

Endless Emergency rule

Emergency rule in Sri Lanka continues since 1971, except for brief intervals. From independence in 1948, upto the end of June 2000, the island has been under Emergency rule for 9,825 days (nearly 27 years out of 53 years of independence). This has permitted serious derogations by successive Sri Lankan governments of rights protected under the International Covenant on Civil and Political Rights (ICCPR).

The People's Alliance government re-introduced Emergency in October 1994 following the assassination of presidential candidate Gamini Dissanayake by a suicide bomber suspected of belonging to the Liberation Tigers of Tamil Eelam (LTTE). Emergency was in force only in some areas at the beginning, but extended gradually to cover the whole island. The Sri Lankan constitution (article 155) and the Public Security Ordinance (No 25 of 1947) empower the President to declare a state of Emergency.

Declaration of Emergency must be approved by Parliament within 14 days and extension of Emergency requires parliamentary clearance every month. The laws also enable the President to promulgate Emergency regulations, including the power to make regulations having the legal effect of overriding, amending or suspending any law, except the provisions of the constitution.

The law does not provide for affirmative procedure (requiring approval before the regulation comes into force) for Parliament to scrutinize Emergency regulations to ensure that they are necessary and reasonable. Although, it is within the competence of Parliament to add to, repeal or amend any regulation, this power is not exercised. The validity of Emergency regulations can be challenged, but neither the President's decision to declare a state of Emergency nor its continuation can be called into question before the courts.

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) has recommended that all Emergency regulations should be laid before Parliament and except in extreme situations, should not come into effect until approved. Emergency powers are

regularly misused. CIJL notes that Emergency regulations are sometimes very wide in scope and enter into fields with no connection with the Emergency. In August 1998, the government attempted to postpone elections for five Provincial Councils under Emergency regulations. The Supreme Court ruled that government action was illegal and breached constitutional provisions on the freedom of expression.

The government declared that the country is in a "state of war", and introduced Emergency (Miscellaneous Provisions and Powers) Regulation No 1 on 3 May 2000 (Gazette No 1131/8), widening the powers of the President and the security forces. The regulations were amended on 10 May (Gazette No 1131/20) and 16 May 2000 (Gazette No 1132/14). These replace Emergency regulations promulgated on 4 November 1994 (Gazette No 843/12).

The regulations were introduced following the LTTE capture of Elephant Pass military base in the northern Jaffna peninsula. Ministers claim that the government measure is to protect Tamils living outside the north-east war zone from an ethnic backlash. But observers say Emergency regulations have been used in the past as an instrument of repression against the Tamils. The new regulations have heightened fears of Tamils in Colombo and other southern areas. Press censorship under the regulations requiring prior approval for war-related news was imposed on 3 May by the Censor.

Under the regulations, the only newspaper in Jaffna, *Uthayan* (Rising Sun), Colombo English journal *Sunday Leader* and Sinhala weekly *Irida Peramuna* (Sunday Front) were banned for six months. *Uthayan* had continued to report news relating to the war. The other two had exposed alleged corruption in high places and recently questioned the French academic qualifications of President Chandrika Kumaratunge. Censorship on foreign media was removed on 5 June, after widespread protests. Following an application by the publishers of *Sunday Leader* and *Irida Peramuna*, the Supreme Court ruled on 30 June that the actions of the Censor were illegal, as the Emergency regula-

tions did not contain provisions for his appointment. But on 1 July the government introduced new provisions and re-appointed Ariya Rubesinghe as the Censor. The government lifted the ban on *Uthayan* on 3 July.

The Censor may prevent publications in Sri Lanka or information being transmitted outside the island on matters regarded as prejudicial to the interests of national security or which incite mutiny or riot. Documents, pictorial representations, photographs, cinematograph films (including sound tracks), teleprinter, telegraph, television, transmission of material relating to the operations of security forces, including news reports, editorials, articles, letters to editors, cartoons and comments must be submitted to the Censor before publication. By the 10 May amendment, the power of the Censor was extended to fax, computer transmissions, video and audio cassettes.

The Censor is also granted authority to ban publications, which contravene Emergency regulations or in the opinion of the Censor, publish material prejudicial to national security, for specified periods and close or take possession of a printing press, computer and other equipment, radio or television stations. He may also close or acquire a printing press that is likely to be used in the production of documents containing matter which, in the opinion of the Censor, is against national security.

Analysts say that the Censor's extensive powers, including the power to impose penal sanctions, undermine the judicial powers vested in the judiciary under the constitution. Subject to an appeal to the Court of Appeal, the Censor also has power to decide which part of the proceedings before a High Court in a case (which must be held in camera) relating to death in security force custody, shall be published.

