CHAPTER III

DIMENSIONS OF HUMAN RIGHTS VIOLATIONS
In the past two decades there has been burgeoning of information on terror and abuse of internationally recognized human rights in countries around the globe.¹ This is true with every political system—democratic or authoritarian. Generally, democratic regimes are expected to offer meaningful solutions to conflicts by accommodating minority group demands.² Human rights are considered as a good principle of democracy, as they are assured through legal and political provisions.³ Democracy also provides citizens the means to oust potentially abusive leaders.⁴ In addition, it makes it easier for the mobilization of local and world public opinion against such leaders.

However, in practice, ‘democracy’ and ‘human rights’ 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 rights abuses in many democracies of today. The violations take place both as a result of militant activities as well as the State’s response to ethnic conflict.⁵

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 violations of human rights of all

---

⁴ It is in this regard ‘democracy’ is defined as “the extent to which the political power of the elite is minimized and that of the non-elite is maximized”. See Kenneth A. Bollen, “Issues in Comparative Measurement of Political Democracy,” *American Sociological Review*, Vol. 45, 1980, pp. 370-90.
sorts. The rights abuses increased in proportion to the intensification of the ethnic violence between the security forces representing the government and the militants representing the minority community. Indeed, in the past, there were violations as a result of two JVP insurrections in 1971 and 1987-89, which is outside the framework of the present chapter.

FORMS OF VIOLATIONS

The ethnic violence has resulted in the violation of human rights in various forms, which could be broadly classified into two:

1. Civil rights;

2. Economic, social and cultural rights.

Civil Rights

Violations of civil rights that have taken place because of disappearances, torture, extra judicial killings, arbitrary arrests and detention, and restrictions in freedom of movement and expression.

Disappearances

Disappearances involve persons last known to be in the custody of the security forces or militant groups and whose whereabouts are not known thereafter or denied by the authorities who allegedly arrested them. Consequently, a case of disappearance can be resolved only when the authorities by release the detainee.

---

6 But the Declaration on Disappearances, passed by the UN General Assembly in December 1992, notes that disappearances occur when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of law." (see Preamble). This evidently ignores militant or other armed groups out of State control as a cause for disappearances.
Thus, the word “denial” is a key concept. The term ‘disappeared’ (desaparecido) was first coined by human rights organizations in 1966 at the time of a secret government crackdown on political opponents in Guatemala. However, a systematic documentation of cases of disappearances was done in the mid-1970s. Considered as a dreadful dimension of human rights violations, ‘disappearance’ has become a convenient and preferred method. Open killing of political opponent will have to be explained to the public. At the same time, retaining them as prisoners also requires explanations. In other words, it is a way of escaping accountability and perpetuating impunity. Disappearance and extra-judicial killing usually accompany one another, but the latter differs from the former in the sense that it refers to deliberate, unlawful killings 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 the disappeared is a bread winner, 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.

The presentation by the Asian Legal Resource Centre at the 55th session of the UN Human Rights Commission clearly brings out the problem in general:

---

The experience of the last few decades in dealing with disappearances (often where they occur in large scale) clearly shows a serious lack of understanding of the magnitude of the problem, the overall effect of such disappearances on society and, in particular, of the legal system where they occur, the root causes of such occurrences and the fundamental issues that need to be faced in assisting countries to overcome the aftermath and to prevent similar problems in future.... Besides there too exists an understanding that if order in society is threatened in one way or another it may be restored with or without law.\textsuperscript{10}

Disappearances violate the nationally and internationally guaranteed human rights. In Sri Lanka, at the national level, disappearances go in contravention to Article 10 of the 1978 Constitution, which States that

\begin{enumerate}
\item A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law;
\item 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 apprehended and brought before a competent court in accordance with procedure prescribed by law.
\end{enumerate}

Further, under Article 141 the Constitution allows the Court of Appeal to grant and issue writ of habeas corpus to hear cases involving,

\begin{enumerate}
\item the body of any person to be dealt with according to law; or
\item the body of any person illegally or improperly detained in public or private custody, and to discharge or remand any person so brought up.
\end{enumerate}

Since 1981, the Office of the Parliamentary Commissioner of Administration (Ombudsman) has been entrusted with the duty to investigate and report on "complaints or allegations of the infringement of fundamental rights and other injustices by public officers of public corporations, local authorities and other like institutions...."\textsuperscript{11}

According to the international human rights regimes, disappearances deny the right to life, liberty and security of the person; the right to humane conditions...

\textsuperscript{11} Provided under Chapter XXIV of the Sri Lankan Constitution.
of detention; and the right to be secure from torture, arbitrary arrest, or cruel, inhuman or degrading punishment embodied in the Universal Declaration of Human Rights (UDHR) and ICCPR. It also goes against the rights provided under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,\textsuperscript{12} the Code of Conduct for Law Enforcement Officials,\textsuperscript{13} the Standard Minimum Rules for the Treatment of Prisoners,\textsuperscript{14} the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,\textsuperscript{15} and the Declaration on the Protection of All Persons from Enforced Disappearances.\textsuperscript{16} The suffering caused by a disappearance to the relatives in itself contravenes the right not to be tortured or subjected to cruel, inhuman and degrading treatment or punishment.

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 numbers of "non-clarified" disappearances in the world.\textsuperscript{17} 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'

\textsuperscript{12} Adopted by the UN General Assembly (Resolution 43/173) on 9 December 1988. See Principle 34 for relevance.
\textsuperscript{13} Article 3 of the Code States, "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."
\textsuperscript{14} Rule 92 States, "[a] untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends...."
\textsuperscript{15} According to Article 1 of the Principles, "Governments shall prohibit by law all extra-legal, arbitrary and summary executions."
\textsuperscript{16} Article 2 of the Declaration States, "No State shall practice, permit or tolerate enforced disappearances".
subsequently, it has become a regular feature only since 1984. The number increased after the capture of Jaffna peninsula by the security forces from the LTTE in December 1996.\(^\text{18}\) Ironically, more than 15 percent of those disappeared during this period were children.\(^\text{19}\) Table 3.1 provides an overview of disappearances in the island related to ethnic violence.

**TABLE 3.1**

**DISAPPEARANCES DUE TO ETHNIC VIOLENCE (1983-2000)**

<table>
<thead>
<tr>
<th>Period of disappearance</th>
<th>Numbers disappeared</th>
<th>Area of disappearance</th>
<th>Circumstance under which disappeared</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-87</td>
<td>860</td>
<td>Northeast</td>
<td>Eelam War-I</td>
</tr>
<tr>
<td>1988-89</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>1990</td>
<td>4774</td>
<td>Northeast</td>
<td>Commencement of Eelam War-II</td>
</tr>
<tr>
<td>1991</td>
<td>410</td>
<td>Northeast</td>
<td>Eelam War-II</td>
</tr>
<tr>
<td>1995</td>
<td>55</td>
<td>Eastern Province, Colombo</td>
<td>“Operation Rivirasa” of Eelam War-III</td>
</tr>
<tr>
<td>1996</td>
<td>648</td>
<td>Jaffna</td>
<td>When security forces regained Jaffna peninsula during Eelam War-III</td>
</tr>
<tr>
<td>1997</td>
<td>100</td>
<td>North and East</td>
<td>Eelam War-III</td>
</tr>
<tr>
<td>1998</td>
<td>67</td>
<td>Jaffna</td>
<td>-do-</td>
</tr>
<tr>
<td>1999</td>
<td>147</td>
<td>Jaffna</td>
<td>-do-</td>
</tr>
<tr>
<td>2000</td>
<td>78</td>
<td>Jaffna</td>
<td>Eelam War-III</td>
</tr>
</tbody>
</table>

*Source: Compiled from annual reports of Amnesty International, Human Rights Watch, Asian Legal Resource Centre, Reports of Presidential Commission on Disappearances, various reports of the Working Group on Enforced or Involuntary Disappearances, University Teachers for Human Rights (Jaffna), and Human Rights Commission of Sri Lanka.*

Despite testimony by eyewitnesses, the concerned authorities have frequently denied or have given contradictory information. Often the authorities claim that the person in question may have secretly left to join the guerillas, died,

---

\(^{18}\) Officially, the number of disappearances in 1996 alone stood at 648, which was the highest since 1990. See Amnesty International, "Sri Lanka: Highest Number of ‘Disappearances’ Reported since 1990," AI Index: ASA 37/10/97.

or went abroad.²⁰ The most disturbing aspect of detentions is the particular practice of "mobile detention", in which detainees are continually transferred from place to place. This has enabled the security forces to prevent detection of a large number of Tamils taken into custody, particularly in the northeast.²¹ The disappearances continued to happen even during the period of IPKF operations, from July 1987 to March 1990. This was evident from the findings of the mass graves in Duraiyappa Stadium in Jaffna (dating back to 1988) when the IPKF continued its operations.

