

The right to protection from torture law public essay

[Law](#)



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Chapter II Introduction At a time when the world is witnessing conflict situations, internal civil wars etc. it is a normal occurrence for people to escape from one country to another. At the same time, the other countries in the world should get together and step forward to give it a more humane outlook and provide relief for those who seek refuge from their own state's that is not able to safeguard their human rights. It is the prime obligation of well functioning democracies to accommodate their fellow humanity protection and safeguard from infringement of their human rights.[1] Even today, in some Middle East countries, as in the African countries, when this matter is being investigated upon for consideration, it can be[2] observed that the civil population is going from one country to another as asylum seekers, in order to obtain protection

and salvation. At the same time the neighbouring countries provide protection to the thousand of refugees who arrive to their countries, under such conflict situations. We cannot blame them for behaving in this manner, when they have no other alternatives or are unable to safeguard and protect their lives. The services rendered by the U. N. O. at such times, to give their utmost contribution, to provide the necessary protection to those who need it, must be upheld and valued with much appreciation. In like manner, during such occasions, if the countries who are prepared to provide help to the people fleeing from the neighbouring countries are not financially stable, it should be the onerous task of the U. N. O, to shoulder the responsibility of obtaining the required financial aid from the fund established for such purposes in the U. N. O. and to make an endowment to such countries, to commit and sustain the needed protection internationally, and to bring such matters to the notice of its member countries. While we appreciate this all round programme, we will eternally help and assist in the same. 2In such a backdrop, it is necessary to consider the geographical location of a country. At times when it is required to cross territorial boundaries by land, to flee from one country to another, the relevant protection seeker will flee into the country situated nearest to his own country. Their intention would be to travel overland, to a country that is convenient and conducive for protection and not with the intention and motive of leading a luxurious life, in the country which they intend to go. The refugee's one and only aim is to live without dying with one's own children and relatives and to earn ones livelihood. The expectation of such refugees during such occasions is not anything more than this. A populace of around one hundred thousand of

people live frugally, during such situations in tents, and undergo severe inconveniences, for being happily able to flee from the predicament that they would have had to face in their own country. They would thus wait until the situation in their own country improves. Conversely, there exists another group of people who do not act in the aforesaid manner, when such a situation arises in a country. They try to flee into a country which they consider as the best place in the world to live in. It can be seen that they expend a lot to travel to such places. They take such measures as they consider these countries, as the places where they would get the best protection. Some others travel to the so called developed countries in the world, to lead a luxurious life with their children in the future. According to my view, even this is not a big issue. In reality, if there is no suitable environment in the country of their birth, there is no problem of going to the country of their choice. However, we must carefully ascertain and verify into the motives and aims of those who flee from one country to another, seeking refugee status. My personal view is that the best country in the world that is suitable for you to live in, is the country of your birth. Though I entertain such a thought personally, I trust that it applies commonly to the entire world. Because you are the first citizen in the land of your birth. If we go to live in another country, we are entitled there to become second class citizens. This is founded and based upon the investigations on the Tamil people who went to England from Sri Lanka, expecting protection. Why did these people flee to England in such a manner? If there was a genuine reason to flee Sri Lanka, why did they go only to England? Why did they not choose another country closer to Sri Lanka and having common cultures, to

go to? These are some of the pertinent questions to which acceptable and tenable answers and explanations are required for further in-depth analysis on the subject. All the people who went to England in this context are not Tamil nationals. I came to know that there were Tamil nationals as well as Muslim nationals and other Sinhalese nationals who comprised this fraternity or group. It became quite clear that the majority of the people who fled seeking refugee status, was due to their desire to make their future life prosperous, and not due to genuine necessity. Likewise, it became evident that a large number of such people who were Tamils had gone abroad with their families, in order to obtain financial funding assistance to their organizations back home. Towards this end, they had received the support of especially the Tamil terrorists. After having obtained full and comprehensive details and thereby presenting information on every such matter, I in conclusion, submit his my deduction, for your consideration.

