CHAPTER - IV

FACTORS RESPONSIBLE FOR HUMAN RIGHTS ABUSES IN TAMIL AREAS OF SRI LANKA
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In chapters two and three, detailed accounts of the various charges against the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) have been made respectively. In the light of those charges, the objective of this chapter is to examine the various factors responsible for violations of human rights in the north and east of Sri Lanka. After its independence in 1948, Sri Lanka witnessed a fundamental shift in its political order, with violence emerging as the main characterizing factor in the state-society relationship. In Sri Lanka, institutional arrangements of the democratic state have survived many political conflicts and tensions. However, it no longer rests on the social consensus that was negotiated repeatedly in the aftermath of independence. These democratic institutions, which exist at present, have ceased to be formal and constitutionally grounded and non-associated with Parliamentary democracy.¹ Sri Lanka’s political conflict or political violence has been accepted as a legitimate mode of political behaviour whether by the state or non-state forces. The militaristic capacity of the state along with the passing of legislation to suppress the demands of the Tamils, and the will to conduct a prolonged war in the north and east of Sri Lanka has increased human rights violations.²

² Ibid, p. 121.
Factors Responsible for Human Rights Abuses in Tamil Areas of Sri Lanka

As regard the factors responsible for human rights abuses in the Tamil Areas of Sri Lanka particularly in the northern and Eastern Provinces, there are three important dimensions, (i) the State’s repression of the Tamils, (ii) the armed rebellion of the Tamils in response to the State’s repression, and (iii) the state’s response to the armed rebellion of the Tamils. Soon after independence from the British in 1948, the state’s repression of the Tamils started through the government’s policies relating to language, citizenship, and employment in government sectors and civil services.

When the State enacted legislations such as (i) The Ceylon Citizenship Act Number 18 of 1948, (ii) The Ceylon Parliamentary Elections Act No. 3 of 1949, (iii) The Official Languages Act of 1956 and (iv) the Standardization Policy that sidelined the Tamils in Sri Lanka, to give more privileges were given to the Sinhalese. The Tamils felt that it was their right to demand equal treatment and opportunity in society. This however, led to anti-Tamil riots in which many Sri Lankan Tamils were killed by the Sinhalese. Therefore, the Tamils demanded federal autonomy for the regions inhabited by them in the northern and eastern provinces of Sri Lanka. These demands made by the Tamils were again meted out with violence being perpetrated against the Tamils. Following these events, the Tamil leadership felt that the only way to achieve and enjoy their legitimate rights was through the establishment of a separate state of Tamil Eelam. However, the Tamil political leadership was not able to achieve anything with regard to their demands, neither federal autonomy nor a separate state of Tamil Eelam. This led a group of Tamil youth to believe that a separate state of Tamil Eelam could be achieved only through an armed struggle. The
armed struggle to achieve a separate state of Tamil Eelam was spear headed by the LTTE from the year 1976. When the armed struggle for the establishment of Tamil Eelam started, the Government of Sri Lanka enacted legislations such as the Prevention of Terrorism Act and the Emergency Regulations. The state also used its armed forces in the region to suppress the demand for the separate state of Tamil Eelam, which resulted in various forms of human rights abuses. To understand the various factors responsible for human rights abuses, the ethnic conflict between the Sinhalese and the Tamils, and the demand for a separate state of Tamil Eelam is necessary.

The Ethnic Conflict

The ethnic conflict between the Sinhalese and the Tamils in Sri Lanka can be traced back to their differences in language, religion, culture and customs. The Sri Lankan Tamils claim that they are a separate nation with their Tamil language, Hindu religion, culture and heritage and history of independent political organization in separate sovereign kingdoms in the northern and eastern parts of Sri Lanka for centuries. Similarly, the Sinhalese too are a separate nation with their Sinhala language, Buddhist religion, culture and heritage and history of monarchical rule in a number of Sinhalese kingdoms in the west, central and southern areas of Sri Lanka for centuries. Because of their particular past history, and their national-ethnic differences and the occupation of separate homelands, each possesses separate and distinct national consciousness and owes its loyalty first to its own homeland, and then to Sri Lanka. The British, who ruled Sri Lanka from 1796, brought the Sinhalese and the Tamil nations together in 1833 for the purpose of administrative convenience. In 1948, the British granted independence to Sri Lanka leaving the two nations, Sinhalese and
Tamils, yoked together in a Unitary State structure. In 1946, The Sinhalese and Tamil Political elites had agreed for a Constitutional settlement in which the Sinhalese upper middleclass political leadership promised a just and fair government with sharing of power based on partnership, in perfect amity and unity. They adopted the independence Constitution (Soulbury Constitution) which enabled the balance of rights between the Sinhalese and Tamil peoples.³

The independence Constitution, which is also known as the Soulbury Constitution of 1947, had definite safeguards for the minority ethnic and religious groups in Sri Lanka. The unexpressed premise of the Soulbury Constitution was a consociational⁴ arrangement between the English-educated elites of the island’s principal groups, (i) Sinhalese, (ii) Tamils, (iii) Muslims and (iv) Burghers. The Constitution provided for weightage in representation including appointed members (not more than six) in the house of representatives and prohibiting legislation that would discriminate against any of the minority groups (Section 29 (2) (b) of the Soulbury Constitution).⁵

After independence, the new nation-state of Sri Lanka hurriedly passed citizenship and franchise laws. The Ceylon Citizenship Act Number 18 of 1948 created two types of citizenship, (i) citizenship by descent and (ii) citizenship by registration. In both cases, documentary proof of citizenship was required for applicants, a procedure that disqualified

⁴ Consociationalism means a form of government that provides confederal arrangements by granting territorial autonomy. Consociationalism is a form of government involving guaranteed group representation, and is often suggested for managing conflict in deeply divided societies.
the majority of Indian Tamil settlers who were illiterates and did not have such evidence. The Citizenship Act of 1948 denied a million Indian origin Tamils their basic right to citizenship rendering them stateless. This was followed by their disfranchisement. Thus, seven Members of Parliament representing the Tamils were relieved of their seats in the next general elections of 1952 thereby depriving the Indian origin Tamils of any representation in the Parliament of Sri Lanka. The pressing question for the Sri Lankan Tamils was, whether they should cooperate with the Senanayake led government, or sit in opposition or rely on them and campaign for the right to self-determination. During the crucial 1948-1956 period, Tamil opinion was divided. G. G. Ponnambalam of the Tamil Congress joined the Senanayake government in 1948, while Chelvanayakam another Tamil party leader and others opposed this decision and split from the Tamil Congress to form the Tamil Federal Party (FP).

