SHORT ANALYSIS ON SENTENCING POLICIES ON TORTURE

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சித்திரவதை தொடர்பான நீதிமன்ற தீர்வுகள் பற்றிய சுருக்கமான பகுப்பாய்வு

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RIGHT TO LIFE
HUMAN RIGHTS CENTRE

Short analysis on Sentencing Policies on Torture

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SHORT ANALYSIS ON SENTENCING POLICIES ON TORTURE

Right to Life Human Rights Centre

1. SUMMARY:

The research provides a short-analysis of sentencing policies on Torture in Sri Lanka, specifically the violation of Article 11 of the constitution of Sri Lanka. In the process of analyzing cases from 1981-2019 we have collected and analysed 100 judgements from the Supreme Court only. We have included Article 12(1), 13(1) and 13(2), as most often these articles were considered by the Petitioner when filing for breach of Article 11.

It was observed that whilst the Supreme Court provided compensation for the violation of Article 11, 12(1), 13(1) and 13(2), Compensation was either private compensation, state compensation or a mix of both private and state compensation.

The judges evaluated each of the 100 cases subjectively on a case by case basis based on the evidence put forth by the Petitioner and the Respondents. Judges took into consideration the following:

- Medical evidence
- Time Bar
- Informing of authorized persons
- Witness statements of both parties

Whilst the way in which the judiciary came to a conclusion in their judgements cannot be faulted per say, it was observed that there were discrepancies on how the amount of compensation was determined, as the amount and the ratio of compensation shared between the private individual and the state is determined at the discretion of the Judges.

It was observed that over the years the number of cases had increased. Between the years 1981-1989 there were a total of only 8 judgements. However, between 2010-2019 there was a total of 42 judgements. Perhaps due to the increase in the number of cases the duration of cases had increased to more than 5 years over time. This would create an adverse impact on a Petitioner that would be required to visit the Courts frequently over the years to receive justice. This may also overtime discourage future applications to seek redress against violations of Article 11.

It was further observed that behavior of the police, a law enforcement authority was abhorrent. Over the years the police have caused irreparable damage to the wellbeing of the Petitioner due to the torture, both physically and mentally, fabricated evidence and false cases against the Petitioner, Petitioners were subject to public shaming and at times assaulted even by third parties.

However, despite the Courts having called for disciplinary action even as far back as 1988, and the Inspector General of Police informing police stations of the way in which an individual must be treated when in custody, torture and fundamental right violations have continued by law enforcement officials.

In addition to analyzing the above 100 cases, **10 judgements under the Torture Act, No. 22 of 1994** ("TA") were also selected for the purpose of this research. These 10 judgements were selected at random with no specific selection criteria. All 10 cases were directly related to official attached to police stations.

Unlike the violation of a fundamental right, if a person was found guilty under the Torture Act, the person would be punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees. Thus, the manner in which the TA was interpreted was far different to that of a violation of a fundamental right.

It was observed that Courts strictly interpreted the evidence placed before them to a point that it may be difficult for an individual to prove Torture. The courts strict interpretation could be due to the fact

that if an individual was found guilty, a verdict would entail an imprisonment between seven to ten years.

When evaluating a sentence under the Torture Act it was observed that judges would evaluate the following:

- Medical evidence
- Witness statements
- Identification parades

There was an instance when the Judge also evaluated the number of years of service of the accused, and the impact it would have on the dependents.

Due to the heavy emphasis upon the victim to prove a case beyond doubt, many perpetrators may get away with torture under the Torture Act.

Thus, based on the research on 100 judgements from the Supreme Court on Article 11, 12, 13(1) and 13(2) and the 10 judgements examined under the Torture Act a few of our key recommendations have been provided below:

a. A transparent formula for compensation must be introduced so that disparities are reduced when awarding compensation.

b. Magistrates must be trained to evaluate and ascertain if an individual produced before Court has suffered torture or has been denied any of his rights (especially the right to an Attorney).

c. Amendment of the Torture Act, No. 22 of 1994. The mandatory sentence between seven to ten years must be re-evaluated. The Punishment must vary according to the abuse metered out and therefore a minimum sentencing period of 1 year should be introduced.

d. An independent authority must be established to investigate allegations of police abuse. Abusers of Power investigating abusers of power will not result in any vital change. Thus, a completely different body comprising of expertise in the field must be established to:

- Conduct regular, unannounced checks of the police stations; and
- Investigate allegations and complaints.