ECHR-for freedom from torture

Jurisprudential basis of the right of freedom from torture

Freedom from torture is a right which has been much debated with regard to its philosophical basis. In utilitarian perspective it is a right which is compromised in inevitable situations. The categorical perspective is that it is absolute and never to be compromised as compromising it would amount to the violation of the concept of inviolable human dignity[3]. Whilst recognizing that freedom from torture is a rigid, independent, unlimited and an unalienable right, countries must avoid resorting to activities which are cruel and self destructive to mankind, which briefly means torture, and therefore to prevent such occurrences. This is as contained in Article 3. The <https://assignbuster.com/the-right-to-protection-from-torture-law-public-essay/>

law relevant to torture is such, that countries must not only be conscious of it within their own jurisdiction, but also in other countries, whenever especially required, to where their jurisdiction extends. Considering on the application of the law governing torture in various states or countries, one must initially examine its history and practice in the United Kingdom (UK). The prohibition of torture in the UK, dates back to the 18th century, when it was part of the British Common Law, and in the present era, it is more complex and of increased significance. The prohibition of torture in that country is enshrined both in the civil law and by several judicial statutes and acts passed in the British parliament. The UK has also approved and given its consent to several international conventions covering the subject which had been reinforced by rigid regulatory instruments such as, the Care Quality Commission (CQC), the Independent Police Complaints Commission (IPCC) and Her Majesty's Chief Inspector of Prisons in England and the county of Wales (HMI).[4] Moving to my country Sri Lanka, much interest had devolved on the imaginary and fictitious nature of the complaints of torture in Sri Lanka, by Tamils returning to Sri Lanka, in the post conflict era.

Investigations further revealed report that those Sri Lankan Tamils who had even a remote relationship with the L. T. T. E., and left Sri Lanka safely, risks torture on their return to Sri Lanka, as at the present. Conversely, this does not mean that, those who did not face torture due to their allegiance with the L. T. T. E., on their return to Sri Lanka, are indemnified or safe from such risks, on their return back home. The risk factor favouring Tamils to be tortured and inhumanly treated and degraded, is based on the combination of both their residence in the UK and a genuine or imaginary or assumed

association with the L. T. T. EThe Article of the European Convention of Human Rights (ECHR) enshrined in the UK Law, by its Human Rights Act of 1998, effective from October 2000, grants recognition to the inalienable right against torture, inhuman and degrading treatment. The UK government is empowered to ensure that no one is subject to torture or inhuman or degrading treatment, under the conditions of the UK Human Rights Act, even as a form of punishment. The provisions of the Human Rights Act are not unlimited or unrestricted, which means that certain other facts may also take precedence over a person's human rights. Freedom of torture is so basic to the civilized society and world, that it had assumed the proportions of being an inalienable right, which cannot be preceded by any other matters, considerations or circumstances. In considering and determining the breach of a person's right to freedom from torture, inhuman or degrading treatment, the courts adopt a rigid test, where only the very adverse cases and examples of torture, could stand up to that test. Following are the situations when such a positive claim might arise, treatment of people in prisons and other custodial institutions such as, asylums, detention centres or camps. treatment of people in the hospitals. failure of the state to prevent child abuse. Deportation of foreign citizens to a country which could inflict torture, inhuman and degrading treatment on the individual. Torture, inhuman or degrading treatment, even as a form of punishment violates human dignity and not allowed by Article 3 and there are no alternatives or limitations to this right. In addition to physical torture, it applies to police violence and inhuman or sub-standard conditions under detention. The courts have emphasized the fundamental nature of Article 3, in holding that the provision

is made in, quote-" absolute terms, Irrespective of a victim's conduct states cannot deport or extradite individuals who might be subjected to torture, inhuman or degrading treatment or punishment in the recipient country." [5] At the beginning, the courts adopted an attitude of passive restraint on the thesis of what really constituted or amounted to torture, on the finding that states had inflicted such treatment to people. In consequence of which, the courts ruled that, Sleep deprivation, exposing people to much noise, forcing them to stand against the wall with their hands outstretched for long periods of time, as not amounting to torture. It was only in 1996, that the courts ruled a case of torture by a state, when a person was hung by his arms with his hands tied behind his back. From that time on, the court has been more receptive and open minded in finding states guilty of torture. In this respect, the courts have ruled that as the convention on same is an active instrument, the treatment it hitherto viewed as inhuman or degrading, might, in the future be considered as torture.