Non-LTTE Tamil militias like the People Liberation Organisaiton for Tamil Eelam (PLOTE), the Eelam People's Revolutionary Liberation Front (EPRLF), and the Tamil Eelam Liberation Organisation (TELO),²² 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. These groups maintain unofficial detention centres where their detainees are held and tortured. The Human Rights Commission of Sri Lanka or any other official body has no mandate to visit these illegal detention centres to inquire about the cases of disappearances.²³ The secrecy of these groups is a main hindrance in the efforts to determine the exact number of victims. Moreover, the chain of command and control over the armed group is unclear and both the army and police claim that they are not in a position to hold these groups accountable.²⁴

²² Since December 2001 a faction of EPRLF and TELO are with the LTTE supported alliance of Tamil political parties - Tamil National Alliance.
²⁴ Interview with two Army officers, who requested anonymity, at Sir John Kotelewala Training Academy, 12 October 2001.
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 cooperates 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 Disappearance or Persons, which inquired into 16,800 cases, revealed the patterns of disappearances in Sri Lanka:25

a. Most of the people who disappeared were killed after their arrests;

b. Before they were killed, the abducted persons were kept in detention centres, interrogated and tortured;

c. In most cases, their bodies were destroyed in order to erase all traces;

d. Some of them were buried in unmarked mass graves, others disposed off in rivers or burnt at roadsides with tyres around their necks;

e. Legal provisions were made to avoid keeping of any form of records;

f. The jurisdiction of courts to inquire into the matter was limited by legal provisions;

g. Some top level of political leaders and decision-makers were involved in designing and maintaining the system which caused these disappearances;

h. The whole process was systematically planned;

i. About 15 per cent of the total number of people disappeared belonged to 19 years of age.

---

The immunity given to the security forces has been a persistent problem in addressing the issue of disappearances; under the Emergency Regulations (ERs) and the PTA the security forces enjoy immunity for holding detainees for a prolonged period of time without explanation. The Emergency Regulations have facilitated the disappearances of tens of thousands of persons held in the custody of the security forces. Through these regulations, all restraints on law enforcement officers have been removed, and the power to dispose off dead bodies is given to the concerned officers. Judicial supervision is suspended. There are no provisions even to keep records of the disposed bodies. Additional ERs, passed in 2000, granted "any authorized person", in addition to the security forces, the right to arrest and detain any person engaged in activities considered to be a threat to national security, public order and maintenance of essential services.

The PTA is a draconian legislation. It overrules most of the guarantees provided by the Constitution against disappearances. For instance, Section 6 allows the Police to arrest, search a person or premises and to seize any document or item without warrant, and allows the police to detain a person for three days without judicial supervision if there is a reasonable suspicion that the person is connected with any unlawful activity.

Section 9 empowers any Minister of the government to

Order the detention of a person for up to eighteen months without judicial supervision, where the Minister 'has reason to believe or suspect that any person is connected with or concerned in any unlawful activity.

Further, Section 26 provides for immunity from prosecution or other proceedings, civil or criminal:

any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act.

Further, the Indemnity (Amendment) Act (1988) provides immunity from prosecution to all members of the security forces, members of the government and government servants involved in enforcing law and order between 1 August 1977 and 16 December 1988, provided that their actions were carried out “in good faith” and in public interest. Though it has not been used to date, the noteworthy fact is that it has increased the immunity for those who committed such acts during the said period, when large-scale disappearances had been reported.29

The other main factor that facilitated disappearances is the lack of any mechanism which makes the official recording of detentions mandatory. Though the Human Rights Task Force (HRTF) was set up for this purpose, it was disbanded in favour of the Human Rights Commission in 1997. The Commission is given enormous powers to protects 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. The Commissions had investigated a total of 27,526 cases of disappearance and resolved 16,742 cases. The Reports implicated hundreds of officers in respect of 3,861 cases. But, most of them happened during the 1988-89 JVP uprising and not related to the ethnic conflict. There are still about 12,000 cases to be investigated. And moreover, the implicated officers are yet to be

prosecuted fully. Ironically, the Presidential Commission Reports merely serve as a record of the disappeared, providing recommendations without ensuring justice.  

The Defence Ministry’s Board of Investigation, established in November 1996 to specifically investigate the disappearances of those arrested by the Army in Jaffna in mid-1996 has never made its report public, thereby making verification of cases impossible and any legal action impossible. Even otherwise its findings were not taken seriously since the complaints filed were against the very officials who were investigating them. Bodies like Disappearance Investigative Unit of the police and Missing Persons Commissions Unit of the Attorney General’s department, which were set up exclusively for the purpose, are afflicted with similar problems.

_Habeas corpus_ petitions, supposedly effective legal means for establishing the fate or whereabouts of the missing, has proved to be ineffective due to practical and legal constraints. The _habeas corpus_ petitions are heard 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 applicants to register and pursue their cases. Legally, there has to be evidence to believe that the arrests were made by the security personnel and not produced.

---

30 Punyasena, n. 9.
32 Article 141 of the 1978 Constitution grants power to writ of _habeas corpus_ to Court of Appeal to bring up before such Court: (a) the body of any person to be dealt with according to law; or (b) the body of any person illegally or improperly detained in public or private custody, and to discharge or remand any person so brought up or otherwise deal with such person according to law.
33 It was only in 1987 under the 13th Amendment that the High Courts were granted this power of issuing writs, which was earlier vested solely with the Court of Appeal.
before the court subsequently. However, getting such evidence is hard by the detainee who is already under threat. The courts are, moreover, are focus more on offering compensation to the families of the disappeared than making efforts in tracing the missing.

**Torture**

Under international law, torture is recognized as one of the most heinous of crimes, falling within the category of *jus cogens*. Freedom from torture or cruel, inhuman or degrading treatment or punishment is a human right guaranteed by Article 5 of the UDHR and Article 7 of International Covenant on Civil and Political Rights (ICCPR). Article 11 of the 1978 Constitution of Sri Lanka guarantees freedom from torture as a fundamental right. This particular provision is a non-derogable 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-thirds majority. A separate UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) was adopted in 1984 to prevent torture world over. 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, Inhuman and Degrading Treatment

---

34 Presentation made before the UNHRC by the Sri Lankan delegation on 24-25 July 1995, CCPR/C/SR. 1438, para. 21.

35 The term *jus cogens* means the compelling law and, as such, a *jus cogens* norm holds the highest hierarchical position among all other norms and principles. As a consequence of that standing, *jus cogens* norms are deemed to be “peremptory and non-derogable.”

36 It States, “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

37 Article 2(1) of the CAT requires each State Party “to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”
or Punishment Act No. 22 of 1994 in November 1994. Interestingly, torture was officially made illegal in the island way back in 1799.

However, torture has become the most common human rights violations 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), 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 carried out by the security forces and the militants for many purposes. The most notable one is to gather information from the victim. Hence, knowing relevant information is to be at risk. Some are tortured to avenge the earlier torture by opposing groups. Torture also takes place due to sadistic reasons, which is beyond the purview of the definition.

Methods of torture include “dry submarine” (pulling a shopping bag containing chilies, insecticides and/or petrol over the head and tied to the base of the neck), “wet submarine” (putting inside a water tub or well), electric shock, beatings with thick pieces of wood and PVC pipes filled with sand or concrete, suspension by the wrists or feet in contorted positions, burnings with lighted cigarettes or melted polythene, and forced to remain in unnatural positions for

38 Though there is no precise definition for ‘torture’, the most accepted one is by the UN Convention against Torture (Article 1) which defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”
40 This group has now been incorporated into the regular Army.
extended periods. The arrested are also hung upside down by their feet or suspended by their wrists. At times pins are driven into their toes or other parts of the body; food and sleep are denied to them and they are also subjected to repeated beatings. In the case of female detainees, rape is the common form of torture. However, though there are allegations, there is no evidence of LTTE using rape as a weapon of violence. This is accepted even by rival non-LTTE Tamil militant groups and officers of the Sri Lankan security forces. Torture by the security forces is different from the militants in its nature that it leaves little evidence of perpetration. The point is that the victims sometimes undergo all the above mentioned forms or at least more than one.

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

---

43 Interviews with the leader of PLOTE, D. Siddharthan, and Commandant, Sir John Kotelawala Defence Academy, October 2001. Interestingly, the Commandant denied the hands of “my men” in committing rape. He asserted that “in case I come to know of such incidents I don’t mind shooting them down myself.”
46 Especially Section 17 of this Regulation provides for preventive detention for an unlimited period without any tangible judicial intervention. A person who is expected to act prejudicial to national security or to the maintenance of public order may be detained in custody for a period not exceeding three months and after that the detention period may be extended every third month for a period not exceeding one year. For detention longer than one year, the person must be produced before a Magistrate every third month but there is no limit on the amount of times the period of detention may be extended. The Magistrate is to decide the necessity of the extension based on a written report from the Secretary of Defence and is only required to find “reasonable grounds” to affirm the
regard to the conditions of the place of detention under this Regulation. Most importantly, under the Emergency provisions, the confession made before police officers not below the rank of Assistant Superintendent of Police is admissible, which is a flagrant violation of Article 15 of the CAT. This also goes in contravention of Evidence Ordinance of Sri Lanka, which does not treat confessions made to police officers as evidence. To avoid the exposure of torture through post-mortem, the Emergency Regulation 15A enables disposal of bodies without an inquest, which is another motivation for torture.48

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.49 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.50 During this period there is no judicial review of detention and the detainee has little ability to influence the administrative decisions.51 Admissibility of evidence is similar under the ERs.

The consequence of torture is fear or phobia. Several people are reported to have died under torture. Doctors say that people who are tortured only once suffer less psychological damage than those who are tortured ‘systematically’.52 Psychological consequences of torture can last forever. Sleeping problems, nightmares, fear, depression and feelings of guilt may haunt a person for the rest

Secretary’s request. The detainee, however, has no real opportunity to challenge the lawfulness of the detention.

