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The Journal provides a forum for in-depth analysis of problems of legal, social, economic, cultural and environmental transformation taking place in the country and world-wide. It welcomes articles with rigorous reasoning, supported by proper documentation. The Journal would particularly encourage inter-disciplinary articles that are accessible to a wider group of Social activist, economist, Researcher, policy makers, Professionals and students.

This quarterly issue of the journal would like to encourage and welcome more and more writers to get their work published. The papers will be selected by our editorial board that would rely upon the vibrant skills and knowledge immersed in the paper.

*Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoj Research Journal of Law and Socio-Economic Issues.*

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## POSITION OF HUMAN RIGHTS IN SRI LANKA

*Ayushi Jain*

### ***Abstract***

The aim of the research was to study in detail the history of Human rights in Sri Lanka, its evolution and the present scenario.

Sri Lanka has been a colony of various nations from 1517 to 1948 and has hence been a victim of the atrocities towards the citizens of Sri Lanka. Even after its freedom in 1948 Sri Lanka has been in constant conflicts between the Government and the LTTE due to which the living conditions for its citizens and even the armed personnel has not been very good. There has been a constant violation of basic human rights that each and every individual holds as a consequence of being an independent human being.

However with the changing times and development of UN Declaration of Human Rights the Government of Sri Lanka has taken several measures to protect the human rights of the citizens of Sri Lanka. They also included few of the rights in the UN Declaration in the Constitution as fundamental rights.

Sri Lanka's new government has taken several positive steps including lifting media restrictions, ceasing a pervasive culture of surveillance, and reviewing all cases of those detained under the country's draconian Prevention of Terrorism Act. It amended the constitution to restore independence to the public services commissions. In a welcome change from previous years, the new government agreed to a resolution at the UN Human Rights Council's September 2015 session, which mandates the creation of various transitional justice mechanisms, including an accountability mechanism for war crimes. The government has embarked on a national consultation and will report to HRC in June 2016 on progress made in implementing the resolution.

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## **WHAT ARE HUMAN RIGHTS?**

While some dictionaries define the word right as "a privilege," when used in the context of "human rights," we are talking about something more basic.<sup>1</sup>

Every person is entitled to certain fundamental rights, simply by the fact of being human. These are called "human rights" rather than a privilege (which can be taken away at someone's whim).

They are "rights" because they are things you are allowed to be, to do or to have. These rights are there for your protection against people who might want to harm or hurt you. They are also there to help us get along with each other and live in peace.

Many people know something about their rights. Generally they know they have the right to food and a safe place to stay. They know they have a right to be paid for the work they do. But there are many other rights.

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<sup>1</sup> <http://www.youthforhumanrights.org/what-are-human-rights.html>

When human rights are not well known by people, abuses such as discrimination, intolerance, injustice, oppression and slavery can arise.

Born out of the atrocities and enormous loss of life during World War II, the United Nations Universal Declaration of Human Rights was signed in 1948 to provide a common understanding of what everyone's rights are. It forms the basis for a world built on freedom, justice and peace.

## **HISTORY AND EVOLUTION OF HUMAN RIGHTS<sup>2</sup>**

The initial impetus of the current human rights legal regime and movement was in reaction to the Nazi atrocities of World War II. Human Rights are importantly referred to in the United Nations charter in both the preamble and under article 1. The preamble of the UN charter reaffirms "faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women". Article 2(4) however prohibits the use of force and has ever since been used to block humanitarian actions though Chapter 7 provides for Security Council enforcement measures.

The chapter 6 of the Charter entitles International Economic and Social Cooperation provides Article 55 of the "Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

The United Nations Charter and Universal Declaration of Human rights provide a legal mechanism which may challenge the sovereign rights of states to oppress the people within their own jurisdiction.<sup>3</sup>

The Vienna Declaration and Programme of Action re-affirms the right to development. The Rio Declaration on Environment and Development sought solutions to poverty the growing gap between industrialized and developing countries and environmental problems.