Chapter II

The special reference will be made to discussion on the Application by Tamils in UK not to be returned to Sri Lanka

The practice of sending back to Sri Lanka, by the U. K. of Sri Lankan Tamils having genuine or suspected connections with the L. T. T. E. or for opposing the Sri Lankan government should be halted forthwith. This was in the wake of revelations by the Human Rights Watch on observations that some rejected Tamils seeking asylum in the U. K. and other countries are being arrested illegally, tortured, and ill treated when they arrive back in Sri Lanka. In fact, the Human Rights Watch had dispatched a statement on 1st August, <https://assignbuster.com/the-right-to-protection-from-torture-law-public-essay/>

YEAR to the U. K Immigration Minister, citing thirteen examples of alleged torture of unsuccessful Tamil foreign asylum seekers, on their return to Sri Lanka, with supporting medical evidence. In trying to be stringent on such failed asylum seekers impulsively, on their return to Sri Lanka, the government of the U. K. tend to overlook the increasing risk of torture the Tamil deportees are faced with , on their return to the country. A temporary legal restrictive machinery to curb such torture and harassment must be set in motion, until a complete review of the U. K. policy and risk assessment guidelines are formed and implemented.[6]The track record of the Sri Lankan security forces for torture and ill treatment of pro L. T. T. E. and anti government elements has been infamous. Evidence of torture and harassment of the failed asylum seekers on their arrival in Sri Lanka, at the hands of the security forces, had been gathered and reported In two recorded incidents. First of these is the case on an unsuccessful woman Tamil asylum seeker who returned back to Sri Lanka in May 2009 on deportation by the U. K government. According to this person, she had been detained, questioned and tortured even to the extent of sexual abuse by the security forces and detained for five months at an army camp. The Human Rights Watch ascribes that she had been accused of fund raising to the L. T. T. E. in the U. K., as allegedly depicted by video-clips, showing her as holding a banner antagonistic of the Sri Lankan government in a public demonstration.[7]The other was the incidence of a Tamil man arriving in Sri Lanka from the U. K. in 2005, who made a further attempt to escape from Sri Lanka in 2008 and was deported to Sri Lanka in January 2010, consequently. This person had reported to the Human Rights Watch about the incidents of

torture and ill treatment he had to undergo at the Criminal Investigation Department (C. I. D.) in Colombo and at an army camp in Vauvniya in northern Sri Lanka. He complains in the verbatim, that he was stripped naked, hung upside down and hit with batons and heated iron rods, in addition to been sexually abused on two or three occasions at the army camp in Vauvniya, by army personnel dressed in uniform. The established legal mechanism to deal with such practices in the U. K. named the U. K. Border Agency, in its operational guidance, applicable to Sri Lanka, articulates the policy on deportations to Sri Lanka. From April 2012, it records of many incidents of torture and ill treatment as increasing or growing in Sri Lanka. Ironically it does not contain guidance on matters of risks of torture, on true and or actual participation in anti-governmental political acts.[8]As contained in Article 3, of the Universal Convention against torture and other cruel, inhuman or degrading treatment or punishment, to which, the U. K. too is a party, which proclaims " that no person can be deported or otherwise extradited from one country to another which is conducive to acts of torture or ill treatment." In coming to such conclusions, it further elaborates taking into consideration, all relevant material, to identify such a State or country which is typically infamous for acts of torture and ill treatment and gross violation of human rights.[9]As regards the U. K. government's stance on torture and ill treatment in Sri Lanka, it does not articulate the reasons why it condemns the use of torture by Sri Lanka, but instead rejects evidence placed before the U. K. Border Agency, about the prevalence of the danger of torture to Tamil deportees from the U. K. to Sri Lanka. Said Mephan, that the time is opportune for serious consideration and

