Tamils who were subjected to violence, formed strong militant groups, the prominent one was Liberation Tigers of Tamil Eelam. It is believed that a large number of training camps were set up in some parts of India for the training of Tamil militants and sophisticated weapons were given to them from the funds contributed by expatriate Tamils living in the West.

Since 1983, Sri Lanka has been affected by an ethnic conflict which escalated into civil war. At first sight, the cause of war is the claim of the Tamil minority for an independent homeland in the northeast of the island. On one side of this conflict is the Liberation Tigers of Tamil Eelam, a rebel organization fighting for 'Tamil Eelam' (a homeland), on the other hand, the government, politically dominated by Sinhalese majority, seeking to protect the integrity of the 'Sinhala' nation. The government has deployed a large number of troops to fight against the separatist movement, particularly, the LTTE. However, Sri Lanka might be characterized as a 'conflict cocktail', since various levels of conflict and lines of inter- and intra- ethnic dissents occur and lead to escalation of the violence.

2.2.6 Justifications for the Violence

The Sinhalese justify violence against Tamils as a means of protecting 'their' state and in turn themselves. The inherent ideological assumption is that the Sri Lankan state is a primarily a Sinhalese state. Hence, those challenging the state and attempting to break it are, in-fact trying to break the Sinhalese community (Manor,

1984:176). According to them, the cause for the prevalence of violence in the north and east is primarily due to instigation and perpetration of militant violence that has severely undermined the integrity of the state. The attack on the state is also seen as an attack on the principles of Buddhism considered being the basis of Sri Lankan state. It is the duty of the government considered essentially Sinhalese to protect the Buddhist principles, the Sinhalese race and the land. Violence is the means by which the Tamils, who had exceeded the behavioural limits of an ethnic minority, could be "put back in their proper subordinate place." Thus in the Sinhalese society the task of defending the sanctity of the state is transferred from the traditional institutions of political bargaining and mediation to the agencies of the war.

A parallel process unfolded in Tamil society. The central argument was that an unresponsive state had to be dismembered by the means of the war in order to satisfy minority ethnic aspirations. Failure of peace attempts only resulted in remilitarisation of the whole ethnic question. The Sinhalese society believed that only a military victory over the Tamil society would ultimately secure the territorial integrity of Sri Lanka. The 'military options only' argument was sustained primarily due to widespread belief that the ethnic war was winnable and therefore it should be fought until a victory was attained

2.3 Patterns of Ethnic Violence

Tamil militancy has been waged by groups comprising Tamil youth known as the Tigers. The Liberation Tigers of Tamil Eelam (LTTE) is the main group leading guerrilla warfare. The ultimate objective of the LTTE is to establish an independent Tamil state or Eelam. The political violence used by the LTTE to achieve this goal introduced a new dimension to the ethnic conflict in Sri Lanka. The pattern of this ethnic violence can be viewed in four phases, e.g. from 1983 to 1990 (Eelam War-1), from June 1990 to March 1995 (Eelam War-2), from mid-1996 to February 2006 (Eelam War-3) and June 15, 2006 onwards (Eelam War-4).

Five major groups of Tamil youth were engaged in the first phase of violence. These included the LTTE, the Tamil Eelam Liberation Organization (TELO), the People's Liberation Organization of Tamil Eelam (PLOTE), the Eelam Revolutionary Organization of Student (EROS) and the Eelam People's Revolutionary Liberation

Front (EPRLF). At the initial stages, these guerrilla groups confined their actions to carefully pre-planned sporadic attacks on selected targets. As the violence expanded, they used a strategy of assassinating Tamil politicians and police informers. In the mean time, Sinhala civilians residing in the isolated villages within the northern and eastern provinces became targets of attacks. Simultaneously, a campaign of guerrilla warfare was conducted against the police and armed forces using the tactics of hit and run. By 1985, the LTTE had achieved dominance over the other guerrilla groups and controlled the Jaffna peninsula.

The second phase of the Tamil guerrilla warfare began with the Indo-Lanka Accord in July 1987. As part of this agreement more than 50,000 Indian troops of the Indian Peace Keeping Force (IPKF) were stationed in the northern and eastern provinces with the objective of disarming the guerrilla group engaged in guerrilla group. Although the groups accepted the Accord and surrendered their arms, the LTTE revived their armed attacks on Sinhala civilians who were living within the boundaries of the Northern Province. In the meantime, the LTTE attacked the IPKF. Although the IPKF managed to drive the LTTE out of Jaffna, eventually the guerrillas retreated to the northern jungles and isolated pockets in the eastern areas, where they continued their rural guerrilla warfare until the IPKF withdrew at the end of March 1990. During this period, the LTTE as a tactic maintained an understanding with the UNP government until the withdrawal of the IPKF from the country.

The Eelam War-2 began from July 1991 after the deterioration of the short lived understanding between the LTTE and the Government. The following two factors contributed to the decline of the cordial relationships between the two: the non- dissolution of the provincial council in the north- east which was controlled by the EPRLF and the revocation of the 6th Amendment to the Sri Lankan Constitution of 1978. Furthermore, an armed attack on the Jaffna port in 1990 and the attack on an isolate army camp at Elephant Pass in July 1991 were major contributing factors during this period.

In the 1994 parliamentary elections, the UNP was defeated and, amidst great hope, the People's Alliance headed by Chandrika Kumaratunge came to power on a peace platform. Chandrika Kumaratunge won the presidential elections as well after

the LTTE assassinated the opposition leader Gamini Dissanayke A ceasefire was agreed in January 1995, but the ensuing negotiations proved fruitless. The LTTE broke the ceasefire on April 19 and thus began the next phase of the war, dubbed Eelam War III (Human Rights Watch, 1996: 23).

The new government then pursued a policy of "war for peace". Determined to retake the key rebel stronghold of Jaffna, which was occupied by 2,000 rebels (New York Times, Nov. 24, 1995), it poured troops into the peninsula. In one particular incident in August 1995, Air Force jets bombed St. Peter's church at Navali (Naavaella), killing at least 65 refugees and wounding 150 others (International Committee of red Cross, 1995: 67). Government troops initially cut off the peninsula from the rest of the island, and then after 7 weeks of heavy fighting succeeded in bringing Jaffna under government control for the first time in nearly a decade. The government estimated that approximately 2500 soldiers and rebels were killed in the offensive, and an estimated 7,000 wounded. Many civilians were killed as part of this conflict such as the Navaly church bombing in which over 125 civilians died. The LTTE and more than 350,000 civilians, compelled by LTTE pressure to leave Jaffna (Human Rights Watch, 1997: 14), fled to the Vanni region in the interior.

The government launched another offensive in August 1996. Another 200,000 civilians fled their home. The town of Kilinochchi (GiraaNikke) was taken on September 29. On May 13, 1997, 20,000 government troops tried to open a supply line through the LTTE-controlled Vanni, but failed. Civilians were regularly killed and wounded by both sides

As violence continued in the North, LTTE suicide and time- bombs were exploded numerous times in populated city areas and public transport in the south of the country, killing hundreds of civilians. In January 1996, the LTTE carried out one of their deadliest suicide bomb attacks at the Central Bank in Colombo, killing 90 and injuring 1,400. In October 1997 they bombed the Sri Lankan World Trade Center and, in January 1998, detonated a truck ·bomb in Kandy (Mahanuvara), damaging the Temple of the Tooth, one of the holiest Buddhist shrines in the world. In response to this bombing, the Sri Lankan government outlawed the LTTE and with some success pressed other governments around the world to do the same, significantly interfering

with their fund-raising activities.In March 1999, in Operation Rana Gosa, the government tried invading the Vanni from the south. The army made some gains, taking control of Oddusuddan (Oththan-thuduva) and Madhu, but could not dislodge the LTTE from the region. In September 1999 the LTTE massacred 50 Sinhalese civilians at Gonagala.

The LTTE returned to the offensive with "Operation Unceasing Waves" on November 2, 1999. Nearly all the Vanni rapidly fell back into LTTE hands. The LTTE launched 17 successful attacks in the region which culminated in the overrunning of the Paranthan (Puranthaenna) Chemicals Factory base and the Kurrakkan Kaddukulam (kurakkan-kaela vaeva) base. Thousands were killed in the fighting. The rebels also advanced north towards Elephant Pass (Alimankada) and Jaffna (Yapanaya). The LTTE was successful in cutting all land and sea supply lines of the Sri Lankan armed forces in the town of Kilinochchi and surrounding areas. In December 1999 the LTTE attempted to assassinate President Chandrika Kumaratunga in a suicide attack at a pre-election rally. She lost one eye, among other injuries, but was able to defeat opposition leader Ranil Wickremesinghe in the Presidential election and was reelected for her second term in office (The Tribune, Dec.23, 1999).

On April 22, 2000 the Elephant Pass military complex, which had separated the Jaffna peninsula from the Vanni mainland for 17 years (World Socialist Web Site April. 25, 2000), completely fell in the hands of the LTTE. The army then launched Operation Agni Khiela to take back the southern Jaffna Peninsula, but sustained losses. The LTTE continued to press towards Jaffna, and many feared it would fall to the LTTE, but the military repulsed LTTE offensives and was able to maintain control of the city.

Eelam War IV is the name given to the fourth phase of armed conflict between the Sri Lankan military and the separatist Liberation Tigers of Tamil Eelam.The fourth Eelam War began early on the morning of 15 June,2006. A powerful land mine ripped through a bus packed eight commuters and school children in the nithern Sri Lanka village of Kebettigollawa, killing 68 people and wounding many more. The explosion was the worst single act of violence since the government and LTTE rebels signed a Ceasfire Agreement (CFA) in 2002. For day afterwards, Sri Lanka's military

responded by bombing rebel-held areas in the northeast , including a Catholic church in which 200 people were taking refuge. Renewed hostilities began on the July 26, 2006 when Sri Lanka Air Forcefighter jets bombed several LTTE camps around Mavil Aru anicut. The government's casus belli was that the LTTE had cut-off the water supply to surrounding paddy fields in the area. The fighting resumed after a four-year ceasefire, nominally still in place, between the Government of Sri Lanka (GoSL) and LTTE. Continued fighting led to several territorial gains for the Sri Lankan Army, including the capture of Sampur, Vakarai and other parts of the east. A new crisis leading to the first large-scale fighting since signing of the ceasefire occurred when the Sri Lankan government closed down the A9 Highway which is the only affordable access for the Jaffna peninsula people to southern Sri Lanka. The Government closed the road to deprive the Jaffna peninsula people which counts more than 600,000 of their basic human needs such as food, medicine etc., which led to the rise in price for commodities which is already higher than most people can afford to buy, in retaliation LTTE closed the sluice gates of the Mavil Aru reservoir on July 21 and cut the water supply to 15,000 villages in government controlled areas (BBC News, August.8,2006). After initial negotiations and efforts by the SLMM to open the gates failed, the Air Force attacked LTTE positions on July 26, and ground troops began an operation to open the gate (Daily Mirror, July 27, 2006). Palitha Kohona, a government spokesman, stated that the government remained committed to the cease-fire. Likewise, the LTTE also claimed that they were committed to the ceasefire The war took on an added dimension when the LTTE Air Tigers bombed Katunayake airbase on March 26, 2007, the first rebel air attack without external assistance in history.

Since the latest upsurge in violence in April, nearly 40,000 people have been displaced in Sri Lanka. This comes amidst the governments air strikes on civilian populated areas of the East. Amnesty International quoted UN figures to say that a total of 39,883 people had been displaced in the north and east since April 7, 2006 adding that a total of 314,378 people were displaced by the conflict while around 325,000 people were estimated to have been displaced by the tsunami (Washington Post, July 26, 2006).

Amnesty International has also stated that increasing violence was forcing many Sri Lankans to flee the country and that more than 2,800 people had sought shelter in India this year. The state's failure to provide adequate security and to ensure that attacks against civilians are prosecuted has resulted in widespread fear and panic.Karuna has also been accused of gross human rights violations such as forming death squads, harassing journalists, extrajudicial killings (Human Rights Report: U.S. Department of State, 2006) abductions, and the use of child soldiers against the LTTE (Ross, 2006:12). Apart from that his group has split due to financial corruption issues (Hindustan Times,May 6,2007) He was later arrested by British authorities for illegal entry and is being probed for war crimes.

2.4 Forms and Manifestations of Ethnic Violence

Forms and manifestations of ethnic violence in the island can be classified as follows:

2.4.1 Riots

Riots are the most frequent and dramatic expression of ethnic conflict (Tambiah, 1986: 28). It is a particular kind of collective violence, which once begins, takes an interpersonal and brutal form. It is observed that despite "an atmosphere of sadistic gaiety that frequently surrounds the killings, this is no light hearted or ritualized test of strength - it is deadly serious" (Horowitz, 2001: 2). Though riots connote spontaneity in the Sri Lankan context, the operation is planned and implemented with virtually military precision (Chattopadhyay, 1994: 73). This method of organised violence has become an integral part of mass politics of Sri Lanka (Jehan Perara, 2007: 77).

Even, before independence, there were many riots along religious lines. But, in the post independence period, the riots are uniquely anti-Tamil. The year 1956 is significant in the history of Sri Lanka for developing a major wedge between the Sinhalese and the Sri Lankan Tamils on the language issue. Riots broke in June 1956 as a result of violence against the introduction of "Sinhala Only Act". Violence spread to other parts of Colombo and Eastern Province. In Colombo, the Pettah area, where the most of the Tamil shops were situated was looted and destroyed. The rioting of the

Galoya[20] area in the eastern part of the island was organized by the Sinhalese to drive away the Tamil settlers from the scheme area. As the police force was not so much politicized on ethnic lines at that point and also due to the adept handling of the situation by Governor General Oliver Gunatilleka, the situation was brought under control quickly. Nevertheless, 150 were dead and thousand were injured apart for the huge loss of property and displacement of over 12000 (Sabaratnam, 71-72). Tambiah pointed out certain themes of the 1956 riots which were to recur in riots of later years. Those running threads are ---

a. The central role of rumours in triggering the violence and also in generating anger and panic among the participants

b. Lethargy on the part of the police (but later this characteristic transformed into active connivance with the rioters against the minorities

c. Critical forces in the crowd like mobile and volatile labour force and construction workers who unleashed violence (Tambiah,1986: 86-87)

The 1958 riots also centred on language and colonization concerns. The Bandaranaike- Chelvanaykam pact, signed in June 1957, which gave the reasonable use of Tamil and regional councils, was unilaterally abrogated. At the same time, colonisation in the east was intensified; the Padviya scheme was one among them. The Federal Party responded by organizing agitations and anti-SRI campaigns in the north. The response from the Sinhalese was in the forms of riots firstly in the eastern parts of the island on 22 may 1958, when the Tamil villagers were attacked. But a rumour that a "Tamil Army" was marching to destroy Polonnarawa caused the riots to spread to the rest of island. For the first time, pangs of violence reached the Plantation Tamils in the central districts. Initially, the administrators failed to take any action. In Colombo, the Tamil business establishments were prime targets of the rioters. [21] The situation was brought under control by army. The riot of 1958 clearly demonstrated

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[20] Situated 150 miles east of Colombo, is Sri Lanka's first and largest post-independence multi-purpose scheme modeled on Tennesse Valley Authority and Damodar valley Corporation.

