CHAPTER – II

STATE AND HUMAN RIGHTS ABUSES
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Increasing international attention for the protection and promotion of human rights has brought about greater concern for the better treatment of nationals within the territory of a sovereign state. It is argued that when the treatment of nationals within one’s territory assumes brutal forms, it constitutes mass and flagrant violations of human rights on a scale which shocks the conscience of mankind, the matter then ceases to be the sole concern of the state or nation. This is a very important principle now universally accepted. In this background, no state can say that citizens of other nations do not have the right to voice concern in matters concerning human rights violations within its borders. Therefore, in order to preserve the respect of the international community and also avoid external intervention in various forms such as legal, moral and even force, every state should be deeply conscious of the way in which it treats its citizens, to preserve the respect of the international community and also avoid intervention in various forms such as legal, moral and even force from other states.¹

After its independence in 1948, Sri Lanka, witnessed a fundamental shift in its political order with violence perpetrated against the Tamil minorities. In Sri Lanka, institutional arrangements of the democratic state have survived many political conflicts and tensions, yet it no longer rests on the social consensus or social contract that was

negotiated and re-negotiated in the aftermath of independence. In carrying out its policies to suppress the demands of the Tamils for the creation of a separate state of Tamil Eelam, the Government of Sri Lanka (GOSL) increased the deployment of the military with the mandate to fight counter insurgency wars in the northern and eastern provinces.\(^2\) The state also enacted legislations such as the Prevention of Terrorism Act and the Emergency Regulations that has resulted in the increasing human rights violations in the region.\(^3\)

**Charges of Human Rights Abuses Against the State**

Allegations of various human rights abuses are leveled against the state by the local and international community, various non-governmental organizations (both international and local). The state is charged of committing various human rights abuses against the minorities like the Tamils in the northern and eastern provinces of Sri Lanka. The human rights abuses are committed by the state security forces, police and the Special Task Force (STF). These human rights violations have been evidenced by the reports of mass graves, torture chambers, illegal detention centers, testimonies from families of thousands of missing persons and through the government's goal of removing political opposition that appeared in the form of militancy by the minority Tamils. Crimes against humanity as enumerated in international instruments include murder, torture, enforced disappearances, extermination, arbitrary imprisonment, and persecution on political grounds.\(^4\) In Sri Lanka, there were violations of human rights in the context of mounting


\(^3\) *Ibid*, p. 121.

demands for greater autonomy and the establishment of a separate state of Tamil Eelam by the Tamil community and the armed militant group namely the Liberation Tigers of Tamil Eelam (LTTE), who predominantly live in the northern and eastern provinces of Sri Lanka. These violations range from discrimination, repressive legislation, arbitrary arrests, extra-judicial killings, political killings, physical torture, involuntary disappearances or forced disappearances, keeping the arrested incommunicado without trial for long periods, genocide, impunity, etc.

**Discrimination**

Soon after independence, the Government of Sri Lanka enacted two legislations namely, The Citizenship Act of 1948 and The Ceylon Parliamentary Elections Act No. 3 of 1949. These Acts denied citizenship and the right to franchise to more than one million Indian origin Tamils. The Indian origin Tamils are those people who were taken by the British to Sri Lanka as plantation workers from 1837 onwards. Following these acts, in 1956, the Sri Lanka Freedom Party (SLFP) led by S. W. R. D. Bandaranaike enacted the Official Languages Act which made Sinhala the only Official Language. According to this act, all official correspondence was to be made in Sinhala only. All those who were employed in the government services had to learn Sinhala and pass a proficiency test failing which they had to face dismissal. Relegating Tamil to a lower status offended the Tamils and inflamed their feelings. The ethnic riots of 1956, 1958, 1977 and the holocaust

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of 1983 which caused genocide against the Tamils in the country can be attributed as the consequences of the Official Languages Act of 1956. The Act disabled the Tamils to use their mother tongue in their day to day affairs with the state. The Tamils protested against the Act on the fear that it would affect education and employment privileges. This protest led to the signing of the Bandaranaike-Chelvanayakam Pact on July 26, 1957. However, Bandaranaike, the then Prime Minister, abrogated the pact following protests from the Buddhist clergy. Following the abrogation of the Bandaranaike-Chelvanayakam Pact, the Tamils staged a Satyagraha which resulted in violence perpetrated against the Tamils by organized Sinhalese mobs. This was followed by anti-Tamil riots in 1958, where 350 (mostly Tamils) persons were killed. As a result, Bandaranaike was willing to offer some concessions to the Tamils regarding the use of their language in official matters. This angered the Sinhalese-Buddhist which led to the assassination of Bandaranaike in 1959. After Bandaranaike’s assassination, his wife Sirimavo Bandaranaike led the United Front (UF) Government and enacted the standardization policy in 1971. This policy provided undue privileges to the Sinhalese students for higher education without high percentage as compared to the Tamils.

As many of the policies and legislations of the successive Government of Sri Lanka did not seem to favour the interest and demands of the Tamils, the Tamil leadership

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2 Satyagraha is a philosophy and practice of nonviolent resistance developed by Mohandas Karamchand Gandhi. Gandhi deployed Satyagraha in the Indian independence movement and also during his earlier struggles in South Africa. The word Satyagraha is derived from two Sanskrit words ‘Satya’ which means truth and ‘Agraha’ which means insistence or holding firmly to.
under the banner of the Tamil United Liberation Front (TULF)\(^{11}\) at the Vaddukkoddai Convention resolved to fight for the restoration and reconstitution of the free, sovereign, secular, socialist state of Tamil Eelam based on the right of self-determination. The TULF stated that this demand has become inevitable in order to safeguard the very existence of the Tamil people in Sri Lanka. On the other hand, Sinhalese dominated Sri Lankan Government made the Sixth Amendment (1983) according to which all members of Parliament were to take oath denouncing the support of demand on separate state failing which they would forfeit their seats in the Parliament. So, as none of the Tamils Members of Parliament complied with this amendment, they all lost their seats in the Parliament. This completely weakened the political realm of the Tamils in the politics of Sri Lanka.\(^ {12}\)

