CHAPTER I

ETHNIC VIOLENCE AND HUMAN RIGHTS:

AN ANALYTICAL FRAMEWORK
In recent years, human rights violations as a result of internal conflict and violence have received much scholarly attention. Since the genocide perpetrated by the Nazis during the Second World War, renewed concern for human rights has been a pervasive feature of politico-legal thought and action. This new found concern is also due to the idea of human rights becoming central to some of the most far-reaching developments of modern times. This is evident from various international charters and most national constitutions framed in the post-World War II period, which are based on the realization that peace and development, within and among the States, can last only if they are based on human rights.

In the wake of decolonisation and the resultant process of State formation and consolidation, many conflicts broke out especially in the newly independent countries. These infant States were more concerned about their security, territorial integrity and unity. To achieve this end, certain basic human rights like right to life were disregarded. Any move towards separatism in the name of ethnicity by independent groups within the State was dealt within a highhanded manner. Even, any demand for autonomy or federation was interpreted as a step towards secession. On the other hand, the secessionist forces responded to the State repression with counter-violence resulting in militarisation of the whole society. The consequence was human rights violations in their worst forms. Thus, despite progress in the international agenda on human rights in recent years, they continue to be viewed as rhetoric than reality.

What is the idea of human rights? How did it evolve and what is the present status? What is ethnic violence? How should it be approached? Is there

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2 Address by Mary Robinson, former Commissioner, UNHRC, at ARCO Forum for Public Affairs, 30 September 2002.
any linkage between ethnic violence and human rights? If so, in what forms? In other words, how are human rights violated as a result of ethnic violence? Are there any remedial measures available? If so, what are they? How does the international community look at human rights violations in individual States? What is the politics involved? The purpose of this chapter is to evolve a theoretical framework by addressing these questions and look at the human rights situation in Sri Lanka within this framework. The exercise is divided into six sections. The following section attempts to define core terminologies involved in the study—‘human rights’ and ‘ethnic violence’. In section two, various approaches on ethnic violence are discussed so as to situate the present study in the right context. Use and justification of ethnic violence are analysed in the third section, which is followed by a narrative on the linkages between ethnic violence and human rights. While the fifth section looks into the patterns and forms of human rights violations as a result of ethnic violence, the final section deals with human rights safeguards available both at national and international levels.

**DEFINING KEY CONCEPTS**

*Human Rights*

The term “human rights” is of recent origin, though the idea of the law, or the lawgiver, defining and protecting the legal rights of men—mainly the mutual rights of the members of the community—are as old as human civilisation.3 Explaining the historical processes through which human rights have emerged, Turner observes,

> If sociology is the study of the transformation of *gemeinschaft* (organic and particularistic values and institutions) into *gesellschaft*

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associations which are more universalistic in their definitions of social membership) as a consequence of modernization, we can conceptualise human rights solidarity as a historical stage beyond citizenship solidarity.4

The idea of human rights took shape in seventeenth and eighteenth centuries. In France, philosophers of the Enlightenment developed the idea of les de l'homme on the basis of earlier ideas of natural rights. However, skepticism towards rights prevailed most of the nineteenth century. Jeremy Bentham strongly criticized human (natural) rights as "mischievous nonsense", "anarchical fallacies" and "nonsense upon stilts", implying that he could not see whose rights these were exactly, and how they were supposed to be enforced.5 To Karl Marx, human rights are "a façade masking class inequalities."6 To Max Weber, the "theory of human rights in the natural law tradition could not be sustained in an era of juridical rationalism and would run the risk of developing into a form of charismatic fanaticism."7 Emile Durkheim did not find answers in human rights for how social solidarity could be maintained when the norms and moves of pre-modern society collapsed.8

However, the example set by the United States and France, by adopting Bills of Rights or otherwise embodying such rights in their constitutions, was followed in the entire continent of Europe, and the movement spread to the Americas, and later to Asia and Africa.9 The magnitude of the atrocities of the

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Second World War and the years preceding it highlighted the imperativeness of the human rights in maintaining world peace. Thus the concept of human rights, universal in its approach and comprehensive in its content, took shape by the middle of twentieth century.10

Despite being a key concept in national and international laws, the precise meaning and content of ‘human rights’ remains controversial; attempts at defining human rights have been peripheral and not central to the human rights discourse. Surprisingly, the dearth of clarifications is premised upon the assumption that the term is self-explanatory and does not require further definition/explanation.11

‘Human Rights’, to give full value to the adjective, as Dowrick puts it, is defined “as those claims made by men,12 for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of human kind.”13 For Milne, human rights are “the rights which people have simply as human beings irrespective of nationality, religion, citizenship, marital status, occupation, income or any other social or cultural characteristic and also irrespective of sex. Such rights cannot merely be positive legal rights because people have them whether or not they have been enacted into positive law.”14 To Graebner, human rights are a central element in human culture and asserts that “all persons possess a natural right to governments of their own consent, to equality before law, to protection from all.

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12 Here used in gender neutral sense.
governmental assaults on the integrity of the person, to individual conscience, and to decent and remunerative employment."¹⁵ Thus, human rights are inherent in the very idea of being human.

Human rights differ from other moral rights by being the rights of all people at all times and in all situations. They are the rights of individuals that help meet the needs and purposes of the individuals. The fundamental norm governing the concept of human rights is respect for human personality or dignity and its absolute worth regardless of colour, race, sex, religion or other considerations. These rights are essential for adequate development of human personality and for human happiness and progress. Thus, inherent within the idea of human rights is the concept of non-discrimination.¹⁶ Human rights differ from legal rights in the sense that while the latter is based on law the former stems from human entitlement. Also, legal rights are enforceable while human rights may or may not be claimed on legal grounds.¹⁷

Human rights are the rights of the individuals and it is the concerned society's responsibility to ensure that those rights are given legal force and upheld against all persons and bodies within the community.¹⁸ In modern States, this responsibility devolves directly on the government, imposing in its stead, a strict and special obligation not to infringe or neglect the rights. Thus, human rights in their classical form, as embodied in international law through the Universal

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Declaration of Human Rights (UDHR) and other documents, are primarily claims of individuals vis-à-vis the State.19

Human rights can be classified on ‘absolute’ and ‘conditional’ basis. Civil and political rights are seen in near-absolute terms, subject to only few exceptions. These rights are right to life, liberty, security of person, and privacy, the right to marry and find family, right to fair trail, freedom from slavery, torture and arbitrary arrest, freedom of movement and to seek asylum, right to a nationality, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of assembly and association, right to free elections, universal suffrage and participation in public affairs.

Economic, Social and Cultural Rights, on the other hand, are ‘conditional’ rights which are usually subject to the political will of the managers of the State, ideological considerations, resources available and level of development. Right to work and for a just reward, right to form and join trade unions, right to rest and leisure, right to a standard of living, right to social security, right to education, and right to participation in cultural life of a community fall under this category of rights. While the first category of rights, also called as ‘First Generation of Rights’, are the claims of individuals and groups against the State, the Economic, Social and Cultural Rights – ‘Second Generation of Human Rights’ – are given by the State. The politics and the debate involved in the primacy of one generation of rights over the other are analysed in detail under sub-section, ‘International Protection of Rights’ of this chapter.

Ethnicity and Violence

The understanding of ‘ethnicity’ and ‘violence’ precedes any better comprehension of ‘ethnic violence’.

The political importance of ‘ethnicity’ has grown currency particularly since the Second World War, defying predictions of early twentieth century social theorists that ‘ethnicity’ and ‘nationalism’ would lose their importance in the wake of modernisation, industrialisation and individualism. This made Ronald Cohen to remark, “Quite suddenly, with little comment or ceremony, ethnicity is an ubiquitous presence.” 20

Birth of numerous States with the demise of colonialism and the subsequent assertion of self-determination based on ethnicity and the continuous influx of migrants and refugees to the developed countries were the major reasons for ethnicity remaining in the forefront of international agenda of sovereign States. 21 Not surprisingly, as of year 2000, 25 of the 27 armed conflicts were internal based on ethnicity. 22

To Nathan Glazer and Daniel Moynihan, “Ethnicity seems to be a new term.” 23 Though its first usage is attributed to American sociologist David Riesman, 24 its root, ‘ethnos’, is archaic enough to be mentioned by ancient Greeks to mean heathen or pagan. Although “most of those who write on ‘ethnicity’ do

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22 The only two inter-State conflicts recorded in 2000 were between India and Pakistan and Ethiopia and Eritrea. See SIPRI Year Book 2001 (London: Oxford University Press, 2001), Appendix 1A.
not bother to define the term,” 25 the number of definitions is high and growing. The attempt here, therefore, is not to add one more definition, but to have a clear idea of the present purport of ‘ethnicity’ so as to extend the understanding and situate it in the present theoretical exercise.