47 Sections 25 and 26.
49 Under Section 7 of the PTA.
50 Under Section 9 of the PTA.
52 Gamage and Watson, n. 44, p. 144.
of his/her life.\textsuperscript{53} The consequences of torture on children are often not recognized. Children, whose parents have been tortured, form another large group of child victims of torture. They constitute the ‘second generation’ of torture victims.\textsuperscript{54} Hence, the LTTE cadres prefer death to torture and carry with them cyanide capsules. It is also said that Tamil youth join the LTTE either to avoid torture or, in the aftermath of torture, to seek revenge.

Displacement

Internally Displaced Persons (IDPs) are defined as those:

\begin{quote}
persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.\textsuperscript{55}
\end{quote}

Sri Lanka’s ethnic conflict has resulted in the displacement of several thousands. By 2001, according to the Sri Lankan Commissioner General of Essential Services (CGES), about 723,668 people were displaced within Sri Lanka.\textsuperscript{56} The break-up is given in Table 3.2

\begin{table}
\centering
\caption{DISPLACED PEOPLE IN THE NORTH-EAST}
\begin{tabular}{lcc}
\hline
Categories & Families & People \\
\hline
Displaced in welfare centres & 41,859 & 175,897 \\
Displaced and living with friends/relatives & 155,212 & 528,736 \\
Economically affected & 4,310 & 19,035 \\
Total & 101,381 & 723,668 \\
\hline
\end{tabular}
\footnotesize{Source: Sri Lankan Commissioner General of Essential Services Report, June 2001.}
\end{table}

\textsuperscript{54} Interview with Dr. Gamila Samarasinghe, Sr. Lecturer, Department of Sociology, University of Colombo, 18 October 2001.
\textsuperscript{55} This is a working definition developed over time by the UN’s Special Representative on IDPs and used by the Global IDP Survey. See Para 2 in “Introduction: Scope and Purpose” of \textit{Guiding Principles on Internal Displacement.}
\textsuperscript{56} But according to the UNHCR, the total number of IDPs accounted for 800,000 by November 2002.
Most of the displacements have taken place due to two reasons:

1. military operations either by the government forces or the LTTE;
2. ethnic riots.

People were displaced even before the military operations, in the wake of threats issued by the militants and the security forces to draw people to their side so as to deny the use of civilians as "human shields" by the other. Some of the significant features of the displaced are:

1. most of the IDPs are those who have been displaced several times;
2. the displaced persons include not only members belonging to the Tamil community, but also Muslims and Sinhalese;\(^{57}\)
3. the largest displacement has been within or from Jaffna peninsula (nearly 350,000); and
4. women constitute the majority among the displaced population.

While the IDPs share a common experience in that they have all been uprooted and forced to flee, their experiences as displaced persons have differed depending on their geographical location, ethnic background, interaction with the local and the international NGOs, relationship with the local population, and the effectiveness of the government authorities involved in relief and rehabilitation in that particular area.\(^{58}\) According to a study sponsored by the Asia Foundation,\(^{59}\) displacement due to ethnic violence in Sri Lanka has jeopardised the physical security, quality of life, and potential for physical and emotional

\(^{57}\) It is estimated that out of the total IDPs 78 percent are Tamils, 13 percent Muslims, and 8 percent Sinhalese.


growth among those displaced. Family and community life had been almost
totally destroyed. And in some cases, their identity as a people was at risk,
especially in the case of those displaced in the north. The opportunity for cultural
activity hardly exists. Those living in camps endure outrageous invasions of their
privacy. Basic healthcare for all and education to the children are virtually non-
existent. Their right to participate and contest in the political processes is difficult.
The movement of those displaced in Vavuniya is restricted by a pass system.60

IDPs living in “welfare centres”, numbering 423 in all, are virtual
prisoners under mass custody of the State. They are devoid of a permanent place
of residence, of employment, and other rights and privileges of citizens, though
they are present well within the State frontiers.61 At best they are patronised,
mostly ignored and left to their own mercy, and, at worst, harassment, arbitrary
arrests, abductions, rapes, torture, disappearances and extrajudicial executions are
common.

IDP men are subjected to arbitrary arrests and prolonged detentions
without trial due to the suspicion of their having links with the LTTE. The wives
are arrested in case their husbands evade arrests.62 There have also been
complaints of midnight raids in “welfare centres” by the Army in connivance with
paramilitary groups and of abduction of Tamil youths, whom the paramilitary
groups claim to have connections with the LTTE. Many of them subsequently

60 It is a complex system maintained by a section of office of the security forces called the
Office of Population Control. The office also runs transit camps where people wishing to
move from “uncleared” areas to “cleared” areas are detained for detailed questioning by
various investigation units of the security forces. Passes are given to travel only when
cleared by the investigation units.
62 Sunday Leader, 2 April 2000.
disappear. So widespread were the human rights abuses in the “welfare centres” that they made CARE withdraw its activities in these centres since 2000.63

Women, who constitute nearly 70 percent of the IDPs, are the most affected, with their special needs such as health, privacy and nutrition not addressed. Rapes and sexual exploitation are high among the displaced women living in welfare centres.64 Poverty has compelled some IDP women to resort to prostitution even for a payment of Rs. 250. Rarely are displaced families asked for their consent when they are relocated, which happens many times over.65 Access to education for the 270,000 displaced children is undermined by the recurrent nature of displacement, making regular school attendance difficult. In short, every single right of a civil, political, economic, social and cultural nature is being and continues to be denied.

Among the IDPs, the plight of the uprooted plantation Tamils is worse than that of all other communities for three significant reasons.

a) The displacement of the plantation Tamils did not receive as much attention as the plight of other communities.

b) The seriousness on the part of the government towards remedial measures for those displaced was poor or nil in the case of this community. For all practical purposes, they were treated as Indian citizens and their displacement was clubbed with the repatriation process.

c) They were caught between the political crossfires of the Sri Lankan government and the Tamil militants, specially in the areas of their

65 The Island, 3 November 1999.
settlement in the north-east after their displacement from the central districts.66

The conditions of the displaced in the “uncleared” areas numbering over 300,000 are worse. Apart from lack of proper food and education for their children, they face the unique problem of compulsory military training, recruitment of children into the fighting force of the LTTE, stringent restriction of movement from the areas of LTTE jurisdiction, lack of proper employment, extortion, lack of proper medical facilities, and so on. Of the total displaced people living in the “uncleared” areas, 92 percent are eligible to receive dry food rations, but only 49 percent of them actually receive these rations due to restrictions imposed by the militants. At times, the security forces have reduced the amount of rations for fear of food supplies falling into the hands of the LTTE. Consequently, in 2000, 42 percent of the children below five years of age in the camps in the “uncleared” areas suffered from moderate or severe malnutrition. Some 50 percent of young women between the ages of 13 and 19 were malnourished. The latest statistics for the uncleared areas in Vavuniya State that 51.7 percent of male children and 46.2 percent of female children are underweight.67 Drinking water is a further concern. People have to walk long distances to find water and are sometimes forced to drink tank water, which is particularly unsafe as the tanks are also used for bathing. Moreover, they are herded like flocks of sheep as and when the LTTE have to move out due to military operations and the consequent territorial loss or gain.68

67 Centre for Policy Alternatives, n. 64.
68 Informal chat at the Ramakrishna Mission, Colombo, with the students from Vavuniya, who had previously resided in Vanni while under LTTE control, 30 September 2001.
Arbitrary Arrests and Detention

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, specially of Tamil youth, has become a routine affair in the Tamil majority areas. Detentions are made mainly for two purposes.

1. Detention 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 potential informants who 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 operations: 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 warning by the security forces. All entries and exits 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 line up and walk past a masked 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.\footnote{See the section under "Arrest and Detention", \textit{Situation Report}, 2001 (Colombo: Forum for Human Dignity, 2001).}

- House-to-house checking: Unwarranted searches are made in houses even during the middle of the night and in early mornings. Such searches are not without supplementary acts of looting, rape, and encounter killings. Despite the promise made to the UN Commission on Human Rights in March 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 bombings and assassination attempts by the LTTE on the grounds of mere suspicion,\footnote{For instance, immediately after the attack on the World Trade Centre in Colombo in October 1996, 965 Tamils, including 139 women, were arrested in Colombo alone.} or in the belief that the detainees may be in a position to provide vital information. Even women are not spared in this exercise.\footnote{"Indiscriminate Arrest of Tamils in Colombo," \textit{Tamil Times}, Vol. 12, No. 6, 15 June 1993, p. 5.} The relatives of the suspected militants are also arrested until the militants surrender to the security forces.\footnote{"Petition of the Tamils of Sri Lanka Deprived of their Internationally Protected Human Rights for a Grant of United Nations Effective Remedy and Declaratory Relief," \textit{Denver Journal of International Law and Policy}, Vol. 21, No.1, 1992, pp. 205-7.}
The total number of detentions by both 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 percent of which is ethnic conflict-related.74 Table – 3.3 gives an idea of detainees under the custody of both sides in cases related to the conflict.