The Tamil youth, who suffered most due to the Language Act and standardization policy enacted by the Sri Lankan Government, became frustrated at the inability of the Tamil political leadership to get their grievances redressed. Hence, the Tamil youth thought that armed struggle was the only way to achieve the separate state of Tamil Eelam in the mid 1970’s. The states response to the demand was to adopt a firm stand to curb militancy of the Tamil groups.\(^ {13}\) The government enacted legislations to crush Tamil militancy that had arisen due to the states discriminatory attitudes towards the minorities (Tamils). These legislations are the Prevention of Terrorism Act (PTA) of 1979 and

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\(^{11}\) On May 4, 1972 several Tamil political groups, including the All Ceylon Tamil Congress, formed the Tamil United Front (TUF). The Tamil United front changed its name to the Tamil United Liberation Front (TULF) after the Federal Party joined them in 1976.


Emergency Regulations which were enacted under the Public Security Ordinance (PSO of 1947). These acts or legislations were enacted to counter militancy.

The Sri Lankan Government claimed to have enacted the Prevention of Terrorism Act 1979 (PTA) and the Emergency Regulations 1989 (ER) under the Public Security Ordinance of 1947 (PSO), to curb militancy and preserve the integrity of the country. On the contrary, these Acts provide the security forces unlimited powers in its operations against the Tamil militants. The Prevention of Terrorism Act and Emergency Regulations enabled the security forces to use violence with maximum possible immunity. In the past, the number of incommunicado detentions increased phenomenally and there have been reports of maltreatment, torture, deaths due to torture, disappearances, of those who were detained under these draconian laws. These Acts alienated the Tamils in the north and east and also consequently increased militant activity which received strong support from the public. Under the Prevention of Terrorism Act and Emergency Regulations, the security forces have extensive powers to arrest suspected opponents of the government and detain them incommunicado without charge or trial for long periods. It is reported that in these conditions, deaths in custody, enforced disappearances, torture, summary executions, extra judicial killings, etc., were committed frequently. On the other hand, the Emergency Regulations permit the security forces to dispose dead bodies without post-mortem or inquest, thereby enabling the security forces to cover up their unlawful activities and deliberate killing of innocent Tamil civilians. Under these acts any person could be arrested and detained merely on suspicion. Those arrested could be detained without

charge or trial for a period of 18 months incommunicado. In case of death in custody, the Emergency Regulations permit the disposal of dead bodies without inquest or post mortem, to the security forces. Apparently, since the enactment of these two acts there have been reports of thousands of disappearances, extra judicial killings, torture, murder and other forms of human rights violations. In the following paragraphs, a brief discussion of the Prevention of Terrorism Act No. 48 of 1979 of Sri Lanka is made to show the various forms of human rights abuses which are committed by the security agencies through this act.

Prevention of Terrorism Act No 48 of 1979 of Sri Lanka

The Prevention of Terrorism Act in Sri Lanka has been seen to have violated international human rights standards. As stated in the preamble to the Sri Lankan Prevention of Terrorism Act of 1979, it was enacted to prevent acts of terrorism and the prevention of unlawful activities by an individual or group of individuals, associations, organizations, or body of persons within or outside Sri Lanka. The Preamble to the Prevention of Terrorism Act further states that, it was enacted to prevent the use of force or the commission of crime as a means of or as an aid in, accomplishing governmental change within Sri Lanka. The Tamils on the other hand did not want governmental change, but they demanded a separate state based on the principle of self-determination. The provisions of the Prevention of Terrorism Act was enacted to suppress the demand of separate state by Tamils, who failed to receive any concessions from the government by

\[15\] Ibid, p. 3
\[16\] The Prevention of Terrorism Act No. 48 of 1979, Sri Lanka.
Constitutional means since the independence of Sri Lanka in 1948.\textsuperscript{17} While the Sri Lankan Constitution and its legal system contain some fair trial safeguards, the PTA and its practices associated with it fall short of those safeguards although the Sri Lankan state is committed to the International Convention on Civil and Political Rights (ICCPR) as a state. Some of the major violations which occurred under Prevention of Terrorism Act are briefly outlined as follows:

The PTA violates the individual’s right to have a fair and public trial. The right to a fair and public trial is a basic human right, non-observance of which undermines all other human rights. Articles 9 and 14 of the ICCPR guarantee these rights. The concept of a fair trial is relevant in the context of Sri Lanka because many have been arrested, tried and sentenced to long terms in jail under the PTA. Under the PTA many were arrested on grounds of suspicion of being an LTTE member, supporting it or failing to give information to the state about the organization. The provisions of the PTA created a new type of offence where, if an individual fails to give information when asked for by the security personnel or the police, he or she would be arrested.

The provisions under PTA allow arrest of any person without warrant. Any police officer authorized by the superintendent of police in writing can arrest, enter and search any person, in any place, stop, search any person or persons traveling in any vehicle, seize any document connected with any unlawful activity without a warrant issued by a magistrate. The Criminal Procedure Code (CPC) states that arrest could be made only

after the authorization of a magistrate. It also states that the arrested should be produced before the magistrate within 24 hours of arrest, but the PTA permits continued detention of any person for a period of 72 hours and thereafter to be kept in administrative detention under the order made by the Minister-in-Charge of Defense upto a maximum of 18 months, which could be followed by remand till conclusion of trial. The detention may be in any place as determined by the Minister-in-Charge of Defense and not necessarily in a prison. Under the PTA, a detainee need not be informed of the reasons or a copy of the detention order is not given at the time of arrest. It is only when a person is produced before a high court that a copy of the indictment will be served, that he or she comes to know the reasons for the arrest.

The right to the access of a legal council is severely restricted and is also not guaranteed in Sri Lanka. The state does not provide pre-trial aid to those detained under PTA before indictment. This is due to the fact that if an individual is arrested under the PTA he or she is not allowed to contact or meet any of his or her relatives or consult a lawyer before being produced in a court of law. This hampers pre-trial aid to the prisoner completely.