re- thinking, of the reflection and application of the immigration policy of the U. K, with its stated foreign policy. Investigations of the Human Rights Watch had revealed that some rejected Tamil asylum seekers from the U. K. and other countries have been treated to unlawful arrest and subsequent torture and ill treatment on their arrival in Sri Lanka. To substantiate such revelations, the Human Rights Watch had dispatched a document to the U. K. Immigration Minister on 1st August 2012, citing thirteen cases of alleged torture of failed Tamil asylum seekers, upon their arrival in Sri Lanka., a few of which are subscribed below for information.[10]

Case No. 01.

A 32 year old Jaffna Tamil was one among 24 Tamils deported to Sri Lanka by the U. K. Border Agency, on 16th June 2011. According to him, as stated to the Human Rights Watch, he had been earlier arrested by the Sri Lankan Police and remanded to custody by the Magistrate's Court Colombo, during which time, he was interviewed by the International Committee of The Red Cross (ICRC) on three occasions. Subsequent to the division in the L. T. T. E. with its Eastern Commander Colonel Karuna, he had escaped from Sri Lanka in 2004 and applied for U. K. asylum in April 2005. According to his statement to the Human Rights Watch, he together with the other deportees were questioned by people who identified themselves as C. I. D. officials on their arrival at the Katunayake International Airport in Negombo, their details recorded, and they were asked to leave the airport. he further states that he stayed with his aunt in Negombo, who advised him to not to go to Jaffna via the Vanni, as he did not have a national identity card. Later, on 10th December 2011. On his way to Jaffna, he had been halted at the Omanthai

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checkpoint, questioned, his emergency travel document seen, and taken in a van to the CiD 4th floor Colombo for further questioning. On the way he had been severely manhandled inside the van, accused of working for the LTTE. At the 4th floor he had been subjected to inhuman treatment in the form of being stripped naked, suspended upside down, and beaten with electric wires, sand filled pipes, suffocated in petrol infused plastic bags. At the instance of the officials, under severe duress from torture, he had signed a confession written in Sinhala, which he could not read, as participated in anti government demonstrations in May 2009, in London. With the help of his uncle, who bribed the CID officials through a member of the Eelam. Peoples Democratic Party (E. P. D. P), he escaped from Sri Lanka on 1st January 2012, arrived in Dover, U. K. on 10th January 2012, and is presently in the U. K.[11]

Case No. 02

In May 2009, JS a 51 year old Tamil woman from east Sri Lanka was deported to Sri Lanka. According to the statement made by her to the Human Rights Watch, she was detained at the Katunayake International Airport for around nine hours, questioned by the CID officials, taken to an unknown place, beaten, sexually abused and made to identify others who were suspected of L. T. T. E. involvement, photographed, finger printed, transferred to an army camp in Batticaloa, made to work as a slave in the camp, doing the cleaning scavenging and sanitary jobs, and was kept at the camp for five months. she managed to escape from Sri Lanka with the help on an agent in April 2010, arrived in the UK where she was granted asylum.[12]

Case No. 03

Another Tamil man was deported from the U. K. to Sri Lanka in December 2005, after he exhausted his asylum claims. As stated to the Human Rights Watch he made another attempt at making an escape from Sri Lanka on 1st April 2008, which was unsuccessful. On being in a detention camp in Africa for almost one and a half years , he was deported back to Sri Lanka in January 2010. he was accosted by the C. I. D. officials upon arrival in Sri Lanka, taken to the 4th floor of the C. I. D. At the 4th floor he was stripped naked, kept handcuffed in a single cell, for questioning, beaten with batons and heated metal rods, with kerosene oil poured on the floor of his cell and threatened with burns and shooting, hung upside down, beaten with truncheons and hot metal rods. He was subjected likewise to extreme mental and physical strain. Later he was transferred to the Joseph (army) camp in Vauvniya, when his uncle was able to bribe the army personnel and later made good his escape to the U. K, via India and France, and he is presently under asylum in the U. K.[13]