### TABLE 3.3

**NUMBER OF DETENTIONS BY THE GOVERNMENT AND THE LTTE**

<table>
<thead>
<tr>
<th>Year</th>
<th>Government No. of Detainees</th>
<th>LTTE No. Detainees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987-90</td>
<td>2,100 (includes those by the IPKF)</td>
<td>500 (approx)</td>
</tr>
<tr>
<td>1991-93</td>
<td>2,463</td>
<td>66</td>
</tr>
<tr>
<td>1994</td>
<td>360</td>
<td>Not available</td>
</tr>
<tr>
<td>1995-99</td>
<td>3,134</td>
<td>11</td>
</tr>
<tr>
<td>2000</td>
<td>1,700</td>
<td>15</td>
</tr>
<tr>
<td>2001</td>
<td>1,800 (approx)</td>
<td>Not available</td>
</tr>
<tr>
<td>2002</td>
<td>34977</td>
<td>17</td>
</tr>
</tbody>
</table>


Under normal laws, law enforcement authorities must inform an arrested person of 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

---


75 The numbers indicate not per year, but the total number of detainees as of that particular year.

76 The figures on LTTE detentions correspond with the number of detainees who the ICRC is given access to visit by the Tigers. The outfit continues to deny from time to time that it holds any detainees. However, due to constant pressure from international and national agencies, it gives access to a few prisoners and releases a few. The Association of Relatives of Missing Servicemen in Action believes that the total number under LTTE custody could be around 3,000.

after a few days due to deliberate delay in entry of arrest in the diary at the place of detention. The magistrate may authorise 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 the 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.78

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.79 In this case, the detainee need not 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.80 However, the detainee can make representation to an Advisory Board of three persons appointed by the President. Practically, such appointments are time consuming, and it is also beyond the reach of every detained person.

The point here is that whenever a statute gives discretionary powers to responsible members of the executive to detain individuals or to make other adverse decisions about them which will not be subject 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 incommunicado and in poor and unsanitary conditions without being informed of the reasons for their arrest. The detentions

---

79 Section 9 of the PTA.
80 Section 10 of the PTA.
are also held in places not authorised by the Secretary to the Ministry of Defence.\textsuperscript{81}

It is to be noted that in 1993, out of 81 places of detention provided in the Gazette list, 68 were police stations or other police establishments.\textsuperscript{82} In 2001, the number of such detention centres stood at 160. Though under ERs it is mandatory for the arresting authority to issue arrest receipts or notify the Human Rights Commission (HRC) within 48 hours, it is not followed in practice. The HRC also has a legal mandate to visit those arrested at the detention centres. But this applies to authorised 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 detection. There is also a tactic of "transit detention", whereby the detainees are not kept in one place but always kept on the move to avoid legal and institutional safeguards. Frequent use of such arbitrary arrests and detentions in unofficial detention centres incommunicado means that practically all are at risk of disappearing and of being tortured.\textsuperscript{83}

Detailed provisions are found in both the Sri Lankan Constitution and the international human rights statutes to prevent any arbitrary arrests. Under Article 13 (1) of the 1978 Constitution, it is provided that:

\begin{quote}
No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.
\end{quote}

Article 9 of the UDHR States:

\begin{quote}
No person shall be subjected to arbitrary arrest, detention or exile.
\end{quote}

\textsuperscript{81} In fact, as per Emergency Regulations, a person can be detained only in those places authorised by the Secretary to the Defence Ministry and published in the Gazette.


Article 9(2) of the ICCPR provides that:

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

This apart, institutions like the Presidential Committee on Unlawful Arrests and Harassments and the Human Rights Commission have been constituted to look into the violations 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 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.\textsuperscript{84} 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 incommunicado. On rare occasions, the ICRC is allowed access to the prisoners to carry messages to their relatives; mostly, however, access is denied.\textsuperscript{85}

Extrajudicial Executions

Extrajudicial executions/killings include reprisal attacks, assassinations, and other arbitrary executions of those under custody without trial. The Armed Forces, the police, paramilitary organisations and the militant groups are identified as those responsible for extrajudicial, summary or arbitrary executions. The principle cause of extrajudicial killings is identified as prevailing abuses against the right to life, which has taken root within the internal armed conflict. The security forces kill

\textsuperscript{84} Human Rights Situation in Sri Lanka, memorandum submitted by the Country Working Group on Sri Lanka to the 49th Session of the UNCHR (Geneva), February–March 1993.

\textsuperscript{85} ICRC News 02/21 dated 23 May 2002.
those suspected as militants, and the LTTE executes those who refuse to continue
the armed insurgency or resist the group itself.\textsuperscript{86}

Table 3.4 presents a detailed picture on various types of extra-judicial
crimes, its perpetrators, times and dates of killing and casualties.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Type & Perpetrators & Place & Time & Casualties & Mode \\
\hline
Assassination & Tamil militants & Jaffna & 27 Jul 1975 & Alfred Duraiyappa, Jaffna Mayor & Shoot-out \\
\hline
Reprisal attack & Security forces & Jaffna & Jul 1983 & 70 Tamil civilians & Shoot-out \\
\hline
Assassination & LTTE & Colombo & 13 Jul 1989 & A. Amirthalingam, General Secretary, TULF & Shoot-out \\
\hline
Reprisal killing & IPKF & Velvettitturai & 2 Aug 1989 & 52 people & Shoot-out \\
\hline
Assassination & LTTE & Chennai & 19 Jun 1990 & K. Padmanabha, General Secretary, EPRLF & Shoot-out \\
\hline
Assassination & LTTE & Colombo & 2 Mar 1991 & Sri Lankan Defence Minister Ranjan Wijeratne & Suicide attack \\
\hline
Assassination & LTTE & Sriperumbudur, Tamil Nadu & 21 May 1991 & Rajiv Gandhi, former Prime Minister of India & Suicide attack \\
\hline
Revenge killings & Security forces & Mailanthani in Batticaloa & 1992 & 35 Tamil civilians & Shoot-out \\
\hline
\hline
Assassination & LTTE & Colombo & 1 May 1993 & President R. Premadasa and 24 others & Suicide attack \\
\hline
\end{tabular}
\caption{EXTRAJUDICIAL KILLINGS IN SRI LANKA, 1975-2000}
\end{table}

<table>
<thead>
<tr>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 Oct 1994</td>
<td>Gamini Dissanayake, former minister and presidential candidate, UNP</td>
</tr>
<tr>
<td>May 1995</td>
<td>42 villagers</td>
</tr>
<tr>
<td>11 Feb 1996</td>
<td>24 civilians</td>
</tr>
<tr>
<td>17 May 1998</td>
<td>Sarojini Yogeswaran, Jaffna Mayor</td>
</tr>
<tr>
<td>11 Sep 1998</td>
<td>P. Sivapalan, Jaffna Mayor</td>
</tr>
<tr>
<td>29 Jul 1999</td>
<td>Neelan Thiruchelvam, TULF leader</td>
</tr>
<tr>
<td>2 Mar 2000</td>
<td>Anton Sivalingam (EPDP), member of the Jaffna Municipal Council</td>
</tr>
<tr>
<td>7 Jun 2000</td>
<td>Industrial Development Minister C. V. Gooneratne and 24 others</td>
</tr>
<tr>
<td>Oct 2000</td>
<td>24 LTTE detainees and 14 others</td>
</tr>
</tbody>
</table>


“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 lamp post or 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 1980s to discourage people from cooperating with the government forces. 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 of being informers.

---

88 *The Indian Express*, 16 October 1996.
executed a few IPKF personnel, some times by “necklacing”, or setting afire tyres filled with gasoline that were fastened around the necks of the prisoners.89

New Regulation 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.90

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 the 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.

The right to life, which is one of the most basic, non-derogable principles of international human rights law, is violated by extrajudicial killings. It is mentioned in the Universal Declaration of Human Rights of 1948 (UDHR, Art. 3), the International Covenant of Civil and Political Rights of 1966 (ICCPR, Art. 6), and also the (Fourth) Geneva Convention Relative to the Protection of Civilians in Times of War of 1949 (Arts. 27 and 32).

**Freedom of Movement**

Freedom of movement is a Fundamental Right granted under Art. 14(1) (h) of the

---

89 Rubin, n. 87, p. 60.
Sri Lankan Constitution. However, it is severely restricted in the name of “prohibited” and “security” zones in the north-east. These zones have constricted several families of their livelihood. A 1,000-metre zone around every army camp in the Tamil area is declared as a security zone where the armed forces are given wide powers. In this area, the forces are permitted to use heavy fire arms, including mortars and rockets. The public is informed that the government is not responsible for any killings of civilians in that zone by the Armed Forces.91

The conflict has also divided the people in the north-east into those who are living in the “cleared” areas (under the control of the government), and those under “uncleared” areas (under the control of the LTTE). Apart from the economic blockade imposed on the “uncleared” areas, the movement of people from these areas to the rest of the island has been extremely difficult. The movement is regulated by the infamous “pass system”. People are divided into 18 categories92 by the security forces and passes are issued accordingly to enter, stay, and leave the Vavuniya division.93 The time limit mentioned in the passes ranges from a few hours to a maximum of three months depending on the purpose of the visit and the discretion of the issuing authority. But it takes several hours or days to obtain such passes. People from “uncleared” areas are described as “defectors” by the military, who were apparently unclear about how to process their cases; they are usually denied passes unless somebody from the south stands as surety.94

