

SRI LANKAN RESPONSE TO COMBATING CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

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I. INTRODUCTION

According to the main theme of the programme, which is the “Criminal Justice Response to crime Motivated by Intolerance and Discrimination,” I would like to share my experience and knowledge as a judicial officer who served in the Sri Lankan Judiciary for the last 15 years. Experience gained, especially as a Magistrate performing in various parts of the country, and knowledge enhanced by studying for the LLM Degree at the University of Colombo on criminal Justice, has paved the path for addressing the main theme of the programme successfully. Therefore, I intend to present my presentation having studied concepts of intolerance and discrimination, crime causation, various offences motivated by intolerance and discrimination in Sri Lanka and initiatives taken by Sri Lanka as a country to combat these offences.

II. INTOLERANCE AND DISCRIMINATION

A. Intolerance

The meaning of tolerance is defined in Article 1 of the UNESCO Declaration of Principles on Tolerance. Thus, tolerance consists of respect, acceptance and appreciation of the rich diversity of the cultures of our world, our forms of expression and the ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and religion. Tolerance consists of harmony in difference. It is not only a moral duty, but also a political and legal requirement. Therefore, intolerance can be interpreted as “conduct that adversely and unfairly targets an individual or group on the basis of one or more of the following actual or perceived characteristics: gender or gender identity, race or ethnicity, disability, religion, sexual orientation, nationality or age¹. I would like to add another characteristic to the above interpretation; that is the economic status of the people.

B. Discrimination

Discrimination is the opposite of the equal treatment principle. The principle of equal treatment shall mean that there shall be no direct or indirect discrimination, specifying thereafter that:

- Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation
- Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless:
 - i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or
 - ii) with regards to persons with a particular disability, the employer or any person or organization, is obliged, under national legislation, to take appropriate measures in line with the principles in order to eliminate disadvantages entailed by such provision, criterion or practice².

People may be discriminated against because of their age, disability, ethnicity, origin, political belief, race, religion, sex or gender, sexual orientation, language, culture and on many other grounds. Discrimination,

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¹ <https://www.sandiego.edu/safety/reporting/hate-crimes/response.php>

² HOW TO DEAL WITH CASES OF DISCRIMINATION AND HATE AND INTOLERANCE CRIMES: PRACTICAL GUIDE: EDITED BY: Instituto de la Mujer y para la Igualdad de Oportunidades Condesa de Venadito.

which is often the result of prejudices people hold, makes people powerless, impedes them from becoming active citizens, restricts them from developing their skills and, in many situations, from accessing work, health services, education or accommodation.

The principles of equality and non-discrimination are laid down in the Universal Declaration of Human Rights (UDHR), "All human beings are born free and equal in dignity and rights"³. This concept of equality in dignity and rights is embedded in contemporary democracy, so states are obliged to protect various minorities and vulnerable groups from unequal treatment. Article 2 of UDHR enshrines freedom from discrimination: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind".

III. CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

When studying crimes motivated by intolerance and discrimination, we can see those crimes can be interpreted as hate crimes in general, which are criminal acts motivated by bias or prejudice towards particular groups of people. Hate crimes therefore comprises two distinct elements:

- It is an act that constitutes an offence under criminal law; and
- In committing the crime, the perpetrator acts on the basis of prejudice or bias.

Thus, the perpetrator of an intolerant or discriminatory crime selects the victim based on the victim's membership or perceived membership of a particular group. The group must share a common characteristic that is immutable or fundamental, such as race, ethnicity, language religion, nationality, sexual orientation, or other characteristic.

A. Forms of Intolerance and Discrimination Crimes

1. Racism

Any incident or crime which is perceived to be motivated because of a person's race, or due to xenophobia, can be identified as a closely related cause for racism. The Oxford English Dictionary defines xenophobia as "a morbid fear of foreigners or foreign countries". Racism involves discriminatory or abusive behaviour towards people because of their imagination of inferiority.

2. Religion and Faith

This encompasses any incident or crime which is perceived to be motivated by a person's faith or religion. Freedom of religion and religious tolerance are basic values present in every country, acts of discrimination based on religion have not yet disappeared. Religious intolerance is often linked with racism and xenophobia particularly with Antisemitism and Islamophobia.

3. Sexual Orientation or Gender-Based Hostility

Gender-related discrimination includes the discrimination of women. Domestic violence is a form of crime that may be carried out by partners, relatives, careers or friends. A homophobic hate crime is any incident or crime that is perceived by the victim, or any other person, to be motivated by a prejudice based on another person's sexuality, or perceived sexuality. Another targeted group is transgender or transsexual people, whose gender identity is inconsistent or not culturally associated with their assigned sex. Discrimination based on sexual orientation affects homosexual and bisexual people.

4. Disability and Difficulty

Any incident or crime, which is perceived by the victim or any other person to be motivated because of a person's disability can be interpreted as a hate crime. Poverty can also be considered as a disability in this context. The definition of a disability hate crime would include anyone who was targeted as a result of his or her disability or impairment, including those diagnosed with HIV.