The federal party had four principal objectives. The first was a federal union of Sri Lanka, comprising of the two Tamil-speaking northern and eastern provinces along with the remaining seven Sinhalese provinces. Secondly, all state aided colonisation of the Tamil areas by Sinhalese should cease. Thirdly, to foster unity among Tamil speaking people of Sri Lanka (Sri Lankan Tamils, Indian Tamils and Muslims). Fourthly, Sinhala and Tamil were to be recognized as official languages of the country on an equal footing.

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6 In Sri Lanka, there are two groups of Tamils, (i) the Sri Lankan Tamils and (ii) the Indian Tamils. The Sri Lankan Tamils are those indigenous people who are believed to have migrated from south India during the 10th century B. C. The Indian Tamils are those people who were taken by the British to Sri Lanka as plantation workers from 1837 onwards.


In these objectives, there was evidence of sections of the Sri Lankan Tamil population imagining themselves as a nation within a short span of time which turned into defensive nationalism in the later years in the politics of Sri Lanka. The Federal Party failed to make an impact in the general elections of 1952, because the Tamils at that time believed in a future that lay in a unitary state. However, in 1956, the Federal Party swept to victory in the Tamil-speaking areas while the coalition led by Solomon West Ridgeway Dias (S. W. R. D.) Bandaranaike, Mahajana Eksath Peramuna (MEP) which obtained power, won all its seats in the Sinhalese Provinces and none in the Tamil areas.

In June 1956, Prime Minister Bandaranaike introduced in the House of Representatives, a bill to make Sinhala the only official language of Sri Lanka. Sri Lankan political parties such as The Mahajana Eksath Peramuna (MEP) and the United National Party (UNP) supported the language bill. The Lanka Sama Samaj Party (LSSP), Communist Party (CP), Federal Party and the Tamil Congress (TC) opposed it. Though the bill was a short one with only three clauses, it gave rise to the longest debate in the annals of Sri Lanka’s legislature. In commending the Sinhala only Act of 1956, Bandaranaike said “the fact that in towns and villages, in business, houses and in boutiques most of the work is in the hands of the Tamil-speaking people, this will result in a fear and I do not think that this is an unjustified fear of the inexorable shrinkage of the Sinhalese language”. The Sinhala only bill was passed in the teeth of opposition by all the Tamil MPs within the house.

*Ibid*, pp. 82-83.
To quote Dr. N. M. Perera, leader of the Lanka Sama Samaja Party:

"The LSSP's demand for Sinhalese and Tamil to be made as the official languages flows from the very concern for the interests of the people who speak these languages. We have been for swabhasha that is Sinhalese and Tamil since 1935."

M. Sivasithamparam of the Tamil Congress commented:

"The result of the government's policy of language: One language two countries; two languages one country".10

The above quotations show that it was only the Sinhalese who favoured the Sinhala only language policy. It also revealed that the language policy would result in dividing the country. In June 1956, the FP staged a sit-down protest against the Official Language Act (Sinhala Only Act). It was organized at Galle Face Green on the principles of Satyagraha11, but organised Sinhalese mobs attacked the Satyagrahi's and injured many. This sort of organized violence was perpetrated against the Tamils in Colombo and Gal Oya in the eastern province.12

For the Tamils, the implication of the Sinhala Only Act was starkly clear. It amounted to the betrayal of the promises held out to them during the transfer of power...

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11 Satyagraha is a philosophy and practice of nonviolent resistance developed by Mohandas Karamchand Gandhi. Gandhi deployed Satyagraha in the Indian independence movement and during his earlier struggles in South Africa. The word Satyagraha is derived from two Sanskrit words 'Satya' which means truth and 'Aagraha' which means insistence or holding firmly to.
from the British in 1948. It meant that the Tamils would be at a great disadvantage economically, in future employment and eventually in professions as well. But more importantly, once the language became the determinant of national consciousness, there was in addition the threat to the integrity of the indigenous Tamils, and to their identity as a distinct ethnic group, in Sri Lanka. The Federal Party in April 1956, at a convention held in Trincomalee made a list of demands on behalf of the Tamils. The list consisted of regional autonomy for the northern and eastern provinces under a federal constitution; parity of status for the Sinhalese and Tamil languages and a satisfactory settlement with regard to the problem of the Indian origin Tamils. The Sinhalese on the other hand were alarmed by the implications of these demands put forward by the Tamils. The fact is that the Sinhalese always had a minority complex vis-à-vis the Tamils, though they are a majority in Sri Lanka, they felt encircled by more than 50 million Tamils of Tamilnadu in India. Though the Tamils of Sri Lanka showed no signs of developing links with the Tamils in Tamilnadu during the early years of independence, the Sinhalese always feared this possibility. The Federal Party’s campaign for federalism and the attempt to espouse the cause of the Indian origin Tamils in the country added substance to these fears and thus the programme of action outlined by the federal party in 1956 was regarded as having ominous long term dangers for Sri Lanka.\footnote{Silva, De, K. M. (ed.) (1964) ‘Discrimination in Sri Lanka’, in “Case Studies on Human Rights and Fundamental Freedoms”, 3(2): pp.552-53.}