The dictionary entries generally give the meaning for the word ‘ethnic’ as “of involving a nation, race or tribe that has a common cultural tradition.” The terms ‘ethnic’ and ‘ethnicity’ are used here to include religious, racial, linguistic, tribal and similar divides which have been activated in socio-political conflicts in the present age. Thus ethnicity is a concept referring to a shared culture and way of life, especially as reflected in language, folkways, religious and other institutional forms, material culture such as clothing and food, and cultural products such as music, literature, and art. The use of the single generic term is justified by the palpable fact that the common features of these conflicts greatly overshadow the specificity of their religious, racial, linguistic or tribal character.26

‘Essentialists’ or ‘Primordialists’ 27 argue that collective ethnic identities are deeply-rooted historical continuities nurtured by early socialisation and reinforced by collective sanctions. Its basic assumption is that ethnic conflicts of today between the groups can be traced back to older animosities. Such animosities are based on inherent ethnic differences. These intrinsic group differences activate prejudices and trigger violence over and again superseding rationality. To ‘Instrumentalists’ 28, ethnic identities and solidarities are fluid,
pragmatic and opportunistic often constructed by ethnic entrepreneurs, irrespective of their belief in ethnicity, to justify demands for political and especially material advantages. In other words, ethnicity is strategically manipulated by the elite for the sake of power irrespective of their belief in the ethnic categories. Thus, they create cleavages or build bridges according to the gains or losses from such manipulation. According to 'Constructivists', ethnic identities were constructed in recent history and ethnicity is a modern phenomenon. To them, in earlier days, identities operated on a small scale and were flexible. Conflicts were managed locally and were not taken at the identity level. But, in modern times, with development of printing press and capitalism, the identities got wider and institutionalized. Thus, even individual conflicts can be blown up into a larger conflict by interested groups or elites by constructing a "master narrative". The 'Institutionalists' link ethnic identities to the political system and the institutions in a particular country. Ethnically, plural countries require different type of institutions from that of mono-ethnic societies. Thus, an unexamined transference of political systems or institutional forms of governance regardless of ethnic categories in a particular society can be a serious cause of ethnic conflict. At the same time, a careful institutional choice would mitigate conflict.

However, the common thread which runs in all the above theoretical arguments is that ethnicity has something to do with the classification of people

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and group relationships. Ethnicity is thus “an aspect of social relationship between agents who consider themselves as being culturally distinctive from members of other groups with whom they have a minimum of regular interaction.”

In its mild form, ‘violence’ is defined as “an outrage, injury or act contrary to one’s feelings or principles,” and, in its strong sense, as “(lawful) unlawful exercise of force.” Violence is also perceived to range from “use of force to unruly behaviour.” In the social context, violence may be defined as the illegal employment of methods of physical coercion for personal or group ends. Qualitatively speaking, all acts of violence are same regardless of methods adopted for carrying them out. In a wider sense, violence entails inflicting emotional, psychological, sexual, physical and/or material damage. It involves the exercise of force or constraint perpetrated by individuals, on their own behalf of a collective or State-sanctioned purpose. The attempt to discriminate in favour of sex or age (in most situations of violence, women and infants are almost symbolically the favourite target), is seen to somehow compromise the majesty and dignity of the ideologies which are supportive of violence. Of late, violence is not only pervasive, but also highly organised and efficient.

Now, it is pertinent to analyse the term ‘ethnic violence’:

33 Raymond Williams, Keywords: A Vocabulary of Culture and Society (Oxford: Oxford University Press, 1976), p. 278.
Ethnic violence entails use of force specifically against a particular ethnic group or individuals belonging to that group. It not only involves perpetration of violence but also its resistance. Ethnic violence involves more than one ethnic collectivity. In simple terms, when there is use of violence in ethnic conflicts it becomes ‘ethnic violence’. Thus, ethnic conflicts may exist without ethnic violence but ethnic violence necessarily involves ethnic conflicts.37

Ethnic violence takes different forms depending on the organized or unorganized nature of the violence; distribution of victims (from which community); the role of the State (neutral and acting to quell the violence/aiding the perpetrators/just onlooker) etc.

APPROACHES TO ETHNIC VIOLENCE

The following approaches may help in widening the understanding of ethnic violence.

In the Marxist theory, the nature and role of violence represents an attempt to mediate between the dual impracticalities of pacifism and “putschism”.38 To Marx, violence is the immoral reality of the State. Its source of power is in the existence of special bodies of armed men who are not part of the working population, but standing over against them. Therefore, any attempt to capture State power must be preceded by preparation to meet the State forces on their own ground. Marxism holds that the chief objection to individual expressions of violence or premature violent action on the part of working class groups is that

such expressions invariably facilitate the policy of government repression.\textsuperscript{39} The amount of violence that must be employed is a function of the intensity of resistance that is encountered. The State is an instrument of violence in the command of the ruling class, though the actual power of the ruling class did not consist of or rely on violence.\textsuperscript{40}

However, ethnic strife diminishes the role of Marxists in local politics because cleavages in the society do not happen according to the textbook on acceptable class lines, but on the basis of race and colour. What is baffling is the capacity of race and ethnicity to effectively transcend class differences to produce cleavages of another sort and do so within a remarkably short time. The awkwardness of the phenomenon is often rationalized by resorting to economic arguments. Accordingly, what appears to be a conflict on ethnic lines is interpreted as a struggle for power and economic privilege between the elitist bourgeois elements belonging to the opposing ethnic groups who skillfully mobilize public opinion to give the impression that what is at stake is the identity of the entire group; this way the inner reality of the conflict is successfully dissembled. By the same logic, lower down in the economic hierarchy, classes are interlocked in conflict with their opposite ethnic counterparts in a competition for dwindling economic resources, job opportunities, places in colonization settlement schemes, and so on. Even the lumpen proletarian elements are sucked into the vortex of the opposite ethnic group as enemies and competitors rather than as fellow class comrades.\textsuperscript{41}


\textsuperscript{41} Wichkremaratne, n. 35, pp. 17-18.
The liberal-modernist tradition views ethnic violence as a reflection of 'irrational' passions of backward sections of society. It distinguishes between the progressive course of history within which the process of nation-building and development takes place, and occasional regressions reflected in isolated outbursts of the passions of what are considered 'communal-minded' and 'backward' people. In short, ethnic violence is viewed as a product of uneven pattern of modernization among the ethnic groups. This view, however, does not present the true picture of the phenomenon as ethnic violence is viewed only as isolated events, and discontinuous in time.

Then there is the moralistic approach which believes that ethnic violence represents an 'event' which is not 'normal' in civilized society. The violence perpetrated at the time of an ethnic riot can be horrendous. It can include hacking people to death or burning them alive. 'Retaliation' and 'punishment' meted out to members of other communities may include violence against children, old people, and women. Thus, violence during a riot is indiscriminate and creates a moral problem for observers. It is often considered an aberration within civilized living. There is a feeling of disbelief and horror, especially at the manner of the violence; evil seems central, yet liberal opinion tries to hold on to the idea of goodness of human nature. In this kind of analysis, such aberrations are to be

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44 Immanuel Kant is the pioneer of moralistic approach to whom "reason and reason alone leads to good behaviour; hence violence is irrational as it is bad." See Immanuel Kant, Critique of Pure Reason, trans. by Paul Guyer (Cambridge: Cambridge University Press, 1990).
condemned and the culprits punished so that ‘normal’ processes of nation-building and development can proceed.45

But, what is required is an approach that looks at the entire gamut of ethnic violence in a particular society in relation to the changes in the society within which they occur. In other words, by refusing to treat ethnic violence as aberrations, one may be able to understand the structure of a society at the precise moment of violence. Thus, the main issue is whether the ethnic violence is a manifestation of the very structures and other socio-political developments that characterize a normal society.