[21] For detailed account of the riots see Tarzie Vattachi's Emergency 58: The Story of the Ceylon Race Riots, London: Andre Deutsh, 1958.

the role of leadership in controlling violence, which emerged as a major variable in the riots of later years.

The 1977 riots were held against the backdrop of post-poll violence following the victory of the UNP under Jayewardene. Tamil militancy has taken root and now militants were in a position to retaliate police attacks, though in a limited manner. The dominant Tamil political party, TULF, in its Vaddukodda resolution, resolved the fight for a separate state. The party also started internationalising the ethnic issue in various world forums. All these enraged the Sinhalese. Trouble started in Jaffna with small incidents on 12 Aug 1977 at a Carnival in St. Patrick's college when some police men in plain clothes were not allowed to enter without tickets. This led to massive assault by the police in various parts of Jaffna and the violence gradually spread to other parts of island, again, due to rumour. But this time, it was spread by the Sinhalese students who were brought from Jaffna University for safety to Anuradhapura.

The government accused the SLFP for violence as a reaction to the post-poll violent incidents, the SLFP in turn, pointed figures at the UNP. But no attempt was made to find the truth. A commission under Justice Sansoni was appointed to find out the causes and recommend remedial measures to prevent such incidents in future, but commission was disappointingly biased in most of its findings. The Report, however, straitened the police for their inability to act promptly in bringing the riots under control. It also pointed out the lack of proper coordination among the senior police officers and too much of political interference in police force. The Report also called upon the government to discuss the major issues of education, employment and colonisation with the Tamil representatives but the recommendations were not fully implemented by the government. As a result, another riot broke out in 1979 (Sieghart, 78). The notable feature of the 1979 riots were—

a. For the first time since independence, the atmosphere for ethnic violence was created by electoral violence.

b. For the first time the government acknowledge the intensity of the violence and appointed a commission to investigate its causes and consequences.

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c. The riots displaced numerous Plantation Tamils from hill country towards eastern parts.

The 1979 riots took place in the back drop of

1. Proscription of LTTE on 22 May, 1978

2. Passage of PTA on 21 July, 1979

3. Presidential order to the army to 'wipe out' terrorism by 31 Dec, 1979

4. Declaration of emergency in the north.

Thus, anti-insurgency operations in the north became intensified and the militant attack on army became a regular event. The riots were sporadic and intermittent spreading out in July and August of 1979. But unlike the previous riots, the 1979 riots were restricted only to north and east.

The 1981 riots have to be seen in the backdrop of violence-marred District Development Councils elections held in June 1981 and burning down of Jaffna Library. The riots, which erupted in Amparai as a small clash between Tamil and Sinhalese students in 1981, spread in entire Island. It affected the Plantation Tamils most and displaced them from hill districts. The extent of arousing, killing and detention demonstrated the organized nature of the riots in the various places. The then president Jayewardene himself admitted that many party members were involved in organizing violence against the Tamils.

The 1983 riots broke out in the charged atmosphere of ambush of 13 soldiers in Jaffna by the LTTE. Of all the previous riots, the 1983 riots were well organized and became widespread both in terms of destruction and geographical reach. The connivance of the government and the security forces was remarkably high. Tamil homes and business establishments were attacked systematically. Pettah, one of the biggest bazaars in the Colombo, came under attack. The riots in Colombo were organized by hired thugs supervised by government high ups (ibid, 21). The riots facilitated a large scale looting, stealing, vandalism and setting of old scores (ibid, 75). On July 25, about 300-500 prisoners broke out their cells and stabbed 35 Tamils to death at the Welikoda prison, a high security prison. On July 27, violence spread to

other parts of the island. Panic heightened among the Sinhalese with the spread of rumours that the Tigers were in Colombo to exact revenge. This sparked further attacks at the Tamils.

The government was confused and indecisive. While, on the other hand, it appeased the majority by claiming that the riots were the legitimate expression of anger by the Sinhalese Buddhist majority and assured safeguards of their rights, on the other hand, it blamed the left for the riots. Many other explanations have been put for riots. One section represented by the former minister Gyril Matthew accused foreign agencies like RAW (India) and KGB (Russia) for the riots. The perspective from the security forces was that the LTTE deliberately perpetrated the violence to demonstrate the Sinhalese hatred against Tamils. Some pointed fingers at JVP, an ultra-nationalist militant group which was anti-Tamil in character. The Tamil nationalist leaders pointed out that the racist elements in the government master minded the riots. Some said that a section of the business community wanted to eliminate its competitors. It was also said that the riots were an attempt to promote conflicts between different ethnic groups in the island. It is also maintained that a section of army was involved to assert its supremacy and gain political power by using the prevailing instability.

Whatever may be reason, the riots undoubtedly demonstrated the extent to which the Sri Lankan society was ethnically polarized. It clearly established that the security forces were no longer neutral and could not to be trusted by all. And the government was representative of only the majority community.

2.4.2 Intra-Ethnic Violence

Intra ethnic violence has received less scholarly attention. It is used here to mean violence within the Tamil community. This form of violence can be broadly categorized into three types.

1. Violence used by Tamil militants against Tamil moderates who fail to subscribe to the separatism. In the incipient stages, the militants targeted the Tamil politicians belonging to main Sinhalese majority parties like the SLFP and UNP: the first such incident was the killing of Thiyagarajah, a UNP

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candidate and Nadaraja, the party organizer, during the 1981 District Council election in Jaffna (Rajan, 2001).

Later, however they turned against moderate Tamil leader who were considered as 'traitors' and unable to win the right of the Tamil community. Ironically, the LTTE has killed more moderate Tamil politicians. Of 37 prominent leaders assassinated by LTTE cadres, 24 were Tamils, 9 Sinhalese, 3 Muslims and one an Indian (Rajiv Gandhi). TULF leaders Amirthalingam and Yogeswaram were assassinated by the LTTE in 1989 for their pro-IPKF stand and their interest in negotiated settlement. Three other TULF MP's were killed thereafter – Sam Thambimuttu in Colombo in June 1990, Arunachelam Thangedurai in July 1997 in Trincomalee and Neelan Tiruchelvan in Colombo in July 1999. Jaffna Mayor Sarojini Yogeswaram and Ponnuthurai Sivapalan were killed successively in May and September 1998 by the Tigers.

2. Violence against Tamil civilians in the process of political, economic, intelligence, organizational and military activities.

3. Violence resulting from intra-military rivalry. Though Tamil military took root in the early 1970's mobilisation under various organisational structures commenced only in the early eighties. The 1983 anti-Tamil riots gave a fresh impetus to the mobilisation fund and international support and a large number of politically radicalized youth joined various organisation. At one point of time in the mid-1980, about 37 militant groups remained committed to the cause of separatism. Of course, five outfits- LTTE, TELO, PLOTE, EPRLF and EROS- were dominant as others went into oblivion. Race for supremacy between these five outfits gave intra-ethnic violence a new dimension. As the state gradually lost control of the Tamil dominated north and east, existing guerrilla organisations competed among themselves for the control of territory, resources and population. Indeed, there existed a brief period of unity among the above mentioned groups, barring PLOTE, under the banner of ENLF. This was due to Indian diplomatic efforts to bring all militant groups under one umbrella on the eve of the Thimpu talks in 1985. But the LTTE soon broke out alliance and targeting two other groups, TELO and EPRLF in 1986.

The LTTE initiated its campaigns of extermination against other militant groups in 1986. More than 300 members of TELO, PLOTE and EPRLF were murdered as a consequence, including Sri Sabaratnam, the leader of TELO in May 1986, Uma Maheswaram, the leader of PLOTE and K. Padmanabha, the leader of EPRLF in 1990. With the signing of the Indo-Sri Lankan Accord in 1987, the EROS accepted the hegemony of the LTTE, while other non-LTTE groups joined the mainstream. Two other militant groups that emerged at a later period were ENDLF, formed with help of Indian intelligence agencies in May 1987, and EPDP, a breakaway faction of EPRLF. While the ENDLF no longer exists the EPDP is a political party. The killings of leaders and prominent cadres of the rival militant groups by the LTTE continues to this day, a number of leaders are in its hit list.

In March 2004, the LTTE commander of the Eastern Province, Colonel Karuna, split with the LTTE leadership in the Northern Province, initially taking with him perhaps one- fourth of the LTTE's cadres. Terminology can vary widely, but this new force may be termed the "Karuna Group". While the LTTE continues to control most of the territory it did at the time of the ceasefire, the Karuna group has conducted many ambushes and killings of LTTE cadres, political representatives and supporters. This has weakened the LTTE's position in Government-controlled areas and has led the LTTE to close its offices and end most political work in those areas[22]. Since the LTTE has long stated its aim to create the state of Tamil Eelam out of most of the territory of the Northern and Eastern Provinces, there is now a crucial battle for control in the east, accounting for many of the most recent killings.

These internecine killings enabled the LTTE to become the main guerrilla organisation aiming at a separate Tamil state and to promote itself as the sole legitimate representative of the Tamil-speaking people in the country. The politics of the Tamil areas are thus no longer decided by the ballot box but by the whims of the Tiger leadership.

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[22] On 18 Nov. 2004, LTTE offices in Akkarai and Arayampathy were attacked with grenades. On 21 Nov. 2004, LTTE offices in Batticaloa and kaluvamchikudy were attacked with claymore mine.

2.4.3 Reprisal Killings

Both the militant groups and the armed groups have evolved the strategy of attacking civilians to seek vengeance. The militants used this strategy to provoke communal disturbances in the south with the expectation that the Sinhalese army would be pulled back from the north or the east to their advantage (Chattopadhyay, 76). Attacks on the villages and Buddhists religious places have been conventional tactics of LTTE. The anti-Tamil sentiments have been successfully transformed into pro-militant sentiments by the guerrillas. The Tamil nationalist argue that such scheming attacks on unarmed civilians were unknown to Tamil militants until the Indian Intelligence Agencies apparently urged the LTTE into doing so in Anaradhapura in 1985 which claimed over 200 lives (Trawick, 120). The security forces made use of night curfew to unleash hired hoodlums on Tamil homes and if the resident tried to flee, the security forces shot them down as curfew violators. In retaliation, Tamil militants attacked on families of armed forces and in one such instance, 126 Sinhalese army personnel and their family members were killed at Kituluttawa in April, 1987 (Somasndram, 69-70). Attacks on the Sinhalese civilians were justified on the grounds that the Tamil civilians have experienced such attacks for long at the hands of security forces (Senawiratne, 1986: 56).

2.4.4 Political Assassinations

Assassination is a form of killing some body or important persons for money or for political reasons. In Sri Lanka, this form of violence is adopted by the LTTE. In the Eelam War One, the LTTE concentrated on assassinations of Tamil politicians and on executing police informers. The assassination of the mayor of Jaffna, the central town of the Northern Province in 1975 was the first of these political murders. From 1977 to July 1983, the Tigers killed 11 Tamil politicians, 13 police informants and 16 civillians (Siriweera, 1980:903-13).

These attacks were followed by a chain of assassinations of established and emerging Sinhalese political leaders both in Sri Lanka and India. These included the assassinations of Ranjan Wijiratne, the deputy defence minister of Sri Lanka in March 1991, Lalith Athulathmudali, the deputy defence minister of Sri Lanka in 1993, Gamini Dissanayke, minister and the united National Party candidate for the

presidential election in 1994, Ranasinghe Premdasa, the president of Sri Lanka in 1993, Rajiv Gandhi, the former prime minister of India in May 1991 and most recently Laxman Kadirgamar, the foreign minister of Sri Lanka in 2005. In December 1999, the LTTE attempted to assassinate another Sri Lankan president, Chandrika Kumaratunga; she survived but lost an eye in the blast.

2.4.5 Suicide bombings

Though, the Tigers adopted various means of assassinating their rivals, the most successful and resorted method has been suicide bombings. In July 1987, the LTTE carried out their first suicide attack: "Captain Miller" of the Black Tiger drove a small truck with explosives through the wall of a fortified Sri Lankan army camp, reportedly killing forty soldiers. Since then they have carried out over 170 suicide attacks, more than any other organization in the world, and the suicide attack has become a trademark of the LTTE, and a characteristic of the civil war. This method is absent in other groups involved in the Sri Lankan ethnic conflict. Trained especially for this purpose, the Black Tigers, thus far, have conducted nearly 190 successful attacks killings hundreds of civilians and armed forces personnel. Suicide attacks are known for their high success rate and enormous terror impact they instil in the enemy. The LTTE chief Prabhakaran said, "With perseverance and sacrifice, Tamil Eelam can be achieved in 100 years but if we conduct Black Tigers Operations, we can shorten the suffering the people and achieve Tamil Eelam in a shorter period of time" (Gunaratne, 2000: 106-109).

The Black Tiger employ various equipments including body suits, boats, bi-cycles, car and trucks for suicide attacks. Through suicide attacks, the LTTE has been able to eliminate political leaders like Rajiv Gandhi; the former prime minister of India, R. Premdasa; the former president of Sri Lanka, Laxman Kadirgamar; former foreign minister, Ranjan Wigiratne, Gamini Dissanayke, and C.V. Gunaratne. Its military targets have included Admiral Clancy Fernendo, Brigadier Levy Wijiratne and Brigadier Anande Hamangoda. The Black Tiger were also successful in inflicting damage on Central bank of Sri Lanka, Joint Command Operations of Sri Lankan security forces, World trade Centre at Colombo, temple of tooth in Kandy, Katunayake airport and oil storage installations at the Kolonnawa.