Many countries like India have enshrined the concept of Human Rights in their Constitution which cannot be abridged by any authority. The constitution of Sri Lanka is another such country which had signed the UN Declaration and has imbibed Human Rights in its Constitution.

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<sup>2</sup> <http://www.legalservicesindia.com/article/article/historical-development-of-human-rights-138-1.html>

<sup>3</sup> <http://www.humanrights.dk/about-us/human-rights-in-denmark/the-evolution-of-human-rights>

## **HISTORY OF SRI LANKA**<sup>4</sup>

About 500 BC when a people called the Sinhalese migrated there from India. According to legend the first settlers were led by a man named Vijaya.

According to tradition Buddhism was introduced into Sri Lanka in 260 BC by a man named Mahinda. It soon became an integral part of Sinhalese culture.

However at first Sri Lanka was divided into different states. A man named Dutthagamani (161-137 BC) united them into a single kingdom. As well as being a powerful ruler Dutthagamani was a great builder and he erected palaces and temples.

The capital of the first Sri Lankan kingdom was at Anuradhapura. The staple diet of the Sri Lankan people was rice but to grow rice needs to stand in water. However in Sri Lanka's hot climate water soon evaporated. Some water was provided by rain in the rainy season (October to April) but it was not enough. To gain extra water the people dammed streams and rivers.

However in time it became the ruler's responsibility to provide water for farming. King Mahensa (274-303) built large reservoirs and irrigation canals to take water from one area to another. The network of reservoirs and canals gradually became bigger and more complex.

In the 2nd 3rd and 4th centuries AD Sri Lanka became a rich kingdom. She traded with India, China, Persia and Ethiopia. However from the 5th century onward Sri Lanka suffered from invasions from India. In the 10th century the Chola kingdom became powerful in southern India.

In 993 the Cholas captured northern Sri Lanka and they made Polonnaruwa the capital. In 1017 they captured the south. However the Sinhalese continued to resist and in 1030 the Cholas withdrew from Rohana, in the Southeast. In 1070 the Sinhalese ruler Vijayabahu recaptured the north.

However after his death in 1111, weak rulers succeeded him. Sri Lanka broke up into independent states. Then in 1153 Parakrama Bahu the Great became king of the realm of Dakkinadesa. This great ruler reunited Sri Lanka and he repaired the irrigation system. He died in 1183.

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<sup>4</sup> <http://www.localhistories.org/srilanka.html>

In the 13th century Sri Lankan power declined. There were repeated invasions from India and political instability. The irrigation system began to breakdown and the people drifted to the Southwest. In 1255 the capital Polonnaruwa was abandoned.

In the 13th century the Tamils settled in the north of Sri Lanka and by 1505 Sri Lanka was divided into 3 areas. In the north lived Tamils. There was a Sinhalese kingdom in the Southwest based in Kotte and another in the center and east based in Kandy.

Sri Lanka was first colonised by Portugals from 1517 - 1629, then by the Dutch from 1638-1760 and then by British from 1796- 1948. Sri Lanka finally became independent on 4<sup>th</sup> February 1948.

### **MODERN SRI LANKA**<sup>5</sup>

The first prime minister was Dr Stephen Senanayake. When he died in 1952 his son Dudley Senanyake followed him. Dudley resigned in 1953 and was replaced by Sir John Kotewala. All three were members of the United National Party.

However in 1956 their party fell from power. The next government was led by S W R D Bandaranaike. He promoted Sinhalese culture and extended state control of the economy. However he was assassinated in 1959. In 1960 he was replaced by his widow Sirimavo Bandaranaike. She was prime minister until 1965. She continued the policy of nationalization. She also brought most schools under state control. In 1965 she was replaced by Dudley Senanayake who was prime minister again until 1970.

From the 1950s tension between Tamils and Sinhalese grew. In 1956 Sinhalese was made the only official language (instead of both Sinhalese and Tamil). Mrs Bandaranaike also deported many Indian Tamil labourers.

In 1971 a rebellion of young people was led by an anti-Tamil organisation called the Janatha Vimukthi Permuna. The rebellion was quickly crushed.