The way in which power is distributed among different groups in the society is important in analysing conflicts between various groups. Society distributes power unequally so that some enjoy relatively greater degrees of power than others, thereby triggering a feeling of deprivation among the latter. Since power in concrete terms determines the degree of mobility and economic prosperity which social groups, or the individuals who comprise the groups, could achieve, it is easy to understand how deprivation, or the perception of it, could lead to frustration resulting in aggression and violence. This is explained by the theory of ‘relative deprivation’46 which holds that the greater the gap between what is actually enjoyed by an individual or group and what he expects to have, the greater would be the degree of frustration. The capacity, either of the individuals or of governments, to fulfill rising expectations becomes paradoxically a potent source of feelings of deprivation and ultimately violence. When the gap is not bridged, the very reforms of the government result only in pushing the

45 Bastian, n. 43, pp. 287-88.
46 This school of thought is rooted in theories of ‘collective action’ formulated by French Sociologist Emile Durkheim. It was first advocated by Robert Ted Gurr.
expectations further. In this regard rapid changes are more provocative than slower ones. In a multi ethnic society, the perception of deprivation is felt by an ethnic group especially when the State power and resources are controlled by a perceptibly competing dominant ethnic community.

While ‘relative deprivation’ theory emphasises on exogenous fluctuations in explaining violence, the ‘resource mobilisation’ theory cites organised activity as a primary cause for the outbreak of violent ethnic conflict. It focuses on the ability of social movement promoters to gain and manipulate resources of power, to organise, to recruit members from existing voluntary association networks, and to provide individual incentives or coercion that motivates participation in social movement activities. The mobilisation is based on appeals to the use of ethnic identity. Thus, in organizing an ethnic violence, a detailed knowledge is required on leadership patterns, hierarchy of power, sources of support, use of resources, and strategy and tactics of the ethnic organisations concerned.

Later, keeping in mind some of the shortcomings of the above two theories, Ted Gurr and Mark Lichbach evolved a new ‘Mobilisation of Discontent Model’. To them, violent conflict is the result of “stress”—short-term fluctuations in economic and political performance—and “strain”—long-term structural sources of collective deprivation. The number of dissidents mobilised by a militant group and the group’s persistence is directly proportional to the

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49 This school of thought draws much from Karl Marx’s theories of ‘collective action’. For Marx’s writings on this subject see Eighteenth Brumaire of Louis Bonaparte.
intensity of the violence. In other words, the more the number of dissidents and
the persistence of the ethnic group, the higher the intensity of ethnic violence. An
ethnic militant group mobilises ethnic dissidents based on the presence of both
"stress" and "strain" in the system attributed to the bad governance of the
"other". The model also identifies the role of competing external powers in a
domestic violent conflict. The involvement of the external powers depends on the
ethnic kin States' relations and other strategic interests in an ethnic violence-
ridden country.\textsuperscript{52}

The framework becomes incomplete if the role of the State in ethnic
violence is not analysed. Generally, it is presumed that the State is the only
institution which resorts to 'violence' to establish and sustain order in society.\textsuperscript{53} It
is defined as "that public authority which enjoys a monopoly on coercive
power."\textsuperscript{54} This means that a State is a State—not just one contender for power
among many jostling rivals—because it controls the country's police and military
forces. A State that tolerated or is incapable of disallowing the existence of private
armies or insurgent forces within its jurisdiction is thus something less than a full-
fledged State.\textsuperscript{55}

Thus, it is assumed that the State in any society is the ultimate arbiter of
inter-group disputes, setting the rules of the competitive game and stepping into
the fray forcibly if rules are violated and civil peace thereby jeopardized. But, in
reality, the truth is different. In multi-ethnic societies, State authorities often align
with one ethnic community and view the perpetuation of unequal distributions of
power among various ethnic groups as ensuring the State's own hegemony. In

\textsuperscript{52} For detailed analyses of ethnic kin State relations see Rajat Ganguly, \textit{Kin State Intervention in
turn, the coercive arms of the State—the police and the military—are also likely to be recruited and deployed with conscious attention to the communal composition that will be politically optimal for the nervous central government.\textsuperscript{56}

The composition of security forces affects its role in safeguarding or suppressing a particular group. A group’s domination in the military and police is established by discriminatory educational and employment policies. Police force recruitments, however, often reflect the government’s notion of security. States often recruit police forces with an eye to their own security rather than the security of the public at large.\textsuperscript{57} The preference for a particular ethnic group to dominate the security forces is principally to have them loyal to the central administration so that they can be used effectively as an instrument of violence to forestall or curtail any overt acts of disobedience challenging the State authority.\textsuperscript{58} The new heavily armoured police units might indeed be politically reliable in the regime’s eyes, but in an ethnically irascible situation their very presence will exacerbate tensions.\textsuperscript{59} The ethnic groups which are under-represented in the security forces see the military-police imbalances as reflections of their overall political vulnerability. On the other hand, the more powerful groups see their control of State coercive apparatus as a guarantee of their continuing hegemony.\textsuperscript{60}

In many parts of the world where there is conflict in one form or the other, the State has assumed a partisan role and has itself perpetuated violence. On

\textsuperscript{57} Ibid., p. 143.
\textsuperscript{59} For detailed analyses of this aspect of Ethnicisation of security forces, see Cynthia H. Enloe, "Ethnicity and Militarization: Factors Shaping the Roles of Police in Third World," \textit{Journal of Studies in Comparative International Development}, Vol. 11, No. 3, Fall 1976.
\textsuperscript{60} Enloe, n. 56, pp. 141-43.
doing so it has intensified the counter violence of groups which initially challenged its authority, and, in the dialectic of inevitability, caused the State to resort to violence in the first instance. A vicious cycle is thus activated. On two counts the State has personified and institutionalised violence:

1) In the normal order of things the State denies the individual the right of violence and force. Instead it arrogates for itself the monopoly of violence. The political violence of the State becomes a fact when the State defends from attack or goes to war. In either case naked aggression is dissembled by euphemisms and shibboleths and is usually tempered by ethical or moral considerations.

2) The State is not an abstraction. It is the handmaid of the prevailing economic and political order and the group or party that personifies it. The character of violence also depends on those factors of influences.61

The States that successfully employ violence against a dissident ethnic group tend to create structures that could inflict violence. But these structures are rarely dismantled even when the threat from the dissidents are no more. As such, both the memory of using violence and the means to deploy it are available for future governments.62

USE AND JUSTIFICATIONS OF ETHNIC VIOLENCE

The use and justifications of ethnic violence for various ends, by individuals or groups or the State, are the most troubling feature of the contemporary life. In general, from the inflictor's perspective, violence may be justified when:

1. it is a counter-violence;
2. it is imposed as part of liberation ideology;
3. one has undergone the experience of self-imposed violence and thereby acquired the right to demand austerity or suffering from others.\textsuperscript{63}

For Marxists, the moral and social justification of the use of violence is done on the ground that it is a measure of defense on the part of the majority against the horrors of war, poverty and political repression.\textsuperscript{64} Violence is not destructive and is an inevitable aspect of the revolution. On the other hand, violence is only a means in achieving the desired economic end.\textsuperscript{65} Guerilla warfare is “an inevitable form of struggle at a time when the mass movement has actually reached the point of an uprising and when fairly large intervals occur between ‘big engagements’ in civil war.”\textsuperscript{66}

For Anarchists\textsuperscript{67} too violence is a means to an end. Though they do not eulogize, but consider violence only as a last alternative,\textsuperscript{68} they are caught in a dilemma: of having to resort to use the very means that they profess to disdain and for which they seek a solution.\textsuperscript{69} The distinction between Nihilists\textsuperscript{70} and