Confessions made by those detained are usually obtained through physical torture. After obtaining confession the detained person is taken to a District Medical Officer (DMO) who completes the medical examination form supplied by the police where evidence of physical torture is ignored in the medical report. Such medical reports are produced in the court to show that the detainee’s confession was not obtained through
torture and that it was voluntary. The Criminal Procedure Code prohibits subjecting a detainee to medical examination without his or her consent. These medical reports have been dismissed by the courts in many cases on the grounds that they cannot be true. To quote Nesaraja Sivakumar vs. Officer Incharge in Thirukkovil five medical reports were dismissed by the court and subsequent medical examination was conducted on the court's orders which revealed 16 injuries for which the compensation was awarded for torture. But according to section 16 of the PTA, any confession is prima facie evidence and the burden of proving that the confession was obtained through torture lies on the suspect.\(^\text{18}\)

**Emergency Regulations**

All successive governments that came to power in post–independent Sri Lanka followed a policy of gradually curtailing the democratic rights of the people. Under the Public Security Ordinance the President of Sri Lanka is empowered to declare a state of emergency and thereby bringing Emergency Regulations into force through gazette notification. When Emergency Regulations are passed by the Parliament it overrides even fundamental rights that are guaranteed in the Sri Lankan Constitution. Through Emergency Regulations the President is empowered to enforce new laws, create new offences and enhance punishments. Under Emergency Regulations public meetings, strikes, picketing, demonstrations are banned and elections can also be postponed.\(^\text{19}\)

\(^{18}\) *Ibid*, pp. 23-24

Under section 5 of the Public Security Ordinance the Sri Lankan Government enacted the Emergency Regulations. Under these regulations any police officer authorized by the Assistant Superintendent of Police can take possession of and bury or cremate the dead body of any person who died in custody. Section 55 FF(1) of Emergency Regulations states that if anyone obstructs a police officer while taking possession of and burying or cremating a dead person, he or she can be arrested. It also provides that it shall not be necessary for any police officer to comply with other provisions relating to inquest of death or post mortem while burying or cremating a dead body.\textsuperscript{20}

Emergency (Restriction on Transport of Articles) Regulations No. 1 of 1991, places restrictions on transportation of specific articles to the northern and eastern provinces. There are as many as 50 articles listed in the regulations which are considered capable of being used in a manner harmful to national security. Some of them include any type of fuel including coal, wax, candles, toy guns, motor cycles, timber, empty jute bags, medicine, soya based food, sweets, confectionery, etc.\textsuperscript{21} Any person found in possession of the articles mentioned in the regulations could be arrested and detained in police custody under the PTA as a preventive measure of curbing terrorism. But on the other hand, these articles are basic essential items which are used in day to day life of any individual or person. For example, if fuel is restricted it hampers cooking, transport, industry, etc.

\textsuperscript{21} Emergency (Restriction on Transport of Articles) Regulations No. 1 of 1991.
Sri Lankan Government promulgated the Prevention of Terrorism Act and Emergency Regulations to suppress the demand for separate state of Tamil Eelam, but there are reports which state that these acts actually perpetrate gross human rights violations. These legislations namely the Prevention of Terrorism Act and the Emergency Regulations stand contrary to the ICCPR. Articles 9, 12, 14, 19, 21, 22 and 25 of the ICCPR, provide or guarantee the rights to liberty and security of a person and the freedom from arbitrary arrest and detention, freedom of movement and choice of residence, the right to a fair trial and the right to legal defense, freedom of opinion and expression, the right of assembly and associations and the right to take part in public affairs. The Sri Lankan Prevention of Terrorism Act and the Emergency Regulations derogates many of the rights to which Sri Lanka is bound as a state party to the ICCPR. Both the PTA and the ER are considered as repressive legislation as it denies most of the rights guaranteed in the ICCPR. These violations occur in the context of the states response to the growing militancy or rebellion of the LTTE which demanded a separate state of Tamil Eelam. Arbitrary arrests, detentions, torture, disappearances, extra-judicial killings, rape, intimidation are the major forms of violations which arise due to these legislations promulgated to curb militancy.

Disappearances

The term disappearance is used when there are reasonable grounds to believe that a person was arrested and authorities deny that the person is in their custody. A disappearance may be resolved by the authorities acknowledging a person’s detention or

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by the detainee's release. People who have disappeared may well have been victims of violent, often illegal arrest or arbitrary arrest, torture, unacknowledged detention and at worst, may have died due to torture while in secret detention. Such cases of disappearances clearly violate international law, as it denies or does not guarantee the right to security of a person. The right not to be subjected to arbitrary arrest and detention and the right to an effective remedy against violation of fundamental rights are provided in Articles 3, 9 and 8 of the Universal Declaration of Human Rights (UDHR) and Articles 2 and 9 of the ICCPR. The UN Commission on Human Rights expressed concern at the anguish and sorrow of the families concerned, who should know the fate of their relatives. However, a person's disappearance may have been through torture resulting in death while in custody and the dead body disposed off under provisions in the Emergency Regulations. This is a violation of the rights provided in Articles 3 and 5 of the UDHR and Articles 6 and 7 of the ICCPR which state that the rights to life and not to be tortured are absolute rights. These rights are absolute from which no state shall derogate even during emergency as stated in Article 4 of the ICCPR.23

Enforced disappearances is said to have occurred while countering demands for autonomy and the establishment of separate state by the LTTE, who live in the northern and eastern provinces of Sri Lanka.24 Human rights agencies such as the Human Rights Watch, the Amnesty International, and the Asian Human Rights Commission have alleged that abductions, arbitrary arrests by the government security forces, death squads, and government militias were responsible for thousands of disappearances of persons in the

24 Ibid, p. 11.
north and the east since the 1980s. According to the reports of Amnesty International, the government set up three commissions of inquiry to look into the human rights violations which had occurred since 1988. These commissions had reportedly received information on approximately 30,000 cases of disappearances.\(^{25}\) It was also reported that most of the disappeared belonged to the Tamil community in the north and east except for the youth belonging to the Sinhala community in the south during the Janatha Vaimukthi Peramuna (JVP) insurgency.

