



**Human Rights for all: The Rights of
Minorities in the Peace Process**

RELIGIOUS MINORITIES

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RELIGIOUS MINORITIES

1. International regime for the preservation of religious rights

From the ashes of the Holocaust emerged a new world order. An order in which the worth of the human person was recognized above all else, a world which transcended the racial, religious and cultural diversities that was the cause of war. The intolerance and aggression between Christians and Jews from time immemorial culminated in one of the direst massacres in human history. The era of terror that began with the relentless massacre of the German Jews as an act of ethnic cleansing was in fact a manifestation of the fundamental differences in religious ideologies. In this instance it is important to draw a distinction between religion and faith. It is ironic that that even being followers of a similar faith and a common God, the intolerance of superficial ideological differences led to such massive and brutal genocide.

Some of the bloodiest wars in human history could be traced to ideological differences and have been catalysed by religious fervour. Religious fanaticism generates precisely those evils that the founders of such religions exhorted their followers to eliminate¹. Ranging from the Crusades to the relentless persecutions of those of a Jewish faith are stark reminders of this fact. Similarly, historical struggles for human rights and subsequent assertions have been launched from time to time for the preservation of those very same rights pertaining to religion.

Hence as a result of the mass scale persecutions that were committed throughout history in the name of race, religion and ethnicity and as a response to the universal call of human rights, an international regime devoted to the protection and preservation

of these human rights finally emerged in the latter part of the 20th Century. Nevertheless despite this development the struggle for religious equality continues to date in most parts of the globe.

With the emergence of modern nation states and multi-ethnic societies during the same period, the struggles for religious equality in a modern context, has become mainly internalised. The issue of religious minorities is two-dimensional. It is not confined to states committed to the rejection of traditional religions in favour of one predominant ideology but finds equal expression in states manifesting an attachment to a particular religion through laws of through state policy. Iran is one such example².

Prima facie it may appear that the "modern nation state" committed to secular governance, which even constitutionally, separates the "church" from the "state" is incapable of discriminatory treatment of the various religions at policy level. However, it was observed by UN special Rapporteur Krishnaswami in an early sub-commission report that "within the framework of the principle of separation *de facto* pre-eminence is sometimes achieved by a particular religion and the law of the country – although equally applicable to everyone – reflects in certain important matters the concepts of the predominant group"³. In a context where even 'race' to a great extent is defined in terms of a predominant religion, the "Singhalese Buddhist" of Sri Lanka being a classic example, the need for an international regime specially devoted to the protection and promotion of rights pertaining to **religious minorities** could no longer be over-looked.

The Universal Declaration of Human Rights was the precursor to many declarations and covenants setting standards for the freedom of religion and belief and, especially, for the protection and

promotion of the identity of religious minorities. They provide a normative framework for developing context-sensitive policy-options aimed at managing religious conflict and establishing democratic institutions in multi religious societies⁴. Subsumed within the genus of international human rights law, the International Covenant on Civil and Political Rights (ICCPR) is one of the foremost instruments. Particularly *Articles 27* of the ICCPR which is devoted to the protection of the **rights of Ethnic, Religious and linguistic minorities** and *Article 18* which preserves the **freedom of thought, conscience and religion** impose a duty on state parties to ensure these rights to their citizens. The Committee is empowered to assess measures taken by state parties concerned to protect the practices of all religions or beliefs from infringement⁵ and to protect their followers from discrimination.

Apart from this the right to freedom of thought, conscience, religion and belief as well as the rights of persons belonging to religious minorities have been increasingly acknowledged in international human rights law, by way of special instruments promulgated for the preservation of the same, both by the United Nations as well as by regional and other Organizations.

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly in December 1992 is one such example. The preamble to the said declaration specifically states that the same was inspired by *Article 27* of ICCPR.

The following list contains all major UN declarations and conventions pertaining to these rights.