\textsuperscript{64} Hook, n. 38, p. 266.
\textsuperscript{67} Anarchists are those who believe in a principle or theory of life and conduct under which society is conceived without government; harmony in such a society is obtained not by submission to law or by obedience to any authority but by free agreements concluded between various groups, territorial and professional, freely constituted for the sake of production and consumption as also for the satisfaction of the infinite variety of needs and aspirations of a civilized being. Famous anarchists are William Godwin, Enquiry Concerning Political Justice (1793), Pierre-Joseph Proudhon, System of Economic Contradictions, or, The Philosophy of Poverty, Mikhail Bakunin, Statism and Anarchy, and Peter Kropotkin, The Place of Anarchism in Socialistic Evolution.
\textsuperscript{68} Michael Bakunin, Statism and Anarchy (trans.), M. S. Shastz (Cambridge: Cambridge University Press, 1990), p. xxxiii.
\textsuperscript{70} Nihilists are those who hold the belief that all values are baseless and that nothing can be known or communicated. It is often associated with extreme pessimism and a radical
Anarchists differ only in the 'ends' when the former use violence for an immediate destructive purpose with a hope of some better form of social organisation arising in some unknown future.\textsuperscript{71}

Georges Sorel, from whom Socialists and Fascists drew much intellectual inspiration on violence, talks of 'proletariat violence' which is both educative and emancipatory: "very fine and heroic thing, at the service of the immemorial interests of the civilisation". At the same time, he cautions against indiscriminate use of violence.\textsuperscript{72} He doubts proletariat violence getting out of hand and becoming brutal because of "the intensity and spiritual beauty of workers who perpetuated it." Violence from proletariat is "always very beautiful and heroic" and simultaneously "promotes class solidarity, determination to act and primordial creative energies."\textsuperscript{73}

Ideas on justification from top down is analysed in greater detail by Hannah Arendt. To Arendt, power is the essence of all governments, but violence is not, which is by nature instrumental.\textsuperscript{74} However, "every decrease in power is an open invitation to violence.... if only because those who hold power and feel it slipping from their hands be the government or be they the governed, have always found it difficult to resist the temptation to substitute violence for it."\textsuperscript{75}

Frantz Fanon, a passionate votary of violence, views violence as skepticism that condemns existence. A true nihilist would believe in nothing, have no loyalties, and no purpose other than, perhaps, an impulse to destroy, who does not bow down to any authority, who does not accept any principle on faith, however much that principle may be revered. See The Internet Encyclopedia of Philosophy, http://www.utm.edu/research/iep/n/nihilism.htm.

\textsuperscript{71} Bondurant, n. 69, p. 8.
a promissory of creating a new man, a whole new man which the European civilisation has finished creating, and which is now the responsibility of the Third World. Violence alone, violence committed by the people, violence organised and educated by its leaders, makes it possible for the masses to understand social truths and gives the key to them. Without that struggle, without that knowledge of the practice of action, there is nothing but a fancy-dress parade and the blare of the trumpets.76

But his advocacy was to overcome colonial domination signified by exploitative relationship in which the colonial subjects are compelled to participate to their continued disadvantage. The oppressed, the “wretched of the earth,” have no choice but to resort to that same violence used on them to overthrow an intrinsically iniquitous system, and establish a new order.77 In doing so they not only created a new political and economic systems but more significantly asserted their own consciousness.78 At the individual level, such violence is “a cleansing force, which frees the native from his inferiority complex and from his despair and inaction; it makes him fearless and restores his self-respect.”79 Violence, thus, to Fanon is constructive, moral and purifying.

Jean-Paul Sartre, expressing his ideas on similar lines, accepts violence as a spiritual purifying force. To him, “… the Colonialist reveals the violence of the native, even in his passivity, as the obvious consequence of his own violence and as its sole justification… it is in itself self-justifying violence. Violence presenting itself as induced violence, counter-violence and legitimate defence.”80 Resorting to it is necessary to effect change. However, in Sartre, there is skepticism about the newer societies that displace the old. Violence constructively achieves the

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77 Ibid., p. 31.
79 Fanon, n. 76, p. 74.
transition but it cannot necessarily guarantee the establishment of better and fairer societies. Among the ideologies Sartre’s stands out redeemed by earthly realism.\textsuperscript{81}

While some of the above theoretical propositions provide ‘colonial counter-violence’ as justification of violence by the colonialists, in the post-colonial ethnic societies, the oppressed ethnic communities justify violence or terrorism, in the words of Eqbal Ahamd, the “need to be heard”; violence is the “best way of expressing long-felt, collective grievances. When legal and political means fail over a long period, a minimum of the aggrieved community elicits the sympathy of the majority with violent acts.”\textsuperscript{82} Thus, violence is justified as means of a ‘change for good.’ It is argued that great revolutions of the world, from the French to the Chinese, were violent as were many of the freedom movements in the twentieth century. People belonging to repressed ethnic groups do not rise unless it is clear to them that they have no other means of changing their condition. This is the moral justification for violence perpetrated during popular revolutions. Such a tradition of justification exists since ancient times, which is evident from proclamation by Heraclitus, “strife is the father and king of all things.”\textsuperscript{83}

Ethnic violence is also justified on ideological basis. It is ideology which plays a critical midwifery role in the transmutation of violence from the static realm of the abstract to the stark realities of collective group violence. Ideology exalts violence by identifying it with a cause. It reasons that “the perpetrators of violence are not assassins, murderers, or terrorists, in the conventional sense of the term, but regard themselves, and are regarded by others, as ‘freedom fighters’.

\textsuperscript{81} Leo Kuper, The Pity of it All: The Polarisation of Racial and Ethnic Relations (Minneapolis: University of Minnesota Press, 1977), p. 117.
'liberators of the motherland', 'martyrs', and so on. A subjective morality comes into play to provide binding cement." To them the cause is "just, moral and righteous in contrast to that of their opponents who became the personification of all that is vile and repugnant."84

In this polarization between ethnic communities, the moderate elements in the society, who caution against extreme measures and attempt to build bridges between opposing factions, are rapidly elbowed out. The plight of the middle elements becomes painfully apparent. They are viewed with suspicion, mistrust, and contempt, by both sides. As Rev. Ian Paisley, the radical Protestant leader of Northern Ireland, remarked, "a traitor and a bridge are very much alike, for they both go over to the other side."85

The legitimization of violence by the State is facilitated by the use of the concept of 'authority'. 'Authority' masquerading as 'sovereignty' is considered inviolable for the existence of the State. Thus, violence by any agency other than the State is declared illegal and hence outlawed. Eruption of violence in the society is no longer considered a social malaise which ought to be corrected and cured, but becomes a problem of ‘law and order’ that could be set right only with the use of force. The State justifies violence in the name of safeguarding the security of its people, integrity of its territory and unity of all its elements. But, at the same time, the State terms it as illegal if any individual or a group uses the same kind of violence against the State. Thus, the extent of legitimization of use of violence by the State is such that the people within its territory are not allowed to resort to violence under any circumstances. If they indulge in such activity it is not only anti-State but also anti-national, thereby endangering the very existence of

85 Kuper, n. 82, p. 113.
the nation-State.\textsuperscript{86} It is justified that the State's use of violence will not bring the problems of social ethics, but only a question of expediency.\textsuperscript{87} It is precisely because of this reason that studies on ethnic violence revolved around the role of ethnic identities rather than questioning the machinations of the State itself. But this assumption requires thorough reexamination in the light of empirical evidences and growing power of the State and its resolve to use violence to justify sustenance and enhancement of its power.

The inherent danger, however, with respect to the term 'ethnic violence' is that it will end providing those who use it in its extended sense a greater number of situations in which they can counter to the violent behaviour of others through justified violence on their own part. By the same token, it will provide an ever-increasing range of behaviours which may be justifiably restrained by social sanctions but will in turn justify an ever-increasing need for social scrutiny of individual behavior. The dissenting groups justify their violence on the ground that the State exercises violence against its own citizens. The State, as a result, in order to curb the anti-State violence, resorts to greater violence. It argues that "if violence against a man is wrong, is it any less wrong to use violent action against the men who practice it?"\textsuperscript{88}

Thus, the two great dangers in the use of ethnic violence, which, if not guarded against, no matter how exalted, are:

1. large scale use of ethnic violence results in brutalisation of society; and

\textsuperscript{86} Singh, n. 32, p. 26.
\textsuperscript{87} Hook, n. 38, p. 265.
2. insensitiveness to special conditions and to the distinctive feature of familiar situations which can be adjusted by finesse and tact rather than by force.\textsuperscript{89}