2.4.6 Air strikes by LTTE

The first ever air attack by the LTTE targeted the Sri Lankan Air Force base at Katunayake on March 26, 2007. Two bombs were dropped near the engineering section of the base by a light winged aircraft manned by the LTTE. Three air force personnel were killed and seventeen others were injured. Barley one month later on April 24, Sri Lankan forces foiled yet another LTTE attempt to carry out an aerial attack at the Palaly Air Base in Jaffna. Subsequently, on April 29, LTTE aircrafts dropped four bombs in close proximity to the city of Colombo. Two Bombs landed in an area called Muturajawela, north of the city, one damaging a water pipeline at a crude oil pumping station and the other striking a fire hut at a Shell gas facility. Two other rebel bombs landed near the Kollonnawa oil refinery facility without causing any damage. With effect from May 9, night operations at Bandaranaike International Airport were suspended. However, an announcement was made by the Civil Aviation Authorities resuming night flights with effect from 1 June 2007.

2.5 Conclusion

The Sri Lankan forces and the Tamil militants are convinced that violence is the panacea of all their ills. For this, the most modern techniques of violence are used. In the post-independence period, ethnic violence erupted in 1958, 1977, 1981, and 1983. Thus, the intervals between each riot narrowed down and at the same time, the intensity and area increased. Both the state forces and militants are responsible for dehumanizing the society. It is clear that the use of violence by the state enhanced the legitimacy of the militant groups like the LTTE and their use of violence as tactics. At the same time, the legitimacy and authority of state has been eroded.

It is also clearly evident that the causes of ethnic violence in Sri Lanka are multi-dimensional that they lay in a combination of political, economic, social and cultural spheres. The political leadership, as a factor in conflict, failed time and again to root out violence from society. This is reflected in the characteristics of the security forces, which have ethnic biases in discharging their functions. Accumulated ethnic grievances have aggravated and provided strong justifications for the violent means adopted by the Tamil militants. Thus, it is wrong to attribute the cause to one single factor.

Chapter-3

Threats to the Right to Life

In the security discourse, state has prime responsibility to protect its citizens and preserve its territorial integrity. It is the responsibility of state not only to provide immediate physical security but also give each individual the opportunity to make its own future more secure. However, in multiethnic societies, minority communities complain that they are politically underrepresented, socially excluded and economically disadvantaged. Also, they talk of traditional rights: right to use their own language, to freedom of religion, preservation of ethnic identity and to autonomy. When these traditional rights are suddenly called into question, they challenge the legitimacy of state itself and hence the state considers it as a direct challenge to its authority and integrity.

In these circumstances, national security prevails over human security in state's actions. As a consequence, the broad framework of a new social contract is actually being negotiated by means of violence. In this sense, violence is also a means by which the contending parties are engaged in the negotiating process. The obvious consequence is a diabolical cycle of violence to further human insecurity: the violation of right to life. Further, in some of the cases, the misbehaviour of the armed forces and police has served to provoke guerrilla misbehaviour. This has resulted in a never ending spiral of violence, with innocent civilians on both sides as victims.

Human security is considered as a good principle of democracy as they are assured through legal or political provisions (Amnesty International Report, 1987). Democracy also provides citizens the means to oust potentially abusive leaders. In addition, it makes it easier for the Mobilization of local and world public opinion against such leaders. However, in practice 'democracy' and 'human security' do not seem to reinforce one another. Democratic regimes often deviate from the set principles for various reasons: population pressure and consequent scarcity of resources, low level of economic development and ethnic conflicts. Among these, ethnic conflicts stand out prominent as they invariably result in human insecurity in many democracies of today. This insecurity takes place as a result of militant activities as well as the State's response to ethnic conflict (Small and Singer 1982: 215).

Sri Lanka, with one of the most "complex plural societies in any part of the world," has three major ethnic groups and four major religions. Sri Lanka is a longstanding democracy. However, the ethnic conflict between the Majority Sinhalese and the minority Tamils has resulted in armed hostilities – the main reason behind large scale of human insecurity of all sorts. The politicization of ethnic and religious separations has led to intensification of the conflict in Sri Lanka. The last three decades produced two armed insurrections in the south and an un-winnable war in the north and east. Though, the war has been divided predominately along ethnic lines, with the majority Sinhalese Government forces ᵃfighting against the Tamil rebel group and the Liberation Tigers of Tamil Eelam (LTTE), much intra-ethnic conflict has also emerged. The conflict in Sri Lanka has had a disastrous impact on the effective protection of right to life. The insecurity increased in proportion to the intensification of the ethnic violence between the security forces representing the government and the militants representing the minority community.

3.1 Sri Lanka's Emergency Laws

Large scale violations of right to life, a result of a state of emergency in Sri Lanka, can be attributed to the country's draconian anti-terrorist legislations – the Public Security Ordinance, The Prevention of Terrorism Act and the Emergency Regulations (collectively, the 'Emergency Laws'). These laws enable political and security officials at all levels to participate in a visceral and illogical counter campaign of terror, oftentimes more brutal and inhumane than the war waged by their opponents. The current set of emergency regulations were framed under the Public Security Ordinance of 1947, which enables the President to bypass the normal legislative process and restrict basic rights granted under the Constitution for national security purposes. The Prevention of Terrorism Act of 1979, enacted to deal more specifically with the state of civil unrest caused by terrorist organisations, places further limitations on the rights of an already politically subordinate ethnic group.

The Public Security Ordinance (PSO) 1947 provides for 'measures in the interest of the public security and the preservation of public order'. Part 1 empowers the President to declare a state of emergency. The criteria by which the President authorised to enact an ER is discretionary. Rule 5(2) lists the authoritative options

available to a President during a self declared state of emergency: detention of persons; acquisition of private property including land on behalf of the government; amendment, suspension and/or application of 'any law', granting supreme legal authority to emergency regulations issued by the President over all other laws of the land and apprehension and punishment of offenders of any emergency regulation. Part 3 of the PSO refers to the special powers granted to the President when Part 2 of the ordinance becomes effective as per his or her order. It includes provisions such as military or security officers, restricted by rank, may seize offensive weapons and substances from armed persons, any attempt to hinder or obstruct the progress of such services physically, verbally or via publication is subject to punishment, arrest may proceed without warrant.

The Prevention of Terrorism Act (PTA) 1979 addresses the threat to public security posed by the LTTE by outlining the ways in which the government may issue ER's of oppression without justifications. Part 1 lists the offences that are considered violations of the PTA: torture, detention or murder of persons are considered violations of the act when the victims are 'specified' or 'special persons' as designated by the corresponding emergency regulations. The Sri Lankan security forces are known to apply the category of 'LTTE terrorist' to anyone who is regarded as supporting the LTTE, even if having been forced to do so under threat to life. Part 2 deals with the investigations of offences. Officers are entitled to do this without warrant in the apprehension of PTA offenders: arrest any person, enter and search any premises, stop and search any vehicle, seize any document suspected of violating any law.

Part 3 stipulates that persons suspected of unlawful activity may be detained on unspecified grounds for a period of three months, extendable by three months, up to a total period of detainment not exceeding 18 months. Other forms of restriction may be ordered as per Section 11, including house arrest, limitation of travel within or outside of Sri Lanka and prohibition of involvement with specific persons or organisations. Part 4 entitles all offenders to make representations to an advisory board which is comprised of persons nominated by ministers or the president. Part 5 bans the print media from publishing any writings commissioning an act violating the PTA or the investigation of any such offence and any language which may incite

violence or promote racial and communal harmony. Part 6 holds that all suspected offenders are subject to trial without jury or preliminary hearing. Any statement made by any suspected persons at any time and under any circumstances may be used as admissible evidence in a court of law.

During states of emergency, the President may institute ER's to secure the public order of the state. Sri Lanka has been in a constant state of emergency since 1983, with broad powers accorded to military and security personnel. The new ER's provide for two types of preventive detention. ER16 deals with detention within one's home, which is also granted in Section 11 of the Prevention of Terrorism Act. Under this regulation, the Defence Secretary may order various restrictions on a person's activities as a preventive measure, including restrictions on employment or business on association or communication with others and on movement. ER 17 discusses about preventive detention under custody. This form of detention is limited to one year. ER 17 required that the Defence Secretary had to be satisfied upon the material presented to him. Detainees are effectively denied legal recourse.

Authorised places of detention need not be published in the government gazette, a legal requirement under the previous emergency regulations. Detainees may now be held in the custody of any member of the police or armed forces and shall be deemed to be in lawful custody. The likelihood of abuses associated with secret detention, such as torture and extra-judicial killings has increased. The regulations provide no separation between detainees and their investigators. Prisoners held in the custody of their interrogators, however, are most at risk of abuse.

Except for a brief six-month hiatus in 1989, a nationwide state of emergency has continuously been in force since May 1983. As the conflict intensified between 1983 and mid-1987, many violations of right to life occurred in the northern and eastern regions of the country, where Tamil communities dominate. Ethnic violence has resulted in the grave human insecurity and violations of Right to Life. Violations of Right to Life have been occurred in terms of disappearances, torture, extra-judicial killings, arbitrary arrests and detention.

3.2 Role of Security Forces

The experience of most societies shows that considerable violence is perpetuated by the agencies of the state, such as police or army. Veena Das observes that -

".................the manner in which the armed forces and the police have been engaged in South Asia in the management of internal conflicts leads one to seriously question the notion of legitimate force. Although, there is well developed repertoire that the state has its disposal for the management of collective episodes of violence, including the use of curfew, the deployment of limited force, preventive arrests etc the manner in which these measures are used by the police can be shown to the partisan" (Das, 1990:25).

Much of the violence of state forces has a bureaucratic sense to it. Its defenders say that this is mainly due to the fact that the anti-state forces largely operate in secrecy. The instruments of violence were used in 'disciplinary' population as the forces lacked the ability, or, perhaps were not trained in responding to violence in commensurate with its nature and intensity. The gradual rise of Tamil militancy in the northeast transformed the security forces into a more professional but biased force due to their ethnic composition. More Sinhalese forces were sent to the Tamil dominated areas as the government felt that the Tamil security personnel were either unreliable or insufficient (De Silva, 2001). The Tamil minority saw the security forces as oppressive; whose sole aim was to implement the state's majoritarian agenda. A common practice by the security forces, while facing unexpected violence from the militants is to target at the ethnic community to which the militants belong as a kind of surrogate punishment (Somasunderam, 1990: 14). The security forces are seen as an important factor in the anti-Tamil riots in Sri Lanka. For instance, in July 1983, as soon as the news of the ambush by the tigers broke out, the soldiers started retaliating against the Tamil civilians (Bastin, 1998; 300-301).

Aggression by the Sri Lankan military forces against the LTTE has strengthened the LTTE in three ways. First, the military has brought armaments and munitions into the country, large quantities of which have ended up in LTTE hands. LTTE raids on military instalments are often for the express purpose of procuring

arms and some of these raids have been monumentally successful.[23] Second, when civilians suffer as a consequence of military aggression against the tigers, the civilians are inclined to fear the military and to turn to the LTTE for support and protection. Third, the actions of military seem almost designed to encourage the young people to join the LTTE. A young Tamil civilian who is tortured on suspicion of belonging to or supporting or having knowledge about LTTE may well end up with no desire but to leave the country. But an idealistic young person whose loved ones are hurt or killed by Sri Lankan army can manage his pain and turn it to strength and self-regeneration by joining the LTTE. The close binding of combatants means that when one combatant is killed, his friends are all the more motivated to fight (Gamage and Watson, 1999: 161)

In the realm of use of legitimate force, the state includes even those who express their political discontent. Importantly, people who misuse the state power in such manner tend to go unpunished. In order to deal with collective violence, the state relies not only on the legal measures such as declaration of curfew and preventive detention but also brutal terror which its agencies employ. Even in the case of individual crime and violence, we can see the transformation of such nude violence into applied terror.

The emergency regulations and Prevention of Terrorism Act have given the security forces a free hand to use the violence with maximum possible immunity. In the past, the number of detentions had increased phenomenally and there were many cases of maltreatment, torture, deaths and disappearances of those who got detained under these draconian laws. Free hand given to the security forces in wiping out terrorism resulted in the alienation of the people of north and east and consequently strengthening of Tamil militancy. Moreover, the legislation enacted in 1981 deprived the judiciary of its power to review any law passed by parliament in the name of urgent national importance (Tambiah, 1986: 44).

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[23] For example, the attack on Mullaitivu in July 1996 and more recently the diversion of munitions shipment bound for Sri Lanka into LTTE custody.

3.3 Various Dimensions of the Violations of Right to Life

Various dimensions of the violations of right to life are as follows-

3.3.1 Extrajudicial Executions

The right to life which is one of the most basic, non-derogable principles of international human rights law is violated by extrajudicial killings. Article 8 of the Sri Lankan Constitution states: Every person has an inherent right to life and no person shall be intentionally or arbitrarily deprived of his life'. This is the most fundamental of rights, recognised by all communities, codified in international law and indisputable under any circumstances. Under the anti-terrorist regime, however, extra-judicial summary and arbitrary executions have flourished in Sri Lanka. It is mentioned in the Universal Declaration of Human Rights of 1948 (UDHR: Act3), the International Convention of Civil and Political Rights of 1966 (ICCPR: Act 6) and also the Fourth Geneva Convention Relating to the Protection of Civilians in Times of War of 1949 (Acts. 277 and 32).

Extrajudicial executions include reprisal attacks, assassinations and other arbitrary executions of those under custody without trial. The Armed Forces, the police, paramilitary organizations and the Militant groups are identified as those responsible for extrajudicial, summary or arbitrary executions. The principle cause of extra- judicial killings is identified as prevailing abuses against the right to life, which has taken root within the internal armed conflict. The security forces kill those suspected as militants, and the LTTE executes those who refuse to continue the armed insurgency or resist the group itself (Sri Lanka: State of Human Rights, 1998: 1819).