Universal Declaration of Human Rights (1948)

Convention Relating to the Status of Refugees (1951)

UNESCO Convention on the Against Discrimination in Education (1960)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Civil and Political Rights (1966)

Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live (1985)

Convention on the Rights of the Child (1989)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

Apart from these, the international regime for the protection of religious minorities includes European Declarations and Conventions relevant to religious rights within the frameworks of the Council of Europe and the Conference for Security and Cooperation in Europe (CSCE). The freedom of religion or belief and the rights of persons belonging to religious minorities have been addressed in several multilateral treaties and conventions. The most important are:

European Convention on Human Rights (1950) and Protocol No 11 (1954)

Final Act of the Conference on Security and Cooperation in Europe (1975)

Concluding Document of the Madrid Meeting of the CSCE (1983)

Concluding Document of the Vienna Meeting of the CSCE (1989)

Charter of Paris for a New Europe (1990)

Document of the Copenhagen Meeting of the CSCE (1990)

CSCE Helsinki Summit Decisions (1992)

Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights (1993)

Framework Convention for the Protection of National Minorities (1994)

Inter-American declarations and conventions relating to religious rights have been promulgated and recognized by the Organization of American States (O.A.S.). Some examples are listed below:

American Declaration of the Rights and Duties of Man (1948)

American Convention of Human Rights (1969)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

There are a number of African declarations and conventions relating to religious rights such as:

African Charter on Human and Peoples' Rights (1981)

African Charter on the Rights and Welfare of the Child

The issue of religious minorities keeps gaining momentum within the spectrum of International Human Rights in the face of increasing religious fundamentalism and ethno-religious movements. Religious differences remain a major cause of social conflict at local, national and global levels. Hence the urgent need for achieving a 'unity in diversity' cannot be over-emphasized particularly at a national level in multi-religious societies. Therefore it is imperative that states (state parties) take into account the dynamics of multi-religiosity and adopt a culture-specific approach towards the formulation of policy-models based on international legal norms.

2. The present legal position in Sri Lanka relating to religious rights

The issue of religious minorities in an internalised Sri Lankan perspective, should be considered in the light of prevalent legal provisions relating to the same and their degree of compliance with international norms.

The discussion of religious minorities, in a Sri Lankan context, becomes a question of whether the three "minority religions" are granted an equal status with the majority "Singhalese Buddhists".

Article 10 of the Sri Lankan Constitution preserves the right to "**freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.**" An equal right is conferred upon the adherents of all religions in Sri Lanka, i.e. mainly Buddhism, Christianity (including Catholicism and the various different sects), Islam and Hinduism. This Article corresponds to *Article 18* of the ICCPR.

Even though an adoption of international standards pertaining to the rights of religious minorities is evidenced by the incorporation of the

provisions of *Article 18* of the ICCPR, the question arises as to whether the Sri Lankan laws and state policies comply with *article 27* of the ICCPR which requires the protection of the rights of Ethnic, Religious and Linguistic minorities by state parties.

Article 9 of the Constitution of Sri Lanka states as follows:

“the republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha sasana.....”⁶

This Article, *prima facie* is a blatant violation of the principle of equality and the concept of secular governance. Not only does such a provision in the Constitution seem to speak of a majoritarian approach but it also ironically goes against the fundamental principle of equality as advocated in Buddhism itself.

First and foremost the full impact of including such a provision in the Constitution of a multi-ethnic, multi-religious and multi-linguistic state like Sri Lanka which is dedicated to the preservation of its territorial integrity, should be fully appreciated. The “ethnic conflict” at its worst – in the form of the Tamil Tiger movement, is regarded by certain scholars, as being the culmination of tensions created by discriminatory political manipulations like the Citizenship Act of 1948 and the Official Languages Act of 1956. It was observed by the delimitation commission in 1956 that “the people have not yet learnt to think sufficiently in terms of principles and policies in preference to race, caste or religion”⁷ Therefore undoubtedly *Article 9* of the Constitution of 1978 is yet another manifestation of this phenomenon.

On the other hand, rather than adopting an interpretation based on a bare reading of this Constitutional provision it is important to

consider the same in a culture-specific context in order to assess its implications and impacts. While an amendment of this Article would certainly diffuse tensions caused by it, an understanding of the same in relation to the context in which it is applicable is important.