The disappearance of tens of thousands of people in Sri Lanka was committed by the government to suppress the demands made by the Tamils for the creation of a separate state of Tamil Eelam. The victims may not have been involved with the armed group, but attending a meeting, or even reading a book, related to the liberation movement of the Tamils were sufficient reason to be targeted for enforced disappearances and extra-judicial killings. Most of the victims were reportedly persons who were arbitrarily arrested, detained, tortured and eventually killed and were not in any way involved with the liberation movements. Some of the victims included members of political parties and many were also children.\(^{26}\) The most frequently used method of detention which resulted in the disappearances of thousands of people in the north and east was through cordon and search operations in which the army, often in conjunction with the police, particularly the Special Task Force (STF), went into a village or a rural area and detained scores of persons. Many of them would be released within 24 to 48 hours, but some persons would


be detained for questioning or interrogation which eventually led to their disappearances and most of them feared dead. In the Jaffna peninsula the highest number of disappearances occurred in 1996 when the security forces regained control over the region from the Liberation Tigers of Tamil Eelam (LTTE).27

Since 1985, cases of disappearances were reported particularly from the northern and eastern provinces where the Special Task Force operates. In many of these cases, although the officials did not deny arrest or detention, relatives of the detainee were denied access, stating that he or she had been transferred to other detention camps. However, when relatives of the detainee tried to find the detained at various camps to which the officials had referred, that he or she had been taken, those camps denied saying that the person was not there. The following statement is one of the testimonies of a mother whose son disappeared after being arrested by the Special Task Force at Karaithivu in the eastern province:

"...on hearing of his arrest I rushed to the Karaithivu junction where I was told that he was being detained. When I reached the junction I saw a truck and three army vehicles going away ...A woman who was standing at the junction informed me that her son-in-law and my son were being taken away in a truck by the Special Task Force. I and the other lady got into a bus and followed the Special Task Force Vehicle. We saw the STF vehicle halted at the Kalmunai hospital. We saw my son in the truck he was wearing a trouser and was bare bodied. His shirt was tied covering his eyes. On seeing my son we raised cries. An officer in the truck pointed his gun at us. The driver of the STF vehicle then drove off. We then went to the Kaluwanchikudy camp where we saw the Special Task Force vehicle came a little later than us and drove into the camp. My son was taken from the vehicle into the camp.

When I went to the camp one week later and made enquiries for my son, I was told that he would be released. I went again to the camp after a few days, I was told that he had been sent to fill up and transport sand bags after which he would be released. When I went to the camp again the next day, I was told that he had been sent to the Kallady camp. So I went to the Kallady camp where I was told that he had been transferred to Colombo. I complained to the Ministry of National Security but received no communication. I complained to the Committee to Monitor the Cessation of Hostilities who acknowledged the receipt of my letter but I received no further communication. Inspite of my several attempts the authorities are refusing to disclose the whereabouts of my son…”

In other cases, officials initially confirmed that a person had been detained, but subsequently gave false information about where he was being held and later denied that he was arrested. Disappearances in the north and east of Sri Lanka are basically a result of the provisions in the Prevention of Terrorism Act and Emergency Regulations. These regions have been ruled under Emergency Regulations continuously, which allows arrest without warrant on mere suspicion. People from Jaffna state that being a Tamil is sufficient reason to be arrested. According to the annual report of Human Rights Commission of Sri Lanka (1999), about 350 persons had disappeared in the year 1999 alone. The list of disappeared include school children, University students, government servants and house wives. The majority of those disappeared were males. Usually men are suspected to be members of the LTTE or other Tamil militant groups. In the north and east of Sri Lanka, disappearances occurred due to security and political reasons, especially in

29 Ibid, p. 16.
times of confrontation between the LTTE and the security forces. During such confrontation, civilians are arrested on suspicion or by citing security reasons.\(^{30}\)

According to the reports of Amnesty International (2001), enforced disappearances continued to occur in Vavuniya, Batticaloa, Jaffna, Mannar, and Trincomalee in the year 2000.\(^{31}\) Reports from the Human Rights Commission of Sri Lanka also provide evidence that there were disappearances of persons even after the Ceasefire Agreement (CFA, 2002) between the Government of Sri Lanka and the LTTE. Reports of various NGOs in Sri Lanka, such as Information Monitor (INFORM) also state that enforced disappearances were common throughout the ceasefire period. After resumption of war against the LTTE in the north in 2008, reports of the United Nations High Commissioner for Refugees, Amnesty International, Human Rights Watch and various Human Rights International Non-Governmental Organizations (HRINGOs) and local Human Rights Non-Governmental Organizations (HRNGOs), have expressed concern over enforced disappearances in the Tamil areas for which there has been no accountability. Many countries in the South Asian region have also expressed concern over the frequent occurrences of enforced disappearances.

Disappearance, which forms the basis of a charge of human rights violation against the Government of Sri Lanka, is a crime against humanity. Crimes against humanity are defined in many international instruments which include the Resolution on Rwanda, the

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Statute of the International Criminal Court and the Draft Code of Crimes Against the Peace and Security of Mankind. The Definition of the International Criminal Court on enforced disappearance states that:

“The arrest, detention or abduction of persons by or with the authorization, support or acquiescence of, a state or political organization, followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of law for a prolonged period of time”.

