

CRIMINAL JUSTICE RESPONSE TO CRIME MOTIVATED BY INTOLERANCE AND DISCRIMINATION

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I. INTRODUCTION TO INTOLERANCE CRIMES IN SRI LANKA

Sri Lanka is an island situated in the Indian Ocean with a population of nearly 21.44 million which comprises three main ethnic groups, namely Sinhala, Muslims and Tamils. The ethnic distribution of the country is 74.9 % Sinhalese, 15.7 % Tamils and 9.2 % Muslims. The Sinhalese history draws back more than 2500 years, and later the Tamils migrated from the Southern parts of India. It is presumed that the Muslims arrived during the last few centuries from the Arabian Gulf region as traders. At present there are no intolerance crimes prevailing in Sri Lanka except for few incidences that occurred during the last few years. In June 2014, a tense situation developed between the Sinhalese and Muslims in the Aluthgama area in the South Western part of Sri Lanka due to an issue involving a Muslim shopkeeper abusing a male Sinhalese minor and, later, the assault of a Buddhist monk by three Muslim youths. As a result of the clashes between the Sinhalese and Muslims, four were killed and many were wounded. It was reported that 8000 Muslims and 2000 Sinhalese were displaced, and many shops, houses, mosques and factories were destroyed.

The most recent intolerance crime which was reported was from the Digana area which is situated in the Central Province of Sri Lanka. In March 2018, a Sinhalese lorry driver was brutally assaulted and killed by drunken Muslim youths. It left many shops in the area damaged and burnt down by angry Sinhalese from surrounding villages. Other than the violence between Sinhalese and Muslims, there were isolated incidents where Christian religious places were attacked. As per the National Christian Evangelical Association of Sri Lanka (NCEASL), there were 52 incidents of religious violence against Christians or Christian places of worship since January 2015¹.

A. History, Root Causes and Trends of Intolerance Crimes in Sri Lanka

A deep analysis into the reported intolerance crimes in Sri Lanka reflects that all incidences are connected with the Sri Lankan history starting with colonization, introduction of new religions and expansion of minority settlements on the Island. In general, the majority Sinhalese are a peace-loving community deeply influenced by the philosophy of Buddhism and guided by four sublime states of mind which are Love or Loving-kindness (*metta*), Compassion (*karuna*), Sympathetic Joy (*mudita*) and Equanimity (*upekkha*). Prior to colonization by the Portuguese, Dutch and British, Sri Lanka was an agriculturally rich self-sustained Buddhist country. The colonial masters destroyed the agricultural-based economy of Sri Lanka and adopted their policy of "Divide and Rule". This targeted policy side-lined the majority Buddhist Sinhalese and all comforts were rendered to minority Tamils and Muslims. The Buddhist religion and its religious places were systematically eliminated, and Christianity was introduced by the Colonial masters. This intimidated the majority Buddhist Sinhalese community which is all well connected to the present religious sentiments in Sri Lanka. Then the Arabic Muslim traders who arrived in Sri Lanka expanded their settlements along the Southern and South Western Coastal belt threatening the land ownership of majority Buddhist Sinhalese.

The present global trends such as the Islamic State (IS) and the "War on Terror" have aligned Sri Lanka with the international community to fight against Islamic terrorist sentiments. This has also made an indirect impact on the intolerance crimes committed against the minority Muslims in the country. As reported, the Christian pastors on the other hand keep spreading Christianity among the poorest in rural parts of Sri Lanka, agitating the majority Buddhist Sinhalese. Therefore, an analysis of the above-noted historical factors, root causes and current trends reveals that all are well connected with the isolated crimes motivated against the minority religions due to intolerance and discrimination.

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¹ Shamara Wettimuny, Religious violence in Sri Lanka: A new perspective on an old problem, <http://www.ft.lk/article/617872/Religious-violence-in-Sri-Lanka-A-new-perspective-on-an-old-problem> accessed on 20 October 2018.