Unless representative organs of the State exercise stringent control over the forces and instruments of violence, the latter may set themselves up as the ruling power and oppress the community in the name of their ultimate interests. The role of civil society, therefore, is vital; unfortunately it is a missing variable in all available traditions of inquiry.\textsuperscript{90} Often called the “third sector”, ‘civil society’ here means the civic space that exists between the family level and the State level – a sphere of voluntary associations and informal networks in which individuals and groups engage in activities of public consequence.\textsuperscript{91} Empirical evidence shows that the level of inter-ethnic civil society networks is directly proportional to the level of ethnic violence. In other words, the space for violence is less where there exist formal or informal interactions between the communities. It is hard to instigate riots, cause bitterness or spread rumors in a setting where peace committees emerge from below.\textsuperscript{92}

ETHNIC VIOLENCE AND HUMAN RIGHTS

Theories are yet to match with the colossal empirical findings on human rights violations due to ethnic violence. Linking violence with human rights, Robert Litke, brings in the notion of ‘violence as violation of persons’. To him, violence “diminishes or destroys a person’s power to act or interact” and “weakens the

\textsuperscript{90} Varshney, n. 37, p. 39
\textsuperscript{91} For systematic understanding of the concept, see Jean Cohen and Andrew Arato, Civil Society and Political Theory (Cambridge: MIT Press, 1992).
\textsuperscript{92} Varshney, n. 37, pp. 39–40.
very basis of ourselves as individuals, communities and cultures." In more explicit terms, "violence against body does not only say that we are going to control you, but also says that we do not even respect that way we define you. Violence States that you don't have autonomy, and that we are going to control how you are defined. It is a total way of saying that you are excluded, and it seems to me that until we deal with that, we are never going to get past this notion of what 'human' means."94

Having said that, human rights violations take place as a result of three sources of ethnic violence:

1. Violations as a result of coercion by the State which includes all its institutions and the structures against an ethnic community or communities;

2. Violations due to violence by ethnic dissidents. This could be either against the State or against the "collaborators" of the State from its community; and

3. Violations as a consequence of violent interactions between ethnic dissidents and the State forces.

In the human rights framework, State is the nexus or the focal point where the rights are organized and balanced. According to the UN Charter, "It is the duty of every State to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms without distinctions to race, sex,

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language or religion." It is the responsibility of the State not only to provide immediate physical security but also to give each individual the opportunity to make his own future more secure. In other words, it means that individuals have the right to a stable government that preserves order, outlaws violence on the part of private persons, and use of State’s monopoly of coercion to protect citizens from assault. The subjects of a State are eligible to enjoy civil, political, economic, social and cultural rights. In providing such rights, the State is also obliged not to discriminate and not give preference to anyone, or exclude anyone, on the basis of race, religion, language or ethnicity. The State is also duty-bound to protect the individual from social discrimination; it has to take affirmative action in order to compensate for past discrimination that places members of discriminated groups at a disadvantage. Democratic States, especially, are believed to respect rights on higher levels than autocratic ones.

However, the governance of the State in times of peace is quite different from when the State is directly under threat of violent uprising against it. In multiethnic societies, while the majority, which controls the power of the State, speaks in terms of collective good and national interest, the minority talks of traditional rights: rights to land, to education, to the use of language, to political representation, to freedom of religion, preservation of ethnic identity and to autonomy. When those traditional rights are suddenly called into question the latter may go even to the extent of organizing itself violently for separatism. But, when separatism is the central question, the legitimacy of the State itself is the issue and hence the State considers it as a direct challenge to its authority and integrity. The obvious consequence is diabolical cycle of violence resulting in

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95 Article 6 of the UN Charter.
further erosion of human rights. In such situations, the violations become chronic
to the extent of affecting to right to life and integrity of person.

In his multi-dimensional threat perception theory, Christian Davenport
addresses four aspects:

a) Frequency of violent actions;

b) Presence of violence;

c) The variety of strategies used by dissidents; and

d) Deviations from culturally accepted levels of dissent.\textsuperscript{97}

State repression is also conditioned by politico-economic conditions like the type
of government, economic development, coercive capacity, dependency and the
government’s past repressive behaviour.

The State always argues that people’s liberties may not last when the land
they enjoy is under military attack and annexation. In other words, civil liberties
cannot exist without national security. But the critical question is how far and how
much can human rights be sacrificed in protecting national security? What,
according to the “doctrine of balance,” is the right combination of individual
liberty and State security? The attempt to answer such questions creates a rupture
between the State and the civil society, producing a situation in which the State
finds it exceedingly difficult to command passive social loyalty and obedience. As
a consequence, the broad framework of a new social contract is actually being
negotiated by means of violence. In this sense, violence is also a means by which
the contending parties are engaged in the negotiating process. The paradox of
violence manifested in this particular context is that ethnic essentialism breeds

\textsuperscript{97} See for details Christian A. Davenport, "Multi-Dimensional Threat Perception and State
Repression: an Inquiry into Why States Apply Negative Sanctions," \textit{American Journal of Political
violence, and violence, in turn, reinforces essentialism and exclusivity. The fact that the groups have chosen the path of armed struggle to press for their demands and express their active and violent opposition is symptomatic of a profound crisis in the formal institutions of the State.

Are these types of behaviour applicable even to democratic societies, where the State is perceived to be neutral and exists for the common good of all and, hence, is not difficult to claim rights against it? In reality, this may not be always true. Recent studies have shown negative association between democracy and human rights. In democratic systems, where everything revolves around numbers, those who control the State apparatus may promote sectional interests that enable them to remain in power. In class-dominated societies the discrimination is on the basis of class and in ethno-centric societies it is ethnicity. This is described as "politics of anxiety" by Ake. The post-democratization human rights violations are due to lack of better means and methods to deal with this new found crisis.

Also, the absence of dynamic pressure groups, active mass organizations, a system of independent mass media and a vibrant political culture are the other key factors that constrain the successful and effective enforcement of rights. Rights would be, moreover, sustained only if they are rooted in a political culture. The people would then fight to maintain these rights and defend them at any rate.

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101 Wickremeratne, n. 35, pp. 34-38.
Thus, the observance or neglect of human rights on the national plane depends on the interests and constraints of the sovereign State.\textsuperscript{102} This contradictory feeling of the modern State is expressed by Octavio Paz as "philanthropic ogre": on the one hand, dominating force with totalitarian ambitions, while, on the other, being the guardian of human rights.

Conventionally, the States have complete control over the laws to be enacted and the method and machinery to be adopted for enforcement. Law, it is often argued, is the means through which society gives to the State a monopoly of violent means, and its purpose is to delimit destructive force.\textsuperscript{103} However, laws are designed to assist the existence, the needs and the activities of the State. The legal framework of the State in fact has resulted in curtailing the rights of the individuals than augmenting them. Moreover, whatever rights that have been provided by the democratic constitutions are practically not enjoyed by all in all forms. This is known as "passion paradox", which is having a right to something but not having it in the sense of enjoying the object of it. Fundamental rights on paper, on the one hand, and fundamental rights consciousness and implementation, on the other, have been two separate aspects of development in many third world societies. At independence, constitutional formats drawn from other democratic societies are adopted with fundamental rights as an integral part of the political framework. However, post-independence events create dialectic of their own where constitutional words are given life and interpretation in contexts which are very different from those anticipated by the founding fathers.\textsuperscript{104}

\textsuperscript{102} Singh, n-32, pp. 1-2.
While discussing the role of the State, the world has overlooked human rights violations by armed groups or militants and is only now slowly waking up to this pertinent issue. It is also significant to note that not much work has been done on this aspect. It is precisely because of this negligence in monitoring violations by non-State armed actors that international human rights law, including its mechanisms for implementation, is almost wholly focused on the conduct of States and not on armed groups or militants. Respect for, or violations of, human rights by a particular ethnic dissident armed group depends on the cause the group is espousing, its ideology, the nature of its leadership, kind of support its commands (both internal and external), type of regime it is fighting against, level of tolerance of dissidence within the organisation, nature of the organisation (democratic or authoritarian), and character of the population and civil society which the group claims to represent.

At the minimum, the fear of breakdown of law and order casts its shadow ahead. On the part of ethnic groups, they tend to feel that their very existence and cultural distinctiveness is in jeopardy and has to be preserved at any cost. Such diametrically opposite perception of interests and their pursuits lead to repression or civil war or terrorism or civil disobedience or such other violent manifestations.