In 1972 Sri Lanka was given a new constitution. This one stated that Buddhism had 'foremost place' among Sri Lankan religions. This was very unpopular with followers of other religions. Furthermore in 1972 the number of Tamil places at university was reduced.

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<sup>5</sup> <http://www.localhistories.org/srilanka.html>

Furthermore in 1972 the name of the country was officially changed from Ceylon to Sri Lanka. In 1976 the Tamil United Liberation Front was formed. They demanded a separate Tamil state. Then in 1977 Sri Lanka was rocked by ethnic riots in which 128 people died. Yet another constitution was introduced in 1978. This one made a president the head of state. However the new constitution failed to satisfy the Tamils.

In 1983 civil war broke out between Tamils and Sinhalese. On 23 July 1983 Tamil separatists ambushed and killed 13 Sinhalese soldiers. The result was rioting in which hundreds of people died. Afterwards the Tamils fought a guerrilla war against the government.

India was drawn into the crisis in 1987 when they agreed to send a peacekeeping force to the north and east of Sri Lanka. However, fighting soon broke out between the Indian forces and the Tamil 'Tigers' or guerrillas. The Indian Peace Keeping force withdrew in 1990 and fighting between Tamils and Sinhalese began again.

Meanwhile in the late 1980s Maoist Janatha Vimukion Peramuna led a violent campaign in the south. It was crushed in 1989-1990.

In 1993 President Premadasa was assassinated. From the mid 1990s efforts were made to end the fighting. A cease fire was made in February 2002 and talks were held. However the cease fire broke down and fighting resumed. The war ended in 2009 with the defeat of the Tamil Tigers by the Sri Lankan government.

### **CONSTITUTION OF SRI LANKA**

The Chapter three of 1987 constitution has protected human rights as Fundamental rights. Freedom of thought, conscience and religion and the right to freedom from torture are recognized as rights which cannot be restricted on any ground.

Article 4 of the Constitution requires all organs of government to respect, secure and advance the fundamental rights declared and recognized in the Constitution. Article 126, provides a right of direct access to the Supreme Court to redress violations of fundamental rights. The Article vests the Supreme Court with sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement of a fundamental right set out in the Constitution.

## **ABUSE OF HUMAN RIGHTS IN SRI LANKA**

### **ABUSES BY THE GOVERNMENT**

#### **1986**

On April 19, 1986, Ramanujam Manikkalingam, an MIT physics graduate, was arrested by government security forces in his native country of Sri Lanka under the provisions of the Prevention of Terrorism Act. Family and friends said that he was arrested while walking home from the local post office and that he was tortured in custody.

#### **1990**

The Eastern province of Sri Lanka was taken over by Sri Lankan Forces after heavy fighting in 1990. Even after government forces moved in early 1990 large number of disappearance and extrajudicial execution were continued. By October 1990, 3,000 people were estimated to have been killed or to have disappeared in Amparai district. Further Many of the disappeared people were believed to have been killed as a result of extrajudicial execution. Likewise in Batticaloa another 1,500 people were reported to have disappeared. The LTTE terrorists continued to kill innocent people in the Eastern Province. They killed Muslims gathered in two mosques, for Friday prayers. Also more than 700 unarmed policemen were murdered, cold blood. A bus full of Buddhist monks were killed at Aranthalawa. However, the true perpetrators of the disappearances are yet to be determined, with the Sri Lankan government and the rebels both accusing each other.

#### **2000**

The European Union also condemned Sri Lankan security forces in the year 2000 concerning human rights, after fighting displaced 12,000 civilians.

The US State Department stated that "The civilian authorities generally maintained effective control of the security forces, although some members of the security forces committed serious human right abuses".

During President Mahinda Rajapaksa's reign White vans started to be associated with abductions and disappearances both during and after the war. Most disappearances of various critics, journalist and others who had disputes with members of the Rajapaksa government as

well as kidnapping for ransom has been associated with the "White vans" which were believed to be operated by Military personnel.