It is note worthy that *Article 9* further states that "*it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all regions the rights granted by Article 10 and 14(1)(e)*".⁸ Also both *Article 10* and *Article 14(1)(e)* explicitly set down the fundamental right/freedom of the individual to practice the religion of his choice. Therefore while a positive duty is imposed upon the State to preserve Buddhism there is also a corresponding responsibility to ensure non-discrimination of other religions in satisfying that duty. Further *Article 12(2)* of the Constitution states that "No citizen shall be discriminated on the ground of race, religion, language etc." Hence, even though "Buddhism is to be given foremost place", the paramount duty of the state to preserve the fundamental freedom of religion accruing to the individual by virtue of the above Constitutional provisions, becomes transformed to a State responsibility to protect and preserve other religions as well.

It is undeniable that although state policy should be non-discriminatory, the emphasis on Buddhism is suggestive of sectarianism. However it must also be appreciated that the emphasis on Buddhism may well be a duty imposed for the preservation of a unique cultural heritage rather than a prominence given to one religion over the others. Theravada Buddhism is an inseparable part of the Sri Lankan culture and is under threat of extinction and Sri Lanka is currently the only country in which the doctrine still prevails in its pristine form. While all religions should undoubtedly be given an equal patronage by the State, the constitutional requirement of giving "Buddhism the foremost place" is associated

with the special duty cast on the State to “protect and foster the Buddha sasana.” *Article 9* is subject to the condition that the rights granted by articles 10 and 14 (1) (e) are assured to all religions. Therefore the duty cast upon the State becomes more of a duty to preserve an intrinsic part of an ancient culture much like the ruins of the ancient Kingdoms or the rain forests, which are now even internationally recognized as world heritage sites.

Nevertheless it is imperative that the carrying out of this obligation should not give rise to a favouritism that would cause discrimination to other religions or religious minorities. Within the amalgam of laws that comprise the Sri Lankan legal system there are certain in-built checks and balances particularly for the safeguarding of minority (religious) interests.

The Sri Lankan legal system consists of a multiplicity of laws, which comprise the Roman-Dutch Law and English Common Law traditions as well as three personal laws based on the different cultural and religious traditions. While the kandyen Law and the Thesavalam Law incorporate certain Buddhist and Hindu customs respectively, the Muslim Law is a purely canonical Law that is completely based on Islam traditions and the Qur'an. It is particularly interesting to note that in the case of conflict between the general law of the country and a special (personal) law, the special law is given precedence over and above the general law⁹.

Further the rights of religious and other minorities are also ensured through statutory means. Acts of Parliament have been introduced for the facilitation and protection of religious activities initiated by institutions representing all four religions. The Buddhist Temporalities Ordinance, Church of England Ordinance, Hindu Board of education Act, Muslim Mosques and Charitable trusts or Wakf Act are some examples.

Nevertheless, despite the various mechanisms that are in place inequality and dissention in a multi-religious society is still very much a social reality. The strife for religious rights begins with the assumption that the same is being denied. Hence, the manifestations of tensions between the various groups prove to be indicators of the practicalities and realities related to the issue of religious minorities.

3. Patterns of conflict pertaining to religious intolerance

Within the major religious orientation in Sri Lanka of Buddhism, Christianity, Hinduism and Islam – as well as the ethnic groups of Sinhala, Tamil and Muslim – the “Sinhala Buddhist” identity has been the subject of prolonged discussion, especially so in the context of Sinhala – Tamil conflict.¹⁰

When considering the concept of conflict in a multi-religious society, two distinct patterns could be observed. Violence and the persecution of one community by another is a social phenomenon that can be commonly observed in mixed societies, particularly during periods of social unrest and ethnic/religious tensions. These persecutions can be either organized violence or can be triggered impulsively.

In Sri Lanka, a more dangerous observable trend is when personal disputes become escalated to ethnic/religious crises based on the particular ethnic/religious identities of the individual parties concerned. The Muslim – Sinhala riots at Mawanella in May 2001 is a classic example of this. A dispute between a Parliamentarian and a citizen both of whom coincidentally belonged to the different communities, ultimately escalated into a full-blown ethnic/religious conflict. The recent near – fatal incident at Maligawatte over the construction of a Muslim mosque once again triggered tensions between the Muslims and the Buddhists.