Consequently, the State and the proto-State (which includes militants, insurgents or terrorists) become increasingly repressive. This is the only way these entities can survive, once bereft of their moral basis. At best, the State and the proto-State may enjoy short-lived periods of ideological hegemony during

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105 'Armed groups' are those who use force by using arms to achieve their objectives. They are not under the control of the State.
moments of military victory over the ethnic ‘enemy’. But true political hegemony and moral acceptability among their own peoples will always evade them. Physical suffering, in those cases where conditions of war prevail, further accentuates this alienation of the State and the proto-State from their respective ethnic populations. Fundamental rights have always been the first to suffer in such situations.

Violation of human rights, be it extra-judicial killings or torture, produces a vicious cycle of violence and terror. With regard to the responses by minority, the State has brought with it a sense of insecurity that tends to act as a strong force for mobilization. This too often takes the form of extra-parliamentary or militant forms. Further, in some of the cases, the misbehaviour of the armed forces and police has served to provoke guerilla misbehaviour. This has resulted in a never-ending spiral of violence, with innocent civilians on both sides as casualties.

**Forms of Human Rights Violations**

What are the various forms of human rights violations as a result of ethnic violence? Are they different from the violations during normal times? Which set of rights are mostly violated? Who are the main perpetrators and who are the principal victims?

Forms of human rights violations, as a result of ethnic violence, vary from riots, assassinations, disappearances, torture, custodial deaths and executions, indiscriminate arrests and detention, unwarranted searches, human shields, economic deprivation, and indiscriminate censorship.

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108 Kumar David, in Rupesinghe and Mumtaz, n. 98, pp. 7-10.
Ethnic riots are intense, sudden, though not necessarily wholly unplanned, lethal attack by civilian members of one ethnic group on civilian members of another ethnic group, the victims are chosen because of their group membership.\textsuperscript{111} Assassination is killing somebody for political reasons. Disappearances involve persons last known to be in the custody of the security forces or armed groups and whose whereabouts are not known thereafter or denied by the authorities. Torture is “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.”\textsuperscript{112} Custodial deaths are a form of extra-judicial executions wherein the victims are killed without the sanction of law or trial. All the above forms of violence violate the basic right to life which is non-derogatory even in emergency situations.

On the other hand, indiscriminate arrests and detention, unwarranted searches, human shields, and economic deprivation violate the right of integrity of a person and thus indirectly encroaches upon the right to life. Arbitrary arrest and detention are related to acts of arresting individuals without legal or reasonable cause and then keeping them under detention without allowing them any legal means of gaining their freedom. Resorted mostly by the security forces, unwarranted searches involve gaining illegal access to the private civilian

\textsuperscript{111} Horowitz, n. 84, p. 1.
\textsuperscript{112} See Article 1 of the UN Convention Against Torture.
residences without legal warrants so as to flesh out insurgents or material sources of insurgency. During such searches many persons are usually detained for questioning who mostly disappear eventually. Human shields, used as a tactics by both the security forces and armed groups, is also an extreme form of human rights violations in the sense that civilians have chances of getting killed in the crossfire. So as to cover up all the above violations from the outside world censorship is imposed to usually by the government. Also, the threat of militants silence the press. Both freedom of information and expression is thus denied.

To categorise them further according to the perpetrator, the human rights abuses by the militants or armed groups are grouped under eight heads by the International Council on Human Rights Policy in its recent study.\textsuperscript{113} They are:

1. \textit{Arbitrary deprivation of the right to life}: Killing or massacres of civilians, political assassinations, killing of captured combatants, suspected "informers", "traitors" or independent critics, civilian deaths resulting from starvation and disease due to deliberate destruction of crops of withholding or preventing access to relief supplies.

2. \textit{Disregard for the protection to civilians caught up in conflict}: Destruction of civilian property, attacks on civilian buildings like hospitals and schools or property with religious or cultural significance, disregard for protection owed to medical and religious personnel, interfering with delivery of relief supplies, attacks on humanitarian workers, and blockades of civilian settlements.

3. \textit{Interference with freedom of movement}: Forced movement and deportation of people, expulsions of populations on grounds of racial, ethnic, or religious

background, denying access to safety of internally displaced persons or refuges, or forcing them back into unsafe areas, and detention of refugees or displaced persons.

4. *Interference with freedom of expression, assembly and association:* Preventing independent organisations from operating, banning meetings and gatherings, using fear and intimidation to silence critics, denying journalists access to areas, closing independent media, and using media to spread hatred and incite violence.

5. *Torture, ill-treatment:* Torturing captured soldiers or suspected informers to extract information, holding prisoners in inhuman or degrading conditions, mutilations, beatings, and other cruel punishments to sow fear, enforce orders, punish delinquents, or indoctrinate recruits, and using villagers as forced labour.

6. *Abuses against children:* Forced separation from family, forced abduction into the armed group as combatants or labourers, deliberate denial of access to education, and sexual abuse.

7. *Abuses against women:* Rape, abduction into forced prostitution or sexual slavery, reprisal attacks against family members, and gender-based discrimination.

8. *Arbitrary deprivation of liberty and due process:* Mass detentions of suspect groups or populations, taking and holding of hostages, forced disappearances of persons, and “trials” against informers without due process.

The above violations are perpetrated by the State and non-State actors. Given the enormity of security responsibilities of the State, the level of abuses is high in conflict situations as compared to those violations committed by armed
groups. The most common methods used by the governments around the world in curtailing civil rights and liberties are:

- administrative decrees and actions that disregard human rights;
- legislation that increases governmental authority and decreases citizens liberty;
- judicial approval of restrictive laws and anti-democratic actions of the administration; and
- raising mass hysteria and public emotionalism in favour of curtailing civil liberties as necessary steps to maintain national security against real or imaginary enemy or a dangerous domestic movement or minority.

When the security of the State is under threat, it may become necessary and justifiable for the government to disregard temporarily all other considerations, including the provision of human rights. Once security is reestablished, civil liberties will have to be restored. However, a survey of political practices of States show that national leaders are prone to find every conceivable excuse to appeal to the emotions of the public in the name of national security to declare national emergencies and rationalize all measures of governmental empowerment and public restriction, including curtailment of human rights.\(^{114}\)

Whenever national emergencies are declared and measures of national security undertaken, civil liberties are the main sufferers. Apart from the above list of human rights violations, the State resorts to imposition of censorship and press restrictions; bans public demonstrations and meetings; resorts to arbitrary

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search and seizure, arrest and detention; suspends habeas corpus; conducts summary trails and executions; denies appeals to administration or courts; runs political internment and concentration camps; and orchestrates deportation, disappearance and liquidation of individuals, genocide, and racial and religious discrimination.

' Riots' are not simply disconnected occurrences, but form a part of the larger incidence of violence. It occurs in a wide range of social contexts and political circumstances. Paradoxically, the security forces and State officials either side with the ethnic majority in the riots or, at the minimum, remain as stock-still onlookers.\(^{115}\) The riot crowds are purposive on destruction of property. They also combine homicide and brutalities with arson. The cross-sectional composition of many developing world riot crowds are linked to participatory democracy, population movements, and sprawling urbanization.\(^{116}\)

**SAFEGUARDING HUMAN RIGHTS**

The entire gamut of human rights safeguards can be looked at from two angles—national and international.

*Domestic Safeguards*

Since human rights are basically a matter concerning a national population, their enforcement mechanism is devised and operated by national government. A State has complete control over the laws to be enforced and the method and machinery to be adopted for enforcement. As these are matters exclusively in the hands of sovereign States, given the will, the observance of human rights at the national


\(^{116}\) Ibid., p. 217.
level can be efficient and effective or totally neglected if the State has no interest in the matter. Thus, the entire exercise of safeguarding human rights depends mainly on the efficiency and impartiality of the State machinery.

Human rights, as enforceable domestic legal rights, require a domestic legal system based on rule of law, affording protection to individuals in the enjoyment of rights under the law with no punishment except for breaches of law. If the inviolability of human rights is recognized, then positivising them through fundamental law is a necessary move. The enduring implementation of human rights norms requires political systems to establish the rule of law. Stable improvements in human rights conditions usually require some measure of political transformation and can be regarded as one aspect of liberation process.