To grant some of the demands of the Tamils and the Federal Party, a series of meetings were held between Bandaranaike and members of the cabinet representing the government on one side and S. J. V. Chelvanayakam and MPs of the Federal Party.
representing the Tamils on the other side. Discussions between the two groups led to an agreement called the Bandaranaike-Chelvanayakam Pact (B-C Pact) of 1957. Most important of the agreement in the Bandaranaike-Chelvanayakam Pact was that regional councils would be established in the Tamil areas, almost on the lines of those recommended by the Donoughmore Commission. According to the pact, the northern province was to constitute one regional council and the eastern province was to be divided into two or more councils. They were to be allowed to amalgamate even beyond provincial limits. The regional councils were to have wide powers over specified issues including agriculture, co-operatives, land and land development, colonization, education, health, industries and fisheries, housing and social services, electricity, water schemes and roads. With regard to colonisation and resettlement schemes, it was agreed that the regional councils would have the power to select those land which was to be resettled. The Federal Party on its part agreed to drop its demand for parity of status if (i) recognition of Tamil as the language of the national minority of Sri Lanka and (ii) Tamil would be the language of government administration in the northern and eastern provinces with provision for Sinhalese people in the region.

14 The Donoughmore Commission arrived in Sri Lanka in 1927 which was responsible for the creation of the Donoughmore Constitution. The Donoughmore Constitution was in effect in Sri Lanka during the period 1931-47. The British government through this commission introduced a form of communal representation which would enable a representation, to the Tamil community. Having noted that the island was facing power struggles between competing ethnic groups, it devised a system of executive committees that would control all government departments. The commission also rejected the principle of communal representation. Every parliamentarian in Sri Lanka would sit on one of these committees, ensuring that no one ethnic group could control all levers of power and patronage. Instead, all executive decisions would require a measure of consensus among the different ethnic representatives.

Tamil opposition to the Language Act led to the Tamil Language Special Provisions Act in 1958, which allowed applicants for civil services to take examinations in Tamil as long as they later developed proficiency in Sinhala. It also permitted the use of Tamil in higher education and allowed Tamil speaking bureaucrat's reasonable time to learn Sinhala. As soon as the contents of the B-C Pact were released, the forces of Sinhala only were up in arms to oppose it, along with the support of the United National Party. Bandaranaike could not even table the Bill in Parliament. On April 9, 1958, a group of Bhikkus (Buddhist Monks) staged a Satyagraha in the private residence of Bandaranaike in protest against the B-C Pact and Bandaranaike abrogated the pact dramatically by tearing it in front of the Bhikkus. Many observers found it difficult to understand the government's failure to implement the B-C Pact. The simple reason was that the Sinhalese-Buddhists were claiming the whole island for Sinhalese people and Buddhist religion. The Sinhalese were beginning to deny any legitimate place for anyone other than Sinhalese-Buddhists, and for any cause other than Sinhala-Buddhism. National-ethnic rights, national education, public and defense services and even business to serve Sinhala-Buddhism were their demands. Sri Lankan politics thereafter was a story of how this position turned into a different reality.

Abrogation of the B-C Pact led to inter ethnic tensions between the Sinhalese and Tamils, which led to the anti-Tamil riots of 1958. Certain conditions of the B-C Pact such as providing powers to the regional councils and recognition of Tamil as the language of administration in the northern and eastern provinces seemed to have led to the outbreak of

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violence. There were three phases of violence during the 1958 anti-Tamil riots in Sri Lanka. The first phase of violence was during May 22 to 25, in the north central province of Sri Lanka where Tamils attacked the security personnel. The second phase of violence was between May 25 to 26, in which Sinhalese attacked Tamils in Colombo, Kalutara, Matura and Badulla. The third phase of violence was because of rumors of Tamil atrocities against Sinhalese in Tamil areas, which led to extreme violence against Tamils in Sinhala areas. Governor General Sir Oliver Goonetileke declared a state of emergency on May 27, 1958, to quell the riots and detained prominent members of the Federal Party.¹⁹

Though the Sinhala Only Act allowed for English and Tamil to be used in government affairs or correspondence till 1960, opposition to this act led to the creation of the Language Special Provisions Act of 1958, but this act was not implemented till 1966. When the United National Party led government passed the Act, it provided for the use of Tamil as the language of correspondence between the government and Tamil-speaking people in the northern and eastern provinces of Sri Lanka. Although the Act was passed, it was never fully implemented. The leaders of Tamil United Liberation Front (TULF) challenged the United Front (UF) government and the United National Party to implement it. In 1972, the United Front government, which comprised of the Sri Lanka Freedom Party, Communist Party of Sri Lanka and Lanka Sama Samaj Party, promulgated the new Republican Constitution, which gave official status of the Sinhala language. When the United National Party came to power in 1978, it replaced the 1972 Constitution. The Tamil United Liberation Front again lobbied for equal status of the Tamil language in the 1978

Constitution. Although, the 1978 Constitution made Tamil as one of the official languages, it failed to provide equal status for the Tamil language. It was believed that these legislations were enacted to establish Sinhalese-Buddhist culture dominant in Sri Lanka which the Tamils perceived as a threat to their culture and identity in society.²⁰