2. METHODOLOGY:

This report is the result of analyzing 100 Supreme Court Judgements specifically focused on Article 11, and 13(1) and 13(2). The report mainly examines the manner in which judges evaluate and interpret the above articles and what they've taken into consideration when attempting to identify torture and to provide recommendations.

Thus, Right to Life organization collected 100 cases from 1981-2019 to create a foundation for future research related to Torture.

A combination of Case records and Cases from Sri Lanka Law Reports were evaluated to assess violation of Article 11, 13(1) and 13(2) of the Constitution.

10 cases were selected at random under the Torture Act No. 22 of 1994 for evaluation as well.

Tables depicting the 100 cases under Article 11, 13(1) and 13(2) of the Constitution and 10 cases under the Torture Act have also been annexed herewith as table A and B for reference.

In Instances where case numbers have been used instead of the case name, such cases can be found within the annexed tables herein.

Where applicable a summary for Article 12(1) and 13(4) has been included within this research. This was mainly due to the fact that at the point of Leave to Proceed Article 12(1) was considered as well, and we were of the view that a general understanding of interpretation would assist future research.

In any case as judgements are read as a whole and not in selective parts, and therefore in the interest of the public Articles apart from Article 11 were considered in this research.

The template below was used to document the 100 Supreme Court Judgements:

No.	SC Application No.	Leave to Proceed	Duration of case	Number of Petitioners	Gender of Petitioners	Respondents	Type of Incident	Compensation	Judgement by Court	Names of Judges

** As the Attorney Generals Department was considered a Respondent in all cases, it was not included as a Respondent in the table*

Further, the template below was used to document 10 judgments under the Torture Act:

Case No.	Judge Number	Defendant	Defendant's Occupation	Incident	Date of Filing Case	Date of Judgement	Judgement	Reasoning behind judgement	Name of Judge

Abbreviations used (In this analysis and its annexures):

AG: Attorney General
CID: Criminal Investigation Department
CAT: convention Against Torture
FR: fundamental right
PTA: Prevention of Terrorism Act
J: Judge
JMO: Judicial Medical Officer
R: Respondent
M: Magistrate
SC: Supreme Court
OIC: Officer in charge

Research Limitations:

- Petitions dismissed at the preliminary stage was not taken into consideration.

- The entire procedure from filing of Petition to date of Judgement was not taken into consideration, only judgements were evaluated.

- The total number of complaints received by the Human Rights Commission have not been evaluated to compare the number of judgements metered out through out the years

- Professions of Petitioners were difficult to analyse due to there being a mix of case records and reports. However, at no point did a judge mention the significance of occupation of a Petitioner in the material available to us as an important factor when assessing infringement.

- More judgements under the TA should be evaluated for a better understanding of the sentencing policy in relation to this Act.

- Cases related to torture under the PTA and any other law were not evaluated

3. BACKGROUND

Right to Life Human Rights Centre (R2L), Katunayake, is a civil society organization established in 2003 that focuses on areas such as advocacy, provision of legal aid and networking with similar organisations. The founding members of R2L have a long history of empowering individuals who were deprived of their rights beginning in the 1980's and have continued their work on empowering individuals and addressing issues related to human rights violations such as torture and disappearances. Thus, the organization has extensively worked to uplift the community by means of education, assistance and awareness.

R2L to this day continues to provide legal counselling services for victims of torture and other human right violations through the establishment of several Human Rights First Aid Centres.

Therefore, R2L hopes that research would be the base document that would further encourage future research on torture and connected fundamental rights violations, it aims to flag issues or patterns where possible and to provide a general overview on how judges have analysed alleged infringement of the corresponding rights.

4. Introduction

There is something to be said for the creativity found in the human's ability to be cruel all throughout history; globally. Despite attempts to curtail this, we find ourselves constantly at the point of debate on torture.