Furthermore, it must also be considered that generally while the rights of religious minorities are liable to get violated the same is true of the rights of members belonging to the majority group who inhabit areas which are predominantly populated by one or other of the minority communities. This is an empirical fact particularly in the North East areas and the border villages. Also the patterns of conflict can be observed between the two main minority groups as well. The mosque massacre in August 1990 is one such example, where over three hundred Muslims, men and boys who were prostrate in prayer at the Meera Jumma Mosque were massacred by the large group of LTTE cadres. These incidents are statistical indicators of the religious intolerance among the various groups.

4. The need for inter-religious understanding in order to promote Religious (human) Rights towards achieve a lasting solution

In view of the above diagnosis, the only prescription of a nation afflicted by a seeming clash of cultural and religious values and a degenerating human identity is strictly therapeutic – a setting in which no amount of Constitutional amendments to positive law could capture the spirit of the Sri Lanka people. The ancient Buddhist-Hindu origins later fused with Christianity and Catholicism, including the Islamic canonical practices, define the parameters of our heritage. Two great legal traditions and three customary legal systems are required to legally accommodate this multitudinous setting, subject to an unavoidable degree of over-lapping and ambiguity.¹¹ The universal theme of human rights among such diversity could only be advocated by appreciating an integrated national culture rich in humanism. For, within this amalgam are found concepts, that centuries later have been enshrined in the Universal Declaration of Human Rights, which is considered to be the very tabernacle of the rights of man, social justice and equality.

It has been stated by Dr. Weeramantry that certain Non – Western cultures “long antedated the West in the evolution of these rights, and out-distanced the West in the amplitude and scope of those rights”¹², citing Islam as a classic example. Deep-seated concepts that constitute the very core of modern human rights have been the fundamental bases of eastern philosophies and religions from time immemorial.

The Sri Lankan Value system emanates from this diverse racial, cultural and religious origins. Common cultural concepts such as the sanctity of womanhood in a patriarchal society, which becomes transformed to the ‘Right of Equality’ in modern human rights, owe their existence to ancient religious ideologies. Homage paid by devotees of all religions to Adam’s Peak, serves as the classic illustration of the emergence of common ritualistic cultural practices with roots embedded in religious beliefs.

Sri Lanka has become so culturally and religiously inter-woven that the distinctions are no longer that pronounced. The ‘Singhalese-Tamil New Year’ is celebrated by Buddhists, Christians and Hindus alike. Furthermore it is characteristic of a typical Sri Lankan Buddhist to be a devotee of Hindu gods, particularly *Vishnu* and *Kataragama*¹³. Similarly, the bond between Christianity and Islam is sealed by the fact that Muslim Law of Marriage in Sri Lanka does not preclude Christian partners as an absolute prohibition¹⁴.

Nevertheless, present day Sri Lanka remains a nation very much divided, more through the notion of diversity rather than the substance of diverse factions. These intricacies of race, religion and culture could be overcome only upon realization of the theme of common humanity within a ‘Sri Lankan Culture’. In the effort to promote human rights and inter-cultural understanding by transcending denominational differences, the Universal Declaration would provide an appropriate benchmark.

"The Universal declaration by itself sets out agreed values for our world and it does this without invoking any particular philosophy, religion or culture"¹⁵. However the major religious traditions in Sri Lanka are directly concerned with such norms and values and they share the field of human rights with the Declaration, despite differences in their particular religious perspectives¹⁶. As observed in Sri Lanka, religion is the main catalyst of cultural and ethnic divisions. Therefore an examination of Buddhism, Christianity, Hinduism and Islam together with their cultural significance in the light of the Universal Declaration would reveal the common language of human rights etched within their content.

The Buddhist view of Human Rights emerges from two basic assumptions, one philosophical and the other ethical. The philosophical assumption is that human beings are born with complete freedom and responsibility¹⁷. This basic freedom together with the concept of equality¹⁸ in dignity and rights is clearly illustrated by the emphasis placed by Buddhism on self-reliance.¹⁹ Further according to the *Dhammapadu* if one is his own master, one is certainly born free, and as such if all could attain Buddhahood what greater equality in dignity and rights could there be?