In September 2002, the Supreme Court, in the Peter Vadivel Case, declared the

---

92 Those include residence passes, day passes, week passes, passes to travel to Colombo, and passes to travel elsewhere. However, with the signing of the ceasefire agreement in February 2002, the categories of passes have come down to just three.
The LTTE runs an equally restrictive system of entry and exit in the areas under its control. People who wish to move out of the areas are expected to hand over the National Identity Card (NIC) and the Family Card to the LTTE, along with the NIC and Family Card of a relative below the age of 45 who remains in the Vanni. The latter will be taken to task if the person leaving Vanni does not return. This LTTE rule also applies to patients going for medical treatment or for any other emergency purposes. In addition, the Tigers levy “exit fee” on those who wish to get LTTE passes to visit government-controlled areas.95

The existence of numerous checkpoints also poses severe restrictions on freedom of movement. In Jaffna especially, the inhabitants are systematically inspected several times a day.96 The checkpoints cause delay in moving from one place to another, thus making the task of seeking medical help difficult, and at times impossible. They also pose problems for movement of relief materials by the international and national humanitarian agencies for the needy in the conflict zones.97

Curfews pose yet another factor in limiting the scope of the freedom of movement. The Emergency Regulations provide for prolonged curfews to restrict

96 Interview with Sivayogan, Senior Lecturer, University of Jaffna, October 2001.
97 Law and Society Trust, n. 86, pp. 15–16.
free movement of "anti-social elements" and consequent acts of vandalism by them. However, they are misused, and, on the other hand, used indiscriminately against all people of the ethnic category to which the militants belong. The imposition of curfews restricts freedom of movement and creates scarcity of essential commodities.

Freedom of movement is also largely restricted by the presence of numerous mines planted by both the security forces and the LTTE. According to the ICBL, Sri Lanka is one of the worst mine-affected countries in the world. With the ceasefire in place since December 2001, though no new mines have been laid, there are estimatedly 700,000 mines in the war-affected north-east alone, endangering roads, water resources and fertile lands of the region. But according to LTTE estimates, there are over two million mines in the region.98 There were 300 casualties due to mine-related incidents in 2001 alone.99 The government forces usually lay mines as a defensive barrier around key security installations in a specific pattern and in marked and mapped minefields. But these maps are inaccurate and not maintained properly. The same is the case with the rebels. In fact, the LTTE is ruthless when it comes to mine-laying without systematic or proper precautions.

**Freedom of Expression and Censorship**

Freedom of expression and information are the essential foundations of democracy and provide the basis for the enjoyment of other human rights and

---

fundamental freedoms. If the Fourth Estate does not enjoy freedom, it disturbs the checks and balances on the other three organs of the government.

At the constitutional level, freedom of expression is guaranteed in Sri Lanka. Article 14(1)(a) of the 1978 Constitution guarantees to every citizen "freedom of speech and expression including publication", subject only to restrictions by law in "the interest of national security, racial and religious harmony, or relation to parliamentary privilege, contempt of court, defamation or incitement of offence". Article 19(2) of the ICCPR, to which Sri Lanka is a party, states:

The right of freedom of expression shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

However, in practice, this freedom is the victim of intolerance of dissent displayed by various parties, including the government, all shades of political parties and rebel groups fighting the State. Various factors have contributed to this lack of freedom in the island State.

First, growth of violence in the political process has curtailed freedom of expression and information severely. Successive governments have systematically undermined this freedom, as democracy itself came under threat. Emergency Regulations are used to prohibit foreign and local media from publishing information on military operations, deployment of troops or use of equipment,

---

including aircraft or naval vessels.\textsuperscript{103} Publication of Statements on the official
custom or performance of the security forces is also disallowed. It provides for a
Competent Authority (CA) vested with powers to regulate the media, especially
news pertaining to the security forces. The CA is also empowered to seize
property and vehicles, and stop sale and distribution of newspapers carrying
reports inimical to the national security interests. Editorial comments, feature
stories, and news reports on any topic are subject to approval by the CA. ERs are
also used not only to seal but also seize and nationalise the printing press of
certain newspapers.\textsuperscript{104}

Similarly, under Section 14(2) of the Prevention of Terrorism, Act No. 48 of
1979:

No person shall, without the approval in writing of a competent
authority, print or publish in any newspapers any matter relating to
(i) the commission of any act which constitutes an offence under this
Act or the investigation of any such offence; or (ii) incitement to
violence, or which is likely to cause religious or communal
disharmony or feeling of ill-will or hostility between communities or
racial or religious groups.\textsuperscript{105}

It is argued that censorship is primarily to control rumours by the LTTE as
part of their ‘psyops’. The fear is that the war front, if presented in a favourable
form to the rebels, could affect the morale of the soldiers and the people. It is said
that free media reporting of war might lead to leaking of strategic information to
the rebels. Moreover, actual casualty figures of the security forces cannot be
reported as such to avoid panic among the relatives of the security
personnel.\textsuperscript{106}

Thus, the government had to opt for a “lesser evil”—restriction on freedom of

\textsuperscript{103} Emergency (Prohibition on Publication and Transmission of Sensitive Military
Information) Regulation No. 1 of 1998 published in Gazette Extraordinary No. 1030/28 of
5 June 1998.

\textsuperscript{104} Rajanayagam and Banda, n. 21, pp. 39-42.

\textsuperscript{105} For details, see Part V of the Act entitled “Prohibition of Publications”.

expression—rather than face the consequences of rumours. However, the real motive behind the censorship is to cover up the military debacles and to withhold news on military corruption.\textsuperscript{107} It also helps to insulate the security forces from adverse world opinion on human rights violations during counter-insurgency offensives.

Second, where law cannot help, intimidation and violence are used against the media and media personnel to stifle the press.\textsuperscript{108} While the legal course is adopted by the ruling regime, intimidation of the press is resorted to by all actors involved. In the north-east, the press has been under severe attack by the LTTE; any expression critical of the Tigers or its policies attracts the death penalty.\textsuperscript{109} Other Tamil groups working with the security forces also use violence against the media when it is critical of their actions. On its part, police raids on newspaper offices, arbitrary closures, threats to editors and newsmen, etc., are used by the government to intimidate members of the press that are critical of its policies and actions.\textsuperscript{110} For instance, \textit{Ravaya}, a Sinhala newspaper with wide readership, has been harassed by the ruling regimes for highlighting the government’s shortcomings or excesses on the human rights front.\textsuperscript{111} Other newspapers which were subjected to bureaucratic harassment include \textit{Aththa}, \textit{Yukthiya}, \textit{Lakdiva}, \textit{Lankadeepa} and \textit{The Sunday Times}. \textit{Ravaya} has a series of defamation cases pending against it.\textsuperscript{112}

\textsuperscript{108} Interview with Sunanda Deshapriya, member, Free Media Movement, Sri Lanka, 10 October 2001.
\textsuperscript{111} Interview with Dr. Victor Ivan, Editor, \textit{Ravaya}, 15 October 2001.
Third, the judiciary, with its contempt of court provisions, has also been responsible for restriction of the freedom of speech. It is held that "deliberate and willful publication in a newspaper of false and fabricated material concerning a trial," "scandalizing the judiciary and even publishing parliamentary proceedings which are contemnouos of court proceedings" all amount to contempt of court. Publication of articles relating to matters pending in a court of law, which has the effect of prejudicing the public, or interfering with the trial process also constitutes contempt of court.\textsuperscript{113} The Supreme Court has also interpreted Art. 14(1)(a) differently. It noted that the press, being a corporate body, does not enjoy freedom of speech, and only individuals do.\textsuperscript{114} Apart from this, the Parliamentary (Powers and Privileges) Act has made all offences specified in the schedule of the Act punishable by the Supreme Court and the National Assembly. Despite the recommendations of the R. K. W. Goonesekere Committee (on the Reform of Laws Affecting Media Freedom and Freedom of Expression) for the repeal of certain provisions in the Act, the government is yet to act firmly on them.\textsuperscript{115}

Another area of restriction is defamation, which restricts the freedom of individuals to impugn the "reputation" of another. The Sri Lankan media are also governed by the Sri Lankan Press Council Act of 1973. Though its objectives are to ensure freedom of press, set high standards of journalism, and provide research and training facilities for working journalists, in practice the Council is seen as a constraint on the free press. The criticism is against the quasi-judicial powers of the body to punish errant journalists. This has allowed misuse of the Act in

\textsuperscript{114} In Neville Fernando and Others vs Liyanage Case (1981).
\textsuperscript{115} On the rescindment of the four Amendments (1978, 1980, 1984 and 1987), the government repealed only the 1978 Amendment in September 1997.
facilitating the restriction of the press. It also imposes a measure of censorship on certain types of publications, like reporting of government decision making, fiscal policy, official secrets, and defamation.

Economic, Social and Cultural Rights

Child conscription and economic blockade are identified as major violations under this category of the "Second Generation of Rights".

Child Conscription

The world over, it is estimated that there are 500,000 children participating in internal armed conflicts. Over 50 governments recruit children below 18 years of age, though militant groups top the list of the total number of children conscripted for the purpose of fighting.

Though the Sri Lankan government has no policy of recruitment below the age of 18, there were instances in the past when the Army had called for applications from candidates below the age of 18, but desisted from enrolling them due to pressure from the UNICEF. However, due to severe shortage of fighting forces and a high desertion rate, it is not sure whether the government is very strict about the age limitation.

