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26-28 August 2016

ABSTRACTS

CENTRE FOR THE STUDY OF HUMAN RIGHTS
UNIVERSITY OF COLOMBO
SRI LANKA

INTERNATIONAL CONFERENCE
ON
HUMAN RIGHTS, CITIZENSHIP AND DEMOCRATISATION

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International Conference on Human Rights, Citizenship and Democratisation

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ICHR COLOMBO 2016
ABSTRACT SELECTION PROCESS

A large number of abstracts were submitted for ICHR Colombo 2016. Due to the availability of limited slots that could be allocated, the Abstract Selection Committee took the responsibility to review and select the best abstracts. Once all the abstracts were reviewed, a sub-committee chose the abstracts that fitted best with the Conference sub-themes.

The ICHR Colombo 2016 Abstract Selection Committee also allocated a few speaker slots for special sessions to provide an opportunity for young presenters based on the diversity of topics and their current significance to the conference.

ICHR Colombo 2016
ABSTRACT SELECTION COMMITTEE
Colombo, Sri Lanka

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Keynote Address

Danielle Celermajer completed her doctorate in political theory and international law at Columba University (summa cum laudae). She is currently a Professor in the Department of Sociology and Social Policy at the University of Sydney. During her ten years at the University of Sydney, she created the Bachelor of Global Studies and the Masters of Human Rights, as well as the Regional Masters of Human Rights and Democratisation, which she established with the support of an initial EU 1.5 million grant from the European Union. She has recently directed a second European Union funded project seeking to identify innovative strategies for preventing torture in security sector organisations, with a focus on Nepal and Sri Lanka.

In developing these programmes, she has collaborated extensively with a number of universities in the Asia Pacific Region, including the University of Colombo. Prior to entering academia, Professor Celermajer worked for eight years at the Australian Human Rights Commission, including as principal speechwriter and Head of Policy for the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Her publications include Sins of the Nation and the Ritual of Apology, Cambridge University Press, 2009, Power, Judgment and Political Evil: Hannah Arendt's Promise, London: Ashgate, 2010 (with Andew Schaap and Vrasidas Karalis) and the Cultural History of Law in the Modern Age, Bloomsbury (Forth Comming) 2017 (with Richard Sherwin). She is currently completing a book on preventing torture.

The Challenge of Human Rights in an Uneven World

Professor Danielle Celermajer

Department of Sociology and Social Policy
University of Sydney

The *universality* associated with human rights standards might be considered both their greatest achievement and their most serious vulnerability. For just as human rights claims are based on the assertion that certain forms of treatment flow from every individual's status as a human and no more, so too we must also recognise the near infinite diversity of human beings and human situations. Moreover, despite their apparently transcendent status and language, human rights are unavoidably superimposed on complex global dynamics (including but not limited to neo-imperialism), caught up in regional tensions, and entwined with domestic conflicts. As such, contestations concerning human rights are inevitably deployed in the service of other types of political agendas. To explore these broad conceptual issues, this paper will reflect on the challenges of advocating against torture in contemporary Sri Lanka, where human rights have

become heavily politicized. It will consider the complex politics of seeking to navigate a terrain that traverses universalism and the 'bad name' it has often acquired in post-colonial contexts, and a localism that is deeply riven and where normative discourses can never be abstracted from politics.

Critical and Emerging Issues in Human Rights

Way Forward: Human Rights or Human Duties: A Buddhist Perspective

Prasantha Lal de Alwis

Responding to atrocities committed during world war; Non binding Universal Declaration of Human Rights (UDHR) was endorsed by the United Nations in 1948. Subsequently covenants for Civil and Political Rights, Economic, Social and Cultural Rights were introduced. Substantive and Procedural mechanism including regional bodies were established. Nations such as Sri Lanka, India enshrined these rights in their constitution as Fundamental Rights.

This research will dwell on effectiveness and efficiency in implementing human rights globally and in Sri Lanka. Further research will attempt to discover International politics and its biases involved in the process.

Research paper will endeavor to find the relationship of rights with duties and responsibilities, and its contrasting effects on individuals in particular and society at large.

Buddhist Philosophy contradicts with the concept of "Self" whist finding equality not only with humans but with all living beings. King Dharmashoka regime in India which can be best termed as the model Buddhist state, and his edicts clearly substantiate this view. In Buddhist philosophy concepts of rights is discouraged and relationships based on duties and responsibility is encouraged. Singalovada sutta[1] defines mutual reciprocal duties on different categories such as husband and wife, employer and employee, teacher-student.

Research will eventually attempt to discover, the pragmatic approach in implementing human rights deviating from a self centered approach to a society based approach with emphasis on duties.

1 Sutta pitaka, Digha Nikaya 3:31

A Critical Analysis of the Value of the Right to Leisure as Both Independent and Interdependent Human Right

Nishara Mendis

The right to rest and leisure appears to be generally viewed as a comparatively unimportant or less important human right. The International Covenant on Economic Social and Cultural Rights (ICESCR) places it only in the context of the enjoyment of just and favourable conditions of work in Article 7 of the Covenant, which arguably undermines its value and importance by limiting its context only to working conditions and only to socio-economic and cultural rights. However, this paper, argues for both acknowledging the intrinsic value of the right to rest and leisure as an *independent* right - as it is in Article 24 in the Universal Declaration of Human Rights (UDHR), and its important contribution to human dignity and democratic governance through the *interdependence* with other human rights, both economic, social and cultural as well as civil and political. The paper also takes into account the philosophical approaches on rest, leisure and human flourishing, such as Aristotle's 'the good life', the

'basic goods' described by Finnis and the 'capabilities approach' of Sen and Nussbaum. Furthermore, the right to leisure can also be discussed in the specific contexts of children's rights, feminist scholarship and women's rights as well as in the context of other groups who may not be able to freely enjoy the right on an equal basis or as reasonably required by them. The General Comment No. 17 of 2013 on Article 31 of the Child Rights Convention comments on rest, leisure and play but unfortunately neither the General Comment 18 on Article 6 of the ICESCR nor CEDAW acknowledge the right to leisure. This research is a critical analysis of the gaps in the discussion and literature, and proposes that it is time for the right to rest and leisure to be given its due place and importance as a human right.

References:

1. Morsink, Johannes, *The Universal Declaration of Human Rights: Origins, Drafting And Intent,* University of Pennsylvania Press, 2010.