Lamp posting is a prevalent method of arbitrary execution without trial of those who are in custody in which the victim is tied to a lamppost of tree, shot, and his body left hanging there as warning. Tamil militants have resorted to such "lamp post murders" in the early days of militancy in the 1980's to discourage people from cooperating with the government forces (Rubin 1987: 16). Such killings were revived by the LTTE in 1995-96 immediately after the occupation of Jaffna peninsula by the security forces to execute people suspected as informers. The LTTE executed a few

IPKF personnel some times by "neck lacing" or setting alive tyres filled with gasoline that were fastened around the neck of the prisoners (Rubin: 60)

New Regulations 15A, made on 3 June, 1983 empowers an Assistant superintendent of Police to take possession, bury or cremate any dead body. This was made just three days after the Jaffna magistrate had pronounced a verdict of homicide at the inquest into the death in army custody of K.T. Navaratnarajah who died of nearly 35 external and internal injuries. Such provisions prevent impartial and public inquiries into custodial deaths. Also, deaths at the hands of the security forces in other circumstances lead to the worst kinds of extrajudicial executions (Sieghert, 1984: 42).

The details of such deaths are not easily available because the police often simply claim that the victim had died during an armed confrontation. Such cases are further complicated by the fact that the police have power to decide whether or not a case of execution falls under the Emergency Regulations and that the police are empowered to keep the body.

3.3.2 Torture

Under International law, torture is recognized as one of the most heinous of crime. Freedom from torture or cruel, inhuman or degrading treatment or punishment is a human right guaranteed by Act- 5 of the UDHR and Act- 7 of International Covenant on Civil and Political Rights (ICCPR). Act- 11 of the 1978 constitution of Sri Lanka guarantees freedom from torture as a fundamental right. This particular provision is a non-degradable right in the sense that it cannot be abridged or curtailed under any circumstances, even during war, public danger or other emergency. It is the only fundamental right in the constitution that cannot be amended even with two-third majority. A separate UN convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (CAT) was adopted in 1984 to prevent torture. It was only ten years later that Sri Lanka acceded to the convention and enacted its own law called convention against Torture and other cruel Inhumane and Degrading Treatment or Punishment Act No. 22 of 1994 in November 1994. Article 2(2) of the Convention states, 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be

invoked as a justification of torture'. Interestingly, torture was officially made illegal in the island way back in 1979.

However, torture has become the most common violation of right to life reported in Sri Lanka in the past two decades. Torture is used by the Sri Lankan security forces, the LTTE and other armed Tamil Militant groups: the People's Liberations Organisation for Tamil Eelam (PLOTE), Tamil Eelam Liberation Organisation (TELO), and Eelam People's Democratic Party (EPDP) and the 'Razeek Group" of the Eelam people's Revolutionary Liberation Front (EPRLF) which work along-side the security forces. Torture is employed by the Sri Lankan armed forces and Tamil armed groups with two principal aims: to obtain information on insurgent groups and to intimidate the population. Torture is often inflicted at unpublished places of detention, as permitted by ER 17(3) and reportedly precedes the taking of a decision as to whether the detainee is released or put at the disposal of the competent judicial authority. Lawyers have indicated that there are repeated allegations of confessions extracted under torture. Many times Tamil suspects are forced to sign a statement of confession written in Sinhalese, a language that the victim may not understand (Zanzi, 2002: 38).

Torture continues unabated mainly due to immunity under the Emergency Regulations and the PTA. This problem has been pointed out by the Supreme Court in various cases. Under the Emergency (Miscellaneous Provisions and Powers) Regulations No.1 of 1994, concerned authorities have wide discretionary powers to deal with offenders, including potential offenders, to prevent such persons from committing such offences. There are no minimum standards with regard to the conditions of detention under this Regulation. Most importantly under the Emergency provisions, the confession made before police officers not below the rank of Assistance Superintendent of Police is admissible which is a flagrant violation of Article 15 of the CAT. This also goes in contravention made to police officers as evidence. To avoid the exposure of torture through post-mortem, the Emergency Regulation inquest, which is another motivation for torture (Somasundram, 1990:58)?

Similarly, a person arrested under the PTA may be detained up to 72 hours and can be moved from the place of detention to any other place for the purpose of

investigation with or without magisterial authorization or attention. A person can also be detained for a period of up to 18 months on the sole ground that such detention can prevent offences under the PTA from taking place. During this period, there is no judicial review of detention and the detainee has little ability to influence the administrative decisions (Martholm, 1998: 167-168). Admissibility of evidence is similar under the ERs.

Custodial deaths in Sri Lanka have increased dramatically during 2006. There are two types of extrajudicial killings taking place, mainly through the police. In the first category, there are reports of several deaths, almost every weak in the newspapers, with a short announcement that a person arrested by the police had been killed. The second category is death after arrest of those in police custody, mostly due to torture. The pattern of cases clearly shows the breakdown of supervision at the time of arrest during detention and in some instances even in prison custody.

3.3.3 Arbitrary Arrests and Detention

Constitutional protection from arbitrary or preventive arrest and detention under Article 10 is left vague, stating merely that persons may only be imprisoned or physically restrained 'in accordance with procedure prescribed by law'. As a result of the lack of definitive criteria for preventive arrest under ER 18(1), countless civilians have been arbitrarily arrested without 'reasonable grounds'. The problem is specifically that determination of 'reasonable grounds' for suspecting offences is at the discretion of the arresting officer, not in accordance with any requisite standards.

Generally, detentions are of two types

1. Preventive detention, which is detention of a person not for what he may have done, but for what it is feared, he might do if left at liberty and
2. The arrest and detention of a suspected offender.

Both types of detentions are in vogue in the island. Detention, especially of Tamil youth, has become a routine affair in the Tamil majority areas. Detentions are made mainly for two purposes:

1. Detentions of terrorists and their accomplices of whose guilt the security forces are convinced but of which they do not have enough admissible evidence.

2. Detention for questioning of political information that might be reluctant to make statements to the police while at liberty.

Arrests are made through the following means-

Road checks: Pedestrians and passengers are inspected at road checks and checkpoints and if suspected, arrested. Such arrests may take place at any time of the day and anywhere.

Cordon and search operation: It is the most frequently used method of arrest by the security forces. Any area can be cordoned off and searched for probable suspects without any warming by the security forces. All entries and exists are totally sealed. The people of the area from children to elders are summoned by a public address system and regardless of weather conditions. They are made to live up and walk past a marked person for identification. The masked person on identifying a suspect nods to indicate the suspect and this person is arrested and taken for interrogation. At times, during these cordon operations, children and youth in the age group of 9-40 are taken away. The fate of those arrested cannot be predicted (see the section under "Arrests and Detention", situation Report, 2001 (Colombo: Forum for Human Dignity, 2001).

House to house checking: Unwarranted searches are made in houses even in the mid- night and in early mornings. Such searches are not without supplementary acts of looting. Despite the promise made 1993 by the Sri Lankan government that relatives of detainees would be informed of where the prisoners were being taken to relatives often do not know where they are held.

Arbitrary arrests at public places: Arrests of Tamil youth in Colombo by the police during midnight raids at lodges, cinema halls, apartments and hotels are common. Such arrests are seen more especially during elections and at times of bombarding and assassination attempts by the LTEE on the grounds of mere suspicion or in the belief that the detainees may be in a position to provide vital information. Even women are not spared in this exercise. The relatives of the suspected militants are also arrested until the militants surrender to the security forces.

The total number of detentions by the government and the militants are not confirmed and they vary from time to time due to new detentions and release of the

prisoners held. According to the International Committee of the Red Cross (ICRC) there are totally 16,000 prisoners in various prisons in Sri Lanka under government custody. 10 per cent of whom are related to ethnic conflict.

Under normal laws, law enforcement authorities must inform an arrested person for the reason for arrest and bring that person before a magistrate within 24 hours. But in practice, persons detained are produced before a Magistrate only after a few days due to deliberate delay in entry of arrest in the diary at the place of detention. The Magistrate may authorities bail or order continued pre-trial detention for up to three months or longer depending on the seriousness of the case. Under the Emergency Regulations, the detention can be as long as the Emergency remains in force. It is common for a detention order under ERS to be used to extend the period of detention of a person for 18 months under the PTA. As regards the second category of detention (the arrest of suspected offenders), the normal provisions of law relating to bail do not apply. In most cases, bail is permissible only with the consent of the Attorney General.

Under the PTA a person can be detained anywhere subject to any conditions for successive periods of three months up to a maximum of 18 months (section 8 of the PTA). In this case, the detainee need net be brought before a Magistrate at any time. This cannot be called in question in any court or tribunal by way of writ or otherwise (section 10 of the PTA). However the detainee can make representation to an Advisory board of three persons appointed by the President. Practically, such appointments are time consuming.

The point is that whenever a statue gives discretionary powers to responsible members of the executive to detain individuals or to make other adverse decisions about them which will not be subjected to review by the courts; it is of paramount importance that the Ministers or officials concerned exercise such powers with great care. However, this aspect is ignored and the executive, directly or indirectly, becomes the main source of human rights abuses. The detainees are kept in poor and unsanitary conditions without being informed of the reasons of their arrests.

The detentions are also held on places not authorized by the Secretary to the Ministry of Defence. It is to be noted that in 1993, out of 81 places of detention

provided in there gazette list, 68 were police stations or other police establishments (Law and Society Trust, Sri Lanka: State of Human Rights, 1994: 56-57]. In 2001, the number of such detention centres stood at 160. Though under ER's it is mandatory for the arresting authority to issue arrest receipts or notify the Human Rights Commission (HRC) within 48 hours, if is not followed in practice. The HRC also has a legal mandate to visit those arrested at the detention centres. But this applies to authorized detention centres and not the numerous illegal and secret centres of interrogation.

Tamil paramilitary groups working with the security forces run many illegal detention centres to avoid detention. There is also a tactic of "transit detention", whereby the detainees are not kept in one place but always kept on the more to avoid legal and institutional safeguards. Frequent use of such arbitrary arrests and detentions in unofficial detention centres means that practically all are at risk of disappearing and of being tortured.

Detailed provisions are found in both the Sri Lanka constitution and the International human rights stature to prevent any arbitrary arrests.

Under Article 13(1) of the 1978 constitution, it is provided that:

No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

Act: I of the UDHR states-

NO person shall be subjected to arbitrary arrest: detention or exile.

Act. 9(2) of the ICCPR provides that-

Anyone who is arrested shall be informed at the time of his arrest and shall be promptly informed of the charges against him.

Apart from this, institution like Presidential Committee on Unlawful Arrests and Harassments and the Human Rights Commission have been constituted to look into the notorious atrocities resulting from arbitrary arrests.

The LTTE is also believed to hold hundreds of prisoners in its custody, like security personnel, Tamils perceived as traitors to the LTTE's cause, critics of LTTE

methods and policies members of the other militant groups working with the security forces and Tamil and Muslim hostages held for ransom. At times, relatives of LTTE deserters and people who have fled to evade conscription have also been detained. Reportedly, there are a large number of undesignated detention centres run by the LTTE in the north-east. The invariable practice of the Tigers is to hold its prisoners in communicator. Rarely, the ICRC is allowed to access to the prisoners to carry messages to their relatives; mostly however access is denied.

Table 3.1

No. of Detentions by the Government and LTTE

Years	No. of Detainees	
	Government	LTTE
1987-90	2100	500
1991-93	2463	66
1994	360	NA
1995-99	3134	11
2000	1700	15
2001	1800	NA
2002	349	17

Source: Compiled from various sources as – www.Tamilnation.org, www.Sinhaya.org, Reports of Asian Human Rights Commission, SAARC Human Rights Report, Reports of University Teachers for Human Rights (Jaffna), Publications of Law and Society Trust.

3.3.4 Disappearances

Disappearances involve persons last known to be in the custody of the security forces or military groups and whose whereabouts are not known thereafter or denied by the authorities who allegedly arrested them. Consequently, a case of disappearances can be resolved only when the authorities release the detainees. The term 'disappeared' was first coined by human rights organizations in 1966 at the time of a secret government crackdown on political opponents in Guatemala. Disappearance and extra-judicial fallings usually accompany one another, but the later

differs from the former in the sense that it refers to deliberate, unlawful killing which is done under an order given by the government or with the government's complicity or acquiescence.

Disappearances serve as a double form of torture in the sense that victims are kept ignorant of their own fates while family members are deprived of knowing the whereabouts of their detained family members. In case of the disappeared, he is a bread winner and his the family suffers economic hardship. There are, moreover, chances of the family members becoming victims themselves in their search for the disappeared. This is part of the strategy to make sure that those responsible for the disappearances are not charged.

For some Sri Lankan political leaders as well as some military and police officers, disappearances are the most practical method of dealing with insurgency. Disappearances help to do away with the necessity for arrest and detention which can create many legal problems,of political prisoners problem, having trials which requires security arrangements and similar problems which in turn create practical problems for state agents. Disappearances also help to erase all evidence as secret abductions often end up in the secret disposal of bodies. Disappearances violate the nationally and internationally guaranteed human rights. In Sri Lanka, at the national level disappearances go in contravention to Act 10 of the 1978 constitution which states that

A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.

(1)   Save as otherwise provided by law, a person shall not be arrested except under a warrant issued by a judicial officer causing such person to be apprehend and brought before a competent court in accordance with procedure prescribed by law.

(2)   According to international human rights regime disappearances deny the right to life liberty and security of the person, the right to humane conditions of detentions and the right to be secure from torture, arbitrary arrests or cruel, inhumane or degrading

punishments embodied in the Universal Declaration of Human Rights (UDHR) and ICCPR).

However, despite these provisions against disappearances according to the 1995 Report of the UN working Group on Enforced or Involuntary disappearances, Sri Lanka had the second highest number of cases of disappearances. And it still ranks second next only to Iraq. The UN· working Group on Enforced or Involuntary Disappearances in 2000 named Sri Lanka as a country with one of the highest number of non-clarified' disappearances in the world. (UN Commission on Human Rights Report, 2000:04). Though, disappearances have taken place since 1983 when Tamil youth in the North and East were subjected to mass arrests and thousands of them disappeared' subsequently, it has become a regular feature only since 1984. The number has increased after the capture of Jaffna Peninsula by the security forces from the LTTE in December 1996.