The LTTE has a long record of recruiting children for combat purposes. Irrespective of gender, forceful conscription of children as young as 9 years is reported; the average child recruitment stands at 14 to 17 years of age. Though

---

118 Summary records of the 228th meeting, UN Doc. CRC/C/SR 228, 13/6/95, Para 16.
the exact number of child soldiers with the LTTE is not available, there are 700 complaints that are pending with UNICEF on forced recruitments. In the year 2002 alone, nearly 300 children were roped in by the Tigers to augment their strength.\textsuperscript{120}

The \textit{Sirasu Puli} (Leopard Brigade) is reportedly composed entirely of children drawn from LTTE orphanages, and is one of the LTTE's most fierce fighting forces. The recruitment system put in place by the Tigers is sophisticated, which purports to utilise any site where people congregate—schools, health campaigns, immunisation sites, festivals, or religious or social gatherings. The cult of martyrdom is emphasised among the children in general, and each family is encouraged to contribute one child. Attention is drawn prominently to verses from the ancient Tamil literary collection, \textit{Puranaanooru}, that romanticises mothers taking pride in anointing their sons and sending them to win glory or honourable death in war.\textsuperscript{121} For the orphaned, displaced and poor, joining the rebel ranks is an attractive option in which financial packages are offered to both the enrollers and their family members.\textsuperscript{122}

The Home Guards and Tamil militant groups working alongside the security forces are also known to recruit children. There have been reports that senior schoolboys are forced to perform civil defence duties normally performed by the Home Guards in the Dimbulagal and Welikanda area of Pollonaruwa district. Officers of the Welikanda police station have set up a scheme whereby each family has to send an adult male to do Home Guard duty. If for some reason

\textsuperscript{120} BBC News, 22 January 2003.
they cannot do so, they have to contribute Rs. 126 per day to allow someone else to be engaged, or they must send a child.123

The involvement of children in armed conflicts, forced or otherwise, is denial of their basic rights that are due to their age. Child conscription contravenes the UN Convention on the Rights of the Child,124 which acknowledges that children have specific needs and interests. Under the ILO Convention, compulsory conscription of children under the age of 18 is considered as one of the worst forms of child labour. In the Statute of the International Criminal Court, the use or enlistment of children under the age of 15 in armed conflict is a war crime. The Optional Protocol on the Rights of the Child,125 to which Sri Lanka is a signatory, outlaws the compulsory recruitment of persons under the age of 18 by both government and non-governmental armed forces.126

Though the Sri Lankan Constitution does not spell out any child-specific rights, the “person” in Chap. III also includes children. In other words, children are entitled to freedom of speech, expression and thought, freedom from arbitrary arrest and torture, and right to equality. However, none of the above rights are enjoyed by a child involved in an armed conflict.127 This apart, children are the worst sufferers in hostilities. The casualty rates among child soldiers are high due

124 The 41-article Convention, adopted by the UN General Assembly in 1989, focuses on three main areas of children’s interests, viz., (i) recognition of children’s civil and political rights; (ii) provision of support for children; and (iii) protection of children.
125 It came into effect on 15 February 2002
126 See Articles 1–4 of the Protocol.
to inexperience, lack of proper training, and lower recovery rates from battlefield injuries.

During the Special Representative of the Secretary General for Children and Armed Conflict Olara A. Ottunu’s visit on 3–9 May 1998, the LTTE leadership undertook “not to use children below 18 years of age in combat and not to recruit children less than 17 years old. The LTTE also accepted that a framework to monitor these commitments should be put in place.”¹²⁸ The Government of Sri Lanka also “reiterated its commitment to the policy of not to embark on a recruitment drive in schools.”¹²⁹ While the government stood by its commitments, the LTTE brushed them aside. Child conscription continues even today, though clandestinely.

Despite its commitments on children, one area where the government failed to act was that under the PTA anybody beyond 16 years of age suspected of terrorist involvement could be charged with detention: arrest and detention only encouraged more and more children of that age to join the LTTE. Moreover, the government continues to use captured child soldiers for propaganda purposes rather than seriously take steps in rehabilitating them.

Economic Blockade

Economic blockade of the LTTE-held areas has been part of the military offensive by the Sri Lankan government against the rebels. As and when anti-insurgent operations intensify, economic blockades, along with ban on fishing in the high seas, are resorted to. The severity of the blockade is conspicuous by the fact that

¹²⁹ Ibid.
the one of the preconditions for any resumption of peace talks by the LTTE has always been lifting of these sanctions.130

There was a major blockade of essential items to the north-east in early 1987.131 Such blockades intensified since 1990. With the introduction of Emergency (Restriction of Transport of Articles) Regulations, No. 1 of 1991 in August 1991, legal backing was given to restrictions in the flow of articles to the conflict zones. Through this, the Sri Lankan government banned the transportation of 42 essential items into the north, including medicines, fertilisers, chemicals, and fuel. Although the announcement was only in respect of the north, the Sri Lankan Army has banned several essential items to the east as well. Though food, medicines and other items of survival were allowed, since 1995, the government took control of the distribution of these items on the ground that these items were falling into the hands of the militants.132 Even during 2001, the government maintained a long list of prohibited “war-related” items, such as plaster of paris, intravenous liquid supplies, bandages, and some drugs.133 NGOs and international humanitarian groups that sought to take these items to the “uncleared areas” needed permission from local officials as well as from the Ministry of Defence. Even the ICRC was allowed to transit only food through military permission which normally took several days.134

The denial of basic items is aimed:

1. as a tool of punishment;

---

131 The suffering from such blockades was so severe that it prompted India to airdrop food and medicines in the Jaffna peninsula.
132 Through Commissioner General for Essential Services (CGES) and Multi-Purpose Cooperative Societies (MPCS).
2. to reduce the supportive mechanisms and stamina of the rebels; and

3. as a weapon of war to break down civilian support to the rebels by attracting the former to the government-controlled areas.

However, these objectives of the government are not fully achieved, as the rebels anyway grab a portion of the relief materials sent to the areas under their control. Despite LTTE commitment not to “interfere with the flow of humanitarian supplies designed for affected population” and its “acceptance of the need for a framework to monitor this commitment,” the situation on the ground belies this commitment.\footnote{135}

Such restrictions on food requirements of the north have resulted in severe malnutrition among the population. The implication is evident in one of the memoranda prepared for the 50th Session of the United Nations Commission on Human Rights in February 1994.

As a result over 1500 Tamils including 2000 children died of disease in Jaffna hospitals. Electricity has been cut off for over three years and all industries and education have been consequently affected. The ban on fertilizer has drastically affected agricultural activity in the north. Telephone lines to the north were disconnected in 1986 and newspapers from the north are not allowed into the south and journals and books from the south are prohibited into the north. Radios and televisions cannot be used as a result of lack of electricity. Ban on paper has affected education and printing industry. As a result of the economic blockade around 200,000 people have lost their employment. The economic blockade continues even in 1994.\footnote{136}

The ban on agricultural implements like tractors and chemical fertilisers has resulted in dearth of food productivity in these regions for the past many years.\footnote{137}


The restrictions on items such as cement, batteries and currency has also had a negative impact on the relief work of the NGOs in the rebel-controlled areas.

**MAJOR FORCES BEHIND VIOLATIONS**

The above discussion on the "forms of violations" pins down the violators to the State and the militants. The State activities include the security forces, and the legal instruments inimical to human rights protection. The militants here mean both the armed Tamil groups working alongside the security forces, and the LTTE.

*The State Forces*

*Security Forces*

A brief overview of the Sri Lankan security forces has already been given in Chap. II.

In general, the security forces are established to protect the frontiers of the State and to maintain law and order in the society. In other words, their internal duty is protection of human rights. But, in reality, the security forces are perceived as oppressors and worst violators of human rights. The Sri Lankan security forces are not an exception. In this regard, a senior Sri Lankan attorney-at-law remarked:

Their [security forces] functions are, in theory, quite simple. Upon a complaint, information, or suspicion, they are statutorily empowered to investigate, take into custody the alleged offender and produce him before court, so that he could be dealt with according to the law. The practice of this exercise is, however, riddled with transgressions of the law and violations of basic human rights. Although I speak of my country, which country can say that they do not have this problem even in a small way?138

---

Such transgressions of protection of human rights and their violations by the security forces in the island take place due to various reasons. First, over a period of time, the ethnicisation and politicisation of the security sector has resulted in a mindset among the services personnel that any ruthless means can be followed in curbing the forces that tend to challenge the sovereignty of the State.\textsuperscript{139} They bring with them the hubris of Sinhala hegemonism that has been fed at schools and temples. Second, such mindsets are not changed during the training period, which is of late short and capsuled. The aim of the training is to produce a fighting force rather than to mould a protective arm.\textsuperscript{140} As a result, the new recruits are not made aware of what human rights are, the procedures to be followed to avoid possible violations while performing their complex tasks, and the need to respect them. This lack of understanding is identified as the major reason behind most of the violations by the security forces that are taking place in the post-arrest period and before the suspect is produced before a judicial authority. Third, social isolation and a siege mentality amidst a hostile population, whose language is alien, is another factor which hinders the security forces personnel from being protectors of rights.\textsuperscript{141} As the perception of the security personnel is negative among the people, especially in the north and east, there is virtually little cooperation in the field of rights safeguards.

Human rights violations by the security forces take place in the following forms, the details of which have already been analysed in the first section of this chapter.

