

Challenges of the Transitional Justice Activities in Sri Lanka: A Special Study on Missing Persons in Northern Province

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Abstract:- This research seeks to identify the challenges in dealing with issues pertaining to civilian disappearances in the Northern Province and how the ongoing transitional justice process of the government address the above issues. Transitional justice mechanisms essentially react to past human rights violations. Sri Lanka has the second highest record of disappearances in the world, which is largely a result of the war and its related atrocities. There is a need to probe into the issue in the interest of closure for those emotionally affected by such disappearances, and thereby ensure meaningful reconciliation in the country. The objective of this research is to identify the challenges of meaningfully engaging in this process. Primary and secondary data were collected and analyzed using the descriptive method. 30 respondents were selected from the districts of Jaffna, Vavuniya and Mannar for this purpose. Data were collected through observations, discussions and semi-structured interviews. The transitional government is conducting many activities for missing persons such as celebrating the day of missing persons, establishing missing person's commissions, and recognizing many acts of missing persons. However, the government faces numerous challenges on this front such as the reluctance on the public's part to share details about missing persons for security reasons, the belief that transitional justice initiatives are worthless, and the lack of faith in the government's willingness to publicize the details of army personnel allegedly implicated in these this issue. The thrust of this paper is to approach these issues within a transitional justice framework, particularly arguing for truth, criminal persecutions, and reparation for those affected.

Key words: - Transitional justice, Good Governance Government, Missing Persons, Sri Lanka

I. INTRODUCTION

Ethnic conflict mirrors the inevitable issues in modern states with different ethnicities, religions, languages and cultures. Sri Lanka has not been an exception. During 30 years of war and also the post war period, there were a huge number of people missing in the country, largely using the license given by to Prevention of Terrorism Act. Especially Tamils suspected of links to the LTTE were forcibly disappeared by the police, military and paramilitary operatives during the course of the armed conflict (Institute for International Cooperation JICA, 2002) Sri Lanka records the highest number of disappearances in Asia as well as compared with other countries in the world. Several attempts were made by the previous government to launch "transparent"

investigations into cases of disappearance Such as the LLRC, Manouri Muttetuwegama commission and presidential commission. However, they failed to ensure satisfactory investigations into said disappearances. With the regime change in 2015, the so-called 'good governance' regime has initiated a number of measures to strengthen post-war democracy, development and ethnic reconciliation.

The 'Good Governance' regime has introduced a transitional justice's process where the government has made claims to ensure preservation of human rights and inquiring into violations of same in the past period when transitioning from conflict to peace. However, various obstacles in this process are observable. This research identifies the major challenges and possibilities for disappearance-related issues in Sri Lanka and explores public opinion of government action. As a developing country that lost its pride due to 30 years civil war, Sri Lanka highly needs a strengthening of its reconciliation mechanisms, particularly related to disappearances, in order to ensure the promotion of peace and development. Although the disappearances issue has been highly emphasized by both domestic and international communities, disappearances issues and objectives therein have been poorly achieved so far. This context necessitates an academic investigation of this nature which is lacking in the present academic domain.

Problem Statement

Various studies have indicated that government's efforts in dealing with disappearances are unsatisfactory, despite almost a decade having passed since the end of the war. The government led by former president Mahinda Rajapakse has not done anything constructively to deal with disappearances. As a result, the coalition government of the two main parties under the leadership of President Mithiribala Sriesena, came to power following the presidential election against former president Mahinda Rajapakse in January 2015. It is possible to observe that carrying out a number of positive activities has given new hope for the affected people. Many challenges and possibilities in relation to the disappearances as a complicated process exist in the current political situation of Sri Lanka. The main research thrust of this study is to explore the challenges and possibilities that the current government is facing in dealing with disappearances through transitional judicial functions.

Objectives of the Study

Although the Government of Sri Lanka has been making various promises and establishing institutions ostensibly to look into the matter of disappearances, the lack of satisfactory progress is a matter of international concern for Sri Lanka's image. The main purpose of this research is to identify the government's activities in dealing with war-related disappearances of the Northern Province and see how the vision of the affected people is reflected in these activities carried out by the government.

II. LITERATURE REVIEW

According to **Simon Romins (2011)** the main issue of a post-war context is that of missing persons. In his "**Addressing the needs of families of the missing: A test of contemporary approaches to transitional justice in 2011**", he has explained about transitional justice activities in Nepal and Timor with regard to the problem of missing persons. William Schabas' *Elements of International Law for the transitional justice* (2011) analyzes transitional justice and International Criminal Courts in the context of international law and forgiveness.