B. Theory of Crime Causation behind Hate Crimes

According to the article submitted by Daniel Burke, CNN Religion Editor, on June 12, 2017 recognized

³ Article I, Universal Declaration of Human Rights.

four reasons that people commit hate crimes. Those are:

- Thrill-seeking
- Defensive
- Retaliatory
- Mission offenders

When considering the above reasons, we can identify the rationale behind offenders who are committing hate crimes. When studying the theories of crime causation, this type of criminal behaviour comes under the Psychological Theories of Crime Causation. This theory can be used to illustrate criminal behaviour of this kind of perpetrators. They are failures in psychological development, have an overbearing or weak conscience, inner conflict, insufficient moral development, and maternal deprivation with its concomitant failure of attachment. Aggression and violence are learned through modelling and direct experience. Personality characteristics of these criminals found that criminals do tend to be more impulsive, intolerant, and irresponsible than non-criminals. Such mental states relate to disorders as psychosis and psychopathy.

IV. BASIC LEGAL FRAMEWORK RELEVANT TO CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

By passing several conventions and resolutions, the United Nations has taken several measures to combat crimes motivated by intolerance and discrimination. Most member countries ratified those conventions and are taking necessary measures to comply with those conventions by taking action through local legislation.

A. Conventions and Resolutions Adopted by United Nations (UN)

- International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.
- International Covenant on Civil and Political Rights, 19 December 1966.
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
- Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1978.
- Convention on the Rights of Persons with Disabilities and its Voluntary Protocol, 13 December 2006.
- Convention on the Rights of the Child, 20 November 1989.
- Declaration of Principles on Tolerance, 16 November 1995.
- Resolution adopted by the UN General Assembly on Measures to Combat Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, 25 February 1997.

V. SRI LANKAN SITUATION OF CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Frankly, I am obliged to say that as a country we cannot be satisfied with the situation in Sri Lanka in this regard. For the last three to four decades, we have experienced all forms of crimes motivated by intolerance and discrimination.

A. Crimes Relating to Racism

For almost three decades, the country was embroiled in an ethnic civil war. The Sri Lankan Civil War was an armed conflict fought on the island of Sri Lanka. The conflict officially began on 23 July 1983, by a minority Tamil militant organization called the Liberation Tigers of Tamil Eelam (LTTE) which fought to create an independent Tamil state called Tamil Eelam on the north and the east sides of the island. After a

26 year military campaign, the Sri Lankan military defeated the LTTE in May 2009, bringing the civil war to an end.

Though the war ended, the larger questions which led to the ethnic conflicts still remain unanswered. After the war ended, the Sri Lankan government took some measures for finding solutions. In 2010, the Lessons Learnt and Reconciliation Commission (LLRC) was appointed by His Excellency President Mahinda Rajapaksa to look back at the conflict Sri Lanka suffered, as well as to look ahead towards an era of healing and peace to build the country. The Report and recommendations of the above Commission were handed over to the President Mahinda Rajapaksa in November 2011. But those recommendations have not been implemented. Therefore, my personal view is that we were not able to find concrete solutions to the country's ethnic conflict that would satisfy all parties.

The World Bank's study paper on "The Root Causes of the Ethnic Conflict in Sri Lanka" explained the root causes for the ethnic conflict as follows:

The ethnic conflict in Sri Lanka has many root causes and consequences that are closely inter-linked. However, given its complexities, it should not be assumed that these causes are part of linear historical processes where one event led to another. Often many of the issues that may be regarded as root causes arose within a single but extended context and equally as often, simultaneously. It is primarily within the context of ethnic politics that language and education policy can be located. However, for discussion purposes it is necessary to separate these issues as clearly identifiable themes that would emerge in any analysis of the Sri Lankan conflict. In general, these themes can be broadly identified as:

- Ethnic politics and the interpretation of the past;
- Politics of language;
- Politics of education; and
- Other factors, including employment and land.⁴

It shows the aforementioned causes having close relationships with intolerance and discrimination.

B. Crimes Relating to Religion and Faith

In the past six years, over 300 religion-related incidents of violence have taken place in the country. Communal violence is not a new phenomenon in the country. Throughout history there have been many incidents of communal violence among the Sinhala, Tamil and Muslim ethnic groups. However, in the post-conflict era, religious violence has become very common between the Sinhala and Muslim ethnic groups.

Sri Lanka is a multi-religious country where Buddhists (71%), Hindus (13%), Muslims (9%) and Christians (7%) have lived in peace and harmony for over 1,000 years. However, in the post-conflict era (after 2009) religion-related violence between Sinhalese and Muslims has become very common. There have been a number of incidents reported in the past. In March 2018, the violence that took place in Kandy (Digana) is one of the recent communal clashes between the Sinhala and Muslim ethnic groups. Rioting in Kandy began in Udipattuwa and Teldeniya, later spreading to Digana, Tennekumbura and other areas.

At least two people have been killed and eight others injured in these anti-Muslim riots and a lot of properties were destroyed. The government blocked Facebook and other social media services in an effort to quell the violence.