The first precept in Buddhism²⁰ sanctifies the right to life. The sagely verses by Sir. Edwin Arnold on the Buddha's way of life reverberates this truth as he says, "*kill not for pity's sake, lest ye slay, the meanest thing upon its upward sway*"²¹ and within this sphere the sacred right to life is preserved and inviolable. Human liberty is understood in terms of three dimensions in Buddhism. i.e. conscience, speech and action, conscience being the forerunner to speech and action – the universal or cosmic righteousness as conceived in Buddhism.²² Similarly, torture and the infliction of bodily harm goes against Buddhist teachings as the human being is considered to be a psychosomatic unit²³ capable of attaining enlightenment. The Buddhist clergy or the *Sangha* exemplify

the ethical codes set down in Buddhism which are in essence committed to safeguarding human rights, in turn adopted and followed by lay devotees.

This fundamentally humanistic approach of Buddhism is the very cause for its popular embrace especially by the socially oppressed lower strata of society. *"Buddhism succeeded in winning the support of many oppressed people suffering from lack of rights, poverty and hunger ... it succeeded, in expressing in a specific form the aspiration of the people for a better life"*²⁴ The pillars of universal compassion and human rights have long stood unshakable, within the temple of dhamma; *"sabbhe satta bhavanthu sukithatha"*²⁵. True to the predictions of the Gautama, the island of Lanka became the sanctuary of the dhamma in its purest form and is an intrinsic segment of a cultural heritage that dates back 2500 years.

In the case of Christianity too, it is as Piaget once stated, *"Morality is the logic of action."* The differences of philosophy, faith and practice are but superficial, for the fundamental moral that governs them all, is the preservation of the human worth. If one accepts the premise in the Old Testament that Adam was created in the image of god, this implies that the divine stamp gives human beings a high value of worth.²⁶

This itself epitomizes the right to life and dignity of the human person.

Also, men being created in the image of God, are all equal and are the sons (and daughters) of god. Hence equality in the eyes of the divine cannot but be transformed to equality in the eyes of man. For though man rules man, god rules above all mankind. That there are no distinctions within the Kingdom of God is emphasized by the special attention He pays to the poor, the disadvantaged, the out casts of society etc²⁷. The themes of 'good' and 'evil' that run throughout the Bible from Genesis to Revelation are but aids to the exercise of the freedom of 'reason and conscience'. The 'spirit of brotherhood' is

found in the Kingdom of god where good triumphs over evil, together with righteousness, justice and peace.²⁸

The rights of life, liberty and security are all consecrated within the hallowed precincts of Christianity. King Assyria, inviting the Jewish people to surrender assures them that every one would "eat of his own vine..... of his own fig tree, and every one will drink the water of his own cistern,"²⁹ Even the seeming harshness of practices such as 'eye for eye' and 'tooth for tooth' were efforts to mitigate the existing barbaric criminal practices by imposed restraint. A man's freedom from cruelty and degradation³⁰ were safeguarded by these means.

Theology presents the basis of a human rights theory stemming from a law higher than that of the state, and whose source is the Supreme Being, 31 and it is therefore sacred and inviolable. Due to this sacrosanct nature, human rights are canonized in Biblical writings starting with the Ten Commandments. Among the pages of the Holy book are doctrines that penetrate into the very core of Human rights, which would in turn penetrate the minds of men by convictions begotten of faith. Hence it only remains to be said *seek and thou shalt find*.