If human rights are constitutionalised, then they are regarded superior to ordinary legislation, and are used to render invalid any legislative action, administrative or other governmental decisions, which are held to run counter to the listed rights. Normally this power of invalidation is granted to courts. The observance of human rights in the domestic arena mainly depends on the effectiveness of the judiciary. The observance, in turn, is fruitful where the judiciary is powerful and independent. However, in many of the developing countries, with a few exception, the judiciary is not fully independent and is amenable to various political pressures and threats from aggrieved parties. The organ is also not adequately paid and equipped to carry out its duties properly.

Besides, there are national human rights institutions in the form of national human rights commissions, and Ombudsman to safeguard human rights.

117 Singh, n. 32, p. 15.
119 Singh, n. 32, p. 103.
It is a relatively new phenomenon that has emerged after the Paris Principles\textsuperscript{121} and is yet to gain ground especially in the developing world. The chief problem is that countries appoint their specific national institutions on human rights either under international or local pressure or to silence the criticism of rights abuses. Also such bodies are not fully independent and permanent. Most of the national human rights organisations enjoy only quasi governmental status and their social legitimacy is not well understood. Social legitimacy is crucial for such bodies because their credibility depends in the longer term on their ability to earn and retain the trust of the public, whose needs they are intended to serve.\textsuperscript{122}

Human rights education, training and public information are also essential means for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.\textsuperscript{123} In most of the developed States, human rights, humanitarian law, democracy and rule of law are incorporated in the curricula of all learning institutions in formal and non-formal settings. Though the developing countries lag way behind in this, they are slowly catching up. This apart, the imperativeness of training on human rights to security personnel, prison and government officials is also recognized.

Despite all these, federal systems are considered to be favourable for the realization of human rights by various groups. In such systems, the notion of group rights is well established, which is why minorities usually prefer them to unitary systems. In federations where the constituent units are coterminous with

\textsuperscript{121} The Paris Principles were developed following an International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991.


\textsuperscript{123} The importance of this dimension of protection was recognized and emphasised in World Conference on Human Rights, \textit{Vienna Declaration and Programme of Action}, at Vienna, 14-25 June 1993.
ethnic groups, group rights directly become the rights of ethnic groups.\textsuperscript{124} Active participation of the State is a prerequisite for the attainment of many human rights objectives. Domestic protection also includes actions of the civil society in safeguard the given rights with "eternal vigilance".

Generally, reaction of the public to ethnic violence is one of revulsion. The strength and character of the reaction can differ in different places and circumstances. The reaction is based on the belief that ethnic riots represent an 'event' which is not 'normal' in civilised society. It is also considered as an aberration within civilised living. However, if that particular society is ethnically polarised, the reaction is based on who is the attacker and who is the victim.\textsuperscript{125} In such cases of ethnicised and divided societies where "our rights" versus "their rights" prevails, it is wrong to expect the civil society to speak against human rights violations as a result of ethnic violence. Ironically, it is very common for one ethnic community to condone the violations of the other.

\textit{International dimension}

Human rights are not entirely a domestic affair of individual countries. They also have an international dimension that has strengthened the safeguard mechanisms in countries where governments pay lip service to human rights issues. The international dimension includes the international human rights instruments and regimes. While international human rights instruments include the International Bill of Rights,\textsuperscript{126} international regimes constitute international organizations like

\textsuperscript{126} Generally refers to Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights
the United Nations and its related agencies, including the United Nations Human Rights Commission UNHRC), regional organisations, international donors, world public opinion and international and regional human rights NGOs. Of late, the UN and other international organizations have made human rights an integral part of their peace-making and conflict resolution initiatives in countries affected by internal wars and other serious conflicts as well as in promoting the interests of indigenous, minority and other vulnerable groups all over the world.127

As regards action, as distinct from scholarship, international concern with human rights has manifested itself in two different ways: by “humanitarian intervention” and by adoption of international treaties. In traditional international law it was assumed that the State had the authority to treat its own nationals as it saw fit. However, when a State ill-treats its own population, other States, usually the great powers of the period, took it upon themselves to threaten, or even to use force in order to come to the rescue of the oppressed population. While this type of action was not infrequent, the doctrine underlying it has never become a generally recognized part of international law because of the abuse inherent in the concept of “humanitarian intervention.”128

The protection of oppressed or endangered groups by international treaty started in the seventeenth and eighteenth centuries in matters of religious liberty. In the course of the nineteenth century the international treaties were also used to protect ethnic and racial groups and to combat slave trade and slavery. In the twentieth century, it has been used to improve labour conditions, to arrange for supervision of administration of mandated territories, and to provide under the supervision of the League of Nations certain rights to racial, religious, or linguistic

minorities in a number of States, mainly in central and eastern Europe. Due the tragic events of Second World War and barbarous acts committed by totalitarian regimes of that period the UN and its members pledged themselves to take action for the achievement of universal respect for and observance of human rights and fundamental freedoms for all.

Though the UN Charter reaffirmed its faith in "fundamental human rights" it did not spell clearly what those rights were. To overcome this lacuna, the UN General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) in 1948; this was larger in scope covering not only traditional civil and political rights but also economic, social and cultural rights. However, it was only a formulation of list of rights aspired by the Charter, lacking modalities of implementation or enforcement. But it served by offering itself as a yardstick by the United Nations and other international organizations for human rights compliance. That the UDHR was "taken seriously was evident of the fact that its provisions penetrated into international conventions, national constitutions and legislations and even into court proceedings." 130

UDHR was the first international Statement on human rights, which listed rights in a systematic manner for a common standard of achievement for all people and all nations. Later two covenants—International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights—were adopted in 1966 and came into effect in 1976. These two covenants, along with UDHR, form the International Bill of Rights. However, the two

129 Ibid.
130 Statement by Dr Ishmael Noko, General Secretary of the Lutheran World Federation, on the occasion of the 50th Anniversary of the Universal Declaration Of Human Rights, 10 December 1998. According to the Franklin and Eleanor Roosevelt Institute (New York) provisions of some 90 national constitutions drafted since 1948 can be traced to the UDHR.
covenants are binding only on those States which ratified them. They also set up a machinery, the Human Rights Commission, for the international supervision of human rights. The United Nations Human Rights Committee, established in Part IV of the International Covenant on Civil and Political Rights, can receive and consider "communications" from individuals who claim to be victims of violations of the Covenant in their own country. The individual must show at least a prima facie case of violation of a provision of the Covenant. The Committee finds the complaint substantiated unless the Government in question supplies sufficient evidence to refute the allegations.

But the common problem is enforcement of international human rights norms. At the national level, the enforcement of domestic law is easy because every citizen is bound to obey the sovereign decisions. But to enforce the international law, what is the criteria and the extent of enforcement? Is it not undue interference in the internal affairs of the States?

Those who stand for the interference to safeguard human rights argue that wherever defenseless people are killed and their human rights violated, the world must come to their aid irrespective of State boundaries. It is said that this is what humanitarianism is all about and it is only this type of activity which would make the world a better place for all to live in. The classic example given is the case of South Africa where the policy of 'apartheid' was totally abolished under sustained international pressure.

It is also argued that human rights violations are infectious. When one country violates and gets away with it other countries may follow the suit. It is said that the fight is not against a particular State or government, but against the principle of repression, human rights violation, and suppression of democratic spirit and the process. The neighbouring States are also concerned about the spill
over effects of conflicts which create tensions. Moreover, in the wake of
globalisation, conflicts affect market access, especially in the developing
countries. In this regard, trans-national companies are more interested in conflict
resolution. They put pressure on their parent countries to intervene and resolve
conflicts.\textsuperscript{131}

Thus, holding States accountable for human rights violations is favoured
for the following reasons:

1. To deter future violations of fundamental human rights.

2. To reassert the central role of law in civilized society, to foster respect for
democratic institutions and advance the nation's transition to democracy.