2. Saul, Ben, David Kinley and Jaqueline Mowbray, *The International Covenant on Economic Social And Cultural Rights: Cases, Materials And Commentary,* Oxford University Press, 2014.

3. Blackshaw, Tony, *Routledge Handbook of Leisure Studies*, Routledge, 2013.

4. Richards, David L. and Benjamin C. Carbonetti, *Worth what we decide: a defense of the right to leisure,* The International Journal of Human Rights, 17.3:329-349, 2013.

5. Reeves, Joy B., *Women's right to leisure: A feminist perspective, Humanity and Society* 18.4 (1994): 47.

It's Time to Get Rid of the Dilemma: Recognising the Right to a Healthy and Ecologically Balanced Environment in Sri Lanka

Ayesha Karunawardhana

It is incontrovertible that the rapidly developing world has taken a toll on its natural environment. Consequently, individuals/groups are constantly deprived of their basic human rights. In fact, there is an integral linkage between human rights and environment; the existence of a healthy environment becomes a prerequisite for the meaningful exercise of human rights and vice-versa. Therefore, right to a healthy and ecologically balanced environment is recognized under the International Law and ensured by many local jurisdictions such as Norway, Hungary, South Africa, Uganda, Nepal and Indonesia, setting aside the dilemmas which entail its enforcement. Within the constitutional framework of Sri Lanka which does not explicitly ensure the right to life itself, addressing environmental issues is mostly confined to the Article 12 and 14. Therefore, the call for explicit recognition of right to a healthy

and ecologically balanced environment is hardly negligible. This right could open an ample leeway to address manifold environmental issues derived from anthropocentric causes, even in a vacuum of judicial activism. Moreover, a number of constitutionally unrecognized human rights could be implicitly enforced thereunder. In that respect, the current surge of constitutional reforms in the country is more advisable to be actuated towards the constitutional acknowledgement of this right. Therefore, this qualitative research anticipates to collate the historical, theoretical foundations, international law perspectives and dilemmas regarding the right to a healthy and ecologically balanced environment and to bring recommendations on its recognition within the constitutional framework of Sri Lanka, with the support of a comparatively study on the aforementioned jurisdictions that have already provided a constitutional guarantee to the said right.

Human Rights and International Humanitarian Law in Times of Armed Conflicts: The Contribution of UN Commissions of Inquiry to the Debate

Isabelle Lassee

The jurisprudence of the International Court of Justice, the UN Human Rights Committee as well as regional human rights courts have expanded the scope of application of international and regional human rights law to cover situations that were previously regulated by international humanitarian law alone. While this expansion was in the main welcomed by human rights lawyers and practitioners, others raised concerns that the application of human rights to situations qualifying as armed conflicts disturbed the fragile equilibrium between military and humanitarian interests recognized by IHL and ultimately undermined States' compliance with this branch of international law.

After examining the legal techniques used to justify the application of human rights law in armed conflicts situations including to non-State actors,

the paper will shed a new light on these debates by examining the practice of UN commissions of inquiry. These commissions are amongst the few international mechanisms applying both international humanitarian as well as human rights law. Their proliferation in the past decade or so has revived the debate by highlighting legal uncertainties in the application of the *lex specialis* principle as well as increased State resistance to the influence of human rights law on the interpretation and application of IHL rules and principles.

References:

1. LASSEE (I), *Les missions d'établissement des faits des Nations Unies sur les violations graves et massives du droit international des droits de l'homme et du droit international humanitaire : entre uniformité et diversité, Doctoral Thesis,* University Panthéon Assas, 2016, pp.736.

2. MILANOVIC (M.), "Norm Conflicts, International Humanitarian Law and Human Rights Law" in *International Humanitarian Law and International Human Rights Law: Pas de Deux,* O. Ben Naftali (ed.), New York, Oxford University Press, 2011, pp. 95-125.

3. SASSOLI (M.), "The role of Human Rights and International Humanitarian Law in New Types of Armed Conflicts" in *International Humanitarian Law and International Human Rights Law: Pas de Deux'*, New York, Oxford University Press, 2011, pp. 34-94.

4. VAN BOVEN (T. C.), "Reliance on Norms of Humanitarian Law by United Nations Organs" in *Humanitarian Law of Armed Conflict, challenges ahead:* Essays in Honour of Frits Kalshoven, A. J. M. Delissen & G. J. Tanja (ed.), Dordrecht, Nijhoff, 1991, pp. 495-513.

5. UN Office of the High Commissioner for Human Rights, International legal protection of human rights in armed conflict, New York and Geneva, 2011.

IHRL as a Means of Regulating Conduct of UN Forces During Armed Conflicts

Punjima Charuka Ekanayake

Recent decades have witnessed a marked increase in the participation of UN troops in Armed Conflict. This dictates that the regulation of their conduct is now central to the administration of international justice.

The traditional view is that conduct during Armed Conflict is regulated by a *lex specialis*, International Humanitarian Law (IHL). I shall assess at the outset, the legal basis for applying IHL to regulate the conduct of UN forces, regard being had both to the ratione personae and matriae aspects of applicability. I shall also consider inter alia, how the plenary nature of UN personality impacts applicability. It is in this backdrop that my paper will proceed to its core analysis i.e. analyzing the significance of IHRL to the regulation question; more particularly whether, after the decision in the Wall Case, IHRL which is usually viewed as a rights creating species of law could infact be used as a means of duty imposition in the case of UN forces. My focus will

thus be on its ability to impose duties which I argue is complimentary or at least ancillary to its ability to create rights.

I shall also assess the appurtenant difficulties, stemming inter alia from the lack of territorial control on the part of the UN and from the non-ratification of treaty instruments.

References:

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 09 July 2004, ICJ Reports 2004

Human Rights Protection Against Non-State Actors Involved in Armed Conflict Situations

Joel Joseph

In recent decades, armed conflict has blighted the lives of millions of civilians. Serious violations of International Humanitarian and Human Rights Law are common in many armed conflicts. While International Law has in general evolved into regulating the conduct of State in International and Non-International armed conflict; it has now started encompassing the acts of non-state actors during armed conflicts under its ambit. This paper provides a thorough legal analysis on the application of international human rights law and international humanitarian law for the protection of persons in armed conflict whose rights have been violated by secondary subjects (i.e.non-state actors). It addresses, in particular, the complementary application of these two bodies of law in this regard.