\textsuperscript{140} Interview with Sivarajah, former police personnel, October 2001.
1. Indiscriminate shelling and bombing.
2. Looting.
3. Abduction.
4. Rape.
5. Issuing threats.
6. Unwarranted searches.
7. Economic blockades.
8. Indiscriminate curfews.
10. Arbitrary detentions.

However, the government of the day uses various methods to protect the security personnel against allegations/complaints of human rights abuses. First, the real suspects are transferred from the area to prevent action being taken against them. This is a familiar method used by the Sri Lankan government to avoid scrutiny.\(^{142}\) Second, in rare cases, so as to silence public and international criticism, the government orders an inquiry into human rights violations. For instance, in November 1997, the Ministry of Defence established a Board of Investigation to look into disappearances in the north and east and review security forces procedures.\(^ {143}\) However, the government has not identified or charged those responsible for disappearances till date. Third, the security forces are given maximum immunity through three legislative means, viz. the PTA, Emergency Regulations, and the Indemnity Act.\(^ {144}\) The immunity of the security forces due to these legislations are discussed in detail in the following section.

\(^{142}\) Tamil Centre for Human Rights Release, 4 January 2000 Urgent Action Ref: Ac/01/00.  
\(^{144}\) Ishwari Rajanayagam and Siridasa Banda, n. 21, p. 78.
there are cases registered, most of the prosecutions are made only at the lower levels, leaving free the higher echelons of the security forces, the real violators responsible. The awareness of human rights protection during training of the security forces is poor. Even officers are not aware of the laws and institutions safeguarding human rights and their responsibilities in the protection of rights of the citizens. Due to reduction in the training period, more emphasis has been given on weapons training and related fieldcraft rather than on human rights sensitisation.145

Repressive Legislations

A decade of civil war and social rebellions have indeed made the State a militaristically interventionist force. This goes beyond the acquisition by the State of certain repressive capabilities through such legislative means as the Emergency Regulations and PTA. It concerns the emergence of new informal methods of repression and militaristic intervention: secret methods that coexist with formal legalistic ones.146

Emergency Regulations

Emergency (Miscellaneous Provisions and Powers) Regulations (ERs) are made under the Public Security Ordinance (PSO), which dates back to the colonial period. This enables the executive to issue regulations bypassing the normal legislative process. The extensive and wide powers vested in the President prohibit any court of law to call into question the existence or imminence of a

145 Informal group discussion with the instructors with the lecturers of Sir John Kotelawala Defence Academy, 15 October 2001.

State of public emergency.\textsuperscript{147} The proclamation has only to be sanctioned monthly by Parliament in accordance with Art. 155 of the 1978 Constitution. There are two kinds of Emergency Laws.

1. Laws that are brought into force during the period of emergency.
2. De facto emergency laws which prevail even after the end of the period of emergency.\textsuperscript{148}

Emergency Regulations have been in force intermittently since Independence and continuously since 1983, as shown in Table - 3.5

<table>
<thead>
<tr>
<th>S. No</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12 Aug 1953</td>
<td>11 Sep 1953</td>
</tr>
<tr>
<td>2</td>
<td>27 May 1958</td>
<td>26 Mar 1959</td>
</tr>
<tr>
<td>3</td>
<td>25 Sep 1959</td>
<td>3 Dec 1959</td>
</tr>
<tr>
<td>4</td>
<td>17 Apr 1961</td>
<td>4 Apr 1963</td>
</tr>
<tr>
<td>5</td>
<td>05 Mar 1964</td>
<td>4 Apr 1964</td>
</tr>
<tr>
<td>6</td>
<td>8 Jan 1966</td>
<td>7 Dec 1966</td>
</tr>
<tr>
<td>7</td>
<td>19 Dec 1966</td>
<td>18 Jan 1969</td>
</tr>
<tr>
<td>9</td>
<td>16 Mar 1971</td>
<td>15 Feb 1977</td>
</tr>
<tr>
<td>10</td>
<td>29 Nov 1978</td>
<td>28 May 1979</td>
</tr>
<tr>
<td>11</td>
<td>3 Jul 1979</td>
<td>27 Dec 1979</td>
</tr>
<tr>
<td>13</td>
<td>3 Jun 1981</td>
<td>9 Jun 1981</td>
</tr>
<tr>
<td>14</td>
<td>17 Aug 1981</td>
<td>16 Jan 1982</td>
</tr>
<tr>
<td>15</td>
<td>20 Oct 1982</td>
<td>20 Jan 1983</td>
</tr>
<tr>
<td>16</td>
<td>18 May 1983</td>
<td>11 Jan 1989</td>
</tr>
<tr>
<td>17</td>
<td>20 Jun 1989</td>
<td>4 Sep 1994 (except in the northern and eastern provinces and certain areas bordering them)</td>
</tr>
<tr>
<td>18</td>
<td>Apr 1995</td>
<td>Jul 1997 (except north-east, its bordering areas, and the capital Colombo)</td>
</tr>
<tr>
<td>19</td>
<td>4 Aug 1998</td>
<td>Not available</td>
</tr>
</tbody>
</table>


\textsuperscript{147} Brought through the 13\textsuperscript{th} Amendment in 1987 by inserting a new Para 3A under Art. 155.
\textsuperscript{148} Sieghart, n. 90, pp. 27-28.
Except the fundamental principles of the constitution, the ERs have the effect of overriding existing laws. The ERs empower the government to deal with a genuine emergency where the security of the State is threatened. The executive can arrest and detain suspects without charge or judicial review, proscribe political parties, and ban publications. The ERs pave the way for much derogation of fundamental rights provided in the constitution through extraordinary powers provided to the executive under ERs. Under International Human Right standards, derogation is allowed only if three conditions are satisfied:

1. there must be a public emergency which threatens the life of the nation;
2. the existence of that public emergency must be officially proclaimed; and
3. the measures taken must not exceed the extent strictly required by the exigencies of the situation.¹⁴⁹

However, there are rights of which there can be no derogation at all. They include the right to life, freedom from torture, and right not to be punished by retroactive legislation. But some of the measures adopted by the Sri Lankan government significantly diminish protection against torture and arbitrary killing, and reduce or eliminate requirements of due process of law in searches, seizures, arrest, and trials.¹⁵⁰

The Sri Lankan government argues that so long as the current level of terrorism perpetrated by the guerrillas persists, there is in fact a "public emergency threatening the life of the nation". However, the misuse of ERs is widely noted. Preventing this misuse is difficult as there are no built-in safeguards except the compulsory provision for Parliamentary approval for the ERs every month. But getting this approval is not difficult for the government of

¹⁴⁹ Art. 4 of the ICCPR.
¹⁵⁰ Asia Watch, n. 20, p. 24.
the day, as the requirement is only a simple majority. To correct some of the ER legislations, a two-thirds majority is a necessity. But with the introduction of proportional representation in 1978, it is impossible for any party to get two-thirds majority in Parliament. This has perpetuated draconian laws responsible for human rights violations.

The regulations cover a wide range of activities, some with only remote or no relevance to national security. Many amendments, rules, and orders related to the exercise of emergency were not made public till 1993. A revision of the ER was made in June 1993. This resulted in ER No.1 of 1993, which to a greater extent conforms to international human rights standards, specially those related to arrest.

Prevention of Terrorism Act

Though the Penal Code deals with traditional crimes and criminal activities, the rise of militancy since 1971 demanded new legislation under which new anti-State activities could be handled. The PTA was enacted to counter Tamil militancy. Known in full as the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, the PTA was certified by the Speaker of the Sri Lankan Parliament and published in the Gazette on 20 July 1979. It was initially to be in force for only three years, but was extended indefinitely in 1982 through the Sixth Amendment.

The main provisions of the Act can be understood in two broad categories.

1. It defines certain offences and provides for their trial and penalties.
2. It confers certain arbitrary powers upon the executive.

Apart from old offences under ordinary law like causing death, kidnapping, abduction, robbery, intimidation and offences in relation to firearms, new offences were added. They were: speaking or writing of words intended to
cause religious, racial or communal disharmony, or feelings of ill-will or hostility between different communities or racial or religious groups; erasure, mutilation, defacing or other interference with public notices; harbouring, concealing or in any other manner preventing, hindering or interfering with the apprehension of someone proclaimed in the Gazette to be a person wanted; and not reporting to the police any knowledge about commission of an offence.

The law enables police to search without warrant, arrest, and hold a person in detention incommunicado for up to 18 months without being produced in any court of law. The courts have no powers to inspect the detention sites. Also covered under the PTA was publication of any matter likely to cause division between racial and religious groups.

The PTA also makes punishable actions committed before its enactment, even if these actions did not contravene any laws in existence at the time (Section 31[1]). This provision is in contravention of Art. 13(6) of the Sri Lankan Constitution, which talks of non-retroactivity. The provision also violates rights protected from derogation even in times of emergency.151

The method of trial under the PTA is the most disturbing aspect. According to its provisions, the trial can be conducted without preliminary inquiry on an indictment before a High Court judge sitting alone without jury. Contrary to the Evidence Ordinance,152 confession made in police custody is admissible. The burden of proof that the confession was made under duress or

151 Ibid.
152 No confession made to a police officer could be used against the person accused of the offence; and no confession made by any person whilst in the custody of the police, unless it is made in the immediate presence of a magistrate is valid; confessions by accused persons made under inducement, threat or promise too are inadmissible.
violence is on the accused. Any document found with the accused can be produced by police without their consent.