B. Nature and Types Intolerance Crimes in Sri Lanka

An analysis into the reported intolerance crimes in the country depicts that the majority are in the form of vandalism, theft, intimidation and do not constitute serious crimes such as murder, gang rape, robbery etc. During the Aluthgama area incident in June 2014, which mainly targeted Muslims, 153 businesses and 23 houses were damaged. As further revealed, 207 houses were partially damaged, and 73 vehicles were attacked. According to the police, some minor damages and thefts were also reported². At the recently reported Digana area incident in March 2018, 27 Muslim owned shops, businesses and several houses were set on fire³. In cases involving attacks on Christian installations, threats, intimidation and 'administrative restrictions' have been used against them. There was no serious physical harm committed against the Christian pastors and followers in recent times. An analysis reveals that the hidden motives behind most of the violent acts against Christian movements were mainly due to the opposition against their religious conversions.

II. LEGISLATIVE APPROACHES AGAINST INTOLERANCE CRIMES

The earlier legislative approach against the intolerance crimes in Sri Lanka was to exhaust the legal provisions contained in the Penal Code of Sri Lanka, which was enacted in 1883. The offences relating to religion are stated from section 290 to 292 of the Penal Code, and in cases of more serious intolerance crimes, such as murder, rape and robbery, are also covered under the same code. Section 290 is relevant to "injuring or defiling a place of worship with intent to insult the religion of any class", which carries a punishment of imprisonment of either description for a period up to two years with fine or with both. Section 291 describes "disturbing a religious assembly", which carries a prison term up to one year. Section 291 A deals with "uttering words with deliberate intent to wound religious feelings", which consists of a prison term extended up to one year. Section 79(2) of the Police Ordinance of Sri Lanka also provides space for thwarting hate speech indirectly when it says that "Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour which is intended to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence under this section." The legal structure which deals with these offences commences with police investigations and reporting facts to the courts followed by filing charges through the plaintiff.

An analysis on the above-noted legislative approaches on intolerance crimes reveals that their scope and punishments are very much limited and does not cover sensitive and well-orchestrated intolerance and discriminatory crimes. Therefore, the enactment of the International Covenant on Civil and Political Rights (ICCPR) Act in 2007 was an effective legal approach compared to earlier initiatives. Section 3 of the International Covenant on Civil and Political Rights (ICCPR) Act of 2007 reproduced Article 20 of the ICCPR and prohibits the advocacy of 'religious hatred that constitutes incitement to discrimination, hostility or violence'. It also gives the High Court jurisdiction to try and punish offenders. This initiative consists of the separate offence approach and the penalty enhancement approach. Earlier the intolerance crimes were also included within the general Penal Code along with all other crimes, and the penalties were not adequate enough to address the gravity of the problem. However, the present ICCPR Act No 56 of 2007 is separate legislation orchestrated specifically to address the intolerance crimes and carries severe punishment. However, human rights defenders criticized its lack of enforcement against hate speech when it is already encrypted within the existing ICCPR Act of 2007⁴.

III. EFFECTIVE MEASURES ADOPTED TO INVESTIGATE, PROSECUTE AND ADJUDICATE INTOLERANCE CRIMES

A. Types of Useful Evidence Required to Prove Intolerance Motive

The most important aspect in an investigation involving an intolerance crime is to gather the crucial evidence connected to the intention of committing the intolerance crime and its physical components. The intention of an ordinary crime may be due to personal hatreds, sudden provocation, rivalry etc. However,

² Waruni Karunaratne, *Economic Cost Of The Aluthgama Incident*, <http://www.thesundayleader.lk/2014/06/29/economic-cost-of-the-aluthgama-incident/> accessed on 20 October 2018.

³ Financial Times, *Digana turns divisive*, <www.ft.lk>, accessed on 20 October 2018.

⁴ Gehan Gunatilleke, *Hate Speech in Sri Lanka: How a New Ban Could Perpetuate Impunity*, <<http://ohrh.law.ox.ac.uk/hate-speech-in-sri-lanka-how-a-new-ban-could-perpetuate-impunity/>> accessed on 20 October 2018.

the intolerance crimes are intended or motivated mainly by ethnicity, religion, race and tend to be violent in nature such as assault, intimidation, vandalism etc.