This paper focuses on four key aspects. It outlines the legal framework within which both international human rights law and international humanitarian law

apply in situations of armed conflict with particular emphasis on the actions of non-state actors, it identifies some sources of law, as well as the type of legal obligations imposed on the non-state actors to armed conflicts, it analyses the challenges faced in the application of international human rights law and international humanitarian law, particularly from the perspective of the existence of an armed conflict involving non-state actors, and it deals with the accountability and explores the legal framework determining the State's responsibility for violations of international human rights and humanitarian law by non-state actors.

International Human Rights Framework

Right to Education and Copyright- Conflict or Coexistence? A Developing Country Perspective

Nishantha Sampath Punchihewa

'Education of the mind without the education of the heart is no education at all'

- Aristotle -

Unlike ever before, the intersection of intellectual property (IP) and human rights has attracted a great deal of attention among IP and human rights communities. Within such discourse, the possible clash between the right to education and copyright has engendered considerable tension, and generated more heat than light in recent years. The right to education is a universal entitlement, and major international human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR), recognize the right to education as an aspect of the primary commitment to the inherent dignity of all people. Education, *prima facie*, refers to learning in the context of teaching

and instruction, and the transmission of knowledge within the formal educational settings, even though it is conceptually far deeper in scope. Human rights advocates often argue that the provision of adequate textbooks and learning materials are prerequisites in the realization of the human right to education. From an IP perspective, copyright recognizes the right to the protection of the moral and material interests resulting from the finest creations of the human mind in the literary or artistic domain. In fact, copyright protection extends to educational materials. While there is no doubt that authors have an inherent right to protect their property interests, critics charge that copyright protection has restricted access to adequate textbooks and learning materials. Consequently, developing countries find copyright exceptions in the international IP norm-setting instruments inadequate and ineffective at enabling them to access knowledge, and transfer and disseminate information. This paper considers these issues and explores various approaches to resolving conflicts between these different sets of rights. It also engages in a critical analysis of the 'Berne appendix' in order to design a balanced copyright regime for developing countries.

References:

1. Laurence R Helfer and Graeme M Austin, *Human Rights and Intellectual Property* (Cambridge University Press 2011).

2. Peter K Yu, *'Reconceptualizing Intellectual Property Interests in a Human Rights Framework'* (2007) 40 University of California - Davis Law Review 1039-1149.

Regional Human Rights Protection Systems for SAARC: Importance and Suitability

Anuththara Perera

The South Asian Association for Regional Cooperation (SAARC) is covering one-fifth of the world's population on today. SAARC member-states have already signed several conventions on narcotics, trafficking in women and children for prostitution, and the promotion of child welfare. South Asia, one of the remaining major geographic areas in the world but there has been no regional human right system focusing specifically on human rights and fundamental freedoms under United Nations Regional Human Rights system. However there are many human rights issues and few of them are torture, human trafficking, internal displacement owing to conflict and domestic violence against women. But other regions such as the America, Europe and Africa have been regional human right system with relevant Charters, Declarations and the regional Court system too. The hypothesis of the research is there should be Regional Human Rights

Protection Systems for SAARC. The research questions are what the mechanisms of Regional Human Right Protection Systems are and what are the importances of SAARC to create Regional Human Right Protection System? The research is qualitative research and based on the theoretical aspect statistics and details which are related to the topic. Therefore use secondary data which are published by internet, paper articles, books and research of other authors which are relevant to the topic. However a sub-regional human rights body could become a common forum in bringing South Asian society together.

References:

1.https://www.forum-asia.org/?issues=south-asia-human-rights-mechanism

2.https://www.change.org/p/south-asian-human-rights-mechanism-for-just-south-asia

3.http://documents.jdsupra.com/7193cd55-1008-469b-9de0-bf34a8776084.pdf

4.http://www.hurights.or.jp/archives/focus/section3/2014/06/human-rights-system-for-saarc-problems-and-pe

5.http://luc.edu/media/lucedu/prolaw/documents/volume3/A_Devkota.pdf

6.http://www.fp7-frame.eu/wp-content/materiale/reports/02-Deliverable-4.1.pdf

Impact of International Human Rights Perspectives on Nepal's New Constitution: Issues and Challenges in their Realization

Sakthivel Mani

Constitutional monarchy of Nepal was abolished in 2007 and the county was under a mandate to draft a new constitution. After a long struggle, it has adopted the youngest constitution of the world which has come into effect in 2015. The new Constitution has incorporated various aspects of the UDHR, ICCPR and ICESCR. Even the third generation human rights are expressly conferred as fundamental rights. In addition, this is the first constitution in Asia which expressly recognizes and addresses the LGBT issues. In short, the new Constitution can be termed as an inclusive and modern one in the context of human rights since it addresses all sections of Nepal ranging from child to elderly people. However, being a LDC, how far the fundamental rights conferred can be implemented effectively is the core issue. Since the Constitution has incorporated many socio, economic rights as fundamental rights, it raises serious concern

and increases the level of expectation related to their implementation. In this context, it is highly inevitable to be understood the dimensions of the fundamental rights that are conferred under part 3 of the new Constitution and the issues and challenges that are believed as potential obstacles in the process of realizing the fundamental rights. In this paper, the author will introduce the new constitution and its salient features in brief in the introductory part. In the second part, fundamental rights of the new constitution are examined in detail. Impact of UDHR, ICCPR and ICESCR on these fundamental rights is critically analyzed in this part. Factors which will potentially disturb the realization of these rights along with suggestions to overcome from the same are discussed in the last part. The research will be based on the various studies conducted by the International NGOs on Nepal's economic conditions and implementation of human rights and Nepal Government documents.

Justice Procedure and 'Digital India Programme': A Case for an Experiment in Good Governance

Shahanshah Gulpham

In the advancement of science and technology, E-filing system is running very fast in every department of the country. Several important departments are going to introduce the online filling provision on the green channel basis information system that will obviously be in accordance with the environment protection and rule of sustainable developments. This is an urgent need of hour to introduce the Digital India Programme in criminal justice procedure because of the big problems in the trail of offenders, filling the FIR, hearing of accused, and security of criminals etc. There is a lot of paper work in the procedure. Modern technologies always give the effective result in accessing of the justice. Some heinous crimes and economic crimes like cyber crime require for technological investigation. Paperless proceeding always help to maintain the ecological balances and it will also help to access of fast justice and reduce the burden of the court, police

and prison administrations. However, corruption will find less space with the introduction of the E-filing data based system. This is also creating the good way for governance.