On the provisions of the PTA, the International Commission of Jurists observed that:

The provisions of Sri Lankan PTA are not only objectionable from the human rights point of view, but it is doubtful that the Act is effective in controlling terrorism. The limitations on human rights, therefore, do not seem acceptable as a necessary means of maintaining public security.

The Corollary drawn in Table 3.6 an idea of how the PTA contravenes many provisions of the UDHR, which is considered as a basic and mild document of international human rights law.

<table>
<thead>
<tr>
<th>Table 3.6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Universal Declaration of Human Rights</strong></td>
</tr>
<tr>
<td><strong>Art. 8</strong></td>
</tr>
<tr>
<td>Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.</td>
</tr>
<tr>
<td><strong>Art. 9</strong></td>
</tr>
<tr>
<td>No one shall be subjected to arbitrary arrest, detention or exile.</td>
</tr>
<tr>
<td><strong>Art. 10</strong></td>
</tr>
</tbody>
</table>

153 Section 16 of the PTA.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Art. 11: 1

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

Art. 11: 2

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

Art. 13: 1

Everyone has the right to freedom of movement and residence within the borders of each State.

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

Art 19

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

Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained...

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

Part VI: Trial

16. (2) The burden of proving that any Statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant.

Part VII: 22

Any person who has committed any offence under section 296 or section 297 or section 300 of the Penal Code prior to the date of coming into operation of Part VI of this Act...would have constituted an offence under this Act...(and) be triable without a preliminary inquiry, on an indictment...

Part III 9 (1)

Where the Minister has reason to believe or suspect that any person is connected with or concerned in the commission of any unlawful activity referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of (a) his movement outside such place of residence as may be specified; or (b) the places of residence and of employment of such person; or (c) his travel within or outside Sri Lanka;...

Part I: Offences

2. (1) Any person who (h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts...shall be guilty of an offence under this Act.

Source: http://www.sangam.org/ANALYSIS/UDHR_SL.htm#Table

Legislation like the PTA, which confers comparable powers, are in force in other free democracies operating under the rule of law like India and the UK, but they are not as draconian as in Sri Lanka. But Sri Lankan authorities claim that, in
fact, these powers go to no extreme than similar ones conferred on executives in other parliamentary democracies.\textsuperscript{155}

Indemnity (Amendment) Act

The Indemnity (Amendment) Act, 1988 is ex post facto legislation.\textsuperscript{156} It officially shields "public servants" from prosecution for alleged human rights violations committed between 1 August 1977 and 17 December 1988, \textit{provided that their actions were carried out "in good faith" and in public interest.} Although it has not been used till date, it has, as the Working Group on Enforced and Involuntary Disappearance declared, "further stimulated" a sense of impunity.\textsuperscript{157} Furthermore, it cannot be excluded that in some of the cases of "disappearances" reported during 1988 which may be brought to court as a result of the investigations of the three presidential commissions of inquiry, one or more of the accused may invoke the provisions of the Indemnity (Amendment) Act when charged.\textsuperscript{158}

Legal experts assert that the existence of the Act not only precludes the punishment of those involved in disappearances prior to December 1988, but also encourages those who violate human rights to think that the government will extend the period covered by the Act.\textsuperscript{159}

\footnotesize{\textsuperscript{155} Sieghart, n. 90, pp. 33-34.  
\textsuperscript{156} Latin origin for "from a thing done afterward". "Ex post facto" is most typically used to refer to a law that applies retroactively, thereby criminalising conduct that was legal when originally performed.  
Non-State Forces

Non-State actors include militants and informal armed groups—private and government-supported.

Militants

It is often assumed that the strength of an insurgent movement is positively related to the repression to which the population is subjected to. In Sri Lanka, at least from the mid-1980s, militants became one of the principle causes of human rights violations. “Militants” here refer to those who resorted to armed means to fight for the rights of the minority Tamil community since the mid-1970s. However, due to extermination of most of the rival militant groups by the LTTE and some joining the political mainstream, “militants” here refer broadly to the LTTE.

The main reason cited for rights violations by the LTTE is the recruitment of teenagers whose maturity was less, and norms for combat questionable. The young were unaware of the values involved or the cause they were fighting for. Death is immaterial to the cadres who always carry cyanide capsules with them and swear loyalty to the leader. Overall, the organisation of the LTTE is more authoritarian, organised, ruthless, and disciplined. This obviously resulted in human rights violations in alarming proportions. The violations were also due to intra-militant rivalries. At the height of insurgency in the mid-1980s, there were five major and nearly 30 splinter groups. Internal dissent within militant groups was dealt with ruthlessly and the LTTE set about eliminating its rivals.

---

The mid-1980s were the start of an escalation of violence in the east, involving the LTTE’s antipathy to Muslim political groups, the massacre of Muslim policemen and the government’s use of Muslim Home Guards. The employment of Muslim Home Guards further increased massacres by the LTTE and counter-massacres by the Home Guards on the government’s instigation.\textsuperscript{161} In 1990, this peaked with the LTTE ousting all the Muslims, who were considered as “traitors”, from the Jaffna peninsula. Those displaced are still languishing as refugees in the Putalam region.

The LTTE also adopted a gruesome tactic of suicide bombing to assassinate prominent political and military leaders. With these tactics, the Tigers have wiped out most of the top leaders of the island. Those assassinated include even moderate Tamils who were considered as “betrayers” of a separate “homeland”. So far, the Tigers have reportedly conducted nearly 185 suicide attacks, killing hundreds of civilians and prominent personalities.

The militants are also involved in mass conscription of children as cadres. The move is to cover the manpower shortage due to huge loss of adult cadres and difficulty in finding replacements. Such constraints were faced by the LTTE during the IPKF operations, and again since intense military operations by the Sri Lankan Army from 1990.\textsuperscript{162} Ironically, even the children are made to wear cyanide capsules around their necks. Lack of proper training and inexperience has left the child cadres extremely vulnerable during combat. It is violative of Art. 38 of the Convention on the Rights of the Child (CRC), which says:

\begin{quote}
States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part
\end{quote}


in hostilities and shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces.

However, since the militants are not State parties to the Convention, they are not bound by it or by other international legal norms. This is the most disturbing factor in the entire human rights debate.

The Tigers are known for holding a large number of people in detention, who include:

- Sri Lankan police and military personnel;
- members of rival militant groups;
- family members of LTTE deserters;
- people criticising LTTE policies;
- people perceived as traitors; and
- Tamil and Muslim hostages held for ransom.

Informal Armed Groups

A considerable number of human rights violations are also perpetrated by Tamil militant groups working alongside government forces and other non-formal armed groups sponsored by the security forces. The non-LTTE Tamil militant groups include the PLOTE, TELO, EPRLF, and EPDP. As the far as the government-backed groups are concerned, they are known by several names like Black Cats, Yellow Scorpions, Green Tigers, and Peoples’ Revolutionary Red Army (PRRA). Of late, such groups are on the rise, with members picked mainly from the slums and shanties. They masquerade as trade unions and function as suppressers of the government opposition in any form. This aspect of human rights violations is less known to the outside world. But paradoxically, the government has decided to extend such armed groups under the guise of “home
guards”. Armed groups are also present in the form of Muslim militia. Following the expulsion of Muslims by Tamil militants from the Jaffna peninsula, some Muslim boys reportedly joined together and formed an armed group to protect their community from future LTTE attacks. Interestingly, such militias act as an auxiliary arm to the Army.163

Not much information is available on the functioning of these groups. However, these groups are considered dangerous as they function informally and are unaccountable to none. They set themselves above the judiciary and the police, and are allowed to violate laws at their will. For instance, in its 2001 “directive” to the Government of Sri Lanka, Amnesty International linked the upsurge in arrests, disappearances, and torture to the paramilitary activity in the Vavuniya area. It said:

The continued high level of human rights violations in the Vavuniya District is bolstered by the practises that have developed between the Tamil armed groups, particularly PLOTE, and the armed forces. The armed forces can claim no improvement in the human rights situation until it can exercise control over paramilitary activity.164

The letter pointed out the PLOTE for the “systematic abuses” of human rights with the help of the government. Some prisoners who had been “arrested by the army intelligence unit have been held at PLOTE camps and in at least one instance were visited by an army officer.”165

CONCLUSION

It is clear from the above analyses that human rights violations are chronic in Sri Lanka. The dimensions of violations are comprehensive in nature. Torture

---

164 ASA 37/010/2001 113/01.
165 Ibid.
remains the most serious among all abuses. But in terms of numbers, arbitrary
arrests and detention record the highest. Disappearance is the most dangerous,
which appears only as a euphemism for killing. The restrictions to freedom of
movement in the name of security have resulted in shortage of food and other
essential items which, in turn, have led to starvation and diseases. The IDPs
undergo all these abuses due to their vulnerability both to the security forces and
the militants.

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, "the acts of violence by the opposition groups can never justify the
security forces themselves resorting to violation of human rights".166

It is ironical that the very mechanisms instituted to protect human rights
themselves turn out to be violative of them. The judiciary and other human rights
protective organs are not allowed to operate independently. They are both
politicised and ethnicised. The three legislative mechanisms, viz. the Emergency
Regulations, PTA, and the Indemnity Act continue to be major elements behind
most of the violations. The crux of the matter is that the true picture of the human
rights situation is not available mainly due to severe restrictions 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.

166 Amnesty International Report, 9 September 1986.