Therefore, even though modern democracies are parties to the Convention against Torture, time and time again we see member states faltering. This could be due to the following number of reasons, especially in the context of Sri Lanka:

- **National Security:** JVP insurgency, three decades of war, Easter attacks, Sri Lanka is on the map for the need of constant counter terrorism initiatives. The Human Rights watch Report 2015 indicated widespread police torture, whilst the UN Special Rapporteur on Torture indicted widespread use of torture as part and parcel of police investigations.

- **Civil Obedience** and deterrence against illegal activities: for the purpose of keeping citizens in line, or to ensure any such illegal activity or behavior is not repeated, torture would be used to discipline such individuals.

- **State Perception:** Sri Lanka for example is currently in the midst of a national debate on capital punishment. Hence, those that hold high political positions can influence the public at large that torture is necessary or needed for good governance despite the obvious human rights violations. Thus, if the Public is convinced, then the State would be excused when human rights violations or torture occurs as the public is not in disagreement to such violations.

Thus, in the midst of a three-decade war, in 1994 Sri Lanka ratified the United Nations Convention Against Torture (CAT). Yet despite ratification, compliance in practice shows that there is a disparity in practice. As per the CAT definition, Torture means "*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

Even before the ratification of this Act by introducing the Torture Act No. 22 of 1994 (TA), Sri Lanka had introduced fundamental rights in order to safeguard its citizens. Yet, despite constitutional protection, torture is prevalent, and the State continues to falter. Whilst it may be difficult to comprehend how state organs individually work against torture the research herein hopes to identify any patterns in the Supreme Court Judgements in order to better the system.

This Research would separately analyse each of the Articles and there after analyse direct and indirect issues of the Supreme Court Judgments in order to examine any patterns and provide recommendations. 10 judgements under the Torture Act have also been included to understand and evaluate the sentencing policies of the TA.

5. Analysis of Articles 11, 12(1) 13(1), 13(2) and 13(4)

5.1 Article 11 of the Constitution:

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

Courts have taken a view herein that torture can be both physical and psychological. However, it was observed that this expansion of interpretation was adopted over the course of time. In the case of Sarjun V Kamaldeen and two others (SC FR 559/03) *Fundamental rights in Sri Lanka by Dr. Wickremaratne* was used to analyze Article 11, and the Court accepted the following notion:

"the Freedom from torture is declared in Article 11 as an absolute right and entrenched by Article 83 which bars inconsistent legislation without a two third majority in parliament and approved by the people at a referendum and should be given its ordinary meaning as prohibiting any act by which severe pain or suffering whether physical or mental that is intentionally inflicted without any requirement of proof of purpose. This guarantee safeguards human dignity which is a material element in the concept of law."

Even in the case of Adhikary and another V Amarasinghe and others (SC FR 251/2002), a similar approach was observed. The Courts thereto was of the view that 'torture, cruel, inhuman, degrading treatment or punishment would take many forms of injuries which could be broadly categorized as physical and psychological and would embrace countless situations that could be faced by the victims. The courts also quoted Amerasinghe J in his separate judgment in Silva V Chairman, Fertilizer Corporation (1989). Analyzing the concept of inhuman treatment Amerasinghe J observed

"The treatment contemplated by Article 11 wasn't confined to the realm of physical violence. It would rather embrace the sphere of the soul or mind as well."

In relation to a deceased that had passed away due to torture, e.g. Sriyani Silva V Iddamalgoda (SC FR 471/2000) the Courts quoted Article 14.1 of the Convention against Torture:

"Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

Thus, in this case the Court interpreted that the right to compensation accrues to or devolves on the deceased's lawful heirs and/or dependents brings the law in line with and in conformity with international obligations.

The Court further recognized a right not to deprive life under Article 11 (read with Article 13(4)); by way of punishment or otherwise and by necessary implication, a right to life. The Court in the case above further went on to state that this right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively.

However, it must be noted that Courts when evaluating an infringement have also looked into the **circumstances** of each case and its nature.