Enforced disappearances in Sri Lanka clearly go in line with the above mentioned definition. In the Tamil areas of Sri Lanka many who were abducted and detained, or arrested for questioning were said to have disappeared. The police and government officials always refused to give information relating to detention or arrest to the families of those persons disappeared. State sponsoring of enforced disappearances can be considered as one of the worst forms of human rights abuses as it is very difficult to find definite ways of getting redress. Experiences in a number of countries suggest that it is almost impossible to get any legal redress for mass disappearances caused by state agencies. State leaders can claim impunity for actions done as heads of state. State officials often possess vital evidence concerning events leading to disappearances and are protected from any actions arising from their refusal to co-operate in investigating cases of disappearances. There is also no prosecutor empowered to try offences committed by the leaders of the state and state officers acting on their behalf. Such are the formidable

33 Ibid, p. 9.
obstacles faced by family members of victims of disappearances and others who try to help them. Although, various human rights organizations, both national and international, have made efforts to condemn disappearances, the state agencies responsible for such acts seem to have paid no attention. Although the number of disappearances in countries like Sri Lanka is horrendous, obtaining legal redress remains a major hurdle.34

Reports of various human rights organizations both at local and international levels state that thousands of people have disappeared from the region. But in reality it is feared that the estimates figured in these reports are much lesser than the actual number of people disappeared. This could be mainly because of the fact that many of the families of those disappeared do not report to the police or any other concerned officials either due to the fear of repercussions they might face from the authorities or the agency or group which had actually caused the disappearance. Also, it is reported that such complaints to any government authority or agency does not provide any useful information with regard to the status of people whether they are alive or dead. A statement by the Asian Human Rights Commission on disappearances states that disappearances in Sri Lanka are a legal construct. Human rights groups also allege that the Government of Sri Lanka is not taking effective measures to prevent abductions and disappearances in the Tamil areas of Sri Lanka.35

Faced with mounting pressure from various international and national human rights organizations in Sri Lanka, the Government of Sri Lanka appointed a Presidential

Commission to investigate abductions, disappearances and killings. But the family members and relatives of the disappeared are of the view that such moves made by the government would not yield any good result. They also believe that it would not minimize the occurrence of disappearance. Mano Ganesan, the first runner up of the U. S. Human Rights Award (2007 Freedom Defenders Award), states that although seven commissions were setup to investigate into such disappearances, but no positive result so far has been reported. When a group of relatives of the disappeared were taken to meet President Rajapakse, they returned disappointed and distressed. One among the group said that the President spoke the following:

"We have not abducted anybody and we have no need to abduct anybody. These allegations are made to soil the name of the government. Having concealed your daughter and son-in-law, you now say that they have disappeared. They may be in Germany or France, go and find them there".

The above statement made by the President of Sri Lanka shows, that the government is not concerned about the issue of enforced disappearances. The issue of disappearances and extra-judicial killings, in many respects, also provides an important window into many facets of the overall human rights violations in Sri Lanka. They are

36 The Presidential Commission to investigate abductions, disappearances and killings was appointed by the President of Sri Lanka, to inquire and report on matters related to (i) allegations about the involuntary removal of persons from their residences, or the disappearance of persons from their residences, (ii) to establish evidence on such alleged removals or disappearances, (iii) reveal whereabouts of the persons alleged to have been so removed or to have so, (iv) ascertain whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances, (v) suggest legal proceedings that can be taken against the persons found to be responsible for such disappearances, (vi) provide relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have disappeared.

symptomatic of the widespread use of torture and the failure of the government to take effective measures to prevent such violations committed by the security forces and the police.\textsuperscript{38}

**Torture**

Torture is an enabled tool in the Sri Lankan Government’s war against terror. As per various reports, tens of thousands of people have been tortured and killed in Sri Lanka since 1975. Laws such as the Prevention of Terrorism Act, Emergency Regulations, and the Indemnity Act empower the Sri Lankan armed forces and other security personnel to arrest without warrant, detain without basic legal safeguards and dispose dead bodies without inquest. Innumerable cases of torture have been reported and recorded by various human rights organizations which have been summarily dismissed by the Government of Sri Lanka.\textsuperscript{39} Various reports show that young Tamil men were subjected to systematic torture and subsequently killed by the security forces after arrests. It is also reported that the security forces covered such killings as encounters with terrorists.\textsuperscript{40}

Reports of Amnesty International talk about torture in army camps in the north including Vavuniya, Palaly, Elephant Pass and Point Pedro. These reports also state that young men were subjected to torture by the Special Task Force in the eastern province.\textsuperscript{41}

There were instances as per the reports wherein the innocent people arrested by the


security forces succumb to torture. Many who survived are reported to have developed neuro-psychological problems, depression, permanent physical disability and various other complications following their release from custody (after being tortured). Most of the victims range from the age group of 14 years and above. Torture is being used on those detained to extract information about LTTE. In most cases, those tortured are innocent civilians who could be working as coolies (daily wage workers), mechanics, farmers, etc.42

Although the Constitution of Sri Lanka has provisions for the prevention of torture, it is reportedly widespread in the Tamil areas of Sri Lanka. The high number of indictments for torture filed by the Attorney General’s (AG) Office, the number of successful fundamental rights cases decided by the Supreme Court and the high number of complaints received by the Human Rights Commission of Sri Lanka suggest or indicate that torture is widely practiced in Sri Lanka. The practice of torture has become routine in the context of counter-terrorism operations.43 Some of the extreme methods of torture are listed as follows:

- Verbal abuse.
- Handcuffing and suspending from the rafters in the roof.
- Beating with wooden sticks, coconut leaf stem, S-Lon pipes, PVC pipes filled with sand or stone, electrical wires etc.

42 Based on an interview with a Professor from the University of Colombo on 03/10/08, in Colombo.
• Repeated beatings in the genitals.
• Assault on elbows, shoulders, knees, ankles with batons.
• Burning with cigarettes.
• Burning with cigarettes on genitals.
• Pulling the penis and scrotum forcefully and squeezing them.
• Suspended upside down and beaten with iron rods on the soles of the feet and buttocks particularly and all over the body.
• Burning with the red hot iron.
• Asphyxiation with plastic bags, bags containing petrol, chilly.
• Head shaved and suspended upside down with burning chilies underneath the head.
• Applying electric shocks especially to the genitals.
• Suspension with the thumbs of legs or hands.
• Insertions with metal rods in the rectum.
• Beatings with blunt weapons.
• Beatings on the head with iron rods, wooden planks.
• Inserting S-Lon pipes into the rectum after which a barbed wire would be inserted and the S-Lon pipe removed and the barbed wire pulled out of the rectum.
• Inserting S-Lon pipes into the rectum and chilli powder introduced through the pipe.
• Vaginal insertions with any hard material which include even rusted iron pipes, rods.
• Vaginal insertions with plantain flower.
- Rape, sometimes raped by a group of men continuously (5-10).
- Molestation.
- Parading naked.
- Slapping on cheeks, ears.
- Forcing to remove clothes and paraded.
- Kicks to the chest and abdomen.
- Cut with razor blade.
- Forcing to kiss dead stray dog.
- Strangling.
- Piercing all over the body particularly under the nails of fingers, genitals and on nipples.
- Stabbings with any sharp object.
- Mock executions.
- Shot with gun.
- Peeling the skin off the body.