The present paper explores the suggestion of Eco-friendly based justice proceeding in criminal justice administration arguing that paper work would reduced in the light of the Digital India Programme initiatives of the Government of India. The paper will also give some suggestions in relevant to the Indian society for the use of technology in justice proceeding because of the fact that most Indian people are not familiar with technological devices. At the end, research paper gives it own suggestion for the smooth running of the programme in justice proceeding with good governance.

Citizenship, Democratisation and Peacebuilding

The Paradox of the Applicability of Human Rights within the Bureaucracy in Sri Lanka

Vidura Prabath Munasinghe
Kaushalya Ariyarathna

The Preamble of the Universal Declaration of Human Rights recognizes the 'inherent dignity and of the equal and inalienable rights of all members of the human family' as 'the foundation of freedom, justice and peace in the world'. Although the state accepts every individual born within its territory as equal citizens with equal rights and dignity, it has been difficult for the public to internalize the concept of equality, given the fact that the Sri Lankan society is highly hierarchical. Government bureaucracy which is supposed to guarantee equal status to its citizens has become an apparatus where the inequality is being emphasized and systematized. In this context, awareness of human rights (knowledge) has become a weapon for the 'powerful' to secure the interests of their own cartel.

This paper explores the paradoxical nature of this mechanism in the light of Pierre Bourdieu's concept of 'symbolic violence', violence which is exercised upon a social agent with his or her complicity and naturalization of power relations. Field work of this study was carried out in Wanathavilluwa DS Division in Puttlam District and Seruvila DS Division in Trincomalee District where people are dependent on the newly restored government bureaucracy in every aspect of their civil life aftermath of the war. Finally, suggestions and recommendations for policy makers as well as to human rights educators and activists are made, based on the findings.

References:

1. Althusser, Louis 1971, *"Ideology and Ideological State Apparatuses", Lenin and Philosophy and other Essays,* Monthly Review Press: London.

2. Bourdieu, Pierre 2002, *Masculine Domination,* Stanford University Press: California.

3. Douzinas, Costas 2007, *Human Rights and Empire: The Political Philosophy of Cosmopolitan,* Routledge-Cavendish: New York.

A Model for Citizenship Education Relevant to the Present Context in Sri Lanka

Saman Weerawansa

This paper presents a model for citizenship education based on ten concepts relevant to the present Sri Lankan situation. The need for citizenship education is increasingly recognized today due to increasing erosion of moral and citizenship values in our society as reflected by the attitudes of youth, increasing crimes, suicides, ethnic conflict and other similar social problems. The present socio-economic and political situation is mainly responsible for this decadence. The situation demands urgent response from responsible agencies. Education can take up this issue, but unless the social causes are addressed, it alone is incapable of resolving the problem. Community building is a process that needs to go with education continuously in a society. If it is neglected it can lead to disintegration. Citizenship education is a part of such community building. Nation is an extension of community; Nation

means in essence the "we" feeling that binds people together in a country. People's ethnic and other cultural identities are secondary concerns. Various educational institutes are interested in citizenship education under different forms. Discussions with school principals, teachers, parents, clergy and conscientious citizens have led the writer to identify ten core concepts, as follows: Self Esteem, Patriotism, National Development, Productivity, Civic Consciousness, Cultural enrichment, Law and Justice, Simple living, Protection of natural environment and Democracy .

Citizenship educational programmes can be designed in this model in formal and non-formal sectors. Teachers can integrate these concepts into their formal lessons. They can organize co-curricular school activities such as citizenship days, school debates, drama and so on. Using above ten concepts we can develop from grade to grade in depth studies. Therefore, this model is imperative to promote an ethnic harmony and citizenship education to promote Good Governance and Democracy.

References:

1. Balasooriya, A.S (1995) *Peace Education, Learning Activities, National Institute of Education.* Maharagama, Sri Lanka

2. Brown, George (1971) *Human Teaching for Human Learning,* Viking, New York

3. Dewy, John (1916) *Democracy and Education,* free press, London

4. Pruzman, Priscillaetal (1998) *The Friendly Classroom for a small Planet,* New Society Publishers Ltd. London

5. Weerawansa, S (2004) *Character Education for Peaceful Living,* Sri Lanka Foundation Publication.

Transitional Justice: Political Transformations and Reconciliation Attempts of Sri Lanka

Danushka Medawatte

Transitional justice (TJ) aims to respond to mass scale human rights violations and prevent recurrence of such abuses. Although TJ is commonly associated with peacebuilding, anti-impunity and politics of memory, the exact meaning that should be attributed to it and whether it should be divorced from retributive justice has caused much disconcert in academic fora. These nuances have a heavier bearing on countries which are segregated due to identity politics and pose more challenges to TJ's aspirations and its capacity of postwar or post-conflict reconciliation. Ethnoreligious perspectives that guide human rights dialogue, the available laws, political will and gender sensitivity or lack thereof, and the existing state of awareness pertaining to TJ have a bearing on its capacity of paving the path to lasting peace. In light of the above complications, Part I of the article explores the debates pertaining to TJ with a view to understanding the specific challenges that have to be dealt with in applying TJ to Sri Lanka. Part II

of the article is concerned with TJ's applicability to Sri Lankan context which is currently attempting to break away from its repressive past of rule by law and illiberality. A further attempt is made in this section to ascertain whether 'successor mentality' of the current political state of Sri Lanka has impacted TJ's peacebuilding objective and the need of establishing participatory TJ. These questions are evaluated with reference to laws, policies and frameworks pertaining to individual liberty, witness protection, truth finding and reconciliation.

References:

1. Alexandra Barahona de Brito et al (Eds.), *The Politics of Memory: Transitional Justice in Democratizing Societies* (OUP 2001).