B. M. Mujipaar Rahman in his essay titled "**Where are the Muslims for transitional justice?**" explains approaches to transitional justice as envisioned by the United Nations, and elaborates the importance of transitional justice. The essay highlights Sri Lankan Muslims and their expectations for transitional justice.

III. SRI LANKAN GOVERNMENT'S APPROACH TO TRANSITIONAL JUSTICE IN THE NORTHERN PROVINCE

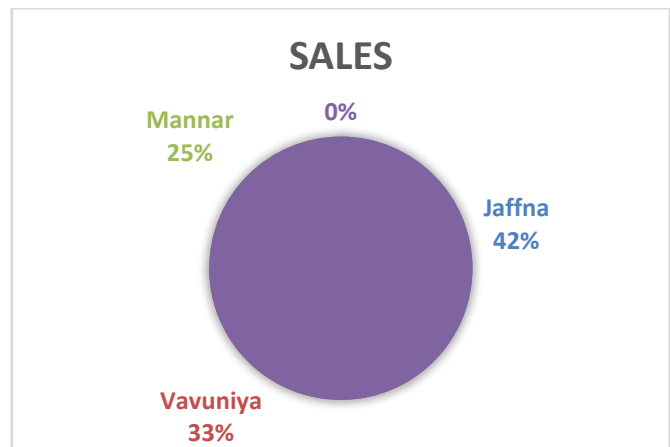
Office on Missing Persons: The Office on Missing Persons was established by the Good Governance regime on 23rd August of 2016 to investigate into the truth about missing persons during the final phases of the war in Sri Lanka. The office is mandated to look into cases of missing persons and address concerns of their relatives and ensure their rights and welfare. However, the Office does not accommodate any women, which hinders women from approaching it with their concerns and complaints. Therefore, the Office should include lady officers for the benefit of women.

Commission of Truth, Justice, and Reconciliation: The positive approach of the present government towards missing persons by way of installing a Commission of Truth, Justice and Reconciliation mandated to investigate into cases of missing persons and provide compensation impartially has shown a sign of trustworthiness of the government. The government thereby has demonstrated its agreement with the Transitional Justice approach of ensuring impartial compensation and finding a political solution for the victims within the framework of the constitution of Sri Lanka. To this end, the government has proposed to establish two mechanisms, one of which is the Mercy Board, composed of

religious representatives and commissioners. The Board will ensure the safety and security of the victims, and motivate and encourage the victims to come out with their bitter experiences where their fundamental rights were violated. It will also ensure that the victims have an environment in which trust towards the government can be built that the victimizer will not go unpunished.

Establishment of compensation offices throughout the island: One of the mechanisms that have given hope to the victims is establishing offices of compensation throughout the island to identify issues people faced during the war, in order to grant compensation impartially after the dramatic change of government in 2015. The operation will be carried out through the divisional secretariat in each district. This method is also considered as effective in gathering people from various backgrounds, but common concerns under one roof. The compensation would be determined after a careful analysis, and will be given not only to the direct victims, but also to those whose psychology; education, health, and professional life were affected. This measure is believed to be a strong contributing factor towards reconciliation.

View of the public on transitional justice mechanisms: The government of Sri Lanka is facing pressures internationally for not responding to the fate of the missing to their families, and not implementing a proper and accepted method to find the truth. Though there was a change of government, the new government also has failed to persuade the people for reconciliation and to inspire trustworthiness towards itself in the victims. "We are not asking the government to punish this one and that one. We are asking for a responsible response for our missing relatives." "All these organizations trying to hoodwink us; We don't trust them" (Interview report) The government has done nothing other than gathering details of the missing. They have not given any answers during the last nine years. In the meantime, relatives of the missing are given ill-treatment. They are forced to engage in prostitution, especially the widows.



According to this graph, 42% of the relatives of the missing were ill-treated in the district of Jaffna, 32% in Vavuniya and 25% in Mannar when they approached the Commission on

Missing Persons. According to the decision made by the Commission, a certificate of death would be issued within two years. This has prompted doubt in the relatives of the missing whether the government is simply trying to make a quick-fix to convince the international community. The relatives of the missing claim to have submitted the names of a few army personnel to the Commission, but the latter has not taken any action. The suspicion is that there may be several other mass graves in the Eastern Province like the Mannar mass grave.