Many of these methods of torture as mentioned are used on those in custody by the security forces and the police to extract information. In the case of men, it is usually physical torture causing severe body pain and harm. Women were subjected to such forms of torture including sexual harassment. It is reported that torture is generally practiced by the security forces as those arrested were Tamils and the majority of security personnel

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belong to the Sinhalese community. Such practices of torture is against the law of the land as in Article 11 of the 1978 Constitution of Sri Lanka states that, “no person shall be subjected to torture or to cruel treatment or punishment.” Also, Article 27 (2) (b) of the Directive Principles of State Policy and Fundamental Duties states that the state is pledged to establish in Sri Lanka “the full realization of the fundamental rights and freedoms of all persons.”\footnote{International proscriptions against torture have also been enumerated in international human rights and humanitarian treaties such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ICCPR, the Status of the International Criminal Court, the Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Standards for the Protection of Prisoners have been set forth through the Standard Rules for the Treatment of Prisoners. These international instruments serve as \textit{jus cogens} norms, which create \textit{erga omnes} obligations between states. Such violations also attract universal jurisdiction. In addition to being a state-party to international treaties, prohibiting torture and other forms of cruel, inhuman and degrading treatment, Sri Lanka has proscribed torture through its Constitution and Penal law as mentioned earlier. Despite the international prohibition against torture, and its reaffirmation through Sri Lankan Law, torture is reportedly practiced in Sri Lanka as part of normal criminal investigations and also as part of operations linked to the armed conflict.\footnote{The 1978 Constitution of Sri Lanka.} \footnote{Jeyawardene, Kishali Pinto, and Kois, Lisa (2008) \textit{Sri Lanka: The Right not to be Tortured, A Critical Analysis of the Judicial Response}, n. 43. p. 3.}
In general, it is argued that the practice of torture and the resultant human rights violations occur only during a period when the country is faced with a feared threat to its sovereignty and national integrity. However, it is a fact that even when there was no active conflict in Sri Lanka, the practice of torture was widespread. In fact it is reported that a significant number of cases involving police brutality in the north and east of Sri Lanka were not linked to the conflict. Sometimes, the victims were tortured for petty thefts and for no reason at all. There were cases or reports which suggest that the police tortured a person for asking the reasons for his or her arrest. This constitutes a severe breakdown of the Rule of Law perpetuated by the very custodians of the law.\textsuperscript{47} Torture is one of the most established forms of crimes against humanity as stated by the Statute on Rwanda, The Draft Codes of Crimes Against Peace and the Statute of the International Criminal Court. These Statutes and Draft Codes define Torture as:

"the intentional infliction or severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from inherent in or incidental to lawful sanctions."

Eyewitnesses, testimonies of victims of detention and torture, reports of illegal detention centers, torture cells and physical marks or scars on the victim's body and the bodies exhumed from mass graves as well as those on display as public warnings revealed

\textsuperscript{47} Ibid, pp. 4-5.
the severe physical torture committed against the innocent civilians in the Tamil areas of Sri Lanka.\textsuperscript{48}

There were numerous cases filed under violations of fundamental rights against the Sri Lankan security forces which included physical torture being perpetrated against detainees. In 2001, a 23 year old woman was detained under the PTA, tortured and raped by 12 police officers and four indictments were placed on her. But all four indictments were withdrawn by the state because of the evidence of physical torture and rape. After medical re-examination on the victim by the court’s orders, evidence of physical torture and rape were revealed. Despite there being strong evidence of physical torture and rape, the state decided that no criminal action should be taken against the police. The Human Rights Commission of Sri Lanka however, recommended that a sum of rupees two lakhs be paid to the victim as compensation by the state, but compensation was not paid.\textsuperscript{49} In the case of \textit{Singarasa vs The Attorney General}, statements made as a result of torture by Singarasa during interrogation were accepted as \textit{prima facie} evidence and convicted for 50 years. This shows the culture of impunity being practiced by the Sri Lankan government.

\textbf{Impunity}

Impunity for human rights violations by government security forces has been a long problem in Sri Lanka. As the conflict intensified and the security forces were charged in a longer list of abuses from arbitrary arrests to war crimes, the Government of Sri


Lanka was unwilling to hold those persons accountable who were responsible for serious violations of human rights. However, government institutions have been unable to deal with the scale and intensity of abuse. The Amnesty International (AI) has also stated in one of its public statements that Sri Lanka has been characterized by decades of impunity by perpetrators of violations of international human rights and humanitarian law.

Since the beginning of the civil war in Sri Lanka from the 1990s, successive governments have consistently failed to adequately investigate or prosecute those in the security forces or the police for serious violations of human rights and international humanitarian law. In cases of enforced disappearances, torture, rape, indiscriminate attacks on civilians, reprisal attacks, abductions, etc, the successive Sri Lankan governments have failed to hold security personnel accountable for committing such serious crimes.