The Federal Party, which sought to protect the interests of the Tamil community with regard to their culture, habits, customs, language and religion, felt threatened by the new development of policies made by the government. The Federal Party Since its first convention asserted that, the Tamil speaking people in Sri Lanka constituted a distinct nation. In this connection the Federal Party said that (i) the Tamils had a separate historical past in Sri Lanka atleast as early as that of the Sinhalese, (ii) the Tamils were a linguistic entity entirely different vis-à-vis the Sinhalese and (iii) the Tamils who lived in the north and east, constituted over one third of the Sri Lankan population. The Tamils also saw themselves as culturally different from the Sinhalese. The Federal Party’s response to the threat faced by the Tamils was to demand the creation of a linguistically based federal system similar to that of Switzerland, with small cantons representing the Tamil areas. The federal division of the country as demanded by the Federal Party was a direct response to the nationalistic policies of the Sinhalese majority. However, the Federal Party was not successful in achieving anything in favor of their demands. The promulgation of the new Constitution in 1972 by the United Front government also failed to address the Tamils’ demand for federalism. The Federal Party made efforts to unite all other Tamil parties in Sri Lanka such as All Ceylon Tamil Congress and formed Tamil United Liberation Front (TULF) in 1976. After the formation of the Tamil United Liberation Front, the demand for

federalism was replaced with the demand for the creation of an independent state of Tamil Eelam. At the TULF’s first convention on May 14, 1976, the party stated that:

“the Tamils of Sri Lanka by virtue of their language, religion, culture and their history of independent existence as a separate state over a distinct territory for several centuries till the advent of the British, by their will to exist as a separate entity themselves in their own territory are a distinct nation from the Sinhalese who are using the power they have wrongly usurped to deprive the Tamil nation of its territory, language, citizenship, economic life, opportunities in employment and education thereby destroying all the attributes of nationhood of the Tamil people. This convention resolves the restoration and reconstitution of the Free, Sovereign, Secular, Socialist state of Tamil Eelam. This has become inevitable in order to safeguard the very existence of the Tamil nation in this country”.\(^{21}\)

Thus, the demand of the Tamils for Federal autonomy in Sri Lanka gradually transformed into a demand for a separate state of Tamil Eelam. This growth seemed to have risen due to the deprivation faced by the Tamils under the Sinhalese leadership who sought to establish their (Sinhalese) dominance in the country. The demand for the separate state of Tamil Eelam developed due to the failure of the state to guarantee the legitimate rights of the Tamils in Sri Lanka.

**The Demand for Separate State of Tamil Eelam**

The manifesto of the Tamil united Liberation Front (TULF) for the general elections of 1977, sought a mandate from its voters for the creation of an independent, sovereign state of Tamil Eelam. Tamil Eelam constituted the traditional homeland of the Tamil speaking people in the country (the north and east). The TULF’s call in 1976, for an independent state of Tamil Eelam represented a shift from the struggle for equality to an

\(^{21}\) *Ibid*, pp. 175-93
assertion of freedom, from the demand for fundamental rights to the assertion of self-determination. When minority rights, which were incorporated in the Soulbury Constitution of Sri Lanka, prohibiting discriminatory legislation was undermined, and minority electoral representation staying below that envisioned at the time of independence, the Tamils felt that there was no other alternative other than the establishment of Tamil Eelam for the full realization of their rights. This became evident in the 1970's, when both the Sri Lanka Freedom Party (SLFP) and its allies and the United National Party were able to garner large Parliamentary majorities sufficient to marginalize the minority Tamils. Both the Sri Lanka Freedom Party in 1972 and United National Party (UNP) in 1978 being Parliamentary majorities ratified and enacted two constitutions without participation of the elected Tamil representatives, thus marginalizing the Tamils. Though the 1978 Constitution recognised Tamil as an official language, it was seen by the Tamils as less than their demands and they also had lost faith in the country's institutions, which had failed to address their earlier demands.\textsuperscript{22}

When the Tamil United Liberation Front altered the parameters of Tamil politics in Sri Lanka from federalism to a commitment to separatism and the promotion of a new Tamil state called Eelam, it was committed to achieve Tamil Eelam through Constitutional means and became the main opposition party in Sri Lankan Parliament after the general elections of 1977. In the early 1970s, rising unemployment among educated and qualified Tamil youth created an increasing disillusionment with mainstream politics and this group justified the demand for a separate state of Tamil Eelam through armed struggle. The

Federal Party and the Tamil United Liberation Front became increasingly unpopular among the Tamil youth because of the failure to achieve any of their demands through constitutional methods. As a result, in 1972, an extremist group of Tamil youth formed the Tamil New Tigers (TNT) in Jaffna peninsula. These boys had been radicalized while in jail on minor charges that arose from protests against various United Fronts (UF) governments' policies on education, language and culture that were perceived as discriminating against the Tamils. The TNT, which grew in size and strength, renamed the organization as the Liberation Tigers of Tamil Eelam (LTTE) on May 5, 1976. As the political process became more polarized under J. R. Jeyewardene, the violence of the LTTE also grew on the other hand. On May 22, 1978, the Sri Lankan government proscribed the LTTE and other similar organizations following the breakdown of law and order on the Jaffna peninsula. The LTTE responded to this by blowing an Air Lanka Aircraft on the runway in Colombo airport on September 7, 1979. The cycle of violence and counter violence escalated and on June 19, 1979, the government passed the Prevention of Terrorism Act (PTA) and declared a state of emergency in northern Sri Lanka.²³

The Prevention of Terrorism Act Number 48 of 1979 must be noted that it was a law made by the government to be applied only against the Tamils. The fact that this law was directed particularly against the Tamils is evident in the Preamble, which clearly states: “Public order continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change in Sri Lanka”. The Act declares that

grievances should be redressed by Constitutional means. On the contrary, the Tamils were not seeking any governmental change but they were seeking their national freedom that arose due to the failure of their efforts to get their rights in relation to language, religion, employment, citizenship and franchise. According to this law, the Minister-of-Defence can order the arrest of any person and detain him or her incommunicado without trial for 18 months.24 It also provided that such an order shall be final and shall not be called in question by any court or tribunal by way of writ or petition. There was also no remedy against torture or death during this long period in detention. No sooner was this act enacted; the President declared a state of emergency in the Tamil areas from July 11, 1979, and the Sri Lankan army was deployed in the north and east of Sri Lanka with orders to wipe out the terrorists demanding for a separate state of Tamil Eelam.25