In the case of **Sisira Kumara V Sergeant Perera and others (1998)** the Court had taken the view that the use of force does not per say amount to cruel, inhuman or degrading treatment and in particular a minimum level of severity should be established to sustain a charge of torture. Further, the Burden of proof was explained in the case of **Channa Peiris and others V Attorney General (1994);** a land mark

case where it was stressed that the gravity of the matter in issue a high degree of certainty is required before the balance of probability might be said to tilt in favour of any petitioner seeking to discharge his burden of proving that he was subject to torture, or to cruel, inhuman, degrading treatment or punishment. **Accordingly, the responsibility is on the Petitioner to adduce sufficient evidence to Court.**

Therefore, it is observed that Article 11 does cover both physical and mental torture, and whilst Courts do interpret and accept this, the burden of proof is upon the Petitioner to prove such torture. In a space where the State has the power to hide evidence and intimidate, a Petitioner may find it difficult to prove allegations of torture.

In SC FR No 244/2010, the Court stated the following ***"Respondents did not leave any marks of torture. That is the very reason they have used such an unusual kind of torture which the medical experts could not trace"***

This further provides reason why the burden of proof imposed completely upon the Petitioner would be problematic as State organs such as the police force would find new innovative methods of torture that would leave fewer physical marks on the body that shows less proof of torture. As the infringement of Article 11 would be subjective and specific to each case it would be harder for a Petitioner to prove a violation if Respondents such as the Police find new ways to inflict torture without leaving physical evidence for a Judicial Medical Officer to trace. Therefore, Courts must perhaps take precaution that these new methods of inflicting torture don't go unnoticed when justice is metered out.

5.2 Article 12(1) of the Constitution:

"All persons are equal before the law and are entitled to the equal protection of the law"

It was difficult to ascertain the cases that were taken into consideration when assessing Article 12(1) as most often judges would ascertain facts pertaining to Article 11 and 12(1) together, as opposed to two separate infringements. However, the authenticity of the medical reports submitted, any other court proceedings related to the case, the version submitted by the Respondents and the Petitioner were evaluated. Further the inaction by law enforcement authorities were also taken into consideration when assessing infringement under Article 12(1). Most often Article 12(1) was filed together with Article 11 because the Petitioner was of the opinion that his right to receive equal protection under the law was infringed alongside the violation of Article 11.

In SC FR Case No. 241/14 (Karuwalagaswewa Vidanelage Swarna Manjula and Nawarathna Henalage Rosaliya Vs. 1. C.I.V.P.J. Pushpakumara OIC Police Station Kekirawa and others), the Petitioners who were Jehovah's Witnesses were arrested for forcibly attempting to convert persons for monetary gain. The Courts upon analyzing the facts of the matter found the respondents guilty of violating Article 12(1). The Courts considered the case of **Muttusamy V Kannangara** where it was stated that with regard to "*the powers of police officers to arrest without a warrant, that the courts must be vigilant to ensure that the powers given to police officers are not abused through inexperience, excess of zeal, or insolence of office*". The Courts also considered the case of **Joseph Perera V the Attorney General**; *"one of the basic values of a free society to which we are pledged under our constitution is founded on the conviction that there must be freedom not only for the thought we cherish but also for the thought we hate*"

Thus, it was observed that Article 12(1) was not in essence a standalone provision considered by itself but mostly as an infringement that may occur due to the violation of Article 11, and the circumstances of each situation. Therefore, very little information was available to ascertain the manner in which these cases were evaluated.

In SC FR Case No. 56/2012 (Suppiah Sivakumar Vs OIC Police Station Theldeniya and others), it was observed that if disciplinary action had already been taken against the accused then it was considered as a ground to mitigate the violation of Article 12(1). This may be due to the fact that the Petitioners complaint was investigated and therefore implies that he was treated as an equal before the law.