The Human Rights Commission of Sri Lanka (HRCSL) in the middle of 2006 put the number of disappeared from the Jaffna peninsular since December last year at 419. These abductions and disappearances are due to the military, the LTTE and other militant Tamil groups. Since this number was published, there have been reported cases of further abductions and disappearances. For the first time in protracted internal conflict in Sri Lanka, in the south as well as in the north and east, this is the first time the rich and affluent in Colombo have felt the threatened abductions in their own midst (AHRC Report, 2006:19).

Despite testimony by eyewitness, the concerned authorities have frequently denied or have given contradictory information. Often the authorities claim that the person on question may have secretary left to join the guerrillas, died or went abroad (Asia Watch, 1987:31). The most disturbing aspect of detentions is the particular practice of 'noble detention' in which detainees are continually transferred from place to place. This has enabled the security forces to prevent detection of a large a number of Tamils taken into custody particularly in the northeast (Ranjan and Banda, 1994: 42). The disappearances continued to happen even during the period of IPKF operations from July 1987to March 1990. During the period of continuous emergency rule, the government admits that approximately 16,742 people disappeared, although human rights groups estimate a higher figure of 60,000. The failure of the government

to stop the exponential progression of disappearances arose, in part, from the failure of legal safeguards to with-stand the corrosive effects of the emergency regulations. The numbers of disappearances have increased, as emergency regulations adopted by the government promoted torture without accountability and allowed for the effective concealment of prisoner killings.

Non-LTTE Tamil militants like the People's Liberation Organisation for Tamil Eelam (PLOTE), the Eelam People's Revolutionary Liberation Front (EPRLF) and the Tamil Eelam Liberation Organisation (TELO) which at times operated alongside the government forces, were also responsible for large scale disappearances. Among all the PLOTE is identified as a major offender. The LTTE is also equally responsible for undetermined number of disappearances, especially, in the conflict areas of north and east. The victims of the LTTE are informers or whoever co-operates with the security forces, members of rival militant groups, security forces personnel and members of the Sinhalese and Muslim communities. However, lack of systematic information about the LTTE's role in disappearances is a major hindrance in tracing the missing persons. Three presidential commissions of Inquiry into the Involuntary Removal or Disappearances revealed the patterns of disappearances in Sri Lanka.

Most of the people who disappeared were killed after their arrests. Before they were killed, the abducted persons were kept in detention centres interrogated and tortured. In most cases, their bodies were destroyed in order to erase all traces. Some disposed off in rivers or burnt at roadsides with tyres around their needs. Legal provisions were made to avoid keeping of any form of records. The jurisdiction of courts to enquire into the matter was limited by legal provisions. The whole process was systematically planned.

The immunity given to the security forces has been a persistent problem in addressing the issue of disappearances both under the Emergency Regulations (ER's) and the PTA. The security forces enjoy immunity for holding detainees for a prolonged period of time. Through the regulations, all the power to dispose off dead bodies is given to the concerned officers. Judicial supervisions are suspended. There are no provisions even to tap records of the disposed bodies.

The main factor which facilitated disappearance is the lack of mechanism which makes the official recording of detentions mandatory. Though, the Human Right Task Force (HRTF) was set up for this purpose, it was disbanded in favour of Human Rights Commission in 1977. The Commission is given enormous powers to protect human rights in general but it is ineffective in discharging its functions. The three commissions of Inquiry which were appointed in November 1994 submitted their final reports to the President in September 1997. Commission had investigated total of 27,526 cases of disappearance and resolved 16, 742. The Reports implicated hundreds of officers in respect of 3,861 cases. But, most of them happened during 1988. Still, there are about 12,000 cases to be investigated. And, moreover, the implicated officers are yet to be prosecuted fully. Ironically, the Presidential Commissions Reports merely serves as a record of the disappeared providing recommendations without ensuring justice (Punyesena, 1997:09).

Habeas Corpus petitioners (Act 41 of 1978 constitution), supposedly effective legal means for establishing the whereabouts of the missing has proved to be ineffective due to practical and legal constraints. The Habeas corpus petitions are allowed only by the Court of Appeal in Colombo and the High Courts in each province far away from the area of incidents in the north and east – thereby making it impractical for the applications and pursue their cases. Legally, there has to be evidence to believe that the arrests were made by the security personnel and not produced before the court subsequently. However, getting such evidence is hard by the detainees who are already under threat. The courts focus more on offering compensation to the families of the disappeared than making efforts in tracing the missing.

Within Sri Lanka at the moment, there is no government authority with the capacity to efficiently investigate the disappearances. The HRCSL may record some facts of such disappearances, but it does not have the capacity to investigate them in any manner that could be called a credible criminal investigations. The assurance of some state authorities to the effect that if soldiers are found to be guilty of such acts, they would be punished is a mere rhetorical gesture in the face of heavy criticism from local and international sources. There is no state machinery to give credibility to such assurances (AHRC Report, 2006:23).

Table 3.2

No. of Disappearances Due to Ethnic Conflict

Period	Numbers	Area of Disappearances	Circumstances
1983-87	862	North-East	Eelam war I
1988-89	N. A	N. A	N. A
1990	4778	North-East	Eelam war I
1991	415	North-East	Commencement of Eelam War II
1995	58	Eastern provinces	Eelam War II
1996	645	Jaffna	Operation Riveresa of Eelam War III
1997	102	North-East	Eelam War III
1998	65	Jaffna	Eelam War III
1999	145	Jaffna	Eelam War III
2000	78	Jaffna	Eelam War III
2001	19	North-East	Eelam War III
2004	2	Jaffna	Eelam War IV
2005	8	North-East	Eelam War IV
2006	63	Jaffna, North-East	Eelam War IV
2007	68	Jaffna, North-East	Eelam War IV

Source: Compiled from various sources as – www.Tamilnation.org, www.Sinhaya.org, Reports of Asian Human Rights Commission, SAARC Human Rights Report, Reports of University Teachers for Human Rights (Jaffna), Publications of Law and Society Trust.

3.4 Conclusion

It is clear from the above analysis that violations of right to life are chronic in Sri Lanka. The dimensions of violations are comprehensive in nature. Torture remains the most serious among all abuses. But in terms of numbers, arbitrary arrests and detentions records the highest. Disappearances are the most dangerous which appears only as a euphemism for killing. Both the state and the militants are responsible for human rights abuses. Lack of accountability and awareness of rights- protection on the part of both the security forces and militants continue to hinder human rights

safeguards. However security forces are made very powerful by the state to address the issue of violence by the militants, the acts of violence by the opposition groups can never justify the security forces themselves resorting to violation of human rights (Amnesty International Report, 1986).

It is ironical that the very mechanisms instituted to protect human rights themselves turn out to be violative of them. The failure of state party to respect its international obligations and also the failure to implement the Human Rights Committee's views and recommendations of UN human rights bodies has placed the citizens in an extremely helpless situation. It is commonly admitted by even state authorities that the rule of law situation is at its lowest ebb at the moment. Extreme forms of torture including death in police custody, military and prison conditions are a frequent feature in all parts of the country. In the north and east, there are massive acts of violence done by the agencies of the state, the LTTE and other militant groups, which the UN High Commissioner for Human Rights and the UN Rapporteur against disappearances have described as gross abuses of human rights. What is worse is that there are no effective authorities to ensure that people have access to institutions to make complaint and to have them investigated. As such, there is almost complete impunity due to the lack of investigations, and this situation encourages further violations of the right to life.

The judiciary and the other human rights protection organs are not allowed to operate independently. They are both politicized and ethinicised. The three legislative mechanisms VR, the Emergency Regulations, PTA and the Indemnity Act continue to be major sources of most of the violations. The crux of the matter is that the true picture of the human security situation is not available mainly due to severe restriction on the media in the name of national security. Due to paucity of information on human rights abuses, preventive and corrective measures are becoming difficult.

Chapter-4

Promoting the Right to Life

Allowing impunity for serious violations of the right to life remains an incredible international problem. Many countries, recently, emerging from a repressive past, must decide how best to address the abuses of former regimes. This could involve initiating official investigations of prior regimes in order to ingrain the rule of law within their societies, establishing truth and reconciliation commissions that disallow prosecutions in exchange for confessions of guilt for past abuses of the right to life. Governments have to decide whether or not some or most of those responsible for the worst crimes should be brought to justice, even if this means annulling a previous amnesty law or risking violent backlash by military or security forces. Such countries must also decide whether to establish compensation schemes to provide for the victims and/or their families. The Sri Lankan government has initiated a series of measures in an effort to deal with the problem. Unfortunately, many of these initiatives hide underlying political agendas (Punyasena, 2003:135).

4.1 Constitutional Provisions

Chapter three of the Constitution of Sri Lanka guarantees certain fundamental rights. Under Article 15, several of these rights can be curtailed for reasons such as national security, racial and religious harmony and the interests of the national economy. However, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, guaranteed in Article 11, cannot be curtailed, in accordance with international human rights standards.

4.2 The Supreme Court

The Supreme Court is the highest court in the country. It also has sole and exclusive jurisdiction to determine, among others, fundamental rights violations. Below the Supreme Court are the Courts of Appeal, Provincial High Courts, District Courts, Magistrate Courts and Primary Courts. Magistrate Courts have original criminal jurisdiction while District Courts have civil jurisdictions. The High Courts hear trial cases on indictments by the Attorney General while hearing appeals against Magistrate Courts and primary courts. It is relevant to note that the indictments based on national security laws are generally taken up before the High Court, unless otherwise specified in the statute. However, the initial production of the suspects under the national security laws are done before the Magistrate's Court, which have

no jurisdiction to release them on bail or discharge them without the consent of the Attorney General. The Court of Appeal and High Courts have jurisdiction to rule on *habeas corpus* writs. There is also possibility of challenging detentions under the fundamental rights jurisdictions before the Supreme Court.

Under Article 126 (2) of the Constitution, a fundamental rights petition must be filed within one month of the occurrence of the alleged violation. Some applications have been barred because this requirement has not been met. One former prisoner complained to the Amnesty International that the prison authorities had delayed giving him the forms which a lawyer had sent, apparently to prevent him filing a petition within one month (Amnesty International, 1990:56). However, in July 1989, a Supreme Court judgment broadened the scope of the one-month rule, potentially opening the way for more fundamental rights applications to be filed. In this case, illegal arrest and detention had been alleged by the petitioners, but the respondents had argued that the fundamental rights application was time-barred; calculating from the date on which the detention order had been served on the detainee. The court held that as the petitioner had no knowledge of the detention order, time could not run against him and that the entire period of detention should be considered as a single detention for which relief could be sought, thus further reducing the limitations of the one-month rule (Ibid,1990:56).

The Supreme Court has awarded a range of reparation in numerous cases of torture under Article 11 of the Sri Lankan Constitution. Article 17 of the Constitution entitles every person to a remedy for the infringement of fundamental rights by State action. The Supreme Court in exercising its sole and exclusive jurisdiction to hear and determine cases relating to the infringement of fundamental rights, has used its wide discretionary power to grant relief in fundamental rights cases through awarding pecuniary and non-pecuniary damages. It has noted that compensation has the function of acknowledging regret and providing relief for the hurt, caused to the victim.

The Supreme Court found that the State is liable for the infringement of fundamental rights by its officials and has, in recent years, increasingly held perpetrators of torture personally liable to pay compensation to the victim. In doing so and directing the higher authorities to take disciplinary and other action, the Court has

taken into account the punitive aspect as well as the need of guaranteeing non-repetition of the violation. It has also emphasised that holding perpetrators personally accountable involves an element of satisfaction. Moreover, the Supreme Court judges have highlighted that "a meaningful course of action to minimize violations of Article 11 should include other measures (than enacting legislation) making torture an offence." Thus, it drew attention to the need for education and certain procedural steps that the State should adopt to guarantee non-repetition of torture, citing Articles 10 to13 of the UN Convention against Torture (Report of Committee against Torture, 2005:14).

4.3 Habeas Corpus

Article 141 of the Constitution of Sri Lanka grants power to issue writs of *habeas corpus* to the Court of Appeal, which normally sits only in Colombo. The petition must be filed in Colombo regardless of where a prisoner was arrested or "disappeared". This has reduced the effectiveness of *habeas corpus* petitions, since relatively few lawyers took on these cases even before they became subject to murder and death threats.

During 1988 and the first half of 1989, a large number of petitions were filed in the Court of Appeal on behalf of people in the south who had been illegally arrested or who had "disappeared" following arrest. *Habeas corpus* petitions are filed to test the legality of a prisoner's detention. The court can issue a writ of *habeas corpus* directing that the prisoner be produced and can order an inquiry into the alleged imprisonment. However, the procedure has not curbed abuses such as arbitrary arrest and "disappearance". As *habeas corpus* proceedings are often subject to lengthy delay in Sri Lanka, this remedy has also failed to protect the welfare of most prisoners. Nevertheless, access to the remedy of *habeas corpus* – which is guaranteed under the Constitution – had effectively been closed by July 1989 as lawyers and witnesses involved in such cases were murdered or threatened with death. In the first six months of 1989, over 400 *habeas corpus* petitions were filed: since then, very few have been filed, as lawyers fear the consequences of taking on such cases (Amnesty International, 1990:53).

Habeas corpus proceedings are often slow and rarely result in the production of the prisoner before a court. The officials named in habeas corpus applications (the "respondents") often request several weeks to file their response and then may deny that an arrest occurred despite individual officers being identified by witnesses. In some cases reported to Amnesty International, however, prisoners were released after a *habeas corpus* petition had been filed and before the respondents had replied to the court, resulting in the case being withdrawn.

In order to file a *habeas corpus* petition, the authorities believed to be responsible for the arrest and detention of the prisoner must be identified. If an arrest has been committed by plainclothes armed men using unmarked vehicles, a *habeas corpus* petition will almost certainly be dismissed by the court unless there is supporting evidence to indicate that the men were security forces personnel. This may have contributed to members of the security forces resorting increasingly to operating in civilian dress and to using vehicles without number-plates or with false number-plates (Ibid, 1990:54).