Following these developments, the Tamil United Liberation Front negotiated an agreement with President J. R. Jeyewardene and a stop-gap solution was made which resulted in the creation of District Development Councils (DDCs) scheme in 1980-1981. The objectives of the DDCs were improvement of administrative efficiency at the district level, encouragement of people's participation in governance, and most importantly, diffusion of ethnic tension. In respect of the first two objectives, the system worked satisfactorily. However, even before the DDCs were implemented, the Tamil United Liberation Front had expressed its strong misgivings about it. The Tamil United Liberation Front said that in any case this system was not structured to promote decentralization of power. The Tamil United Liberation Front could not accept the DDC’s, because the

President of Sri Lanka and the government would be involved in matters relating to its policy formulation, implementation and funding. Further, since the whole idea was conceived within the framework of a unitary state and there was no feature of federal structure and this model offered to the Tamils was unacceptable.\footnote{Wickramasinghe, Nira. (2006) \textit{Sri Lanka in the Modern Age: A History of Contested Identities}. n. 7. p. 97-98.}

Following these developments in Sri Lanka, the country was rocked by anti-Tamil riots in July 1983, all efforts to resolve the ethnic conflict through Constitutional and political means came to a grinding halt. Anti-Tamil riots had taken place earlier also, but none matched the intensity of the 1983 riots in Sri Lanka. The ethnic conflict since then developed into warfare between the Government of Sri Lanka and the LTTE and other groups such as the Tamil Eelam Liberation Organization, Peoples Liberation Organization of Tamil Eelam, Eelam Peoples Revolutionary Liberation Front and Eelam Revolutionary Organization of Students.\footnote{Tambiah, Stanley, J. (1996) \textit{Leveling Crowds: Ethno Nationalist Conflicts and Collective Violence in South Asia}. California: University of California Press. p. 82.} During the 1983 anti-Tamil riots and the government’s warfare against the Tamil groups, it was noticed that many middle-class Tamils took asylum in western and European countries and started lobbying for protection of their rights.\footnote{Wilson, Jeyaratnam, A. (2000) \textit{Sri Lankan Tamil Nationalism: Its Origins and Developments in the 19th and 20th Centuries}. n. 8. pp. 122-23.}

Anton Balasingham, a leader and political ideologue of the LTTE explained the background of the development of the above situation. He stated, “plunged into despair of unemployed existence, frustrated without the possibility of higher education; angered by the imposition of the Sinhalese language, the Tamil youth realized that the redemption to
their plight lay in revolutionary politics, that should pave the way for a radical and fundamental transformation of their miserable conditions of mounting national oppression, the youth rightly perceived that armed struggle was the only means to achieve total independence of their nation".  

In this connection, to reiterate the governments stand towards the Tamil militant organization, President Jeyewardene brought about the Sixth Amendment to the Constitution of Sri Lanka in August 1983. This amendment required all members of the Parliament and government officials to take an oath for the protection of the Unitary Constitution of Sri Lanka. Thus, by one stroke of the legislative pen he forced all MPs belonging to the Tamil United Liberation Front out of Parliament since they refused to subscribe to the oath. The military arm of the Tamil resistance now secured a control of Tamil politics as they proved far more inflexible than the Tamil United Liberation Front who pursued Constitutional and political means to achieve the rights of the Tamils. The Tamil militants did not trust any Sinhalese led government because of the failure to make any concession for the Tamils through Constitutional means.  

Therefore, to solve the growing armed resistance by the Tamils, new round of talks began in July 8, 1985 in Thimpu, Bhutan. Talks between the Government of Sri Lanka, the Liberation Tigers of Tamil Eelam (LTTE), Eelam Peoples Revolutionary Liberation Front (EPRLF), Tamil Eelam Liberation Organization (TELO), Eelam Revolutionary Organization of Students (EROS) and the Tamil political party, Tamil United Liberation

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30 Ibid, pp. 139-40.
Front (TULF), took place during July 8-13 and August 12-17. The Sri Lankan Government came to Thimpu without any fresh proposals different from those discussed during the All Party Conference in 1984. During the talks, the Tamils presented four demands: (i) recognition of the Tamils as a distinct nationality; (ii) establishment of a homeland comprising the areas considered as the traditional homeland of the Tamils; (iii) the right of self-determination for the Tamil nation, and, (iv) the right to full citizenship of the Tamils living in Sri Lanka. The Tamils, in other words, demanded the creation of a single linguistic unit by merging the Tamil speaking areas of the north and east of Sri Lanka with greater devolution of power. However, the Talks failed due to the tough stands taken by both the LTTE and the Government of Sri Lanka. The Sri Lankan Government rejected all the demands made by the Tamils except for the issue regarding the right to full citizenship for the Tamils living in Sri Lanka. After the failure of the Talks, military pressure escalated against the Tamils because of the increased deployment of the armed forces in the northern and eastern provinces that were under the control of the LTTE. With the situation worsening, the Indian Government attempted to make a political solution and succeeded in committing the Sri Lankan Government to the principle of a provincial council that would provide legislative and executive powers for all the nine provinces in Sri Lanka. However, the Sri Lankan Government remained firmly opposed to the merger of the Tamil speaking areas of the north and the east of Sri Lanka. On the other hand, for any political settlement, the LTTE insisted on the acceptance or creation of a single region as the homeland of the Tamils by the Government of Sri Lanka. This demand was supported by other Tamil groups as well.