5.3 Article 13(1) of the Constitution:

"No person shall be arrested except according to procedure established by law. Any person arrested shall be informed for the reason for his arrest"

In SC FR Case No 241/14 (Karuwalagaswewa Vidanelage Swarna Manjula and Nawarathna Henalage Rosaliya Vs. 1. C.I.V.P.J. Pushpakumara OIC Police Station Kekirawa and others), the Courts first evaluated if there was in fact "**an arrest"**. Thus, cases such as Piyasiri V Fernando (1988) and Namasivayam V Gunawardena (1989) state that when a person is required or directed by a police officer to go to a police station and he is thereby compelled by the nature of that requirement or direction to go to the police station against his wishes that person has been arrested.

In the case of Namasivayam V Gunawardena (1989) Sharvanada CJ stated "in my view when the 3rd Respondent required the Petitioner to accompany him to the police station, the Petitioner was in law arrested by the 3rd Respondent. The Petitioner was prevented by the action of the 3rd Respondent from proceeding with his journey in the bus. The petitioner was deprived of his liberty to go where he pleased. It was not necessary that there should have been any actual use of force; threat of force used to procure the Petitioners submission was sufficient…"

A similar stance was taken in the case of Sirisena V Perera (1991) Fernando J states "whether or not a person has been arrested depends not on the legality of the arrest but on whether he has been deprived of his liberty to go where he pleases"

SC FR Case No 241/14 also evaluated if the arrest was as per the procedure of the law as well. In relation to when a police officer arrests an individual section 32 (1) of the Code of the Criminal Procedure Act must be evaluated as it empowers a police officer to arrest a person without a warrant only in one of the instances enumerated in sub sections (a) to (i) of Section 32(1).

Thus, Prasanna Jayawardena J states, "*time and time again Courts have taken a view that an arrest will be lawful only if the arresting officer had reasonable grounds, either upon personal observations on knowledge of the arresting officer or upon a reasonable complaint or credible information received by him, which enables him to form a reasonable suspicion that the person he proceeds to arrest has been concerned in a cognizable offence"*

In the case of **Channa Pieris V Attorney General (1994)** Amerasinghe J extensively discusses this and states the following:

"The provisions relating to arrest are materially different to those applying to the determination of the guilt or innocence of the arrested person. One is at or near the starting point of criminal proceedings while the other constitutes the termination of those proceedings and is made by the Judge after the hearing of submissions from all parties. The power of arrest does not depend on the requirement that there must clear and sufficient proof of the commission of the offence alleged. What the officer making the arrests needs to have are reasonable grounds for suspecting the persons to be concerned in or to be committing or to have committed the offence. ….A reasonable suspicion may be based either upon matters within the officer's knowledge or upon credible information furnished to him or upon a combination of both sources. He may inform himself either by personal investigation or by adopting information supplied to him or by doing both…. A suspicion does not become "reasonable" merely because the source of information is creditworthy.

If he is activated by an unreliable informant the officer making the arrest should, as a matter of prudence act with greater circumspection than if the information had come from a creditworthy source. However, eventually the question is whether in the circumstances, including the reliability of the sources of information, the person making the arrest could, as a reasonable man, have suspected that the persons were concerned in or committing or had committed the offence in question…..However the officer making the arrest cannot act on a suspicion founded on mere conjecture or vague surmise. His information must give rise to reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence"

Thus, to determine this, the courts would consider an **objective test to evaluate reasonable grounds** and not the subjective reasoning of the arresting officer.

Reasonable grounds however as per our view would vary according to the situation. There have been cases evaluated herein where innocent individuals had been arrested when they were unintentionally in the wrong place such as a protest, or a fight in a public space. However, in most cases section 13(1) was evaluated objectively as discussed above.

As observed by Shirani Bandaranayake J, in W Nandadasa V U.G Chandradasa, OIC Police Station (2005) *"the purpose of following the correct procedure is therefore to safeguard the liberty as well as maintain law and order and thereby to mete out justice and fair pla.y.."*

5.4 Article 13(2) of the Constitution:

"Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the Judge of the nearest competent Court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with the procedure established by law"

The procedure discussed above is contained in Section 37 of the Criminal Procedure Code Act No. 15 of 1979 which states as follows:

"Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate"

In the case **of Channa Peiris V Attorney General (1994)** Amerasinghe J, observed that the *"Constitutional requirement must be complied in a reasonable way within a reasonable time which is a matter for Court to decide on the circumstances of each case.*

In the case of **Queen V Jinadasa (1960)** it was held by the Supreme Court that Section 37 of the Criminal Procedure Code and section 66 of the Police Ordinance requires that a person arrested without a warrant should be produced before a Magistrate with the least possible delay. The limit of twenty-four hours prescribed in both sections does not enable the police to detain a suspect for the length of time even when he can be produced earlier or to deliberately refrain from producing him before a Magistrate.