In some cases, the Supreme Court has awarded substantial damages to torture victims. Nihal Pathmasiri was awarded Rs. 10,000 in October 1988. He had been assaulted in the custody of Amparai police and forced to inhale smoke from burning chillies. In July 1989, the court awarded damages of Rs. 100,000 to W. Senadeera Gunatilake, a university undergraduate, for illegal arrest and detention, and torture. He had been arrested by Wennapuwa police in June 1988 while distributing leaflets and, according to press reports, had in his possession at the time a camera loaded with film and four exposed films containing picture of a body which had been burned on tyres at Weerahena cemetery. The police had initially denied that they held him in custody. Some lawyers and petitioners who filed fundamental rights cases have received death threats (Ibid, 1990:56).

4.4 Criminal Cases against Security Forces Officers for Alleged Violation of the Right to Life

An important method of upholding the right to life is to ensure that all alleged violations of the right to life are thoroughly and impartially investigated and that those responsible for such violations are brought to justice.

There is not a single case in which a member of the Sri Lankan security forces has been charged for violations of the right to life committed in north-eastern Sri Lanka. The Indian military authorities did discipline some IPKF members for violations of right to life, including the rape of women. For example, in January 1988 four Indian soldiers were discharged from the army and sentenced to one year's imprisonment for raping women. Several other IPKF members were also tried by Summary Courts Martial for rape, looting and theft. One was charged for killing seven civilians and injuring four others, the day after his brother-in-law had been killed during a search operation (ibid, 57:1990). However, the Indian authorities failed to investigate and account for the great majority of reported violations of right to life committed by their troops. They did not account for those who 'disappeared' following arrest by the IPKF. They also did not investigate the alleged extrajudicial executions, including reprisal killings and instances of torture. Some criminal cases may have to be withdrawn because witnesses have been killed or threatened. The seven police officers charged with killing a schoolboy in Teldeniya in June 1989 argued that the cases against them should be dropped because the witnesses were not appearing in court (Ibid, 1990:57).

Despite several announcements by the government during 1989 that it would investigate killings by 'vigilantes', none is known to have been identified and brought to trial. Results have not been published of the investigations, for example, into the reprisal killings in March 1989 at Eppawala, Anuradhapura District, attributed to the "Black Cats" or into the reprisal killings of between 80 and 150 villagers in Kandy Districts, officially attributed to the "Eagles of the Central Hills" (Ibid, 1990:58).

In May 1989, the then Minister of Higher Education, A.C.S. Hameed, appointed a committee to monitor the indictment and release of students in custody and to investigate the cases of disappeared students. According to press reports, the chairperson of this committee, a retired Supreme Court Judge, would be empowered to enter places of detention and question officials. The authorities also announced special reporting procedures relating to arrests of lawyers had to be communicated to their branch Bar Association and their parents within 24 hours of arrest and the place of detention had to be communicated to their Bar Association or other authorized lawyers. The Secretary of their Bar Association was also to be granted access to the

detainee at least three times a week. These procedures were not regularly followed, however.

Human rights organizations welcomed the announcement of these procedural safeguard but urged that specific safeguards against torture and deaths in custody should be adopted and enforced to protect all prisoners. The procedures which the government introduced did not prove adequate to halt the torture and "disappearance" of prisoners. For example, according to the committee, 271 students had "disappeared" by the end of 1989.

4.5 Presidential Committee on Youth Unrest

In October 1989, a Presidential Commission on Youth Unrest was appointed on the recommendation of the All Party Conference. In its report, submitted to the President in January 1990, the Commission made several recommendations relating to the protection of the right to life. It recommended the establishment of an Independent Surrender Committee "in order to create a climate of confidence to enable those who have taken up arms against the State to surrender". In late April 1990, the government established an Independent Surrender Committee (whose members were nominated by several political parties) with 21 district committees. According to press reports in Denagama, Hawmana, the police announced the names of wanted suspects over loudspeakers and asked them to surrender to the committee. Those who did surrender to the authorities said that they had not been involved in subversive activities, that enemies had filed petitions against them, and that they "decided to surrender through fear". Certificates were given to those who surrendered and their families stating that they had surrendered and if released, they would receive certificates to prevent re-arrest.

The Commission also recommended a cessation of anti-subversive offensives by the security forces to accompany the establishment of the Independent Surrender Committee. The Ministry of Defence had announced a cessation of such actions at the time of the establishment of the Independent Surrender Committee. By that time, however, the counter-subversive offensive by the security forces had already been significantly reduced.

The Presidential Commission on Youth Unrest also recommended that urgent steps be taken to disarm illegal paramilitary organizations and "vigilante groups". In late January, 1990, the Ministry of Defence announced that all provincial council and parliamentary candidates who had been issued with weapons by the government before the elections should return them by 1 March and that elected members of parliament and provincial councillors should return those weapons which were "in excess of their requirements". By mid-May, however, only 1, 728 weapons had been returned to the government out of the 6, 143 weapons issued and due to be returned. After the Killing of Richard de Zoysa in February 1990, the Minister of State for Defence also announced that no arrests would be permitted "for security reasons" without the authority of the Defence Secretary or the Inspector General of Police or the Army Commander, and those arrests at night would not be permitted. The Commission further recommended that the fundamental rights jurisdiction of the Supreme Court be strengthened. This issue was under discussion at the All Party Conference in late May 1990.

In addition, the Commission recommended that the state of emergency be lifted as soon as possible. Certain Emergency Regulations were lifted or replaced in February and April 1990, but the state of emergency remained in force in early June and wide powers of arrest and detention were still available to the security forces. In the monthly parliamentary debates on its extension, the government expressed its intention to lift the state of emergency after new legislation had been passed to deal with the thousands of prisoners who remained in detention without charge or trail. If the state of emergency was lifted before this, the government argued, those currently detained without charge would have to be released.

In the last decade, the Sri Lankan government has established commissions to investigate massive violations of right to life. Under public pressure, President Ranasinghe Premadasa established the Presidential Commission of Inquiry into the Involuntary Removal of Persons in January 1991, but, because its mandate of investigation started only from January 11, 1991, it missed the entire slew of violations that occurred during the *Janatha Vimukthi Peramuna* (JVP) and LTTE uprisings prior to 1991.Even when D.B. Wijetunga came to power after President Premadasa's assassination in 1993, he again restricted the investigations to limited

timeframes in order to avoid addressing the disappearances of Tamils in the early stages of the war. Later investigations established under President Chandrika Kumaratunga produced more credible results, but they also remained political in nature (Punyasena, 136:2003). The lack of government efforts to investigate disappearances after President Kumaratunga took office weakened the government's movement towards greater accountability.

The commissions presented their national reports publicly in September 1997, with 27,526 complaints analyzed and 16,742 cases of disappearances established. The commissions also implicated hundreds of officers in relation to 3,861 cases, but prosecution of the alleged offenders has been slow as the commission did not have a judicial mandate, abuses have followed. Of the total 4,000 suspected perpetrators that the commissions identified, approximately 500 have been indicted and even fewer have been convicted (Asian Human Rights Commission, 15:1997). This is largely because in cases initiated against suspects identified by the commissions, evidence for prosecution must come from investigations conducted by a special police unit and not from evidence provided by the commissions. The reports merely served as a record of the disappeared, providing recommendations without ensuring justice.

4.6 Defence Ministry's Board of Investigations

In November 1996, the Sri Lankan government established the Defence Ministry's Board of Investigation (BOI) in response to pressure from human rights organizations to establish an independent commission to specifically investigate the disappearances of those arrested by the army in Jaffna in mid-1996. Subsequent to probing a total of 2,621 complaints, the BOI established 765 disappearance cases (Amnesty International, 1997: 151).

The BOI never made its findings public and only submitted its results to the government in March 1998, thereby making verification impossible. The secrecy of the findings limited the initiation of legal action. A number of annexations in the report include evidence to justify further inquiries by the police, yet the Attorney General led charges with regard to only 14 deaths that were found to have occurred at the hands of the security forces. Although the commissions were supposed to provide crucial evidence regarding the magnitude of the disappearance and spur litigation against those who perpetrated the crimes, only a small number of convictions against

perpetrators of violations of the right to life moved beyond the limitations of past commissions and expanded the scope of the investigations.

The People's Alliance appointed three commissions in late 1994 to examine cases of prior disappearances throughout the country. The commissions again had a restricted mandate to investigate and document the involuntary removal or disappearance of persons from 1988 to 1994, during the reign of the previous United National Party regime. Having made the defence officials investigate, the crimes committed by them had weakened the BOI's mandate. Paramanathan Selvarajah, the president of the Missing Persons Guardian Association (MPGA) in Jaffna, stated that the BOI's official findings 'concealed the truth'. Although the MPGA gave details to the Ministry of Defence of 21 persons who disappeared from the town of Thenmaradchiin in northern Sri Lanka including the details of the Sri Lanka Army soldiers involved in the incidents, no inquiries have been conducted. The BOI also mistakenly told the families of two of the disappeared that their fates were not known in spite of the exhumation and identification of their bodies at Chemmani, Jaffna in June 1999.

The capacity for investigations by way of competent and experienced persons does exist, although their numbers may not be adequate. The real reason for proper inquiries not being held is political. Various pressures are brought on the investigators through their own superiors as well as from outside not to engage in serious and professional criminal justice inquiries. In sensitive cases, heavy moral pressure is exercised on the investigating officers to ensure that the investigations stop before identifying the perpetrators and credible evidence through a charge before court. When serious allegations are made against the government for failure to investigate, it sometimes tries to pass this burden unto presidential commissions appointed under the Commissions of Inquiry Act, No.17 of 1948. These inquiries are often fact finding inquires and nothing more. They can never be a substitute for investigations into crimes as envisaged by the Criminal Procedure Act of Sri Lanka. Often, the appointments of these commissions have no other purpose than to create a false impression about a possible inquiry when, in fact, no such inquires takes place (AHRC Report, 2006:8).

Such blatant error and general refusal to investigate documented cases of disappearance call into question the integrity of the entire investigation conducted by the BOI. Rather than working with civil society organizations to put to rest the fates of the disappeared, the BOI used its limited and politicized mandate to provide surface-level relief to families in Jaffna. Consequently, the unwillingness to make the findings public and to initiate charges against those suspected of crimes weakens the government's credibility in the area of human rights and accountability. While vital in documenting past atrocities, these investigations serve as only one step in providing justice to those who disappeared (Punyasena, 2003:139).

The absence of witness protection and a witness protection programme is a fundamental defect affecting criminal inquiries and prosecutions. There is a general reluctance in the country for people to come forward to provide information to the police or any other agency on crimes. This is due to a widespread perception that the police are either complicit in crimes or, are unable to protect witness. Witnesses suffer from assassinations, threats of assassinations and other forms of harassment. The situation is even worse when the alleged perpetrators of an offence are police, military or other state officers. The very making of the complaint brings the complainants, their families and anyone who supports them into serious risk. The traumatic effect of horrendous repercussions creates a heavy toll on even the most determined complainants and their families.

Another vital step in creating an atmosphere of accountability comes from developing effective prevention tactics to ensure that disappearances do not occur. While the Sri Lankan government has created some regulations and permanent institutions to curb the incidence of disappearances, such as the Human Rights Task Force (HRTF) of 1991 and Emergency Regulation 18(8), many practices have not been enforced. The creation of a National Human Rights Commission in 1997, seen by many as a changing tide in overall attitudes towards accountability around disappearances, has suffered from weak prevention strategies and initiatives.

4.7 Human Rights Commission

Established by Parliamentary Act No. 21, the Human Rights Commission (HRC), with its 11 offices throughout the country, has an overall mandate "to inquire into and investigate complaints regarding procedures with a view to ensuring compliance with the provisions of the Constitution relating to fundamental rights and to promoting respect for, and observance of, fundamental rights." The HRC also advises the government on formulating legislation and administrative directives to protect and promote fundamental rights. The body itself promotes and provides education on human rights (Human Rights Commission of Sri Lanka, 165). In addition, the HRC makes recommendations to the government to ensure that national laws and administrative practices remain consistent with international human rights norms and advises the government on whether it should become a party to other international human rights instruments/treaties.

Set up as a permanent national institution, the HRC can "investigate any infringement or imminent infringement of a fundamental right declared and recognized by the Constitution and grant appropriate relief". Many envisioned that the HRC would complement the judicial system in the protections of human rights, as its powers reach wider than that of the Supreme Court (Ibid).

To improve the image of the Sri Lankan security forces regarding respect for the right to life, founders endowed the HRC with the additional authority to monitor detention centres through inspection procedures. Under this implementation, when persons are arrested or detained under the PTA and the Emergency Regulations (ERs), the arresting authority must inform the HRC of the name and location of the person being held within 48 hours of the arrest or detention. Those who wilfully fail to inform the HRC of an arrest or detention may face imprisonment for no longer than one year and/or be fined. Also, at the time of arrest or immediately thereafter, the arresting officer must issue a receipt acknowledging the arrest to a close relative. Any child under 12 years of age and any woman arrested or detained must be placed in the custody of the Women's Unit of the armed forces/police or in the custody of a female military/police officer. Statements from those arrested or detained should be recorded in a language comprehended by the detainee (Punyasena, 1`990:142).

Security forces often ignore the crucial safeguards embedded in the ERs and HRC legislation; particularly the provision calling for an arrest receipt and the provision requiring that the security forces notify the HRC. Despite these continuous abuses, the government did not fine or imprison any security personnel for failure to comply with the regulations in 2000 or in 2001.

When the HRC became fully operational in 1997, it filled the dual role as an investigative and protective institution, ensuring governmental compliance with human rights norms. Despite the fact that filling is an important need, many human rights groups feel, the HRC has not been pursuing its mandate effectively. For example, its first annual report, covering the period from March 1997 to March 1998, has never been available to the public, limiting the awareness of the crimes detailed. The HRC's existence is a testament to the government's improvement in shoring up mechanisms to address violations of the right to life in Sri Lanka, but its inherent lack of necessary authority or political or financial support has enforced its weaknesses and offset its strengths.

Many victims who have gone to make complaints regarding torture to the HRC find that the whole exercise has brought on further frustration upon them. The commission does not have a competent and efficient service for recording complaints; it does not have any form of capacity for being engaged in the preliminary stages of investigations into allegations of torture. Even the HRC does not have a prosecuting officer who can call for all the necessary documents and evidence and a proper inquiry while investigating abuses of right to life (AHRC, 2006:33).