In an effective investigation of an intolerance crime, it is important to gather evidence pertaining to telephone interceptions, emails, social media, public speeches and interviews which led to the commission of crimes. It is also ideal to assign a separate group of investigators with specialists such as IT experts, digital forensic experts, and lawyers to investigate intolerance crimes.

B. Measures to Encourage Victims and Witnesses to Report and Cooperate with Criminal Justice Authorities

In Sri Lanka the victims and witnesses are reluctant to report and cooperate with criminal justice authorities due to various reasons. The main reason is the majority of the population has lost their confidence in the criminal justice system. The police have somewhat lost public confidence and have been criticized by the media and general public for their short comings. The judiciary system on the other hand managed to keep its credibility, but the conclusions of its cases are sometimes time consuming. Therefore, it is high time for all concerned parties in Sri Lanka to rebuild the lost confidence on the criminal justice system and to encourage victims and witnesses to cooperate with criminal justice authorities, especially in cases involving intolerance crimes. The following are some of the measures that can be taken in this regard:

1. Witness Protection Measures

It is worthwhile to note that Sri Lanka has introduced the Protection of Victims of Crime and Witnesses Act, No. 04 of 2015 which provides for the establishment of the National Authority for the Protection of Victims of Crime and Witnesses. The main objective of this Act is to strengthen the course of administration of justice by identifying a proper legal framework to protect the rights of the victims of crime and witnesses. In cases involving intolerance crimes, it is of paramount importance to protect the victims and witnesses of crimes since the majority of such crimes are committed by the majority of the population or the parties in power. In reality, there are no known cases where the provisions of victim protection act have been adopted to safeguard the victims of intolerance crimes in Sri Lanka.

2. Adequate Assistance for Victims and Their Communities

The cost of litigation in Sri Lanka has significantly increased during recent times, and it has become impossible for an average citizen to retain a highly competent legal representation. Therefore, in cases where the affluent are involved with committing intolerance crimes, the minority victims and witnesses are lack proper legal assistance. Therefore, it is of paramount importance to provide adequate assistance for victims and their communities. It is commendable to note that the Legal Aid Commission of Sri Lanka is playing a vital role in providing legal assistance for victims of crimes.

3. Measures Adopted to Strengthen the Security of the Victims of Crimes

It is worthwhile to note that the Sri Lanka Police established a separate Victims Protection Division in 2017 to address the protection issues of the victims of crimes. Therefore, any victim who has been threatened or intimidated in intolerance cases can make a complaint and seek assistance of the respective Police Division. However, it is recommended to improve and establish a mechanism to protect the victims from identification.

4. Measures to Strengthen the Mutual Trust and Relationship among Opposing Parties

In Sri Lanka a majority of Sinhalese are against the intolerance crimes and are living harmoniously with the two other communities. It is only a selective group of people who are creating tense and uncomfortable situations whenever there is a minor incident involving a minority ethnic group. Therefore, it is important to strengthen the mutual trust and religious harmony among the three ethnic groups in Sri Lanka to prevent the reoccurrence of intolerance crimes which have taken place in Aluthgama (2014) and Digana (2018) areas causing immense property damages.

IV. EFFECTIVE TREATMENT OF OFFENDERS OF INTOLARANCE CRIMES INCLUDING DELIVERING PROPER INTERVENTIONS

There are few offenders who are still in remand custody for causing intolerance crimes in the Kandy area during March 2018. They were charged under the new ICCPR Act of 2007 where bail has to be obtained

from the High Court. The offenders in the Aluthgama incident in June 2014 were released from remand custody, and now some of them are facing trial. It is not clear whether authorities have taken due care for effectively treating the offenders of the above noted two incidents. Further evidence of proper intervention to correct the bias and discriminatory motives of the perpetrators were not documented as required. Therefore, it is high time for all relevant parties to have timely interventions and initiate effective treatment mechanisms for offenders of intolerance crimes.

V. CONCLUSION

As elaborated above, Sri Lankan authorities should overcome shortcomings and have a proper and effective criminal justice response mechanism to address the intolerance crimes in its journey towards making Sri Lanka the “Wonder of Asia”.