2. Kieran Mcevoy and Lorna Mcgregor (Eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing 2008).

3. Paige Arthur (Eds.), *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (CUP 2011).

4. Ruti G. Teitel, *Globalizing Transitional Justice: Contemporary Essays* (OUP 2014).

5. Ruti G. Teitel, *Transitional Justice* (OUP 2000).

From Victims to Actors: Empowering the Families of the Disappeared in Sri Lanka

Chathurika Sisimali Gunasekera

The large scale enforced disappearances has never been a new phenomena in Sri Lanka. During the JVP insurrection and in its aftermath, 'enforced disappearance' was commonly used as a means of suppressing the political opposition. However, the rate of disappearances reached alarming levels during the near three decade long armed conflict between Liberation Tigers of Tamil Eelam (LTTE) and the state security forces. The current Presidential Commission to Investigate into Complaints of Missing Persons (PCICMP) though claims that it has received some 19,006 civilian complaints and an additional 5,000 cases of missing armed forces. While the families of the disappeared have to undergo the same experiences as rest of the victims affected by armed conflict, the specific psycho-social and economic challenges they have to endure are much more devastating. In this backdrop the main objective of this study is to recognize the

psycho-social and economic challenges faced by the families of those who went missing in Sri Lanka during the internal conflict period and evaluate the actions taken by the government to address their issues and also the underlying legal framework in light of relevant international standards. For this purpose this research was conducted as a qualitative research based on data gathered from families of disappeared, human rights activists and lawyers, policy making authorities and law enforcement authorities and also data collected from books with critical analysis, international conventions, statutes etc. Transitional justice measures though, quite effective in achieving reconciliation, is rather time consuming. Hence, this study proposes how victim-centered interim measures should be taken to address the needs and safeguard the rights of the families of disappeared until the transitional justice measures are being taken in the long run.

Human Rights and Society

Conceptualization of Internet Access as an Instrumental Human Right

Y P S S Pathiratne
P A B H Amarathunga

The influence of ICT, especially the Internet, on the poor is of incrementing concern within the development community. Antecedent empirical studies suggest the impact of Internet is 'Janus faced'—in some cases it engenders incipient opportunities for the poor, while in others it seems to exacerbate the challenges the poor. This emerging debate is virtually exclusively in the domain of political rights, customarily fixated on the right to information in the UDHR. However, published academic work contains little theoretical connection to broader human rights theory. The lack of theoretical development in this emerging debate sanctions this paper to contribute by exploring possible theories of human rights and applying them the "Right to Internet access."

Authors notionally theorize that access to the Internet is best conceptualized as an instrumental human right. The Cyber World is now instrumental

to both: (I) economic rights (especially the right to work); and (II) civil and political rights. The argument proceeds by positing that the philosophical grounding for a "Right to Internet access", at least in terms of implementation, should be conceptualized as a prioritizing theory of instrumental rights. Determinately, turning towards case law, authors empirically exhibit that a "Right to Internet access" is already being implemented through licit arguments grounded in human rights. Thus, the empirical section exposes that a "Right to Internet access" is commencing to be litigated in pockets of case law around the world. Consequently, the authors debate that in the modern world the "Right to Internet access" cannot be simply characterized as 'nonsense on stilts.'

Questioning Role of Social Media in Occupy UGC and Aftermath in India

Bidu Bhusan Dash

Social media has played definite role in the new movements in twenty-first century India, commencing from Pink Panty Campaign to Occupy UGC. I am conceptualising role of social media in new movement in contemporary India, taking instance of the latest episode i.e. Occupy UGC. Occupy UGC was started against the decision to scrap the non-NET fellowships in New Delhi on 21 October 2015. The movement was led by JNU and supported by a few other universities. After Occupy UGC, a student committed suicide in the University of Hyderabad and 3 students of JNU was in jail for few days under sedition law. Universities are spaces for critical thinking and expression of free speech. Matter of contention might arise from critical thinking and free speech of these social engagements need to be addressed democratically and rationally, again through the institutional procedures and constitutional methods. A series of attack on universities to chock critical thinking, has

raised many questions in the public sphere. The state cannot dictate on the meanings of what it is to be 'Indian' or mandate the meaning of 'nationalism'. Rather, the state should be the one that makes sure multiple ways of imagining one's relationship with the nation are allowed to flourish, especially when it might contradict dominant ways of thinking. In this context, I study social media like Facebook and Twitter and interpret data through textual analysis to understand the role of social media in new movement, especially citizen centric movements in India.

The Significance of Social Movements in Defending Socio-Economic Rights in the Context of Globalization - with Special Reference to the Campaign of Federation of University Teachers Association (FUTA) to Defend Public Education in Sri Lanka

Ramindu Perera

Globalization has radically redefined the socio-economic role of the state and its functioning. With its emphasis on establishing a flexible environment for the free movement of global capital it has compelled individual nation states to adopt structural changes to facilitate a market friendly development model. This has affected the role of the state, shifting its character from a protector of socio-economic rights to a facilitator of the market. Thus a state-market nexus which expedites the process of commodification of social rights has emerged. This changed context has resulted in attributing a prominent role for social movements which operates independent of the state, in the course of upholding socio-economic rights. Social movements mobilize

the dissent of the marginalized and the dispossessed and operates as a pressure group articulating the interests of such sections of the society. If provided with a viable political strategy, social movements bear the potential of acting as the decisive agent of upholding socio-economic rights in the era of globalization. To demonstrate this thesis this paper assess the impact of the campaign on defending public education in Sri Lanka, led by the Federation of University Teachers Association (FUTA) in 2012. It attempts to position the struggle of FUTA within the context of changed state policy approach on education and to identify the struggle's impact on the larger policy framework. Furthermore, it assess certain aspects of the FUTA strategy to recognize the conditions in which social movements shall perform a role of prominence.

References:

1. Jessop, B., *'The Future of the State in an Era of Globalization', International Politics and Society,* no. 2, 2003, p. 30.

2. Harvey, D., *The Enigma of Capital and the Crises of Capitalism*, London, Profile Books, 2010.

3. Hill, D and Kumar, R. (ed.), *Global Neo Liberalism and Education and its Consequences,* New York, Routledge, 2009.

4. Kadiragamar, A., *'Neoliberal State, Rural Dispossession and Struggles for Education'*, in Kumar, R. (ed.), *Neoliberalism, Critical Pedagogy and Education,* New Delhi, Routledge India, 2016.

5. Skanthakumar, B., *'Growth With Inequality: The Political Economy of Neo Liberalism in Sri Lanka'*, LST Review, vol. 24, no. 310. P.1

Domestic Human Rights Framework in Sri Lanka

The Fundamental Right of Freedom from Torture and International Law

Asanka Ishan Dayapala

Torture is the use of physical or mental pain, often to obtain information, to punish a person or to control the member of a group to which the tortured person belongs. Torture is the mother of all Human Right violations. Each act of torture and ill-treatment, inflicted by one human being upon another, permanently scars all those touched by it and destroys our sense of common humanity. The practice of torture is so cannot be conceived and borne within the notion of civilized life. Legal prohibition of torture and degrading of punishment is absolute. There exist no circumstances whatsoever which justify its use.