The theme of multi-ethnicity and human rights in Sri Lanka cannot be considered sans the influences of the ancient Islamic Civilization that is the heritage of the Muslim community. The sentiments of Dr. A.R.B. Amarasinghe as he contemplated the Islamic traditions in the light of the Universal Declaration, are indeed reverential; "*Certainly, the societies that base their guiding principles of state policy on the holy Qur'an, very clearly recognized the existence of such rights and placed the greatest importance on the observance of those fundamental rights which humankind generally regards as basic and universal in character*"³²

Dignity is an undeniable condition to being born human, for the Qur'an says "*surely we have accorded dignity to the sons of man*". Innumerable texts likewise point to the pre-eminent position of the human being in the scheme of god's creation: "*We have honoured the sons of Adam..... and conferred on them special favours above a great part of our creation.*"³³ The concept of equality of man (and woman) indignity and rights is encompassed in Qur'anic teachings decreeing its inviolability, '*O mankind be careful of your duty to your Lord, who created you from a single being and from the same created your mate..... and be careful of your duty to Allah in whom you demand your mutual rights and be mindful of your ties of kinship.*'³⁴

Similarly values pertaining to the preservation of the right to life, liberty and security of person have been postulated within divine Quranic law, which forbids the taking of life '*which Allah has made sacred.*'³⁵ In Islam the fountain from which all life flows is the almighty and all such life is sacred, and liberty and security are as much a part of such life. Considering the strict emphasis on morality, ethics and righteousness placed by Islam, Qur'anic writings prescribe certain forms of punishment for offences in a human society which was essentially barbaric and uncivilized. However, justice was mingled with mercy in Islamic governance and "*the mutilation of a human being is strictly forbidden, even if a Muslim state has been massacred by the enemy.*"³⁶ Freedom from torture was thereby preserved within this pristine civilization in co-existence with a criminal justice system.

In a Sri Lankan multi-ethnic context, the appreciation of this judicious approach of Islam in its purest form is vital, as prejudicial views due to fundamentalist interpretations popularly resorted to in other jurisdictions may bear its influences upon the local communities³⁷. It is indeed tragic that, what is considered to be "*a developed cultural heritage which was among the most*

*intellectually stimulating the world has seen,*³⁸ ceases to be appreciated by the modern world, and is in fact criticized especially by the West, for the purported lack of the very same qualities of righteousness and justice that it stands for.'

A better appreciation of the humanistic approach of Islam, at least in a local context, would elucidate definite assertions of the very same rights that are fiercely advocated by the West in a modern world order. For, *"in order that the Nationalities of the world can harmonize with one another, Islam laid down a principle of the greatest magnitude and established true democracy in the world and removed all distinctions between man and man, wherever he came from and whatever nationalities he belonged to."*³⁹

Hinduism too plays a vital role in moulding the Sri Lanka value system. The Hindu View of human rights emerges, as does that of Christianity and Islam, from the focal point of god⁴⁰. The quintessence of Hinduism is the existence of an infinite god; "it is the beginningless Supreme Being which is said to be neither being nor non-being."⁴¹ Man, is considered simply, as a manifestation of that being and in a sense a part of Him. Hence the human being is recognized as the acme of creation. The equality of the human person in dignity and rights is ensured by this concept alone.

Nevertheless Hinduism is severely criticized as promoting inequality due to its caste system. However, repressive caste divisions as they exist today, are very much against the basic Hindu doctrine of the all-pervading *Brahman* identified with the *Atman*⁴². The caste system is deemed by certain scholars to be a development by Indian Society due to its multi-racial nature⁴³. According to the *Brahma sutta* "there is inequality in creation because of god's regard for the merits and demerits of individuals,"

and thereby ensures the continuance of the different professions in society. Nevertheless, basic equality of man is maintained as all castes are deemed to have arisen from the same *Purusha* or godhead⁴⁴. Furthermore, Hinduism encompasses the jurisprudential concept of "equal treatment of those equally placed."⁴⁵

The freedom of conscience, in Hinduism, is ascertained by the words of *Krishna*⁴⁶; "*an eternal portion of myself having become the soul (Jeeva) in the world attracts the senses, with mind as the sixth, abiding in the physical body.*"⁴⁷ Rights to life, liberty and security of a person, in ancient Hindu philosophy accrued due to corresponding obligations of others. For instance, tremendous emphasis was laid on the duty of the sovereign to protect the subjects "*even as rain provides sustenance to all beings, the king's justice provides sustenance to his subjects*"⁴⁸. A reading of the *Bhagavad-Gita* would elucidate the various principles within the somewhat complicated philosophy of Hinduism that is essentially devoted to the preservation of the fundamental human freedoms.