The objective viewers: Each government uses these issues and the people for their own benefit. **View of the Commissioners** – The main issue here is that the relatives of LTTE carders have come to lodge complaints about their missing relatives, whereas the Office on Missing Persons is for civilians. We do not know why they come and lodge complaints with us. When we ask questions we had to face problems. Most of the people were compelled to obtain Certificates of Death to be eligible for some sort of assistance from the government. More than 500 such certificates have been issued.

IV. DISCUSSION ON THE OPERATION OF TRANSITIONAL JUSTICE IN SRI LANKA

August 30th is commemorated as the International Day of the Disappeared in order to prevent such disappearances from recurring in future, and to find out the fate of the missing. According to Act No. 16 of 2016, Sri Lanka has established an independent commission to this end. The core purpose of the Commission is to follow up on missing cases, provide security to the relatives of the missing, and to take precautions to control the recurrence of such cases in future. The government's constructive decision was applauded when it agreed to enact the Forced Disappearance Law in March 2018. As a result, forced disappearances are now recognized as a crime by the International Criminal Court, and the constitutional way was identified by the government as a remedy for the victims. Further, the constructive approach towards the Geneva resolution was welcomed by the international community which expressed hope that the issue of missing will be resolved within the country. The pressure from Western countries such as the UK plays a prominent role in pushing the government of Sri Lanka towards reconciliation, providing a political solution to the ethnic conflict, and achieving perpetual justice and peace.

V. CHALLENGES

The pressures from the international community caused the government to establish an Office on Missing Persons in February of this year. This commission is questionable. Their operation is limited and there are doubts as to whether they receive complete support from the government. Though it has collected ample of information from several people and places, the Commissioners were not able to release any conclusive data regarding missing persons and it until now remains a big question. It demonstrates the irresponsibility of the government. The government is being reluctant in

publishing data pertaining to missing persons. According to the statistics of the International Committee of the Red Cross, there are 16,000 missing (including 5100 from the police and army); according to the Paranagama Commission the figure is at 21,000 and according to the statistics of GramaNilathari it is 13,000.

The Office on Missing Persons has collected details of detainees and missing persons, but they have not done any follow up until now. The relatives of the missing want to know the fate of the missing, but the response given by the government is not satisfactory and that has led people to lose faith in the Office as well as the government. Statements given by politicians in the South make the relatives of the missing hopeless and desperate. MP S.P. Dissanayaka "All the missing are somehow connected to the LTTE" "The allegation regarding the CIDs are a threat to the nation" Rani Wickramasingha has also issued a statement that the missing might be dead. President Mithripala Sirisena "If you know where your relatives are let me know I'll bring them to you". These irresponsible statements from the hierarchy of the government have left the people feeling hopeless.

There are few cases where some people have lodged complaints on behalf of people who are abroad as refugees. The international community also contributes to the exacerbation of tensions by separating Sri Lankans as victims and victimizers, leading to retention of hostilities within the country.

VI. CONCLUSION

In contrast to the former government, the transitional justice process of the Good Governance government has made certain achievements though continuing to grapple with several issues. Typically, the point of view of victims on the government is unsatisfactory. Politicians play a big game with these issues for their own benefit. However, Transitional Justice in Sri Lanka will be successful when the recommendations of the Office on Missing Persons are considered seriously, and acted upon efficiently, demonstrating that the government is dedicated to this issue. Still, whether the issue of missing persons be resolved within the period of the Good Governance government is a big unanswerable question.

REFERENCES

- [1]. Gamini Keerawella (2013) **Post war Srilanka: Is Peace a Hostage of the military?. Dilemmas of Reconciliation Ethnic cohesion and peace building**, Colombo 05: Karunaratne & sons (pvt) Ltd: 122, Havelack Road.
- [2]. Institute for International Cooperation JICA (2002) **Research study on peace building Japan**: Shinjuku - ku, Tokyo, 2002
- [3]. Jayadeva Yangoda, (Ed) **conflict (2005) conflict resolution and peace building an introduction to theories and practice**
- [4]. Laksiri Fernando (2016) **Issue of New Constitution Making in Sri Lanka; Towards Ethnic Reconciliation**, Colombo Lack House Books Shope