3. To assert the inherent dignity of each individual by providing a legal remedy
to the victims and their families.

4. To provide a complete and irrefutable record of what happened, so that no
one can pretend the abuses did not occur.

5. To comply with obligations of international law.

Commentators identify several specific human rights treaties that set
conditions for prosecuting violators and to protect human rights.\textsuperscript{132} Customary
international law is being cited to support the proposition that prosecutors are
required in cases of serious violations of the right to physical integrity. This was
exemplified by the prosecution after the Second World War at Nuremberg and
Tokyo and the recent Balkan war trials by the International War Crimes Tribunal.
At the same, it is to be noted that 'human rights' are not placed on equal footing

\textsuperscript{131} For details on this aspect see Edward Azar and John W. Burton (eds.), \textit{International Conflict

\textsuperscript{132} In this regard the common conventions cited are Convention on the Prevention and
Punishment of Genocide, Convention Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment, International Covenant on Civil and Political Rights, International
Covenant on Economic, Social and Cultural Rights, etc.
with ‘sovereignty’ in international relations. Unlike domestic laws, the international human rights laws lack firm enforcement. The binding is more of moral and at the maximum resolutions at the UNHRC condemning the violations. But such strictures are taken seriously by the individual countries to take the human rights issues at the bilateral level by imposing trade and other economic sanctions or totally isolating the country.

For many years, some governments have contested the human rights framework, arguing that it was developed and imposed to serve western policy interests. However, the conceptual challenge to human rights has grown in recent years, with a variety of governments and others arguing against universality, largely on cultural or religious grounds, and against indivisibility, largely on grounds of economic expedience. Like, for instance, preference of individual freedom over collective good, rights over duties, self-interest over social responsibility, and civil and political rights over economic and social rights is not appropriate for societies with different social and political traditions. It is seen as smacks of neo-imperialism, for example, when progress in human rights is made a condition of economic aid and cooperation. The Orient, it is said, has its own set of rights to rest and maintain as per its own traditions and cultures. They point to crime, social problems and the breakdown of family and community structures as symptoms of excessive individualism in western societies. Asian philosophers and religions have traditionally emphasized on the concepts of

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134 South Africa stands as a prominent example whose practice of ‘apartheid’ was totally eliminated by sanctions by the individual countries.
harmony and order in society. They have laid great emphasis on individuals’
duty in maintaining such harmony.

If human rights and development rights coexist on the same plane, then it
is reasonable that in the greater interest of the country priority will be given to
development rights.137 For many newly independent States, the first priority will
be consolidation of the “hard won” independence and territorial integrity and
sovereignty than the rights of its citizens. The developing countries also point out
the human rights violations in the formative years of the western countries. It is
also maintained that certain violations of rights are mainly due to the result of
colonial exploitation and perpetration of civil wars through arms sales by the
developed States.

To strike an acceptable norm, hence seems problematic. In this regard, the
UN Secretary General observed that “...the reconciliation of the principle of
national sovereignty with the ideals expressed in the UDHR will inevitably
remain a complex and delicate problem for the fact that governments view issues
of human rights in different ways.”138

The geo-political global divide of the Cold War years allowed an artificial
separation of two sets of rights. The two major human rights treaties deriving
from the UDHR reflect this division: the International Covenant on Economic,
Social and Cultural Rights and the International Covenant on Civil and Political
Rights. These two Covenants, however, affirm the indivisibility of the rights they
enshrine, stating: “the ideal of free human beings enjoying freedom from fear and

137 George W. Shepard and P. Nanda, Human Rights and Third World Development (London:
138 United Nations, Annual Report, 1975-76 (New York: Department of Public Information of the
want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

In 1993, at the UN World Conference on Human Rights in Vienna, 171 governments adopted by consensus a declaration which stated:

All human rights are universal, indivisible and interdependent and interrelated... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms.¹³⁹

This does not mean imposing alien cultural values, or homogenizing the wonderful variety of collective human expression. Universality does not mean uniformity. The contribution of different cultures, at the local and global level, enriches our understanding of human rights. Indeed, in guaranteeing freedom of thought and belief, and freedom from discrimination on the basis of race, sex, language or other status, the UDHR serves to protect cultural and religious diversity.

However, despite the differences, all can agree on minimal standards of civilized behaviour that the entire world could agree; they are freedom from torture, slavery, arbitrary arrest, disappearances and, above all, right to life. With increasing interdependence of States, it becomes difficult for States to ignore the pressure of international opinion on human rights issues. This very interdependence, over a period of time, could provide effective backing for better regulations of human rights.¹⁴⁰

The diffusion of international norms in the human rights area crucially depends on the establishment and sustainability of networks among domestic and

¹³⁹ See for the text of the whole Declaration www.un.org
¹⁴⁰ Beetham, n. 135, pp. 4-5.
transnational actors who manage to link up with international regimes to alert western public opinion and western governments. These advocacy networks serve three purposes that constitute necessary pre-conditions for sustainable domestic change in the human rights area:

1. They highlight and put norm-violating States on the international agenda in terms of rising moral consciousness.

2. They empower and legitimate the claims of domestic opposition groups against norm-violating governments, and partially protect the physical integrity of such groups from government repression. They are crucial in mobilising domestic opposition, social movements, and NGOs in target countries.

3. They challenge norm-violating governments by creating a transnational structure and pressuring such governments simultaneously "from above" and "from below".

Regardless of the debate, it is interesting to note here that some governments change their human rights practices only to gain access to the material benefits of foreign aid or to be able to stay in power in the face of strong domestic opposition. Even instrumental adaptation of human rights norms, if it leads to domestic structural change such as re-democratization, initiates a process of identity transformation, so that norms initially adopted for instrumental reasons are later maintained for reasons of belief and identity. Thus, repressive governments often adapt to normative pressure for purely instrumental reasons. When the pressure decreases, they return to repression.


142 Ibid., p. 15.
Many Western governments in practice flout the principles of universality. The United States, for example, is reluctant to be bound by international human rights treaties that embody these principles. It stands virtually alone by not signing the UN Convention on the Rights of the Child. It is one of the few countries that have not ratified the Convention on the Elimination of All Forms of Discrimination against Women. While ratifying international human rights conventions, it has often made extensive reservations, refusing to be bound by many of the provisions within them.

As far as the civil society is concerned, especially the minority or affected groups, external involvement is often welcomed as a counter-weight to the 'arbitrary' power of the State. In this regard, the role of ethnic kin States comes to the fore. The minority ethnic groups seek the help of the ethnic kin States to highlight the discrimination and repressions faced by the group at the international fora. But the State tries its maximum to avoid outside interference on the issues of ethnic conflict or the resulting human rights violations in the name of 'sovereignty'. There are also intermediary forces arising from regional organizations or influential allies to counter the international influences on human rights.143

International non-governmental organisations (INGOs) are emerging as major players in the human rights protection. Their legitimacy has increased dramatically over a period of time.144 They take up human rights activities at three levels:

1. They focus on continuous monitoring and recording of violations in the individual countries and dissemination of information on human rights. Though a recent phenomena, such monitoring and dissemination of human rights situations, especially in conflict-prone zones, have enormously shaped global perception on the subject.

2. They consult and lobby with the international and regional organisations, and individual countries which participate in high-level negotiations and diplomacy for global human rights policies.

3. They also take direct steps in safeguarding human rights by designing and funding projects to promote human rights.

CONCLUSION

The respect of human rights of ethnic groups has been a chronic problem faced by post-colonial plural societies. By giving higher priority to security and territorial integrity of the State than the protection of human rights of all, the State has paved the way for alienation and the consequent militarization of the affected ethnic communities. Though terms 'human rights' and 'ethnicity' are afflicted with definitional controversies, they have come a long way in enhancing the understanding of the respective spheres of knowledge. Ethnic violence is approached to understand in its entirety than sectorally as attempted by 'Marxist', 'liberalist' and 'moralistic' approaches. 'Relative deprivation', 'resource mobilisation' and 'mobilisation of discontent' models provide better understanding about ethnic violence.

The State, which is supposed to protect the rights of its citizens, is identified as a major violator of human rights. Its legal, security, judicial and
executive organs are put to maximum use for this purpose. This does not mean that the State does violations deliberately, but at times it becomes inevitable for it in the name of security and territorial integrity. The secessionist armed groups also justify violence in the name of ‘liberation’ and ‘winning back their lost rights’. The protection mechanisms put in place by the ethnically divided State do not function at their optimal levels due to inherent bias of the State. Civil society and media in such societies also are less articulate in taking up cases for human rights safeguards. In this regard, international pressure in the form of international organisations, legal regimes, donor community and world public opinion are effective, especially if the country is small and economically dependent on foreign aid. From time to time, the State might try to assert its sovereignty, but succumbs to international pressure due to helplessness.