1. Sri Lankan Legal Framework against Crimes Related to Religion and Faith

(a) Constitution

The following Articles in the Sri Lankan Constitution are relevant to religious freedom:

- Article 9
The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana (the teaching of the Buddha), while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

⁴ <https://siteresources.worldbank.org/INTSRILANKA/Resources/App1.pdf>

- Article 10
Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.
- Article 12(2)
No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.
- Article 12(3)
No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.
- Article 14(1)(e)
Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching.
- Article 27(6)
The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.

(b) Penal Code

The Penal Code of Sri Lanka in 1885 (updated several times since then) 'Offences Relating to Religion':

- Section 290
Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class persons, with the intention of thereby insulting the religion or insult the any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Section 290A
Whoever does any act, in or upon, or in the vicinity of, any place of worship or any object which is held sacred with intent to or in veneration by any class of persons, with the intention wounding the religious feelings of any class of persons or with the knowledge that any class of persons is likely to consider such act as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- Section 291
Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- Section 291A
Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- Section 291B
Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Section 292
Whoever with the intention of wounding the feelings of any person, or of insulting the religion of any

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person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(c) International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 OF 2007

Sri Lanka is a Party to the International Covenant on Civil and Political Rights which was adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force on 23 March 1976; and whereas Sri Lanka has acceded to the aforesaid Covenant on 11 June 1980 and subsequently enacted the act No 56 of 2007 to give effect to those civil and political rights referred to in the aforesaid Covenant.

Sections 2 and 3 of the Act state follows:

- Section 2
Every person shall have the right to recognition as a person before the law.
- Section 3
 - (1) No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
 - (2) Every person who—
 - (a) attempts to commit;
 - (b) aids or abets in the commission of; or
 - (c) threatens to commit,an offence referred to in subsection (1), shall be guilty of an offence under this Act.
 - (3) A person found guilty of committing an offence under subsection (1) or subsection (2) of this section shall on conviction by the High Court, be punished with rigorous imprisonment for a term not exceeding ten years.
 - (4) An offence under this section shall be cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances.

According to the above legal provisions in Sri Lankan law, the country is fully equipped to combat crimes motivated by intolerance and discrimination. Sufficient laws are available for giving maximum sentences to offenders who commit the above crimes. We can satisfy the Sri Lankan legislative response in combating the above crimes but there are many problems with the implementation process. For instance, recently, some newspaper articles revealed that most of the communal violence took place in the presence of Sri Lankan police and forces.

C. Gender-Based Crimes

1. Key Findings of a Survey Done by the Statistics Department of Sri Lanka in 2016 Regarding Domestic Violence of Sri Lanka

- Prevalence of domestic violence: In Sri Lanka, 17 percent of ever-married women age 15-49 have suffered from domestic violence from their intimate partner.
- Forms of domestic violence: Two percent of ever-married women who suffered from domestic violence, experience domestic violence daily.
- Differentials of domestic violence: Prevalence of domestic violence by an intimate partner increases with the age of the women. Urban residents also reported the highest percentage of domestic violence (20 percent). Kilinochchi and Batticaloa districts have the highest level of domestic violence (50 percent). Ever married women who belong to the lowest wealth quintile and those with primary education reported the highest percentages in domestic violence (28 and, 30 percent respectively).

- Support for domestic violence: Among women who suffered from domestic violence, only just over one fourth of women (28 percent) have sought help, with three fourth of them (75 percent) seeking help from their family members, 27 percent from friends or neighbours and only 18 percent seeking help from the police. Half of the ever-married women age 15-49 (50 percent) indicated knowledge about the Sri Lanka Women Bureau to combat violence, while 26 percent mentioned mid-wives and Women Help Line⁵.

Prevention of Domestic violence Act No 34 of 2005 (PDVA) was unanimously passed by the Sri Lankan parliament on 9 August 2005. At the time this Act was introduced, Sri Lanka made a commitment to deal with gender violence and thereby honour its obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, it has been observed that, initially, PDVA has been enacted as gender-neutral legislation. Though PDVA can be considered as gender-neutral legislation, it is important to identify why the Sri Lankan government intended to enact this type of legislation and application of act in the present situation. According to available resources, the following facts have been taken into account by the government when introducing the PDVA;

- Insufficiency of existing criminal and civil laws for the protection of women from various kinds of domestic violence
- Reported numbers of domestic violence have been increasing, and specific legislation to address this issue was required.
- Protection of women from domestic violence came into focus as an internationally recognized issue as a result of the demands made by international organizations pressuring states to address this issue.

Considering all these facts, the parliament of Sri Lanka enacted the PDVA.

VI. CONCLUSION

Sri Lanka has ratified international conventions and enacted local legislation in line with the international conventions and treaties. It has taken steps to protect the victims from crimes motivated by intolerance and discrimination. That response towards combating the above crimes is much appreciated, but drawbacks of implementing procedures should be reduced and worked out to accommodate more practical approaches for fulfilling the objectives of the enacted laws.

5 http://www.statistics.gov.lk/social/DHS_2016a/Chapter13.pdf