Basnayaka CJ, further went on to state *"the law requires (Section 66 of the Police Ordinance) that an accused person taken into custody by a police officer without a warrant must forthwith be delivered in to the custody of the officer in charge of the Police Station in order that such person may be secured until he can be brought before a Magistrate to be dealt with according to law. That is the lawful purpose to be served by the means of detention and we would sternly and emphatically disapprove of what seems to have*

become the common practice of compelling an accused to accompany the Police from place to for the purpose of participating in the detection of crime. The delay of his production before a magistrate in order that unlawful purpose maybe served is illegal and deserving of censure"

In the case of Kapugeekiyana V Hettiarachchi and two others (SC No. 80/84), Courts state Section 36 and 37 of the Criminal Procedure Code, which were once statutory rights have been made into constitutional rights. The Court further went on to state that **unless there are compelling reasons** they ought not to be cut down by judicial construction.

Even in the instance more than 24 hours are required, Section 115(4) of the Code provides for the procedure that police officers are required to adopt when investigations are long drawn out and cannot be completed within a 24-hour period. In such an event the Officer-in-Charge of the police station has to first obtain the authorization of the Magistrate to have access to the remand prison for the purpose of further investigation.

5.5 Article 13(4) of the Constitution:

"No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment."

It was observed that only three cases were found where leave to proceed under Article 13(4) has been granted. Only SC FR 18/87(Ansalin Fernando Vs Sarath Perera OIC, Police Station Chilaw and Others) was found to have violated 13(4). Thus, there is insufficient material to analyse how 13(4) has been interpreted.

In SC FR 18/87 the case of **Nanayakkara V Henry Perera** was evaluated. In the case of Nanayakkara the court expressed the opinion that it would be unlawful to detain a person for an unspecified and unknown purpose as this would be an infringement of Article 13(4). Thus, it can be observed that if an individual is detained for long periods of time for an unknown purpose Article 13(4) can be considered, depending on the facts of the case.

In SC FR 471/2000 (Sriyani Silva Vs Iddamalgoda, OIC Police Station Payagala and others), Fernando J stated "Although the right to life is not expressly recognized as a fundamental right, that right is impliedly recognized in some of the provisions of Chapter III of the Constitution. In particular Article 13(4) provides that no person shall be punished with death or imprisonment except by order of a competent court. That is to say a person has a right not to be put to death because of wrongdoing on his part except upon a court order. (There are other exceptions as well, such as the exercise of the right of private defence). Expressed positively that provision means that a person has a right to live unless a court orders otherwise. Thus Article 13(4), by necessary implication recognizes that a person has a right to life at least in the sense of mere existence as distinct from the quality of life which he can be deprived of only under a court order. If, therefore, without his consent or against his will, a person is put to death unlawfully and otherwise than under a court order, clearly his right under Article 13(4) has been infringed. In regard to every such instance, upon the infringement taking place the victim will cease to be alive, and therefore unable to bring an action. If I were to hold that no one else-next of king, intestate heir, or dependent is entitled to sue the wrong doers, that would mean that there is no remedy for causing death in violation of Article 13(4) and that the right to life impliedly recognized by that Article is illusory, as there is no sanction for its infringement.

Fernando J. further went on to state that where there is an infringement of the right to life implied in Article 13(4), Article 126(2) of the Constitution must be interpreted in order to avoid anomaly, inconsistency, and injustice as permitting the lawful heirs and/or dependents to institute proceedings.

Thus, it can be construed that Article 13(4) does imply a right to life, even though it may not be expressly stated in the Constitution, and in the event a person is put to death wrongfully the Court will interpret Article 13(4) to permit lawful heirs to institute proceedings as a narrower interpretation would diminish the meaning of Article 13(4).