### **Shooting of Tamil media workers**

Sahathevan Nilakshan, was a minority Sri Lankan Tamil student journalist and the head of the Chaalaram magazine. Sahadevan was shot dead inside his house during night time curfew in an area heavily guarded by the Sri Lankan Army. Sahadevan was part of a series of killing of Tamil media workers particularly those seen supporting the Tamil nationalist cause as Chaalaram magazine for which he worked was linked to the Federation of Jaffna District Students was seen supporting Tamil nationalism. It was seen as part of the intimidation of Tamil media.

### **POST-WAR**

People who were previously in, or who assisted, the Tamil Tigers have alleged that the government has been continuing to torture them after the formal end of hostilities. Human Rights Watch has said that 62 cases of sexual violence have been documented since the end of the civil war, though the government says that there have only been 5. Similarly, the government asserts that these are isolated cases, while those making the allegations believe that this is a part of an organized government campaign. One specific link to a formal government program investigated by the BBC found numerous people who say they were tortured at government rehabilitation camps, run for suspected former rebels. Several of those involved have medical documentation of torture along with documentation of having attended these programmes. Two UN reports have stated that the programme does not meet international standards and that there was a possibility of torture occurring. The government claimed to the BBC that they did not agree with the claims, and asserted that those anonymous people making the reports may have been paid by the Tamil Tigers or tortured by the Tigers themselves.

## **ABUSES BY THE LIBERATION TIGERS OF TAMIL EELAM (LTTE)<sup>6</sup>**

The Liberation Tigers of Tamil Eelam have repeatedly been accused of attacks on civilians during their separatist guerrilla campaign. The US State Department reported several human rights abuses in 2005, but it specifically states that there were no confirmed reports of politically motivated killings by the government. The report states that, "they [LTTE] continued to control large sections of the north and east and engaged in politically motivated killings, disappearances, torture, arbitrary arrest and detention, denial of fair public trial, arbitrary interference with privacy, denial of freedom of speech, press, of assembly and association, and the recruitment of child soldiers". The report further accused the LTTE of extrajudicial killings in the North and East.

The LTTE committed massacres in the Northern and Eastern provinces of Sri Lanka. The number of civilians massacred in a single incident were as high as 144 (Anuradhapura massacre) in 1985. Some of the major attacks resulting in civilian deaths include the Kebithigollewa massacre, the Gonagala massacre (54 dead), the Dehiwala train bombing (56 dead), the Palliyagodella massacre (109 dead) and the bombing of Sri Lanka's Central Bank (102 dead). Further a Claymore antipersonnel mine attack by the LTTE on June 15, 2006 on a bus carrying 140 civilians killed 68 people including 15 children, and injured 60 others.

Tamil Tigers were also credited by FBI for the invention of suicide bra and suicide belt. Most of the targets of suicide attacks were made on civilians rather than the government forces.

## **ABUSES BY OTHER GROUPS**

The TamilEela Makkal Viduthalai Pulikal (TMVP), an armed organization led by Colonel Karuna, was accused by many human rights and non-governmental organizations of recruiting children, torture, assassinations and engaging in extortion in its war against the LTTE. The TMVP was also involved in kidnappings for ransom of wealthy, predominantly Tamil, businessmen to raise money in Colombo and other towns. Some businessmen were killed because their family could not pay the ransom.

**HUMAN RIGHTS VIOLATIONS COMMITTED IN SRI LANKA (2002-2011)<sup>7</sup>:** The report discusses the human rights abuses allegedly committed by the LTTE and government

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<sup>6</sup> [https://en.wikipedia.org/wiki/Human\\_rights\\_in\\_Sri\\_Lanka](https://en.wikipedia.org/wiki/Human_rights_in_Sri_Lanka)