The Hindus mainly inhabit the Northern and Eastern regions of the Sri Lanka which, until recently, was ravaged by a bloody and inexorable war and recorded the highest rate of human rights violations in the island, ironically being, some of the very rights (minority) the preservation of which, the war is being fought for. The urgent need for inter-cultural understanding cannot be over emphasized in the light of what has been long described as the tragedy of Sri Lanka. In view of the above analysis redemption for Sri Lanka is a process of rediscovering innate potentialities and modalities dedicated to a common cause within an integrated national culture. For as proclaimed by the Buddha "everything is found within this fathom long body" and is buried deep within an archive of Sri Lankan cultural traditions.

Understanding human rights as a centrifugal force that emanates from the core of Eastern cultures is, therefore, in relation to the

hegemonic religious ideologies rich in humanism, which were the bases of governance. The Western experience on the other hand, was governance by powerful religious institutions such as the Roman Catholic Church devoted rather to the promotion of its own might by the imposition of dogmas and practices repressive of human rights, eventually giving rise to the development of secular states that separated religion from governance. The void occasioned by this abstraction created the need for substituting religious teachings by positive human rights standards, as a support system to secular governance. However the super-imposition of these same standards to ancient cultures already rich in humanism is a travesty. Rather, the invocation of already existing norms would prove more efficacious. In Sri Lanka too, camouflaged within ideological differences of race, culture and religion human rights have been the lifeblood of a rich and ancient cultural heritage.

Therefore, the significance of examining the axioms underlying the religious and cultural conventions of traditional Sri Lanka, is for the granting of *locus* to abstract human rights principles as emerging from deeper value-based roots, in the eyes of a nation that is in essence devoted to the antecedence of tradition rather than the super-imposed artificiality of modern legislative standards. For the tragedy of Sri Lanka as a nation beleaguered by human rights atrocities, lies not in its inherent value system but in the segregational, myopic perception of the individual.

*"What though the spicy breezes
Blow soft o'er Ceylon's isle
Though every prospect pleases
And only man is vile...."*

- Bishop Reginald Heber (1811) ⁴⁹

¹ Premasiri, P.D., "Minorities in Buddhist doctrine", cf., (edit.) K.M. de Silva, Pensri Duke, Ellen S. Goldberg and Nathan Katz, *Ethnic Conflict in Buddhist Societies – Sri Lanka, Thailand and Burma* Pinter Publishers Limited (1988), pg 48

² See Report on the Human Rights situation in the Islamic Republic of Iran, cf. Thornberry, Patrick, *International Law and the Rights of Minorities*, Clarendon Press, - Oxford (1991), pg. 191

³ Krishnaswamy, Study of Discrimination in the Matter of Religious Rights and Practices, UN Sales No. 60.XIV.2, 47-8, cf. Thornberry, Patrick, *International Law and the Rights of Minorities*, Clarendon Press-Oxford (1991), pg. 191

⁴ <http://www.unesco.org/most/rr2int.htm>

⁵ Wallace, Rebecca, *International Human Rights –text & materials*, Sweet & Maxwell (1997), pg. 144

⁶ Article 9 of the Constitution of the Democratic Socialist Republic of Sri Lanka [7th September 1978 as amended]

⁷ Report of the Delimitation Commission, Sessional paper XV of 1959, p. 13. cf. Ponnambalam, Sachi, *Sri Lanka – The National Question and the Tamil Liberation Struggle*, Zed books Ltd (1983), pg. 72

⁸ The freedom either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching [Article 14 (1) (e)]

⁹ This is due to the Roman-Dutch Law principle of "Generalia specialibus non derogata"

¹⁰ Silva, Padmasiri de, "The logic of identity profiles and the ethic of communal violence: A Buddhist perspective", cf., (edit.) K.M. de Silva, Pensri Duke, Ellen S. Goldberg and Nathan Katz, *Ethnic Conflict in Buddhist Societies – Sri Lanka, Thailand and Burma*, Pinter Publishers Limited (1988) pg 12

¹¹ Hence the necessity for the frequent reliance on the Common Law doctrine of *Generalia Specialibus non-derogata*

¹² Weeramantry C.G, *Justice without Frontiers: Furthering Human Rights* (Volume 1), Kluwer Law International (1977), pg.7 [**Hereinafter Justice without Frontiers**]

¹³ It is commonly believed that both these gods are aspiring to attain Buddhahood in a future lifetime.

