

BOOK REVIEW

*SRI LANKA, HUMAN RIGHTS AND THE UNITED NATIONS:
A SCRUTINY INTO THE INTERNATIONAL HUMAN RIGHTS
ENGAGEMENT WITH A THIRD WORLD STATE*

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The discontents regarding the protection of human rights have become of cardinal analytical concern in critical international law scholarship, especially in the light of the rise of human rights violations in the global south. Human rights development in Sri Lanka is at a critical juncture, even a decade since the end in 2009 of the civil war. The political apathy and the majoritarian chauvinism of the society have undermined the reconciliation process in post-war Sri Lanka. Against the backdrop of such a deplorable situation, Thamil Venthan Ananthavinayagan's work, *Sri Lanka, Human Rights and the United Nations: A Scrutiny into the International Human Rights Engagement with a Third World State*, is a timely academic endeavour, addressing pertinent human rights issues of Sri Lanka under the thread of international law.

The book is divided into six chapters. The introductory chapter discusses the human rights infrastructure following Sri Lanka's accession to independence from Great Britain in 1948 as a Dominion state. It provides an insightful account of Sri Lanka's ambiguous constitutional setting in 1947. Lacking tangible domestic human rights mechanisms, it paved the way for many discriminatory legislative acts under majoritarian governments in the post-colonial context. Writing from the minority perspective, Ananthavinayagan provides a brief and coherent overview of the nature of the United Nations engagement in Sri Lanka since the country entered the UN in 1955. However, any academic discussion of UN engagement with the country's human rights mechanism often receives a hostile reaction in Sri Lanka, because such engagement is perceived as a western concept intended to violate the state's integrity. This paranoia with UN engagement has been buttressed by the Sinhalese nationalist ideology that dominates Sri Lankan society.¹ In discussing the human rights infrastructure and the anomalies around it, Ananthavinayagan offers a glimpse of Sri Lanka's history, which is crucially important for understanding the seeds of ethnic strife and human rights failures in the country. The second chapter, titled 'Sri Lanka's

¹ Thamil Venthan Ananthavinayagan, 'Why Sri Lanka Doesn't Trust the UN', *The Diplomat*, 10 August 2016, <https://thediplomat.com/2016/08/why-sri-lanka-doesnt-trust-the-un>.

History: Colonialism, Independence and Conflict', is informative for readers who are not well aware of Sri Lankan history beyond the orthodox historiography that perpetuates the majoritarian narratives. The chapter offers new insights from alternative historical viewpoints, which shed light on the human rights failures in post-independent Sri Lanka. Ananthavinayagan's stance on the human rights infrastructure in post-independent Sri Lanka seems to be a critical one, as he offers a broad analysis of the drawbacks of the human rights protection mechanisms adopted by the autochthonous constitutional building process. The third chapter discusses Sri Lanka's human rights infrastructure under the post-independence Constitution building. The first home-grown Constitution of Sri Lanka in 1972, known as the 'First Republican Constitution', is regarded largely as a reaction that arose against the 1947 Constitution, which was imposed on Sri Lanka by the British colonial administration.² Contrary to this general belief, Ananthavinayagan describes the 1972 Constitution as a product of pervasive Sinhalese nationalism, 'reflected in the political rhetoric, which heralded the era of new home-grown and indigenous constitutions' (p 71). He further criticises the parochial nature of fundamental rights interpretation in the Republican Constitution as nothing more than a debilitated tool functioned under the authority of the legislature, the National State Assembly. The fundamental rights guaranteed under Article 18(1) of the First Republican Constitution were subject to certain restrictions prescribed by the law in the interests of national unity, national security and the national economy. Thus, the fundamental rights provided by the First Republican Constitution could not fulfil the aspirations of all citizens of Sri Lanka. As the author highlights, the architects of the 1972 First Republican Constitution made a further blunder by abolishing section 29(2) of the 1947 Constitution, which stood as the last resort for minority rights in Sri Lanka. Section 29(2) affirmed a sense of constitutional protection for the minorities in Sri Lanka as it prevented the legislature from enacting laws that would restrict the free exercise of any religion or any community. Abolishing that provision from the Constitution clearly indicated Sinhalese reluctance to admit multi-ethnic, multi-linguistic concerns under the new Constitution of 1972. Ananthavinayagan's view of the Second Republican Constitution of 1978, still in force today, is more optimistic as he elucidates the more formidable human rights codification enshrined in the Constitution (p 78).

Notwithstanding the lucid account given in the first three chapters of the human infrastructure of Sri Lanka from both historical and constitutional perspectives, the fourth chapter, titled 'The United Nations Treaty-based Bodies and Their Engagement with Sri Lanka', contains some inaccuracies, such as citing Dudley Senanayake as the first Prime Minister of Sri Lanka whereas he was the second Prime Minister. The lack of analysis of the practical difficulties faced by Sri Lanka as a newly independent nation to become a member of the United Nations is another notable shortcoming. Nonetheless, Ananthavinayagan critically questions Sri Lanka's ambivalent position towards UN human rights treaties. He points out Sri Lanka's excellent record in ratifying the UN human rights treaties, which expresses 'receptiveness' (p 135) to the international human

² M de Silva, 'Sri Lanka (Ceylon): The New Republican Constitution' (1972) 5 *Law and Politics in Africa, Asia and Latin America* 239, 241.

rights treaty regime, compared with the other South Asian countries, but then he critiques the vagueness of the constitutional mechanism in protecting those ratifications in the domestic context. He states that 'none of the post-colonial constitutions contained a provision that regulates the relationship between international law and national law' (p 136).

Sri Lanka's historic role in the UN Human Rights Commission since its entry in 1957 is described in the fifth chapter, which explains how Sri Lanka took a prominent role in drafting and adopting resolutions that condemned racial and apartheid policies in Rhodesia and South Africa, and contributed to discussions of the situation in the Middle East. Ananthavinayagan unveils the opprobrium that Sri Lanka has faced since 1983 as a country that violated basic human rights norms, when it launched state-sponsored violence against the Tamil minority. It is worth noting that the author aptly illustrates the complete rejection that arose from Sri Lanka's majoritarian government when the UN Commission for Human Rights scrutinised Sri Lanka's human rights in the aftermath of the July Riots in 1983. Ananthavinayagan's account affirms 1983 as the beginning of Sri Lanka's troubled relations with the UN human rights organs, which continues to diminish the country's reputation as a responsible state committed to respecting international human rights.

In our opinion, the most important contribution of the book is in showing Sri Lanka's majoritarian polemics against the duty to protect international human rights obligations. Also, this work helps the reader to understand how the post-independence constitutional building process was hindered by ethnic nationalism, which systematically degraded the human rights apparatus. Perhaps it is not an exaggeration to describe this work more as a socio-legal analysis rather than a mere international human rights book, written from the minority perspective. Notwithstanding some minor drawbacks, such as an over-emphasis of the political factors and some name omissions, Ananthavinayagan's contribution deserves to be admired as a compelling work written on Sri Lanka's engagement with international human rights since its independence.

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