Case No. 04

A 29 year old poet and writer from Vauvniya identified as a deportee to Sri Lanka from Dubai on 10th December 2010. He complained to the Human Rights Watch that when he arrived in Sri Lanka, he was as usual, arrested by the C. I. D., photographed, taken to the 4th floor of the CI D. subjected him to intense mental and physical strain and injury, with hands tied in the position of a crucifix, kept in a dark room, sexually abused and beaten. Using the services of a member of the Eelam People's Revolutionary Liberation Front (EPRLF), his aunt was able to bribe the C. I. D. and military officials,

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after which he went to the U. K . on 8th January 2011 and successfully arrived in the U. K on 20th January 2011, and claimed asylum in March."[14]

Chapter III

The Grounds On Which UK Deports Asylum Seekers (With Case Law)

We as human beings owe our fellow human beings the obligation of humanity that transcends narrow national, political and territorial boundaries. In every democracy in the world there exists a contract between the individual and the state. Individual submits his powers to the state that hold those powers in trust for the individual. State by this social contract is bound to protect the human rights of the individual. However there are times that this contract is not properly executed. Sometimes state does not deliver on the promise of safeguarding the rights of the individual. States sometimes arbitrarily compromise on the individual's basic rights. In situations like these refuge is sought by the affected humanity and it is the obligation of the humanity of the well functioning democracies to provide refuge to the affected. Claims of refuge are justified in my opinion in this philosophical logic. International human rights conventions, courts, institutions and various procedures have been established for the purpose of respecting this fundamental obligation of the humanity towards the humanity. Immigration Act 1971 provides for the grounds for deportation. If the Secretary of State is convinced of the need to deport an individual in the interest of public good, health and security etc. that person is deported. If the person concerned is closely related to a deportee or in other words a family member of a deportee then he also is liable to be deported. In addition to the above

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persons if a person is recommended by a criminal court to be deported who is over 17 that individuals also are liable for deportation. Deportation is the involuntary or the forced departure from the United Kingdom in the event that the asylum seeker does not satisfy any of the legal requirements to stay in the UK either permanently or temporarily. Naturalization is a legal right available for asylum seekers in the UK exercisable against arbitrary deportation. However a hindrance faced by the Tamil asylum seekers in the UK is that having been linked to LTTE and engaged in terrorist activities when they were in Sri Lanka fail to satisfy the requirements of Section 6(1) of the British Nationality Act. The respective legal provision states that: "(1) If, on application for naturalization as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalization as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalization as such a citizen." Paragraph 1(1) of schedule 1 to the 1981 Act provides in relevant part as follows: "(1) ...the requirements for naturalization as a British citizen under section 6(1) are, in the case of any person who applies for it — ... (b) that he is of good character; ..." A major ground of refusal to grant stay in the UK for Tamil asylum seekers is that under the above provision they fail to satisfy the Secretary of State with regard to their good character. In the case of *R. (on the application of Chockalingam Thamby) v Secretary of State for the Home Department*[15] the claimant a Tamil national from Sri Lanka who had come to UK in 2000 applied for judicial review of the decision of the Secretary of the State for the Home Department to refuse the claimants application for naturalization under Sec 6(1) of the British Nationality Act