¹⁴ Such marriages are "Fasid" (Permitted degree of marriage) and not "Batil" (absolute prohibition)

¹⁵ Perera, Horace (Edit), *Human Rights and religions in Sri Lanka*, Sri Lanka Foundation (1988) (**Hereinafter Human rights and religions**), pg. x

¹⁶ Ibid

¹⁷ Human Rights and Religions, supra note 14 at pg.3

¹⁸ Article 1 of the Universal Declaration

¹⁹ Self reliance was achieved by virtues such as personal effort (attakara), human endeavour (purisakara), human strength (purisathma, human energy (purisaviriya), human valour (purisaparakkama) and human responsibility (purisadhoraya)

²⁰ panchasila

²¹ Arnold, Sir, Edwin, *Light of Asia* (illustrated Version), Singapore Buddhist Meditation Centre ("1996)

²² Human Rights and Religions, supra note 14 at pg. 23

²³ Nama and rupa

²⁴ Swaris, Nalin, *Buddhism, Human Rights and Social Renewal* Asian Human Rights Commission (Dec 2000), pg. 14

25 "May all beings be well and happy"

26 Sherstack Jerome J., "Philosophic Foundations of Human Rights" cf. *The Human Rights Quarterly* – Vol. 20 No. 02 May 1998, John Hopkins University Press (1998), [Hereinafter **Philosophic Foundatins of Human Rights**] pg. 205

27 Human rights and Religions, supra note 14 at pg.8

28 All of the above features and the components of Article 1 of the UDHR

29 Human Rights and Religion, supra note 14 at pg. 25, (2 kings 18:31)

30 Article 5 of the UDHR

31 Philosophic Foundations of Human Rights, Supra note 25

32 Amerasinghe, A.R.B., "Human Rights and the Islamic tradition", cf. Banda, S.J. Sumanasekera (Edit. By), *Life is simply a duty – some speeches by A.R.B. Amerasinghe*, Sarvodaya Book Publishing Services (1994), pg 116

33 The Qur'an (Sura xvii:P70) in Weeramantry C.G *Islamic Jurisprudence – An international Perspective*, Sarvodaya Vishva Lekha Publication (1999) [Hereinafter **Islamic Jurisprudence**]

34 Qur'an Sura 4:1

35 Qur'an (sura 6:151) in Human Rights and Religions, supra note 14 at pg. 27

36 Human Rights and Religion, supra not 14 at pg.47

37 The human rights violations in Afghanistan, for instance,, perpetrated in the name of Islam have appalled the world community.

38 Islamic Jurisprudence, supra note 32 at pg 112

39 Doi, A Rahman I. *Non-Muslims under Shari'ah (Islamic Law)*, Ta Ha Publishes Ltd. (1979), pg 76

⁴⁰ Known as the "Maha Brahma"

⁴¹ Bhagavad-Gita, xiii, 12 in Osborne, Arthur, Buddhism and Christianity in the light of Hinduism, Rider & Company – London (1959) pg 40.

⁴² Sen K.M., Hinduism – The world's oldest faith, Pelican Books (1963), pg. 27

⁴³ Ibid

⁴⁴ Human Rights and Religions, supra not 14 at pg.6

⁴⁵ This interpretation of *Article 12* of the constitution of Sri Lanka is preferred by the Judiciary rather than the adoption of an abstract impracticable standard

⁴⁶ Krishna is the god that determines and rules over the acts of men during their respective life times (as *Brahma* determines birth and *Shiva* determines death)

⁴⁷ Bhagaved-Gita, 15:7

⁴⁸ Human Rights and Religions, supra note 14 at pg. 24, cf. Thirukural 452

⁴⁹ In Greenland's Icy Mountains, cf. William McGowan, Only man is Vile – The tragedy of Sri Lanka, Farrar, Status and Giroux – Newyork (1992)

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