The purpose of torture was to break the will of the victim and to dehumanize him or her. The intent was also to punish, obtain information or extract a confession from the victim or a third party or to intimidate the victim and others.

The harsher the crime committed, the more horrendous the punishment executed. Nowadays these torture devices seem so cruel and heartless, inconceivable and abominable to human kind, primitive and uncivilized that the nations gathered together and repealed all forms of torture and enacted acts, provisions in their own states in accordance with the conventions of United Nations and established remedies for torture victims at home and universally. This paper concentrates and analyzes the Fundamental Rights of freedom from Torture and International Law.

The UPR Process: Assessing its Potential to Catalyze Change

Gehan Dinuk Gunatilleke

The Universal Periodic Review (UPR) process was introduced to ensure the 'fair scrutiny' of UN member states on their human rights performance. This process was introduced in the context of considerable criticism of the former UN Commission on Human Rights due to its ostensible selectivity and politicisation. The UPR was intended to remedy these defects. Hence 'constructive engagement' and 'non-confrontation' emerged as the defining features of this new procedure.

This paper examines the UPR's defining features and assesses the extent to which the UPR process has contributed to the global advancement of human rights. The essay is presented in three parts. The first part examines statistical evidence from a number of regional blocs to explain how the UPR process has contributed towards transforming adversarial discussions into persuasive dialogues. The second

part presents a counter narrative based on the Sri Lankan experience. Sri Lanka's two UPR cycles demonstrate the fundamental limitations of the procedure in terms of its ability to advance human rights compliance. The final section discusses the future potential of UPR. It points out that the effectiveness of the UPR process has thus far been contingent on certain pre-existing conditions, such as a strong regional discourse on human rights. The paper accordingly concludes that, while the UPR process has a strong potential to capitalise on pre-existing conditions for positive change, it is still to prove itself as a medium to catalyse such change.

References:

1 Felice D Gaer, *'A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System'* (2007) 7 Human Rights Law Review 109, at p.109.

2 Rosa Freedman, *'The United Nations Human Rights Council: More of the same?* (2013) 31(2) Wisconsin International Law Journal 208, at p.210.

The Possibility of a 'Consensus' Parliament in the Upcoming Sri Lankan Consititution

Dinidu Sathsara Basnayake

The government has implemented plans to form a new constitution and also expressed its will to abolish the executive presidency which was established in the 1978 constitution. Probably Sri Lanka is on the way to a parliamentary system from a semi-presidential one. The problem is which parliamentary system suits the most. Should it be a Westminister parliament which has a majority government and a main opposition and which was exercised in Sri Lanka under two previous constitutions? Or else, should it be a "consensus" parliamentary system influenced by some countries in the European continent?

The present paper argues that instead of a majoritarian parliamentary system which promotes bi-party system and suppresses minorities, what Sri Lanka needs is a parliament influenced by the Scandinavian model. The proportional vote system closes the doors

to a two-party dominance and it will pave the way for policy-making through convention, not through majority. On the other hand, the uprising parties and the splits of major parties will make Sri Lanka a good ground for a much "consensus" parliament without two dominant parties. Furthermore, this would result in the protection of minorities' rights in Sri Lanka. In a majoritarian parliament which has a clear distinction between government and opposition, the latter's participation in passing laws is less emphasized. But, in a "consensus" parliament system in which a single party cannot authorize, attention has to be paid to the parties elected by minorities' votes. This clearly gives way to be more attentive of minorities' rights which are otherwise thrown to the periphery in human rights.

References:

1. Blondel, Jean, and F. Battegazzore. "Have 'Consociational' Forms of Parliamentary Government Ceased to Exist in Western Europe but is the Majoritarian Model on the Way to Becoming more 'Cooperative'?" BCN Political Science Debates 2003 (3): 5-25. Accessed April 24, 2016. http: // www.icps.cat/ archivos/ BCNDebats / BCNdebats3.pdf?noga=1

2. Brown, A. H. "Prime Ministerial Power" In European Politics: A Reader, edited by Mattei Dogan and Richard Rose, 459-482. London: The Macmillan Press Ltd, 1971.

3. Wit, Daniel. Comparative Political Institutions: A Study of Modern Democratic and Dictatorial Systems. New York: Henry Holt and Company, 1953.

Security Laws in Sri Lanka: A Critique from a Human Rights Perspective

M A D S J S Niriella

Ensuring peace and security of the people is one of the topics which have gained serious attention of many countries including Sri Lanka. Committing crimes by individuals and organized crime syndicates, lead to a serious threat on security of the people and violation of their human rights too. Threat of certain serious crimes such as terrorism strongly demands of stringent security laws in criminal law jurisprudence. Sri Lanka has enacted some security laws such as Public Security Ordinance and Prevention of Terrorism Act to ensure the security of the people in the country. However, many legal scholars and human rights activists are of the view that these security laws are inconsistent with international human rights norms and abused in implementation. Therefore, this study intends to closely look at security laws in Sri Lanka, including their efficiency in suppressing the serious threats to the security of the people and the importance of such laws. The

paper argues that effectiveness and importance of these laws cannot be measured by the number of people incarcerating, but the ability to ensure the expected security of the people without violating the rights of the suspects/accused /offenders/victims and the society at large.

The qualitative research method is followed to carry out this research which contains an extensive examination of security laws available in Sri Lanka with the relevant international standards adopted by the UN treaties. Judicial pronouncements and relevant secondary resources are also reviewed in this analysis.

Human Rights of Specific Groups

The Rut of Formal Equality: Law and Gender (In)Justice in Sri Lanka

Dinesha Samararatne

The approach to gender equality in Sri Lankan law is primarily 'formal.' Law and policy is often gender neutral and Sri Lankan women rank high in the country's health indicators. It has been argued that women in Sri Lanka enjoy gender equality under the law and that they enjoy access to equal opportunities in the spheres of education, employment etc. This paper argues however that the law (including the Constitution, legislation, judicial interpretation, policy, institutions and practice) and its enforcement (or lack thereof) demonstrates otherwise. Sri Lankan women are faced with significant barriers under the letter of the law as well as in its enforcement which prevent them from enjoying their right to equality. Lived experiences demonstrate that deep seated cultural notions of femininity; masculinity; and patriarchy intersect with political and economic factors to stereo-type and to exclude women and also to place them in vulnerable situations.