During the South Asian Association for Regional Cooperation (SAARC) Summit in 1985, following a meeting with Prime Minister, Rajiv Gandhi, President Jayewardene offered more concessions with the promise to trifurcate the existing eastern province into (i) a Tamil majority Batticaloa province, (ii) a Sinhala majority province in Trincomalee, and (iii) a Muslim majority province in Amparai. However, as no offer was made for the merger of the northern and eastern provinces as one unit, the LTTE considered the offer as inadequate. Nevertheless, a major objective of India’s mediation effort was achieved in the aftermath of the SAARC Summit through the consensus which emerged between Sri Lanka and India on December 19, 1985. In this regard, the Sri Lankan Government agreed to excise the Sinhalese people from the Amparai district of the eastern province to increase the percentage of the Tamils living in the region. Further, as per the proposal, institutional linkage was to be created between the northern and eastern provinces through establishment of a common University, a common planning commission and an inter-ministerial committee to co-ordinate the various functions of the commission. By 1987, Sri Lanka’s ethnic conflict had deteriorated into a dangerous situation as the Jayewardene government pursued its military option against the Tamil community. On January 1, 1987, the LTTE started carrying out its plan to take over the civil administration in the northern province which was already under its military control. This was seen by the Sri Lankan Government as a unilateral declaration of independence, and therefore, imposed a ban on the supply of fuel and other essential commodities to the Jaffna peninsula, and stepped up military action both in the north and the east of Sri Lanka in which more than 200 Tamil civilians were killed.32

Towards the end of May 1987, the army and LTTE engaged in fierce fighting in the Jaffna area. Several towns were brought under the control of the security forces which were earlier controlled by the LTTE. About 500 civilians were killed in the fighting for which the Sri Lankan Government claimed no responsibility. On the other hand the Government of Sri Lanka declared that Jaffna had to be captured and civilian casualties in the process cannot be avoided. This act of Sri Lanka which caused civilian casualties and hardships was severely condemned and criticized by India. Following this, on June 3, 1987, India sent food supplies and relief materials to the people of Jaffna in a flotilla of 19 boats flying Red Cross flag. However, Colombo rejected the supplies and blocked these boats from entering into the territorial waters of Sri Lanka. Condemning Colombo’s act, India sent five Indian Air force planes escorted by Mirage 2000 fighter jets and dropped food supplies and relief materials in and around Jaffna region. Sri Lanka termed this act of India as naked violation of its sovereignty and territorial integrity. However, Colombo lifted the six-month old economic embargo on Jaffna and ceased military operations. This served as a prelude to the Indo-Sri Lanka Accord of 1987.

India and Sri Lanka engaged in diplomatic negotiations regarding the solution of the ethnic conflict in Sri Lanka that resulted in the signing of the Indo-Sri Lankan Accord in Colombo on July 29, 1987 by Rajiv Gandhi and Jayewardene. The Indo-Sri Lankan Accord agreed upon four points: (i) an immediate ceasefire effective within 48 hours after the signing of the agreement, (ii) surrender of arms by the Tamil militants and withdrawal of the Sri Lankan army to its barracks within 72 hours of the ceasefire, (iii) combining of

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33 Ibid, pp.425-26
the northern and eastern provinces into a single administrative unit with an elected provincial council consisting of one Governor, one Chief Minister and a board of ministers, and, (iv) a referendum before December, 1988, in the eastern province to decide whether it should be merged with the northern province as a single administrative unit. It was also agreed that the Implementation of all the above mentioned points were to take place under the supervision of India. This agreement also included a commitment that India would assist Sri Lanka only on request in implementing its provisions. However, it should be noted here that this agreement was a bilateral one and it did not involve the Tamils in Sri Lanka. Although, the agreement was approved by the LTTE very reluctantly, it was bent on floundering the agreement on the slightest pretext. Finally, the LTTE declared war on the Indian Peace Keeping Force (IPKF) in October 1987, stating that it failed to protect Tamil lives from Sinhalese attacks.\(^{35}\)

The Indian Peace Keeping Force (IPKF) withdrew from Sri Lanka in March 1990. From the beginning of 1990, until June the same year, a defacto ceasefire existed between the Sri Lankan army and the Tamil Tigers. After the IPKF withdrew from Sri Lanka, the Sri Lankan army occupied the eastern province which was officially united with the northern province. While the northern province is virtually 100 percent Tamils, the east comprises of Tamils, Muslims and Sinhalese. The Sinhalese in the eastern province were largely settlers relocated by Sinhalese governments as part of the policy of colonisation. The Tamils see this as part of a conspiracy to deprive them of their homelands and for the Sinhalese it is simply part of a plan to settle landless Sinhalese peasants. In June 1990, it was alleged that the LTTE started killing Muslims in the eastern province presumably to drive them away. The Tamil Tigers claimed that they were not responsible for the killings,

but stated that the government used this as an excuse to start attacking the LTTE again. When the Sri Lankan government decided to attack the LTTE in the northern province it had to do so only through aerial bombing as the LTTE was in complete control of the region. These aerial bombings, which were intended to destroy LTTE bases, caused many civilian casualties. Although, the government dropped warning leaflets prior to its attacks, the civilians in the region had relatively short time to get out of their homes. Tamil sources claimed that because of this offensive attack by the government in the north, more than one million Tamils became homeless and refugees. As the war against the LTTE intensified in late 1990, civilian casualties also increased. The Tamil civilians who were previously anti-LTTE saw no choice but to support the Tigers. Expatriate Tamils all over the world who had earlier withdrawn their support to the LTTE now started to support it.^^

Because of the heavy destruction caused by the war, there was widespread national and international support for Norway's initiative in the late 1990s, to facilitate peace negotiations between the LTTE and the Sri Lankan Government. Although, the LTTE refused to surrender its arms and formally renounce Eelam, it did not affect the talks between the two parties. The government was of the opinion that the present time was a transitional phase in the politics of the Sri Lanka, and the situation would normalize with the creation of the provincial police force and the installation of new provincial government in the Tamil speaking areas. The LTTE, on the other hand, said that (i) the dissolution of the northeast provincial council, (ii) the holding of fresh elections for the council and (iii) the repeal of the Sixth Amendment to the Sri Lankan Constitution were prerequisites for it to enter the political mainstream and work towards the solution of the conflict in the island.