1981. The refusal of this application was made on the ground that Secretary of State for the Home Department could not be satisfied with regard to the requirement of good character of the applicant for the reason that he was an ex LTTE combatant and had been actively involved in the terrorist activities of the LTTE. This constituted a sufficient reason for not to be convinced of his good character (However the appeal judgment was given quashing the decision to deny naturalization as the claimant was able to prove his good character despite had been linked with the LTTE. Asylum seekers have a legal right under the Human Rights Act 1998 to remain in the UK provided they can convince the authorities that there is a substantial degree of possibility of being tortured upon being deported to Sri Lanka. Articles 3 of schedule no 1 of part no 1 of the Human Rights Act 1998 of the United Kingdom that: " No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Human Rights Act of 1998 United Kingdom recognizes the right to protection against torture irrespective of nationality and other distinctions. However in a considerable number of cases the asylum seekers were deported for the reason that they were not able to convince the authorities that they would be tortured upon returning to their countries. In the case of *Devaseelan v Secretary of State for the Home Department*[16], a Sri Lankan Tamil claimed that his human rights would be violated if he went to Sri Lanka for he claimed that he would be tortured in Sri Lanka. Nevertheless D was not able to convince the authorities that he would be tortured upon returning to Sri Lanka. His right to remain in the United Kingdom depended on his ability to invoke the right of protection against torture under the Human Rights Act 1998 of the United

Kingdom. It was held that in no circumstances, the duties imposed by the Act could be transferred to states that have not ratified the European Convention on Human Rights 1950. Deportation to Sri Lanka would not breach D's Convention rights, unless there was a risk that he would be tortured in breach of Sch. 1 Part I Art. 3 of the 1998 Act, or was compelled into a situation where there would be a substantial risk of a gross violation of another Convention right. In reaching this decision the case *Drozdz v France* also was referred to in arriving at the decision. So failure to convince the authorities that he or she will be subject to torture upon returning to Sri Lanka constitutes ground for deportation. Systematic persecution is another ground upon which asylum is being sought in the UK by Sri Lankan asylum seekers in the UK. In the case of *The Queen on the Application of J v The Secretary of State for the Home Department*[17] asylum was sought on the basis that the claimant would be subject to systematic and organized persecution if forced to return to Sri Lanka. Defeat of the LTTE terrorists in Sri Lanka by the government of Sri Lanka and the social, political and economical changes that came in the aftermath of the defeat of the terrorists triggered the deportation of Tamil asylum seekers from the United Kingdom as the reasons for them to escape to United Kingdom seeking asylum had ceased to exist in Sri Lanka. They could no longer hold on to the justification of threat to life from war and remain in the United Kingdom as the conditions that made them eligible for asylum in the United Kingdom had ceased to exist. *LP (Sri Lanka) v Secretary of State for the Home Department*[18] however shows that the government of United Kingdom had to assess the actual situation prevailing in Sri Lanka before they could justify

deporting the Tamil asylum seekers from their country. When faced with deportation asylum seeking Tamils in the United Kingdom lamented that there was a huge risk of being arrested and tortured upon being deported to Sri Lanka which would amount to the violation of their human rights under Universal Declaration of Human Rights, European Convention on Human Rights and the Human Rights Act of 1998 Of the United Kingdom. The appellant asylum seeker in this case appealed to quash a decision by the relevant government official appointed to deal with the respective issues and has powers been vested necessary for that purpose, the secretary of state to refuse her asylum application. Here the appeal was by a Tamil from northern Sri Lanka. Since the country guidance case of LP (Sri Lanka) v Secretary of State for the Home Department[19], which identified 12 risk factors for the Tamils returning to Sri Lanka and the consideration of that guidance in the case NA v United Kingdom[20], the Liberation Tigers of Tamil Elam (LTTE) had been defeated in the civil war against the Sri Lankan government. Here what had to be decided was whether, since the case LP, Tamils who were being forced to leave from the UK mainly Tamils from the LTTE held areas of the north or east of Sri Lanka, had an obvious huge risk on return of adverse treatment such as arrest, detention or torture by the Sri Lankan law enforcement authorities as if they have had involvements with the LTTE organization the prevention of terrorism and the normal criminal laws and procedures start to be invoked against them. To decide on that issue, the tribunal considered firstly the risk of being arrested, detained and tortured on return to a person whose home area was in the north or east; Secondly the risk at Colombo airport; thirdly the risk at checkpoints and cordons inside

