

Abstract

This paper examines the emergency law in Sri Lanka in the context of human rights of the people. The paper will be mainly focused on the security detention and its effect to the human rights which are protected by the constitution of Sri Lanka. This will be discussed under main three parts. (1) Prevailing provisions of the legislations related to the emergency law in Sri Lanka (2) the human rights cost of emergency laws and (3) recommendations for balancing these two end. To arrive to that end the experience of the other jurisdictions and the high standard of the human rights calcified in the UN instruments will be discussed. Preventive detention involves the detaining of a person with a view to preventing such person from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services. This emerges by detention of a person without trial and conviction by the court but merely on suspicion in the minds of the executive authority. The detainee may not even be suspected of criminal conduct. Under certain forms of preventive detention, the detainee is held for purposes on the assumption that he or she poses a future threat to national security or public safety. The executive authority exercises wide discretionary power regarding arrest and detention to any person as they wish. Human rights are universal values and legal guarantees that protect individuals against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. However, the emergency law when it comes to its implementation state it is obvious rather than ensuring the purported goal of public and national security, the emergency powers permitted the infringement of both constitutionally entrenched fundamental rights and international standards of human rights. Although ensuring national security and protection of its citizens is an important state interest, the state should get their best effort to demonstrate its genuine interest for ensuring more civilized emergency law with the low cost to the human rights of their citizen. So, it has to take every endeavor to balance these opposite effects. Such legislation must lead the democratic society, state legitimacy and international order.