Although, the government seemed to have been favorably inclined to consider the repeal, it was constrained by virtue of the fact that it did not command the required two-thirds majority in Parliament. The Sri Lankan Government also felt that the repeal of the Sixth Amendment would result in the endorsement of the separate state by itself, which was contrary to the oath of allegiance to preserve the unity of the nation. The big question in Sri Lankan politics during the mid 1990s was why the LTTE refused to accept a negotiated solution when the government was willing grant concessions to the Tamils and end the conflict. It is said that the LTTE leadership did not accept a negotiated settlement to the Tamil problems at that period of time on the assumption that the Sri Lankan Government was luring them into a peace trap to weaken their morale as a militant organization.\(^{37}\)

What implies here is that the LTTE’s goal was not to achieve any form of federal solution to the ethnic conflict in Sri Lanka. Its ultimate goal was to achieve a separate sovereign, independent state of Eelam. It is also evident that the government on the other hand was willing to grant the Tamils of Sri Lanka a form of federalism within the unitary state structure of Sri Lanka, with an intention of bringing about a peaceful solution to the ethnic conflict.

Thereafter, fierce fighting continued between the LTTE and the Sri Lankan government forces. The LTTE won an impressive victory over the Elephant Pass in April 2000. After this, discussions took place between Prabhakaran the LTTE leader and Erik Solhiem, Norwegian Foreign Minister regarding the modalities of a ceasefire agreement.

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leading to negotiations between the LTTE and Sri Lankan Government. The LTTE initially proposed a temporary ceasefire on its own, which was to be followed by the evacuation of almost 35,000 Sri Lankan troops from Jaffna peninsula. The government rejected this demand of the LTTE. Following another meeting between the LTTE and Solhiem in November 2000, Prabhakaran agreed to a unilateral ceasefire from December 21, 2000. On April 2001, after the LTTE ended its unilateral ceasefire, the Sri Lankan military launched a major offensive attack to recapture the strategic Elephant Pass as this connects or links the Jaffna Peninsula to the southern mainland. The Tamil Tigers put up strong resistance against the attack in which the Sri Lankan army suffered heavy casualties. The LTTE then attacked the International Airport in Colombo destroying half of the fleet of Air Lanka and eight military fighter planes following which the government retaliated with air strikes against LTTE bases in the north. In the aftermath of these incidents, a no-confidence motion took place against the government headed by Chandrika Kumaratunga in June, 2001. Kumaratunga forged an alliance with Janatha Vaimukthi Peramuna and continued in power till October 2001. The President however, was forced to dissolve the Parliament later in December, 2001 and call for fresh elections. The elections of December 2001, resulted in a change of government and Ranil Wickramasinghe of the United National Front (UNF) became the President of Sri Lanka. The new government proposed peace negotiations with the LTTE and therefore, as a prelude ceasefire was observed for one month. The government also lifted the economic embargo on the LTTE controlled areas.

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The Norwegian sponsored peace process was again initiated following the ceasefire on February 23, 2002. Subsequently a Memorandum of Understanding (MOU) was signed between the LTTE and the Sri Lankan Government. As a result, the government lifted the economic embargo on the northern and eastern provinces and the major roadway (A9 highway) linking the north with central and southern Sri Lanka was opened by the LTTE after many years. Both sides agreed to abjure hostile and violent acts towards each other and to allow civilians to enter into their respective territories. The Government of Sri Lanka conceded control over the north and east to the LTTE and authorized the retention of arms and military bases in areas under its control. The Tigers were also allowed to open political offices and to carry out mobilizational works and political activities.

A major splash in the news was created when V. Prabhakaran, the leader of the LTTE, called for an international press conference at his jungle redoubt in Killinochchi, northern Sri Lanka. More than 250 domestic and international journalists attended the press conference called by the LTTE. This press conference served as the vehicle for the leader of the Tigers to present their views directly to the national and international communities and to reassert its objectives for the Sri Lankan Tamils. Prabhakaran, the LTTE leader, reiterated his continued commitment to the Thimpu principles, the right to nationhood of the Tamils, a homeland and self-determination. He demanded lifting of the ban on the LTTE by the Sri Lankan government before talks could begin and refused to abandon the demand for a separate state and all forms of violence until a satisfactory permanent solution.

39 Redoubt is a temporary or supplementary fortification, typically square or polygonal and without flanking defences.
was achieved. He also called the killing of Rajiv Gandhi, the former Prime Minister of India, as a tragic incident and called on the journalists to forget the past.40

Between February 2002 and April 2003, representatives of the LTTE and the Sri Lankan Government held several rounds of Norwegian facilitated peace talks aimed at resolving the ethnic conflict. However, slowness and the complex nature of negotiations coupled with contradictory signals emanating from both sides, the peace process was severely strained by 2003. In April 2003, the LTTE abruptly suspended the peace talks on ground that the resettlement of the displaced Muslims expelled by them would not be possible until the Sri Lankan army was withdrawn from the High Security Zones (HSZ) in Jaffna. The LTTE suspended the peace talks to use pressure tactics to win major concessions from the Government of Sri Lanka such as recognition of the sea tigers as a defacto naval unit. The Government of Sri Lanka on the other hand refused to grant such concessions as it posed a threat to the territorial integrity of the nation. The impasse continued and some feared a return to war as the LTTE did not show interest in toning down its demands. In early February 2004, President Kumaratunga called for fresh elections. The United People’s Freedom Alliance came to power after the elections and criticized the Norwegian-facilitated peace process for taking an undesirable turn and setting out a path for the establishment of a separate state.