and outside Colombo; and fourthly whether the 12 risk factors identified in LP continued to exist unchanged. So the deportation laws of the United Kingdom operate subject to these human rights concerns. Asylum seekers are not deported if upon their returning there is an obvious risk of their human rights under the law of United Kingdom or any other international conventions such as European Convention on Human Rights and the Universal Declaration of Human Rights being violated and also if it is not a matter of affecting public health or public security. Another interesting decision of a case of deportation involving the risk of being tortured upon deported is of the case of *The Othman (Abu Qatada)* by the European Court of Human Rights. On 17 January 2012 the European Court of Human Rights (ECtHR) delivered their verdict in *Othman (Abu Qatada) v United Kingdom*[21]. Abu Qatada, the claimant, was supposed to be a radical Muslim cleric who was once described as 'Osama bin Laden's right-hand man in Europe'. He was convicted in absentia by Jordan courts for various terrorism related offences. He alleged after being convicted that the evidence used against him in the hearing was obtained by torturing him. In 1994 he had been permitted to remain in the United Kingdom (UK) as a refugee temporarily. He then tried to apply for permanent stay in the UK. When his application for permanent stay was being processed he came under arrest and was detained without any charges being filed or producing him before a court. He was being detained under the Part 4 of the Anti-terrorism, Crime and Security Act 2001. In 2005 he was released subject to a control order under the Terrorism Act 2005. Later the UK government decided to deport him to Jordan despite the obvious risk of his human rights

being violated in Jordan in violation of the Article 3 of the European Convention on Human Rights. Even though The deportation order was challenged on the basis of the possible violation of the above provision of the European Convention on Human Rights and the respective provisions of the Human Rights Act UK 1998 the House of Lords gave the verdict to deport him. The case reached the European Court of Human Rights where the House of Lords verdict to deport was quashed. European Court of Human Rights recognized the claimant's right to be prevented from torture and given effect to even though this decision angered UK. Grounds of deportation it can be said having considered the above are subject to human rights law and are governed and controlled by international human rights conventions and courts both domestic and international. A deportation order is founded upon a careful consideration of human rights concerns and concerns like public security and public health.

CHAPTER IV

The Sri Lankan perspective on Tamils return and Legal reaction in Sri Lanka have outlined in the foregoing only some of the factors that apply to a normal citizen, who hopes to travel to a foreign country from his own country. Whatever it is, the migratory travel or tour to be affected, must confirm to fulfill the rules and regulations of the country which he is presently residing and those of the country to which he hopes to travel. Firstly, after getting the foreign travel passport, he should get the relevant visa from the embassy of the country he hopes to travel, such as either/or tourist visa/educational visa/sponsorship visa of a person in such a foreign country/permanent residence etc. must be obtained and fulfilled. If this

procedure is legally followed, no person coming to Sri Lanka from a foreign country will be arrested by the Airport Officials, on the grounds of contravening Immigration & Emigration laws. Unlike to Australia, to go to England, Sri Lankans must travel abroad from a Sri Lankan airport. As mentioned above by me, having a legal passport, valid visa permit and an air travel ticket will enable one to travel legally from one country to another. Every person in Sri Lanka irrespective of race, must adhere to the procedure mentioned above. Also, those who have not followed the legal procedure to travel to a foreign country, resort to other devious means to travel abroad. The incidents of taking these people to the grasp of the law, before leaving the Sri Lankan airport, are many. Failing which, there is the possibility of such people being arrested at the airport on arrival, in a country such as England, for contravention of the Immigration & Emigration laws of that country. There would be no problem about such people, as they are sent back to the country, from which they came, by the next available plane. They have no opportunity of entering that country, as they are a group who had contravened the law. I have explained above, that the provisions of the Immigration & Emigration Act[22] must be adhered to, when a person is travelling from Sri Lanka to another foreign county. Regarding the same, while the acts of no. 20 of 1948, no. 16 of 1995, no. 68 of 1961 can be made use of, the amended Immigration & Emigration acts of no. 16 of 1993, no. no. 42 of 1998 and no. 31 of 2006 of the above stated basic Sri Lankan Act, is today still valid and active in Sri Lanka. As a Sri Lankan cannot travel abroad in contravention of these acts and the amendments to same, and also the National Immigration & Asylum Act of 2002, chapter 41, Study