4.8 National Police Commission

The National Police Commission (NPC) was established in 2001 by the Seventeenth Amendment to the Constitution. The 17th Amendment to the Constitution was brought due to a common realisation that a fundamental crisis had arisen in all the basic public institutions due to decades of politicisation of these institutions and loss of a credible system of command responsibility. The Amendment gave powers of appointment, transfer, dismissal and discipline of public authorities to independent commissions whose members were to be appointed by the Constitutional Council,

created by this amendment. However, some of these commissions were never appointed, such as the Election Commissioner.

While NPC has a mandate to conduct independent investigations and effective disciplinary procedures for police misconduct, its long-term effectiveness is threatened by the lack of a strong constituency supporting its independence. At one level, this is unremarkable given that many interlocutors reported a long history in Sri Lanka of politicians influencing appointments, transfers and promotions of police. Thus, vesting administrative powers over the police in an independent body promised to replace patronage and politics with professionalism. While most members of civil society and Government had favourable impressions of the NPC's efforts thus far, some also feared that in struggling to insulate the police from politics, it would fall victim to politics itself.

The president appointed some members of NPC without selection having made by the Constitutional Council as required by the Constitution. When an attempt was made to challenge the appointment to the national Police Commission by way of a writ, the Court of Appeal held that no legal action may lie against the president due to Article 35(1) of the Constitution. This crisis of legitimacy is also crisis of authority. Thus, the very function of the institutions for maintaining the rule of law suffers from the absence of the recognition of legal validity of their authority. At a time, when command capacity and command responsibility are most needed, the present crisis of legitimacy contributing negatively to any resolution of the most fundamental questions facing nation (AHRC Report, 2006:41).

4.9 Recent Steps Taken by the Government

Sri Lankan President Mahinda Rajapkse appointed a Commission of Inquiry to probe and report to him the alleged violations of right to life since August 5, 2005. The seven member Commission has been headed by Supreme Court Judge Nissanka Udalagama (The Hindu, Nov 7, 2006).

A committee, namely, 'International Independent Group of Eminent Persons' has been established to study the investigations by the Commissions of Inquiry into charges of violations of right to life (The Hindu, Nov 3, 2006).The committee has been headed by the former Indian CJI Justice P. N. Bhagawati.

The Attorney General urged the IIGEP not to make public statements that directly and unnecessarily affect public confidence in public institutions of Sri Lanka such as the AG Department and the Commission of Inquiry (COI) appointed by the Government to investigate and inquire into alleged serious violations of human rights occurring in Sri Lanka but instead to engage in a constructive manner with these bodies so as to ensure that the objectives of efficacious law enforcement and dispensation of justice pertaining to alleged serious human rights violations could be jointly and harmoniously met (Sunday Times Sep,23:2007).

Sri Lanka introduced a draft bill for the "Assistance and Protection of Victims of Crime and Witnesses" in Parliament amid going concerns over violations of right to life and lack of effective mechanisms to remedy the situation. The bill has been pending for a long time. Enactment of legislation for protection of victims of crime and witnesses was one of the key recommendations made by the International Independent Group of Eminent Persons (IIGEP) headed by Justice P. N. Bhagwati. The bill enlists victims and witness's rights and entitlements. These include the rights to apply and receive compensation for harm suffered as a result of being a victim of crime; the right to be informed of proceedings and events in the criminal justice process and of legal rights and remedies and of available services (The Hindu, June18 :2008).

4.10 International Mechanisms

With increasing consciousness of human security world wide, there is immense pressure from donor countries to link aid with the human security records of the recipient countries. There is also renewed concern among the aid agencies that they have an express role to play in the promotion and protection of the right to life worldwide. Consequently, donors have increasingly been demanding the connection of development with the observance of basic human rights as enshrined in the International Bill of Rights.

Sri Lanka is a major aid dependent country. It is one of the world's highest per capita recipients of foreign aid. The aid comes primarily from three sources: multilateral agencies, aid consortia and individual donor countries. Sri Lanka receives Official Development Assistance through loans and grants, an amount equivalent to 7 % of its GDP. Till early 2003, Japan was the largest donor country, amounting for

about 45% of aid to Sri Lanka. Other.leading bilateral donors are Germany, Norway, the Netherlands, the U.S. and Sweden. India is also emerging as a leading donor. The principal donor coordination mechanism in Sri Lanka is the Development Forum chaired by the World Bank. The Development Forum is held every one to two year and facilitates the overall coordination in Sri Lanka (Goodhand, 2001:51).

The objectives of the donor countries are in the three main areas: first, the settlement of the ethnic conflict within a united Sri Lanka; second, development aid to stem the refugee flow from the island; third, assistance to safeguards the right to life.

With the escalation of the ethnic conflict and consequent violence since 1983, the Development Forum and individual donor countries of Sri Lanka have been consciously linking aid with corresponding improvement in the human security and negotiated settlement of the ethnic issue in the island. The Sri Lankan Development Forum, which met in Paris on 18-19 December, 2000 to discuss assistance plans for Sri Lanka, refused to pledge new assistance, calling instead for the government to take concrete steps to end the war with the LTTE, speed up restructuring the public sector and account for previous assistance. Donors expressed concern over the country's disproportionately high level of military expenditure and political interference in development and relief initiatives (Human Rights Watch, World Report, 2002).

At the bilateral level, with the end of the cold war, the U.S. foreign assistance became multifaceted: spread of democracy, human rights standards, containing internal conflicts and recently the "war against terrorism". Although, U.S. aid to Sri Lanka is only approximately $31 million, U.S. is in a position to exert economic leverage through its participation in the Sri Lanka aid consortium, which accounts for approximately $1 billion in non- military and loans. The U.S. State Department compiles yearly reports on human rights practices in the island along with over 194 individual countries. However, the human rights country reports brought out by the State Department sound pro-government and are satisfied with the steps taken by Colombo on the rights front (Wickremsinghe, 1993: 26-27).

Japan is one of the few countries that have officially linked right to life with its foreign assistance. In its Official Development Assistance Guidelines, it has declared that full attention will be paid to introduce democracy and market oriented economy and secure human rights and freedom. This guideline would be implemented

in two ways: by providing increased aid to assist countries seeking to democratize and by suspending aid to countries that have committed serious human rights violations (Japanese Ministry of Foreign Affairs, 1992).

Being the largest donor over the past two decades, Japan has emerged as a significant actor in the island's development and peace process. In the process, it issued many appeals and warned that the emergency measures and continued censorship of the media in Sri Lanka could violate Japan's Official Development Assistance Guidelines on human security (Human Rights Watch: World Report, 2000). At the same time, neither did it criticises nor threaten to cut assistance over military confrontation between the government forces and the LTTE.

Since the outbreak of violence in 1983 and the subsequent refugee exodus to its frontiers, Canada has been linking its aid with the corresponding reduction of ethnic violence in the island. In 1984, Canada provided only $30 million worth of aid to Sri Lanka as against $38.1 million in 1981 owing to the 1983 riots. It was categorically stated in subsequent years that until Sri Lanka improved its human rights records, the flow of aid would be denied. Sri Lanka, in turn, insisted on the "non-alignment" and "non- interference" principles.

India's concern for violation of right to life in Sri Lanka goes back to the mid-July 1983 when the Sri Lankan government re-imposed emergency regulations in the north. While taking up the matter bilaterally at the diplomatic level, India also followed up by publicising the situation in the north-east, especially among Sri Lankan donors. India was hopeful that such pressure would help halt military operations against Tamils. In addition, India also raised the issue of violation of right to life in Sri Lanka at the Human Right Commission, the Sub commission on Prevention of Discrimination and Protection of minorities and even the UNGA (De Silva, 1991:84).

Apart from individual and multilateral donors, there are independent agencies like the Swedish International Development Agency (SIDA) and Canadian Development Agency (CDA) which provide human rights related assistance. SIDA provides support to international organisation and private organisations for seminars on the conflict, the constitution, peace and tolerance: legal assistance and advice and reporting and documenting human rights infringements. SIDA is also contributing to project for reinforcing the Sri Lankan Human Rights Commission and its work on a

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centre for children affected by the war. The agency is also supporting equal opportunities work regarding violence against women and human rights for women among other things. A number of private Swedish organisations are also working in Sri Lanka using SIDA funding for social projects of various kinds.

Since 1999, SIDA has been involved in implementing the "Governance and Institutional Strengthening Project" (GISP) in Sri Lanka to support key organisations and institutions that promote human rights and democratic values. For this, GISP coordinates with government organisations and institutions and civil society to address issues central to the resolution of the ethnic conflict, apart from enhancing the role of civil society in promotion of the right to life, reinforcement of the democratic process and promotion of dialogue and understanding within and among various ethnic groups.

In general, the demands of the donor community are focussed on:

1. continuing vigilance to ensure that individual rights are not violated and

2. encouraging the government to strengthen its partnership with NGO's

However, the politics of the Development Forum are intense and successive Sri Lankan governments have become quite adept at convincing the donor countries that change is in the offing. Although, the forum represents an opportunity to develop a joint approach from the donor community, divisions between donors prevent it from playing this role. In general, the bigger donors are reticent to raise human rights and governance issues, in contrast to a number of smaller bilateral donors. Policy dialogue at such meetings has served to raise general criticism rather than to impose any explicit conditionality. There is a lack of critical mass amongst the donor community to apply pressure on issues related to peace and human rights.

It has been argued that countries with large expatriate Tamil populations such as Canada and Norway have been more critical of the Sri Lankan government and pushed more actively for a political response to Tamil grievances. The U.S. has tended to work more closely with the Sri Lankan government and in 1977 designated the LTTE as a terrorist organisation. They have also been providing anti-terrorist equipments since 1974. The following steps were taken by Sri Lankan government on the right to life front as a result of donor pressure:

1. Declassifying the list of various emergency regulations declared till 1993.

2. appointment of the Human Rights Task Force in 1994 and subsequently the Human Rights Commission as an apex body to look into the violations of the right to life

3. signing and ratification of many international human rights instrument, especially the ICCPR and its optional protocols, The Torture Convention and the International Convention on the Elimination of All Forms of Racial Discrimination

4. reducing the harshness of certain repressive legislation and make them public

5. acceding to sit together with the rebels to find solutions to the issues due to which violations of right to life are flagrant

A related question is: to what extent does aid help promote right to life. There are allegations that aid funds were diverted for the "war for peace" programme. However, there is no evidence to substantiate this but what is certainly clear is that threats of withholding aid and financial help in favour of protecting human rights have not worked to their fullest potential. Despite worsening of its human rights record, development aid from donor countries has continued to flow in Sri Lanka. A substantial portion of this aid was used to finance military operations that have only intensified militarization and violence.

The role of regional institutions is of prime importance, as they understand the problems better and suggest appropriate means of redress. These regional bodies are based on a charter of convention that for the most part, reinforces the International Bill of Rights. Unfortunately, Asia is the only region in the world without a regional inter-governmental mechanism for the protection of the right to life.

As for as South Asia is concerned, bitter political divisions within SAARC members have made any decision on right to life a non-starter. However, at the 6th SAARC Summit in Colombo in 1991, right to life was mentioned for the first time but the declaration did not result in any substantial collective action towards the protection of the right to life in South Asia.

It is clear that the steps taken to protect right to life by Sri Lankan government has been partly due to international pressure and partly to appease the donor countries.

But the problem is paucity of the correct information on the situation of right to life in the island. One can not appreciate the steps taken by Sri Lankan government until the real situation in known. The main problem in the international aspect of protection of right to life is that the local community views it as acting under the manipulation of 'conspiracy theory'. Such differences existed between the international community and majority of Sinhalese including Sinhalese NGO's, especially during 1983-87. The government of the day also finds it convenient to encourage such a view to conceal itself from adverse exposure. Incompatibility of local legislation with the international standard of human rights continues. The ER and the PTA are identified by many international human rights bodies as the main contributors to the abuse of right to life in the island.

Yet another problem is the lack of similar international pressure on the militants who are to be equally blamed for the violations. As the militants are dependent on funding from the international Tamil Diaspora, the international community is able to prevail upon the militants effectively.

The ordinary citizen is not aware of the safeguards available and the procedures involved at the international level. The fault in this regard lies partly with the government and the media as they are responsible for dissemination of information. Enquiries reveal that even at the higher levels only a handful are aware of the international dimension of the protection of the right to life.

The international community has contributed a great deal to the development of national human rights institutions in the island. At the same time, it has to adopt necessary follow up actions to ensure that the national institutions are engaged not only in their image building exercise, but actually guard the right to life of the people.

4.11 Conclusion

Although current measures undertaken by the Sri Lankan government have demonstrated a greater commitment to human rights, the new measures only superficially affect the deep-rooted problem. The UNWGEID, in its 1999 visit to Sri Lanka, outlined the weaknesses of the government's efforts and provided recommendations to combat the disappearance phenomena. Procedures must be adopted that not only meet international human rights norms but that are specifically

designed for the Sri Lankan context, ensuring that the rule of law counters the reign of impunity within the country.

In creating a model process to combat disappearances, the three strategies of prevention, investigation, and countering impunity must be strengthened. The first leg of prevention will deal with the training of armed forces and the provision of legal safeguards to ensure documented arrest and detention. The second leg of investigation will provide un-politicized commissions and investigations by police to provide greater evidence in support of cases of disappearance. The third leg will implement an effective system to combat the climate of impunity, to allow greater accountability for actions undertaken by security forces and to provide justice through standardized trials in cases of disappearance.

Though, the Sri Lankan government has taken small steps to tackle the violations of right to life plaguing the nation, the government has not ensured the strength and efficacy of such institutions in the long term. Legitimate and comprehensive commissions of inquiry into past abuses under former regimes must coexist with those investigating and exposing present abuses.