In March 2004, a serious split in the LTTE’s main organization led by Prabhakaran in the northern region and its eastern unit led by Muralithatran alias Colonel Karuna was reported. It was reported that Karuna broke away from the LTTE because he alleged that

they (LTTE in the north) were ignoring the interests of the Tamils living in eastern province. On the other hand it was said that the real reason Karuna broke away was because the LTTE’s intelligence wing was closing in on him for alleged financial misappropriation and personal misconduct. As is its practice, the LTTE expelled Karuna and asked his forces to surrender to the LTTE in the north. Previous dealing with insubordination among its ranks, led most the fighters under the control of Karuna to surrender to the LTTE under Prabhakaran following which Karuna fled the region.

In an environment of ethnic polarization and political uncertainty, one cannot be optimistic that either the Sri Lankan Government or the LTTE will be making any kind of political compromise necessary for peace process. The most fundamental difficulty of Sri Lanka’s ethnic conflict is the deep distrust and contempt with which the Government of Sri Lanka and the LTTE view each other. From Colombo’s perspective, meaningful negotiations are possible only after the LTTE renounces its goal of achieving the separate state of Eelam. However, government sources believed that this was not possible as long as Prabhakaran remained its supreme leader.41

In the process of fierce fighting that took place between the LTTE and the Sri Lankan armed forces during 2008 till May 2009, which ultimately resulted in the defeat of the LTTE, many innocent civilians were killed and rendered homeless thereby causing human rights abuses.

According to Figure 2.1, the views expressed by the respondents revealed that there are human rights abuses in the Tamil areas of Sri Lanka. 68 percent of the respondents agreed to the fact that human rights abuses occur in the Tamil areas of Sri Lanka. 15 percent said that there are no human rights abuses while 17 percent did not know whether human rights abuses were committed in the region. Thus, according to the figure, it is clearly revealed that human rights abuses are committed in the Tamil areas of Sri Lanka.
Opinions expressed by the respondents revealed that the LTTE, Security forces, Police and Sri Lankan political parties such as Eelam Peoples Democratic Party and the Janatha Vaimukthi Peramuna were the main violators of human rights in the Tamil Areas of Sri Lanka. 37 percent of the respondents felt that it was the LTTE while another 32 percent said that the security forces were the main violators of human rights in the Tamil areas of Sri Lanka. Further, 27 percent of the respondents said that it was the police while the remaining 4 percent of the respondents felt that political parties such as Eelam Peoples Democratic Party and Janatha Vaimukthi Peramuna were the main violators of human rights in the Tamil areas of Sri Lanka.
Figure 4.3 revealed clearly the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 22 percent of the respondents said that the ethnic conflict between the Tamils and Sinhalese while 19 percent expressed that the demand for a separate state of Tamil Eelam were the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 16 percent of the respondents felt that it is the Prevention of Terrorism Act while the demand for the right of self-determination was expressed by 14 percent of the respondents. Failure of the government, armed forces and the police were stated by 11 percent and another 8 percent of the respondents felt that denial of fundamental rights to the Tamils as enshrined in the Constitution of Sri Lanka were factors responsible for human rights abuses in the Tamil areas of Sri Lanka. 6 percent of the
respondents expressed that Emergency Regulations was responsible for human rights abuses and the remaining 4 percent felt that it was economic sanctions imposed by the Government of Sri Lanka in Tamil areas as a factor responsible for human rights abuses in the Tamil areas of Sri Lanka.

Thus, we can understand that the ethnic conflict and the demand for separate state of Tamil Eelam are the major factors responsible for human rights abuses in the Tamil areas of Sri Lanka. It is also revealed that the ethnic conflict itself arose due to denial of the legitimate rights of the Tamils living in Sri Lanka after independence in 1948. This chapter revealed that after independence, the Sri Lankan state resorted to repression of its Tamil minorities by enacting legislation that favored the Sinhalese majority on issues relating to language, employment and education. When demands for equality made by the Tamils in Sri Lanka were meted out with violence, it gradually transformed into a demand for the creation of a separate state of Tamil Eelam. The demand for separate state of Tamil Eelam arose because the Sri Lankan state failed to address the demands for equality made by the Tamils in Sri Lanka. When efforts to achieve the legitimate rights of the Tamils failed through constitutional means, the Tamils felt that the only way to achieve their demands was through armed struggle. Thus, after the Tamils in Sri Lanka engaged in armed struggle, the Sri Lankan state tried to suppress these demands through military force which resulted in human rights abuses in the Tamil areas of Sri Lanka. This also suggests that human rights abuses occurred in the Tamil areas of Sri Lanka due to the sphere of violence. Sphere of violence in this context suggests that the Sri Lankan state after independence enacted legislation which denied the rights of the Tamils which resulted in the ethnic conflict
between the Sinhalese and the Tamils in Sri Lanka. The ethnic conflict gradually turned into the demand for separate state of Tamil Eelam through armed struggle headed by the LTTE. To the demand of Separate state of Tamil Eelam, the Sri Lankan state responded through military means which led to the ultimate defeat of the LTTE in May 2009, which resulted in various forms of human rights abuses in the Tamil areas of Sri Lanka.

Further, it is revealed that legislations such as the Prevention of Terrorism Act and the Emergency Regulations enacted to suppress the armed rebellion of the Tamils were factors responsible for human rights abuses in the Tamil areas of Sri Lanka. These legislations enabled the security forces to evade accountability and continue to abuse human rights of the people living in the region. Complete disregard by both the parties for human rights abuses is also another factor. People’s unawareness of the rights guaranteed is also a factor responsible for violations of human rights.\footnote{Based on interviews conducted in Sri Lanka between 27/09/08- 26/10/08.}