It was observed that Leave to Proceed for Article 13(4) was permitted in SC FR 18/87, SC FR 471/2000 and SC FR 429/2003 (Guneththige Mislin Nona and another Vs OIC Police Station Maheepala and others).

6. Analysis of the cases in relation to infringement of Article 11, 13(1) and 13(2):

A total of 100 cases were evaluated and assessed to identify patterns and issues in the way in which a judgment was made. Thus, we have observed the following:

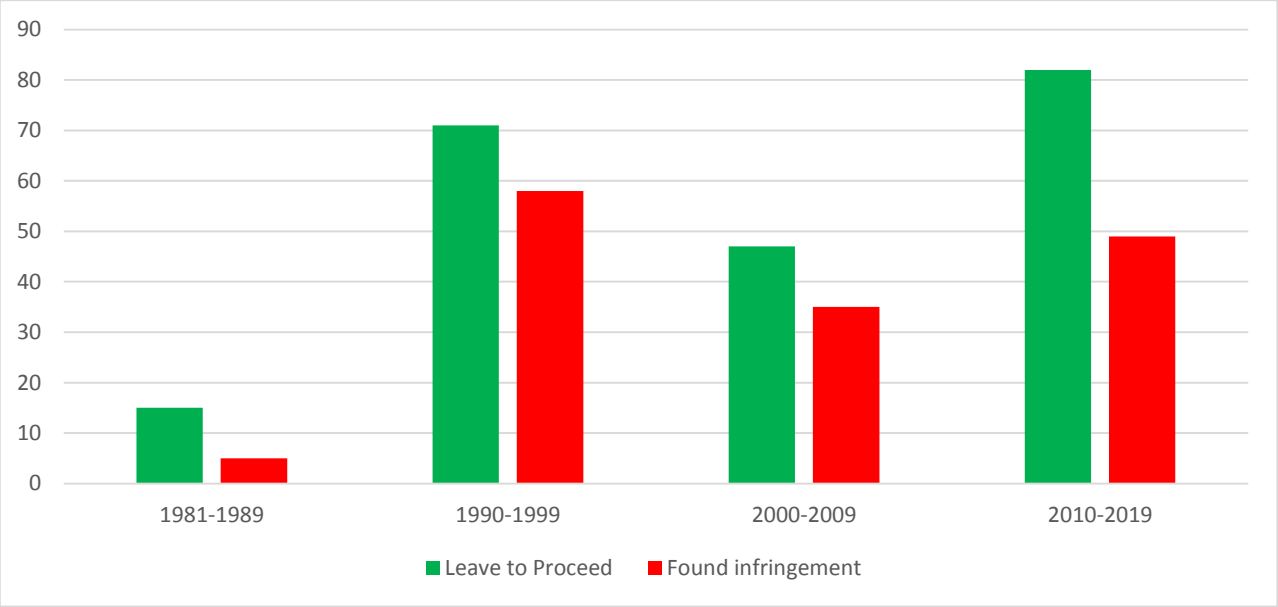
- More males have made applications to the Supreme Court for violations of fundamental rights (11,13(1) and 13(2)) for the period between 1981- 2019. Females are far few. Females were mostly acting in the capacity of guardians or representing the deceased. Few of the females who did make an application to the Supreme Court did feel threatened of sexual assault or was sexually assaulted. It was also observed that in certain instances males were stripped naked, and even had certain devices like pipes being inserted into the rectum, yet none of these acts were noted as sexual violence.

- In the 1980's the Courts discussed if the remedy prescribed by Article 126 of the Constitution is available only where there is an infringement or imminent infringement of a fundamental right by executive or administrative action. This discussion however over the 1980's era had expanded to individuals who act under the colour of office even though he/she may have not been authorized to do so.

- **Leave to Proceed:** It was observed that most often an application made by the Petitioner contained many infringements but was subsequently reduced at the Leave to Proceed stage. Thus, it would be beneficial to the public, if a research on the reasons why the violations of articles were reduced and how it was reasoned especially during the stage of preliminary objections.