Chapter-5

Conclusion

The study has attempted to analyse violations of right to life due to ethnic violence in Sri Lanka. Ethnic violence is approached as a manifestation of long felt collective deprivation due to unequal distribution of power and lopsided socio-economic and political developments in a multi-ethnic society. The intensity of ethnic violence depends on mobilization of the deprived people by their militant leadership against the ethnically biased state to win back their equal rights and privileges or to resist state-aided ethnic violence. But, states use counter-force in the name of maintaining law and order and safe-guarding territorial integrity, thereby triggering a diabolical cycle of violence. The obvious consequence is militarization and large scale human insecurity including the violation of the right to life. Since the state is also a party to human rights abuses, the internal human security promoting mechanisms are generally not effective. However, international repercussions of ethnic violence lead to involvement of the international community in mitigating violence and promoting human security.

5.1 Ethnic Violence: Not of Biology but Sociology

Ethnic violence in Sri Lanka has reached its crescendo. Its origin lies in political, economic, socio-cultural and international factors. Political factors include ideological justification of use of violence by both the state and the militants, failure of the political leadership in addressing its root causes and use of ethnic-biased security forces by the Sinhalese dominated government. Economic factors comprise discriminatory economic, educational and other developmental policies by the state to the ultimate disadvantage of ethnic minorities especially the Sri Lankan Tamils. The rise of Sinhalese-Buddhism in an aggressive manner and revival of mythical history to invalidate the claims of minorities form part of the socio-cultural factors that fuelled ethnic violence.

Ethnic violence in Sri Lanka is characterized by many forms and patterns. Firstly, intra-ethnic violence which is manifested in three forms viz., militant attacks on moderate leadership, intimidation of civilians and rivalries between various Tamil militant groups. Secondly, collective violence in the form of riots is targeted against Tamils. It started in 1956 and culminated in 1983 and thirdly, vengeance killings that involved the security forces and the Tamil militants. Finally and fourthly,

assassinations mostly carried out by the Tamil militants, of the Sinhalese and Tamil leaders who were considered as 'enemies of Eelam'.

Human insecurity arising from the above forms of violence are characterised by violations of multidimensional civil rights such as right to personal integrity and right to life. It also includes disappearances, torture, displacement, arbitrary arrest and detention and extra-judicial executions. The major sources and forces behind these violations are the security forces, repressive legislation like the emergency regulation, PTA and indemnity Act, informal armed groups supporting the government forces and the LTTE.

5.2 Analysing Violence

The pervasiveness of violence at the societal level is evident in the outbreak of ethnic riots. This form of violence generally indicates the existence of collective anger. However, in the Sri Lankan case, ethnic riots are both spontaneous and organized, created by both the institutional structures and the people. The institutional structures which include the government leadership, political parties and security forces, use people in organizing riot to make it appear as a spontaneous outburst. This is evident by the connivance or helplessness displayed by the security forces and sleekness of the leadership to come to the rescue of the affected community.

It is a noticeable fact that there were no major ethnic riots involving the Sinhalese and the Tamils after 1983. The answer lies in the internationalization of ethnic conflict. In the aftermath of 1983 riots, widespread condemnation by international community and the pressure from donor countries have worked to change the attitude of the Sri Lankan government. As a result, the political leadership is determined to prevent such form of ethnic violence.

At the same time, vengeance killings, another form of ethnic violence, involving the Sinhalese and Tamils has gradually replaced ethnic riots. It involves the security forces and the militants as representatives of their respective ethnic collectivises. Earlier riots included the people to arrange casualties. Importantly, it is the civilian population from both communities which is made scope-goat for such

failings. At times, one could find vengeance killings becoming a cause for ethnic riots as happened in 1983.

The intra-ethnic nature of ethnic violence which is unusual in a plural society should be noted here. Generally, a deprived ethnic group fights united against the state dominated by another ethnic group but in the Sri Lankan case, there are shims not only among the Tamil militant groups but also between the moderate and militant leaders. Interestingly, some militant groups joined hands with the very state forces when they fought against earlier. However, such defection of militants failed to dilute the intensity of violence because of LTTE which is capable of not only sustaining the violence but also diversifying its intensity in its attempt to fight the security forces. In this process, it has eliminated rival groups and leadership through assassinations, another form of ethnic violence. By such acts, the LTTE has successfully extracted support from its ethnic members partly because of the non-availability of a viable alternative and partly due to the continued repression by the state.

Rift within an aggrieved ethnic group arises at two levels. First, the moderate and radicalized sections of the community fall apart on the issue of adopting means of articulating its demands. While the moderate leadership continues to argue for non-violence modes of agitation, the militant section prefers arranged means to comfort the repressive state having found commonality in the cause and means. The militant section is expected to form a common front in confronting the state. But this does not always happen. Personality and petty ideological and tactical differences between the militant leaders create serious divisions in the militant movement. The state forces also try to divide the militants so as to weaken the armed opposition. But often the state fails to understand that it was continued failure to accommodate interests of the affected ethnic group that has actually strengthened the militant's hands and hence the best way to weaken the militant movement is to accept the demands of the moderate. External powers also play a vital role in the exacerbation of inter-militant rivalries by pitting one group against another so as to prevent a particular group from gaining supremacy.

Some factors characterising of modern ethnic conflicts can be identified as follows; minorities are seen as political threats, plainly in numerical terms and the

entire community is attacked for acts of terrorism perpetrated on members of the majority community. The concept of collective punishment is evoked. In all cases, merchants and traders are involved in instigating, preparing lists of competitors and in financing attacks. Peasants are a large number of lumpen proletariat, who act as the advanced guard for looting and scavenging. The most significant point, however, is that these types of riots are mostly pre-planned and to some extent centrally directed by sections of the state, sections of the ruling political party and with covert assistance of parts of the state apparatus, particularly its law enforcement agencies.

In summary, we could say the spiralling of violence and counter violence was encouraged by both sides through the adoption of a variety of political military stratagems. From the government side, this could be summarized as follows-

1. The application of military methods to resolve a political problem

2. The sanction of reprisal killings on the civilian population

3. The encouragement of gross human insecurity including torture, extra judicial killings and arbitrary arrests

With regard to the Tamil movement, the following can be said-

1. Choosing military methods such as land mines and booby traps which are intended to invite reprisal against civilians

2. Indiscriminate killings of civilians

3. Elimination of all opposition within and outside the armed militant movement

5.3 Assessment of Violations of the Right to Life

The study has established three major elements connected with the above forms of ethnic violence as responsible for violations of right to life.

First, the inherently contradictory legislative system of the island has contributed in its own way to abuses of the right to life. On the one hand, there are fundamental rights guaranteed by the constitution but on the other, there are stringent laws like the PTA, Emergency Regulations and Indemnity Act. This contradiction has

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been pointed out by almost all the independent reports on right to life situation in the island. The PTA and the ER's were enacted to prevent terrorism and maintain public security but they failed to achieve their lofty objectives. The main problem with these legislative mechanisms is that they give enormous discretionary powers to security forces, which are normally issued at the cost of the security of individuals.

Second, the character of security forces is identified as another major aspect that fosters violations of right to life in the islands. The security forces are perceived as a repressive rather than the protective arm of the state, especially by the minorities. Under- representation of the minority and lack of the right to life sensitivity in performing their duties have led to such a perception. Repressive legislation like PTA, ER's and Indemnity Act and the government's indifference to abuse of right to life has only bolstered the security personal to disregard human security.

This aspect of ethnicity as a decisive variable in human security has proved our first hypothesis: "The gap between theory and practice of human security is wider in countries affected by ethnic violence". There may be structures for protection with rules and regulations supporting them. However, given the nature of ethnic antagonism, those protective structures are practically ineffective. Unless the ethnically skewed structures are corrected, such gaps between theory and practice of human security tend to widen further. The problem of maintaining a neutral security force in an ethnically polarized society has been a major challenge. The ethnic composition of armed forces is clearly mirrored in their performance especially in controlling ethnic violence.

Third, the role of militant groups in violations of right to life requires thorough examination. The Sri Lankan case has established that lack of clarity in the militant group's ultimate aim results in violations of right to life. If the ultimate aim is secessionism, then the militants who are committed to this goal would be sensitive to human security norms as they would be expected to conduct themselves in a responsible manner to be recognized by the international community. On the other hand, if there is an ambiguity; then the militant groups tend to subordinate their proclaimed objectives to their immediate purpose of ensuring survival and hegemony.

Under the emergency regulations, public security has not improved. Rather, the island, particularly in the war torn areas of the North and North-east, has witness a virtual collapse of law enforcement system. The present situation is a by-product of all the hard knots that keep criminal investigations tied to the rule of law and the elementary norms of human decency. Consequently, extra-judicial killings, torture and rape are no longer phenomena that merely relate to insurgency investigations, but have subtly entered the area of criminal investigations as a whole.

At present, the Government and the LTTE succeeded in committing deniable right to life abuses through the use of proxies, the subversion of accountability mechanisms and disinformation that shifts the blame. The ability to commit "deniable" abuses assumes strategic importance because it is understood that the conflict is as much about achieving international and domestic legitimacy as territorial control. Both parties seek the moral high ground of being a defender of right to life but they believe that this high morale ground can be reached without actually respecting right to life in practice.

5.4 Reviewing the Protection of Right to Life

Against these violations, many mechanisms for protection are available both at the state and civil society level. The state institutions include legislature, executive-judiciary and independent commissions pertaining to right to life. Civil society institutions include NGO's and media. Due to the presence of contradictory provisions of violations and protection side-by-side, these mechanisms are practically not as effective as their mandate calls for. With the idea of 'rights have no borders' emerging, the international influence has been playing a leading role in the protection of right to life in the island. Such influence comes in the form of international human rights instruments, international human rights NGO's and the donor community. They have been effective in strengthening the protective mechanisms in Sri Lanka.

From the analysis, it is found that Sri Lanka offers itself as a classic example of difficulties faced by an ethnically antagonized society in protecting right to life. There are protective mechanisms but they are neither inherent nor coherent. While the provisions in the international Bill of Rights are included in the constitution, Sri

Lanka has failed to build adequate institutional structures and atmosphere for the protection of those rights.

The existence of numerous commissions pertaining to right to life might give an impression that the executive is over-concerned about violations of right to life. However, commissions are appointed by the executive under internal or external pressure. This doesn't mean that such commissions are not effective. The Human Rights Commission, for instance, despite its lack of powers and resources, is in a position to deal with thousands of cases of violations of the right to life. It is important to enlarge the mandate and powers of the commission that the government is serious in safeguarding right to life. Various presidential commissions of inquiry into the involuntary removal or disappearances of persons have undeniably established over 15,000 cases of disappearances. But, mere setting of such commissions to inquire into deaths and disappearances is not adequate. The government needs to critically address the root causes of violence. It is important that the people who were responsible for violations of right to life be made accountable.

Due to weak right to life protection mechanisms, Sri Lanka has been an object of much international criticism and pressure from three quarters; international human rights legal framework, IHROs and donor countries. Being an aid dependent small state, Sri Lanka has not been in a position to resist such pressure. It has readily signed nearly 17 conventions and protocols and made certain corrective measures in its domestic legislation and created some protective mechanism over a period of time. However, at times it has evaded external pressure, especially when the international community is divided on right to life issues. This has necessitated a modification in our earlier hypothesis. To repeat the earlier hypothesis, *international pressure works effectively to promote human security, especially in small states.* It is now reasonable to conclude that *international pressure works with moderate efficacy to promote human security especially in small states.*

Ironically, the international community has not exerted sufficient pressure on the militants and informal armed groups in adhering to right to life. Of course, from time to time, foreign governments have condemned violations of right to life by these groups. Beyond verbal reprieved, the international community can always use its

leverage on the militant groups by curtailing their international fund mobilizations and arms procurement activities.

Perhaps the biggest contributing factor to the rampant violations of right to life by the Sri Lankan security forces is the impunity granted by ER 71 to offices who act outside their professional jurisdiction. Respect for the rule of law is essential to maintain order and stability and to protect right to life in any country. Effective impunity encourages political violence and has contributed to the uncontrolled spiralling of violence. The systematic absence of an investigation, either civil or military, into violations of the right to life has left security officers unaccountable for their actions. Investigations are rarely conducted and when they are, they do not lead to the appropriate convictions or penalties.

What is of equal concern is the increasingly brutal and partisan role being played by the instrument of the state. For instance, the rise of legal and illegal paramilitary forces, death squads and private armies has witnessed the use of such forces, by state actors against dissenters, minorities and opposition forces. This is now endemic to the South Asian region. Additionally, in each country there have been the promulgations of numerous laws that restrict rights and escalate tensions. The mostly state owned or controlled mass media has been used to legitimize repressive politics and actions. Ironically, the state remains a crucial actor in processes towards the management and resolution of conflict

In ethnic conflict, there is fundamental human insecurity on both sides. State terrorism has been countered by guerrilla terrorism. The civilian populations on both sides of the ethnic divide become hostages and victims of these mutually reinforcing forms of terrorism. Adopting militaristic solutions to the ethnic problems has stimulated the increased presence of criminal behaviour on both sides, with a vicious cycle of violence leading to the militarization of the entire society. The state has extended itself in forming legal and illegal para-military forces, death squads and private armies in the pursuit of security. Recruits to these armies are drawn from the lumpen elements in the cities. These lumpen elements and private armies have often been deployed against minorities and oppositional forces.

National accountability mechanisms are important but insufficient for achieving the necessary accountability. The criminal justice system, police investigations, prosecutions and trials have utterly failed to provide accountability. Indeed, it is an enduring scandal that convictions of government officials for killing Tamils are virtually non-existent. The National Human Rights Commission has gone on record as concluding that it would not be an appropriate body to investigate political killings countrywide. Moreover, the current Government has undermined that body's independence, thus further limiting its ability to provide right to life oversight. Publicly, the government has demonstrated its eager willingness to cooperate with international standards and invited inquiries by the United Nations special rapporteurs and commissions to assess and make recommendations on the occurrence of disappearances and extra-judicial executions within its borders. Little action has been taken; little progress has been made in the most pressing areas of violation of right to life and successive emergency legislation has effectively reduced safeguards against violations.

The time has come for the establishment of a full-fledged international monitoring mission for the protection and promotion of human security. This mission must conduct in-depth investigations throughout the country, report publicly on its findings and report to a neutral body. Such a mission would stand a real chance of changing the manner in which political ends are pursued, reducing human insecurity and crating the conditions for a sustainable peace.

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