In response to rising international pressure and concern over human rights violations in Sri Lanka and to pre-empt proposals from an international human rights monitoring mission in November 2006, the President appointed a group of commissioners to the bodies that deal with the police, public service and human rights issues. Prior to this the government established a Presidential Commission of Inquiry (COI) to investigate serious cases of human rights violations by all persons since August 1, 2005. The Commission of Inquiry was assisted by a group of observers called the International

Independent Group of Eminent Persons (IIGEP). The Commission of Inquiry had serious deficiencies and could not work effectively to investigate human rights violations committed by the state. This could be due to the fact that (i) the commission could not investigate into the 16 cases it had mandate to, (ii) the commission could only make recommendations to the government on the steps by which it could possibly improve the situation, (iii) investigations were stymied with inadequate witness protection program that would encourage the victims and witnesses to testify about the abuses committed by the government security forces, (iv) the Attorney General’s office had direct role to play in the commission’s enquiry where a potential conflict of interest would undermine the commission’s independence. The head of the commission limited the international expert’s role by prohibiting them from conducting investigations and speaking with witnesses. Due to the above said reasons the Commission of Inquiry failed to demonstrate any improvement in the context of the increasing human rights violations. On March 6, 2008, the International Independent Group of Eminent Persons announced its resignation as it was frustrated over the government’s lack of support. In its statement, the Commission of Inquiry said “there has been a lack of political and institutional will to investigate and inquire into cases before the commission. There is also a climate of threat, both direct and indirect, to the lives of those who are capable of identifying persons responsible for human rights violations, including those who are likely to have been committed by the security forces”.

http://www.hrw.org/en/node/10799/sec/2.173/09.17/03/09

Ibid.

Impunity is perhaps the single most important factor contributing to the phenomenon of disappearance and various other forms of human rights violations. Perpetrators of human rights violations become all the more irresponsible if they are not held accountable in a court of law. In recent years international human rights enforcement strategies have come increasingly to focus on the need to impose direct legal accountability on the perpetrators of serious human rights violations. Such accountability is essential if basic rights are to be effectively protected. It is the responsibility of the government to hold those persons accountable regardless of whether they are members of that government or of its security forces for committing human rights violations.56

In 2008, categorically denying state sponsored human rights violations of any nature, President Mahinda Rajapakse asserted that all the doors were wide opened for all local and international human rights organizations to visit the country, investigate and ascertain the veracity of the alleged human rights violations. He also stated that these allegations are propagating slanderous, malicious and mischievous news to incite the masses to create communal violence and hatred.57 But the President’s statement was contrary to the situation in Sri Lanka as the ethnic conflict and the ongoing civil war against the LTTE arose mainly due to communal hatred. It was also contrary because the government had failed to prosecute those convicted of violating human rights. There are numerous cases to be concluded (Laws Delays) and such delay allows the perpetrators to continue working in the same manner and pervade accountability. It is said that the

57 Government Has Nothing to Hide on Human Rights- President, http://www.defence.lk/, 19/10/08
Sinhalese have always held the opinion that Sri Lanka belongs to them and has showed it through the years by its policies which excluded the ethnic community of the Tamils. Taking the advantageous position of numerical strength, the Sinhalese led government has always sidelined the Tamils of Sri Lanka. There are also reports that economic sanctions imposed by the government have hampered normal life in the Jaffna region. These economic sanctions were imposed in the form of Emergency Regulations which placed restrictions to transport essential items to this region.

Among other charges of human rights abuses against the state are the creation of High Security Zones which restricts freedom of movement in the north especially in the Jaffna region, media censorship, and various forms of suppression of information with the resumption of war against LTTE in 2006. The Sri Lankan Government is charged of using civilians in these regions as human shields to either evade LTTE’s attacks on them or to make them remove land mines placed by the LTTE in the north and east.

Freedom of press and expression continue to remain severely curtailed across Sri Lanka. Journalists in Sri Lanka faced attacks from the security forces, political parties and other armed groups for which the Sri Lankan Government failed to take necessary measures to protect press freedom. In 2005, atleast two journalists were killed. Editors of various newspapers who wrote against the government and its policies and its ruthlessness towards civilians during the war against the LTTE faced threats, intimidation and in some

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58 Based on interviews conducted in Sri Lanka during 25/09/08- 24/10/08.
cases arrested and detained under police custody. Some faced physical assault from unknown masked men who were believed to be agents of the government. It is reported that the list of Newspaper editors and other journalists who were abducted, killed or detained for revealing the atrocities committed by the government and its security forces increased every day.\(^{60}\) One of the most recent incidents of attack on media personnel is the killing of Lasantha Wickrematunge. Though the Government of Sri Lanka has denied any involvement in the murder of Lasantha, it is evident that the government could have been involved from the fact that President Mahinda Rajapakse had called Lasantha a Tiger (LTTE) and also a terrorist, but after the assassination of the latter, the former had said words of grief and disbelief.\(^{61}\)

In his last words on the editorial column, the chief editor of the Sunday Leader, a weekly newspaper in Sri Lanka wrote:

\[\ldots\] no other profession calls on its practitioners to lay down their lives for their art save the armed forces and in Sri Lanka, Journalism. In the course of the past few years, the independent media have increasingly come under attack. Electronic and print media institutions have been burnt, bombed, sealed and coerced. Countless number of journalists have been harassed, threatened and killed... he also stated that... the distaste for the war should not be interpreted to mean that we support the LTTE. The LTTE are among the most ruthless and bloodthirsty organizations ever to have infested the planet. There is no gainsaying that it must be eradicated. But to do so by violating the rights of the Tamil citizens, bombing and shooting them mercilessly, is not only wrong but shames the Sinhalese, whose claim to be the custodians of the Dhamma is forever called into question by this savagery, much of which is unknown to the public because of censorship.\(^{62}\)

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\(^{60}\) Ibid, pp.101-02.


