Implementation of Counter Terrorism Law, Status of the Rule of Law and the accountability of the Government of Sri Lanka (GOSL)

Introduction:

In Sri Lanka, the polity has been in an acute and deepening crisis in all aspects of governance of the country. Although the deepening of the crisis is more visible with in the past three decades, the origin can be traced out since the independence in 1948. A viable way out of this crisis requires far reaching reforms in our political, institutional, ideological and constitutional structures of governance. The executive dominance over other branches of government, failure to ensure proper checks and balances between the three branches of government, political and economic exclusion of minority nationalities and marginalized communities, utilizing violent means to suppress the spaces for democratic protest, the increased and institutionalization of political violence, the gradual decline of democratic institutions and practices, intolerance against other identities and dissent, continuous adversarial relationship among political parties and the authoritarian and centralizing tendencies of the state are generally identified as issues that is effecting the democratic governance. Despite of limited attempts made to address some of the issues mentioned above also pointing to the general belief that the Sri Lankan political structures have become obsolete and incapable of accommodating new democratic demands.

These crisis has been made manifest over the decades in a variety of ways: long periods of rule under emergency regulations that bypassed the normal procedures of democratic legislation, the use of emergency powers and the Prevention of Terrorism Act of 1979, often for the purpose of normal governance. It has helped to institutionalised state terrorism. , the denial and/or restriction of democratic rights including the rights of free expression at both political and cultural levels, continuous violations of human rights of a magnitude that has attracted the concern of international and UN human rights institutions and international human rights organizations.

Violence has become a part of political practice used by the state as well as oppositional forces. It has been used from time to time to silence political opposition and to suppress dissenting opinions. All these situation indicate the need for a drastic change in the structures and system of governance that could restore transparent and accountable governance, public confidence on democratic governance and institutions, including the rule of law.

The threat for the armed conflict is removed with the total decimation of the Liberation Tigers of Thamil Eelam (LTTE) in May 2009. The conflict transformation processes itself should address the structural reality of inequality, rights and injustices in the society involved and offer alternative ways of addressing those realities in order to progressively removing or at least democratically reducing the conditions from which the conflict and violence have arisen. A proper transitional justice procedures need to be followed to ensure justice for the war time victims of all communities, Sri Lankan Tamils, Indian

Origin Tamils, Muslims and Sinhalese. To create and sustain violent conflicts, creating enemy (adversary target) is inevitable. Creating racial feelings between communities is found the easiest way of creating this enemy. Then armaments and a people who follow the orders of the authorities or their leadership is needed. Need authorities in power who belief that power can be maintained through violence and control of information. One of the other important factors that wars based on ethnic or religious identities is racism. In one form or other, racism is found in every society on earth. It influences the denial of human relationships. Yet, for many people, it remains almost invisible, unnoticed except when violence is involved. Those who do not experience it often fail to understand how profoundly offensive it is. The Human Rights Policy Group provided policy definition on racism as " Racism has three components: (1) it is a vision of society that is composed of inherently different groups;(2) it concludes as explicit or implicit belief that these different groups are un-equal by nature; and (3) it shapes and manipulates these ideas into programmes of political policies and actions. Combined these three components give racism its force and together with other requirements explained above, creates conditions for identity based conflicts. Racism fostered with the state power is always more destructive that racism of not state actors or excluded communities. In fact, in the three decades of ethnic war ended in May 2009 and various violence against Muslims since the end of the war, all these elements stated above can be witnessed. Elimination of racism and hatred against other communities is indispensable to build communities of peaceful coexistence.

The whole society is divided on human made boundaries of ethnicity, religion, ideology and political interests. There is a serious issue on how to create an environment that is safe for these differences by building a true plural society and how to ensure that just because of the differences advocated by non-dominant ethnic groups is not going to face threats and intimidation by the dominant ethnic group. The real challenge is on how to transform this divided past into a shared future in order to ensure peaceful coexistence of diverse groups with in an undivided polity. How to ensure the constitutional guarantee for diversity and pluralism and equal space for all the identity groups to advocate their differences and advance their socio, economic and cultural development through democratic means? The analysis and the prevailing situation of repression, violence, exclusion of minorities, lack of accountability, absence of adequate guarantee for the enjoyment of human rights and the weakening of the rule of law in the following pages. Monitoring the dialogue on war in the recent past, people believe that the armed uprising of Tamil militants to fight to create a separate state in Sri Lanka as a course for the war. In reality, The Tamils struggled till the mid of 1970s to find a solution for their issues within an undivided polity. Failure of all their initiatives and eventually unleashing police terror of the SLFP government in 1970 -1977, that pushed the Tamils to resolve to establish a separate state and subsequently a section of the Tamil your taking arms, first to resist state armed repressions against Tamils and thereafter to launch an armed struggle to fight for a separate state for Tamils. No government since then made any sincere efforts to address the root causes of the conflict. With the enactment of the draconian PTA, it has become a practice of all successive governments to use violent means of dealing with opposition.

The document in annex I clearly explains the efforts taken by Tamils for the first three decades of Independence of 1948 to resolve the issues within an undivided polity through negotiations, the betrayal of trust by both the major Sinhala parties governing the country alternatively and the subsequent militarisation of the ethnic conflict that has pushed section of Tamil youth to take arms and fight to realise their ethnic aspirations. PTA has been utilised by governments against Tamils for decades, against Sinhalese during 1998-1990 to suppress armed uprising, and against Muslims since the Easter Sunday attack on 21 April 2019. The government authorities publicly acknowledge that there is no threats to national security at present. Yet, the repressive legislations remain intact. This paper analyses the impacts crated through PTA and how it has contributed to institutionalize state terrorism and why the law needed to be reformed or repealed.