Adopting an eclectic approach to feminist theory, this paper offers a critical assessment of experiences under the Law in arguing that the Law is a root cause of gender injustice in Sri Lanka. Selected aspects of experience under the Law are analysed in arguing that the approach of formal equality has to be replaced with the more dynamic concept of transformative equality in the Sri Lankan law. The internalization of the concept of transformative equality in line with the standards stipulated by CEDAW, in the law and in practice, is indispensable for gender justice in Sri Lanka.

Constructing the 'Female' in Judicial Pronouncements on Rape in Sri Lanka: A Critical Discourse Analysis

S N Y Abeywardena

Language plays an important role in legal discourse and the rape trial encapsulates this link between language and law as well as the politics of gender for, by its very definition in Section 363 of the Penal Code, only a woman can be a victim of rape in Sri Lanka. By analysing judgments on the offence of rape delivered by the Superior Courts of Sri Lanka during the time period 1995-2013, this study adopts a Critical Discourse Analysis approach to examine the linguistic features and practices present in the construction of the female and her conduct, in order to evaluate whether extra-legal i.e. socio-cultural perceptions are considered by Courts when reaching a verdict. Such an examination reveals that the judgments invoke certain images of women that are drawn from gender-based stereotypes, construct binaries between 'modest' and 'promiscuous' women while relying on constructed social norms of blame and responsibility in a situation of rape.

Such constructions are problematic given that by doing so the Courts invests these perceptions, which are unjustified generalisations of stereotypes, with the authority of the law, and violate the principles of fairness and objectivity expected from a rape trial. Violence against women is a violation of their human rights and the reliance on gender-based stereotypes and constructed social norms in the evaluation of evidence in a rape trial leads to further violation of the rights of the female rape victim.

The Child's Right to be Heard in Custody, Access and Guardianship Matters: A Comparative Perspective with Special Emphasis on the Sri Lankan Experience

Achalie M Kumarage

It is of common experience that in the adversarial system of court proceedings, the voice of the child being drowned by the voice of the parties to a case. The paper examines custody, access and guardianship cases to examine how a child can remain a passive subject in cases between their two parents or parents and third parties. The irony is that such cases equally affect the life and interests of the child.

Signatory to the United Nations Convention on the Rights of the Child and Hague Convention on the Civil Aspects of International Child Abduction, Lankan courts currently adopt an informal mechanism for consulting child's wishes in cases mentioned above. Evaluation of such a mechanism is extremely challenging and futile since how such mechanism would perceive a child's eligibility to

testify in relation to his age, maturity, understanding and psychological capacity remain largely subjective. In the current context of an escalating number of these cases this mechanism is woefully inadequate to protect the interests of the child. In this light, Sri Lanka has failed to fulfill its state obligation in protecting the best interests of the child.

Through a qualitative study, the paper analyses enabling mechanisms which effectively ascertain child's wishes during court proceedings. Inspired by models utilized in the United Kingdom and South Africa, the paper strives to devise a guideline for Sri Lankan courts to consult the child's wishes, which will be instrumental in safeguarding the child's right to express and to be heard in matters that affect his/ her life.

References:

1. UN General Assembly, *Convention on the Rights of the Child,* 20 November 1989, Uni ted Nations, Treaty Series, vol. 1577, p. 3

2. *Hague Conference on Private International Law, Hague Convention on the Civil Aspects of International Child Abduction,* 25 October 1980, Hague XXVIII

3. Boberg P. Q. R. '*The Law of Persons and the Family*' (Juta 1977)

4. Brossy v Brossy (602/11) [2012] ZASCA 151 (28 September 2012)

5. United Kingdom Government Advisory Group, *Final Report of the Voice of the Child Dispute Resolution* (March 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421005/voice-of-the-child-advisory-group-report.pdf> Accessed on 15th April 2015

Protection of Right to Education of Children Under Indian Constitution and Role of Indian Judicary

Gyanendra Fulzalke

Children are future of any country and education leads child to achieve that golden future. The whole progress and development of nation depends on young minds and education system. It is necessary to protect the human rights of children to strengthen development of country. Human rights are basic rights to survive in the human society hence needs extra protection to children. Indian constitution is a masterpiece which contains under part IV various human rights for all the sections of the society. This part has special provisions for the right to education to children. The *suprema lex* provides ample protection to children's education. There are plethora of provisions but unless and until if they are not interpreted by the judiciary are in vain. Apex court of India laid down guidelines for education to children. There are plethora of judgments which uphold the constitutional mandate which confirms education as fundamental right of every child. Indian

judiciary has played vital role in the protection of rights education of children. If children are suppressed, oppressed and neglected then ultimately it will give rise to downfall of state. It is the duty of every state to create child friendly atmosphere to groom a child in proper direction to achieve specified goals. In the era of liberalization, privatization, and Globalization children are most marginalized section of society. There are provisions under Indian constitution which safeguard the education, but such provisos must be implemented without delay and bias. It will give rise to a new episode in democratic countries. This research paper is an attempt to study the provisions of Indian constitution which protects right to education of children and role of apex court of India while interpreting such provisions.

The Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities

Yanitra Kumaraguru

Legal capacity enables a person to act within the framework of a legal system and forms the bedrock of personal freedom. Depriving an individual of this capacity is therefore the denial of effectively exercising several other rights; resulting in a fate often equated to 'civil death'.

For too long, mechanisms addressing individuals with intellectual and psychosocial disabilities denied them the very basic entitlement and dignity of legal capacity; resulting in an extremely low quality of life, perpetuating a vicious cycle of dependence and contributing to harmful stereotypes and marginalization.

Part One briefly considers progress made in the international sphere, noting the shift in thinking pioneered by the United Nation's Convention on the Rights of Persons with Disabilities [UNCRPD].[1]

1 UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution/ adopted by the General Assembly, 24 January 2007, A/RES/61/106

Despite this milestone allowing States to envision the ultimate goals aimed at, certain countries remain steeped in outdated and oppressive systems while others, despite progress, remain considerably far from the goal. Part Two, primarily through examples of good practice, explores how the paradigm shift brought about by the UNCRPD may be attained.