\(^{62}\) Wicrematunge, Lasantha, \textit{And Then They Came for Me}, The Sunday Leader, Colombo. 11/01/09.
Prior to his death in the same editorial Lasantha also stated that

…I know you (Mahinda Rajapakse) will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry. But like all the enquiries you have ordered in the past, nothing will come of this one too. For truth be told, we both know who will be behind my death …As anguished as I know you will be, I also know that you have no choice but to protect my killers: You will see to it that the guilty one is never convicted….63

True to his editorial, Lasantha was killed on January 8, 2009, by unidentified men on motorcycles, and the government has not found out the killers and brought them to justice. No one has been prosecuted or even arrested in connection with the murder of Lasantha. This case also proves that the Sri Lankan Government practices impunity for violence committed on those who criticize its war against the LTTE in the north and east of the country. Sadly, the fact is that in the so called war against terror, Sri Lanka is the only country in the world to routinely bomb its own citizens.64

The foregoing discussion provides a clear understanding of the charges of human rights violations alleged against the Government of Sri Lanka. In an interview with a government official, the respondent said the government is violating human rights for a better future. This statement by the official shows the negative attitude of the government towards the issue of protecting of human rights of its own citizens.65 In another interview, the respondent stated that the human rights situation has deteriorated than it was before. He also stated that people live in a constant state of fear. The government has instilled fear

63 Ibid,
65 Based on a interview conducted in Colombo with a government official on 28/08/08.
in the minds of the people and people are afraid to talk about their rights and their infringement.\textsuperscript{66} Anyone who speaks of human rights in the north and east of the country may face intimidation and threats or even be abducted eventually resulting in disappearance. In another interview, the respondent stated that the government has failed to acknowledge the fact that these northern and eastern provinces of Sri Lanka are claimed by the Tamils as their traditional homelands. This view of the respondent was substantiated by the statement of the secretary of the Human Rights Commission of Sri Lanka who stated that there are no Tamil areas in this country it is only the northern and eastern provinces.\textsuperscript{67}

Many of the Sinhalese themselves acknowledge the fact that the government along with its agencies commits various forms of human rights violations against the Tamils in Sri Lanka. Though they belong to the Sinhala community many show sympathy towards the plight of the Tamils and have also stated that the condition of the Tamils in the region is appalling. The freedoms as guaranteed in the Constitution of Sri Lanka are violated every day by the security personnel. The Tamil community in Sri Lanka says that being a Tamil in this country is sufficient reason enough to be arrested under the PTA and killed.\textsuperscript{68} The government has been charged of killing and waging war against innocent civilians in the north and east by many human rights organizations. In another interview, a Tamil from Jaffna stated that in Jaffna, everyday some 10 men would be rounded up and shot in the

\begin{itemize}
  \item \textsuperscript{66} Based on an interview held with a university professor in Colombo on 12/09/08.
  \item \textsuperscript{67} Excerpts of an interview with the Secretary of the HRCSL on 13/09/08.
  \item \textsuperscript{68} Based on an interview conducted in Colombo with a Lawyer on 14/09/08.
\end{itemize}
pretext that they were members of the LTTE. In India, many political party leaders have alleged that the government is causing genocide in the name of eradicating terrorism in Sri Lanka. Human chains were formed and protests were held to urge the government of Sri Lanka to stop the war against civilians in these regions. But the Government of Sri Lanka has continued its war against the LTTE at the cost of civilian lives.

The government's inability to effectively solve the Tamil problem and the growth of Tamil rebellion and the states response to the rebellion has caused serious human rights violations which occur with impunity. In a war like situation, human rights violations are inevitable but they cannot be justified in the name of providing a better future. Civilians in the north and east of Sri Lanka face immense hardship with a significant number of them being killed in the crossfire and indiscriminate raids. Lack of transport links to Jaffna affects food supply to over 500,000 people in the region.

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69 Based on an interview conducted with a Tamil in Kandy on 23/09/08.
70 Daily Mirror, Colombo. 3/6/08.
Opinions expressed by different groups of people in Sri Lanka revealed that the Tamils face discrimination by the Government of Sri Lanka and the Sinhalese in Sri Lanka. 60 percent of the respondents agreed to the fact that the Tamils face discrimination by the Government of Sri Lanka and the Sinhalese in Sri Lanka while 25 percent of the respondents said that the Tamils in Sri Lanka did not face discrimination. The remaining 15 percent of the respondents said that they don’t know whether the Tamils in Sri Lanka face discrimination by the Government of Sri Lanka and the Sinhalese.
Respondents who agreed to the fact that the Tamils in Sri Lanka faced discrimination, also stated the areas in which they were discriminated by the Government of Sri Lanka and the Sinhalese. 32 percent of the respondents said that the Tamils in Sri Lanka faced discrimination relating to employment in government sectors and civil services while another 27 percent of the respondents expressed that the Tamils were discriminated in getting admissions to educational institutions such as universities and professional courses. The Tamils faced discrimination in Language was stated by 25 percent and another 9 percent said that were discriminated in culture. The remaining 7 percent of the respondents felt that the Tamils were discriminated with regard to their religion.
Opinions expressed by the respondents reveal that the various forms of human rights abuses committed by the security forces in the Tamil areas of Sri Lanka include (i) verbal abuse, (ii) mass arrests, (iii) keeping the arrested incommunicado without trial for long periods, (iv) physical torture, (v) rape, (vi) impunity, (vii) extra-judicial killings, (viii) arbitrary arrests and (ix) abductions. 18 percent of the respondents stated that the security personnel committed rape against civilians living in the region while another 17 percent of the respondents said that the security forces were using verbal abuse. Physical torture was stated by 17 percent of the respondents and 16 percent of the respondents said that the security forces were involved in mass arrests in the Tamil areas of Sri Lanka. Further, 16 percent of the respondents stated that those arrested were kept in detention incommunicado for long periods without trial while another 11 percent of the respondents said that Impunity was practiced in the north and east of Sri Lanka. The remaining 5
percent of the respondents said that the security forces were involved in extra-judicial killings, arbitrary arrests and abductions in the Tamil areas of Sri Lanka. Thus, it is clearly revealed from the various opinions expressed by the people living in Sri Lanka, that various forms of human rights abuses are committed by the Sri Lankan Government and its security forces in the Tamil areas of Sri Lanka.

In the inter-ethnic conflict in Sri Lanka, human rights violations were committed by both the warring groups (GOSL and LTTE). It cannot be said or proved that the Government of Sri Lanka only violates human rights in the Tamil areas of Sri Lanka. The LTTE which is recognised as the world’s most organised terrorist organisation is also charged with various human rights violations. It is also believed that the LTTE has killed as many people in these regions as the security forces. The next chapter deals with the charges of human rights violations against the LTTE.