A Competent Authority appointed by the President under the regulations is empowered to requisition any article in Sri Lanka, including ships, aircraft and agricultural machinery, in the interest of national security, preservation of order or maintenance of supplies. On acquisition, the ownership of the article vests in the Authority, free from any mortgage,

lien or charge and the Authority may sell or dispose of it in any manner. The Defence Secretary may requisition any immovable property such as land and use or deal with it in any manner.

A Competent Authority may, under the regulations, requisition any vehicle, including spare parts and fuel, if he/she is of opinion that it is necessary in the interests of national security, preservation of order or maintenance of supplies. The Superintendents of Police are authorized to acquire any building which is alleged to have been used in an offence under the Prevention of Terrorism Act (PTA) and evict any resident. The owner may apply to the High Court for repossession and the court, if satisfied that the premises was used in the commission of an offence under the PTA, must forfeit the property to the state.

The President or an authorized officer may require any person to do work or perform service connected to national security. The courts are granted power to forfeit all movable or immovable property of anyone failing to comply. The President is also empowered to prohibit public meetings or processions and impose curfew orders.

The Defence Secretary may, in the interest of national security, order anyone not to be in any area, require the person to notify his/her movements, confine him/her to residence without access. He may also order anyone to surrender travel documents or tickets to travel abroad, prohibit him/her using specified articles and impose restrictions on his/her employment or business, association or communication.

The Secretary may also detain any person upto one year without authority of the courts. There is no appeal against the Secretary's decision. Such detainee may complain to an advisory committee appointed by the President. But the Secretary is not obliged to act on the report of the advisory committee. A person suspected of belonging to a proscribed organisation will not be entitled to make such complaint. The large number of Tamils detained without trial for long periods under the PTA or Emergency on suspicion of links with the LTTE will not have the right to complain to the committee.

The security forces may break and enter any premises or vehicle. They are also empowered to search, arrest without warrant, detain and interrogate suspects and seize property, vehicle or any other article. The arrested person must be handed to the nearest police station within 24 hours and produced before a magistrate within 30 days of arrest. But a

police officer not below the rank of an Assistant Superintendent of Police (In Northern and Eastern provinces, also officers of the armed forces) may detain a person for 90 days, with restrictions on access, communication and other rights that ordinary prisoners are entitled to, by amending or modifying rules under the Prisons Ordinance.

If the arrested person is produced in a court before the expiry of the 90 days, the detention must be extended for another six-month period, if the police request. The courts have no discretion in the matter. An arresting officer is required to issue a receipt to relatives, but instead, an entry may be made in an information book at the police station, giving reasons for not issuing a receipt. The police are also expected to issue receipts for property seized. In the case of a death by action of armed forces or in custody, the Deputy Inspector General has power to deny access of the dead body to relatives and order cremation or burial, after a post mortem examination.

Householders must register at a police station if required by police, and furnish a list of residents, distinguishing members of the family from servants, tenants and visitors. According to Sri Lankan human rights agencies, currently, the police demand, without legal authority, proof of registration from Tamils during search operations and at checkpoints in many towns, including Colombo. The Supreme Court recently held that such a demand is a violation of fundamental rights guaranteed in the constitution and ordered compensation.

The regulations also make it an offence (punishable by imprisonment upto 20 years) to bring or attempt to bring the President, constitution, government or the judiciary into hatred or contempt by spoken or written words or promote hatred between different groups. It is an offence to publish information or comment about a proscribed organisation (the LTTE was banned in Sri Lanka in January 1998) or government investigation into such an organisation. Publication on the disposition, condition, movement or operations of the security

forces or matters relating to the defence of Sri Lanka is also an offence. Photographing security force buildings or vessels without Defence Ministry permission is prohibited.

The Defence Minister or the Defence Secretary may order a detainee under Emergency regulations or the PTA to be sent to a rehabilitation centre under a Commissioner General of Rehabilitation. The consent of the detainee is not needed and a number of detainees have been sent to rehabilitation centres. The security forces must send a person who surrenders, to a rehabilitation centre, after obtaining a written statement that he/she surrendered voluntarily.

Trials under the regulations are without a jury and conditional release of a convicted person, permitted under normal laws, is not allowed. Confession or an incriminatory statement, to whomever and wherever made, is admissible as evidence under Emergency regulations. The burden of proving facts to reduce or minimise the weight of such a confession or that it is irrelevant, will lie on the accused. Under normal law (Evidence Ordinance), only a confession made to a magistrate is admitted as evidence. A confession implicating another accused person in the same offence, although inadmissible under normal law, can be evidence under Emergency regulations. CIJL has stated that admissibility of confessions encourages torture.

Emergency regulations in Sri Lanka have been criticized as falling far below internationally accepted standards. Human rights agencies say restrictions under the regulations go far beyond derogations permitted under the ICCPR. The UN Working Group on Enforced or Involuntary Disappearances urged the Sri Lankan government in April 2000 to abolish the PTA and Emergency regulations or bring them into line with international standards.

Reading

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