Guide, Human Rights Act of 1998, and/or in preparing documents according to these acts and imploring the protection offered in terms of the relevant law. In such situations, to justify and claim living in a country like Sri Lanka, in accordance with these acts, as an obstacle to their human rights, submitting false and incorrect information to England, takes place continuously. Under such circumstances, when in one occasion a case is filed, as such a case will be heard continuously for many years, such persons live in the country doing jobs or on aid granted from these countries. I disclosed information of a judicial decision, where after entering England, such persons appeared before the law, seeking political asylum in that country, after many years subsequently. A case was also filed against many persons for raping a girl under 16 years of age, while staying in Sri Lanka, in the Negombo High Court of Sri Lanka under case number HC-324/2002. During the pendency of preliminary investigations and filing of this case in the High Court, two respondents of this case were sent to England by a person engaged in human trafficking. While staying there freely for a period of over four years, they were apprehended by the law. They later claimed asylum stating that they could not live in Sri Lanka. They tried to justify their claim on gross untruthful information. While compiling this account, I considered initially the reason why people migrate or travel from one country to another. Why people cooperate immensely in this human trafficking exercise. This is a major money making mine. An avenue where easy money could be made. As such, the perpetrators or master minds by devising various unscrupulous means, subject even today, the innocent people to this predicament, and they live happily. Likewise, it had been

informed that people, who are sent back to Sri Lanka while trying to enter England or any other country illegally, are not considered as undesirables or deviants. Also, after entering England or any other country illegally, and later while living in such a country continuously becomes a problem, there is no other alternative to them, than to seek political asylum. Matters can be investigated indiscreetly regarding the genuine asylum seekers. But it is problematic to ascertain whether the Officers entrusted to investigate the matter properly, will do a proper task or job. The chief cause for it is the lack of a proper solution still to this problem. The traffickers are not only in countries like Sri Lanka. There are such persons involved in this trafficking even in England. They too had acquainted themselves of the laws in that country very well. I discussed about this matter with a few others who wish to remain anonymous. They cited the following case under the National Immigration & Asylum Act 2002. Case number B83/2012 in the Negombo Magistrates Court Criminal Investigation Department Vs Kanchana Gayan Udawatte (2nd respondent) In this case, the above named suspect and another had printed forged passports on forged letter heads and porch documents, which enabled the first suspect Perimpanadan. Niroshan. to go to Italy, on forged passports and porch documents, who was produced before the Negombo Magistrates Courts on 5. 01. 2012 and remanded to prison custody. They were imprisoned for contravening the rules and regulations of the Immigration & Emigration Act. In such a situation, according to the Sri Lankan law, bail is obtained through the High Courts. No such Bail application had been made under the terms of the Act no. 31 of 2006 and clause no. 47(1) of the Immigration & Emigration Act. Accordingly, a bail

application of number HCAB15/2012 was made to the Negombo High Courts and the suspects bailed out. This is the procedure under the Sri Lankan law to obtain bail for an offence.

Conclusion

We as human beings owe our fellow human beings the obligation of humanity that transcends narrow national, political and territorial boundaries. In every democracy in the world there exists a contract between the individual and the state. Individual submits his powers to the state that hold those powers in trust for the individual. State by this social contract is bound to protect the human rights of the individual. However there are times that this contract is not properly executed. Sometimes state does not deliver on the promise of safeguarding the rights of the individual. States sometimes arbitrarily compromise on the individual's basic rights. In situations like these refuge is sought by the affected humanity and it is the obligation of the humanity of the well functioning democracies to provide refuge to the affected. Claims of refuge are justified in my opinion in this philosophical logic. International human rights conventions, courts, institutions and various procedures have been established for the purpose of respecting this fundamental obligation of the humanity towards the humanity.