<sup>7</sup> <http://www.ijrcenter.org/2015/09/22/un-report-highlights-human-rights-violations-in-sri-lanka-and-urges-creation-of-hybrid-court/>

forces between 2002 and 2011, including the following: unlawful killing of humanitarian workers, politicians, journalists, Muslims, students, and civilians; extrajudicial killings; torture; sexual and gender-based violence, including rape and sexual harassment; unlawful arrests; arbitrary detention; enforced disappearances; threats and harassment of victims' relatives and human rights defenders; and the abduction and forcible recruitment of adults and children. Also according to the report, domestic UN and NGO offices, hospitals, churches, and food distribution centres were attacked despite being located in "no fire zones" and the LTTE restricted the freedom of movement of civilians and humanitarian workers and their dependents. Additionally, the report notes that the government: restricted humanitarian assistance to civilians in LTTE-controlled territories, which deprived people of water, food, and access to emergency medical care and deprived internally displaced persons of their liberty by detaining them in squalid closed camps that were guarded by the military.

### **HUMAN RIGHTS PROTECTION IN SRI LANKA**

The Human Rights Commission of Sri Lanka was established in March 1997 under Human Rights Commission Act, 1996. It was designed to be an apex national body with a multi functional role, combining investigative, adversary and awareness raising tasks. Under Section 3(2) of Human Rights Commission of Sri Lanka of the constitution, the President on the recommendation of constitution council has appointed 5 persons to the Human Rights Commission of Sri Lanka with effect from 4 April 2003.

A senior human right adviser has been working with the UN country Team in Sri Lanka since June 2004, advising and supporting the UN resident Coordinator and UN agencies on strategies to protect human rights and build the capacity of national institutions and civil society to support the peace process.

December 2005, Office of High commissioner for Human Rights has forced ways to reinforce its presence in the country, culminating with the High Commissioner's visit in October 2007. Action by Ministry for Human Rights and Disaster management was crested in 2006 and has taken number of positive initiatives in keeping with the policy of government to focus on human rights concerns and to continue the dialog that has always existed between the government and the international community.<sup>8</sup>

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<sup>8</sup> <http://www.lawteacher.net/free-law-essays/public-law/nature-of-human-rights-in-sri-lanka-public-law-essay.php>

On 26<sup>th</sup> October 2009, President Rajapaksa appointed a four member committee to examine carefully the allegations of violations of the laws of was during the final stages of the 30 year long armed conflict along with the European Commission Report of 19<sup>th</sup> October, 2009.

On the 6<sup>th</sup> November 2009 Foreign Minister Rohitha Bogollagama handed over document captioned “Observations of GOSL in respect of the report on the findings of the investigation with respect of the effective implementation of certain human rights conventions in Sri Lanka” to EU.

A draft Freedom of Information Bill was approved by the cabinet if ministers in February 2004 after consultation with civil society. Political developments thereafter may have prevented the enactment of the Bill. The World Bank strongly supported the adoption of a freedom of information act as a means to promote accountability and responsiveness in governance in the country.

The government of Sri Lanka forwarded the observations of the Government of Sri Lanka in respect to the effective implementation of certain human rights conventions in Sri Lanka.

Millennium development Goals forwarded to United Nations. In September 2000, world leaders gathered at the UN General Assembly in New York to talk of the challenges to humanity in the new millennium. They noted the importance of established peace and security and human rights. Sri Lanka is one of the 191 signatories to the Millennium Declaration which emerged from the Summit.

## **CONCLUSION AND RECENT DEVELOPMENTS**

Sri Lanka’s new government has taken several positive steps including lifting media restrictions, ceasing a pervasive culture of surveillance, and reviewing all cases of those detained under the country’s draconian Prevention of Terrorism Act. It amended the constitution to restore independence to the public services commissions.<sup>9</sup> In a welcome change from previous years, the new government agreed to a resolution at the UN Human Rights Council’s September 2015 session, which mandates the creation of various transitional justice mechanisms, including an accountability mechanism for war crimes. The government has embarked on a national consultation and has reported to HRC in June 2016 on progress made in implementing the resolution

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<sup>9</sup> <http://reliefweb.int/report/sri-lanka/recent-developments-sri-lanka>