Part Three acknowledges the transition stage that States must undergo prior to achieving effective legal capacity for all, and details possible steps to be taken to minimize the violation and restriction of rights during such period.

Equality is for All: Naturalizing "Unnatural" Sex

Sajith Bandara

Article 12(1) of the Sri Lankan Constitution states that "all persons are equal before the law and are entitled to equal protection of the law". Yet, other domestic legislations have conveniently distinguished persons based on their sexual orientation. The Sri Lankan Penal Code prohibits any sexual relationship between persons of the same gender, and terms it as "carnal intercourse against the order of nature". These penal provisions even when not enforced, reduce gay men or women to "unapprehended criminals", thus encouraging discrimination in different spheres of life. These individuals not only go through misery and fear throughout their lives, but are also subjected to continued harassment, extortion and discrimination. Today, countries like India and the United Kingdom from whom we inherited our penal laws have liberalized their laws related to homosexuality. United States Supreme Court has taken steps to even recognize the equal right to marriage for gay individuals. However, our

colonial legacy has successfully kept the Sri Lankan society entrapped in the idea that anything different to heterosexuality is immoral and unnatural. The objective of this paper is to look at how Sri Lanka could move towards a more inclusive equality clause in the proposed constitutional reforms, while repealing the discriminatory sections in relation to LGBTQ rights[1] in other domestic legislations. This paper will also discuss the different approaches taken to promote gay rights in the United Kingdom, India and the United States of America through a comparative analysis. Everyone deserves equal dignity in the eyes of law.

References:

1 Penal Code Ordinance No 02 of 1883; Marriage Registration Ordinance No 19 of 1907; Adoption of Children Ordinance No 24 of 1941

2 Penal Code (Amendment) Act No. 22 of 1995, § 18

3 Naz Foundation v Government of NCT, High Court of Delhi, WP(C) No.7455/2001

1 The term "LGBTQI rights" is used in relation to the rights of the "Lesbian, Gay, Bi-sexual, Transsexual, Queer and Intersex" community.

Ensuring a Women Friendly Penal Code

Shashini Vidanapathirana Abeysinghe

This paper focuses on how the Penal Code of Sri Lanka, enables the violence against women or the abuse of women, through the analysis of the results of a secondary desk research.

Even though Sri Lanka has been a signatory for both the ICCPR and CEDAW, the current status of women suggests that certain provisions in the Sri Lankan Penal Code contravene the basic Human Rights ensured by these conventions as well as the Universal Declaration of Human Rights, and the Equality Provision of the Constitution of Sri Lanka.

Specifically, Section 365 and Section 365 A, have penalized what is termed as carnal intercourse 'against the order of nature' and acts of 'gross indecency' which as research suggests, is widely utilized to 'intimidate, harass and coerce' those of the LGBTIQ community. Section 363 A (a), which suggests that marital rape is not an offense in Sri Lanka where the partners are not judicially

separated also puts the lesbian and questioning women in a helpless situation, despite the government's suggestion that the Prevention of Domestic Violence Act successfully responds to the issue of Marital Rape.

The aim of this research is to establish that the provisions of the Penal Code which can be utilized to harass or cause discomfort to the women belonging to the LGBTIQ community are in contravention of Article 12 of the Sri Lankan Constitution, as well as the international conventions and hence, such provisions should be repealed.

References:

1 The Penal Code of Sri Lanka 1995

2 Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization-Situation Analysis, Equal Ground, found at https://issuu.com/equal-ground/docs/situation_analysis/0, accessed on 09th April 2016

3 International Covenant on Civil and Political Rights, Replies of Sri Lanka to the List of Issues in Relation to the Fifth Periodic Report of Sri Lanka, September 2014, pg 9

A Socio – Cultural Analysis on Rights of LGT[1] in Sri Lanka

Unnathi S Samaraweera

Since heteronormativity is recognized as only acceptable sexual behavior in Sri Lanka other sexual minorities in a social exclusion. In fact the legal background of the country which is the penal code introduced by the British, during the colonialism provides a room of marginalization as well as exclusion of sexual minorities. LGBTQ is an umbrella term which is used to identify sexual minorities where I would specifically focus on rights of homosexuals (Lesbian and Gay) and transgender in this paper. Homosexuality refers to sexual behaviors and desires between same sexes partners either between males or between females. Gay refers to male homosexuality and lesbianism refers to female homosexuality. The term transgender includes inter-sexual, transsexuals, drag queens, cross-dressers and transvestites. Intersexual is a term used to refer to individuals who have both male and

1 LGT refers to lesbian, gay and transgender

female organs. Transsexuals can be defined as being biologically born to one sex though they feel that they belong to the opposite gender, and suffer from an identity crisis. Cross-dressers, dress like opposite sex with some purpose such as issues impacting their own gender identity but not for performances. However, transvestites cross dress for some erotic pleasure such as in sexual acts. Even though there are few differences between them, contemporary transgender discourse broadly includes all these sub-categories as transgender. 30 semi - structured interviews with lesbians, gays and transgender where 10 per each conducted. Main aim was to identify the socio – cultural prohibitions faced by those groups being a sexual minority group and samples were found through two NGOs in the city of Colombo. Thematic analysis used as the qualitative analysis method. In this paper my attempt is to outline findings related to legal prohibitions, inequality, discrimination, human rights violation, socio-cultural factors such as exclusion, non-acceptance and violence faced by LGT in Sri Lanka. According to 365 (a) a homosexual act is a crime, under the explanation of "Any act of gross indecency" and "Vagrancy Ordinance" is often used to harass and arrest all sexual minorities specifically group of

transgender where their sexual orientation and gender identities are also legally prohibited. The fact is homosexuality is a one form of sexual orientation which is not clearly understood in the Sri Lankan legal, cultural and social sectors. Because of their sexual orientation just differs from main stream acceptance homosexuals always in a social exclusion where their most human rights including job, living environment, legal marriage, adoption of children, are prohibited. When it comes to transgender they are in a more exclusion comparing to homosexuals. On one hand they have an issue with their representation in larger society, which often ends up as both physical and psychological violence. When it comes to their sexual orientation again they are in a margin as homosexuals which is not agreed by most of transgender I studied. The main argument of the paper is to highlight the legal, social and cultural prohibitions towards LGT in the country which are often inter-linked with one another.