  The table below however provides an overview of the number of leave to proceeds for each violation and the number of applications that were found to have infringed Article 11, 13(1) and 13(2)

Year	Leave to Proceed	Found infringement
1981-1989		
Article 11	08	02
Article 13(1)	05	02
Article 13(2)	02	01
1990-1999		
Article 11	28	21
Article 13(1)	23	18
Article 13(2)	20	19
2000-2009		
Article 11	22	18
Article 13(1)	15	09
Article 13(2)	10	08
2010-2019		
Article 11	41	27
Article 13(1)	25	12
Article 13(2)	16	10



- In SC FR No 244/2010, the Respondents had not left any marks of torture. In fact, the medical report stated healing wounds only on the wrists and ankles. However, the beating was done with a hose pipe which does not leave marks and kotchi miris as a substance was used by the Respondents, firstly by making the Petitioner eat it and thereafter by pouring the juice into the eyes and nose. Thus, as burden of proof for an infringement under Article 11 is upon a Petitioner, and if Respondents are looking for innovative ways to torture but reducing the marks on the victim's body, Courts in the future may have to look at evidence beyond what meets the eye to assess violation of Article 11.

- Number of applications in total dismissed: **21 applications in total were dismissed out of the 100 cases.** Most cases were dismissed on the basis of a lack of evidence of torture, for e.g. the Petitioner's story was not compatible with the report provided by the Judicial Medical Officer. Furthermore, Judges also considered instances where the Petitioner's witnesses provided contradictory statements to a story. Furthermore, the behavior of the Petitioner was also considered especially when evaluating Article 13. Drunken behavior, public brawls were assessed as a deciding factor when dismissing an application. However, Respondents (Law Enforcement Officials) providing contradictory statements were considered as evidence of alleged infringement, thus strengthening the case of the Petitioner.

- In case SC FR 555/2009 (Herath Mudiyanselage Yohan Indika Herath Vs OIC Police Station Dumalasuriya and others) it was observed that the Courts were of the view that the fundamental rights provision in Article 11 was supplemented by the Torture Act No. 22 of 1994 which provides criminal sanctions for torture. SC FR 112/2010 (Ishantha Kalansooriya Vs. Karunarathne OIC Police Poddala and Others) also quoted the Torture Act. In case No. 244/2010, the definition of Torture under the Torture Act was used to analyse the facts of the case.

- It was observed that despite allegations of human rights violations during the war, or the JVP insurgency 100 applications are far too few. Furthermore, it is noteworthy to mention that these applications were not from across the country either. Certain districts had zero applications. Furthermore, only three cases were found to be connected to matters relating to the Liberation Tigers of Tamil Eelam (LTTE); SC FR 326/2008 (Edward Sivalingam Vs Jayasekera, Sub-Inspector CID) which was dismissed due to a lack of evidence, the Courts in addition to other

factors evaluated two visits made by the officers of the International Committee of the Red Cross (ICRC). Updates of these visits are included in the Routine Information Book Records maintained by the CID. It had not indicated any ill-treatment or torture. The Second Case was SC 860/99 (Priyantha Dias Vs Ekanayake, Reserve Police Constable,Police Station Polpithigama and others) here the Petitioner was a teacher by profession and he was about to board a bus with the principal of the school when he was questioned about his place of birth by the Respondents. The Petitioner though a Sinhalese, his place of birth was Batticaloa . The Respondents after questioning him subsequently assaulted him as they assumed him to be an individual connected to the LTTE. However, the judges found that the respondents had violated Article 11 and lastly SC 555/2001 (Koneshalingam V Major Muthalif), the Petitioner complained that he was taken into custody, assaulted and forced to admit that he was a member of the LTTE. The Court was of the view that he was taken into custody on a vague suspicion and therefore found the Respondents to have violated Article 11, 13(1) and 13(2).

- Only Two Cases were directed to the Judicial Service Commission with regard to the Magistrates orders. In SC App No. 126/94; the Supreme Court was unable to find a provision of law granting sanction for a magistrate to make a remand order that eroded the liberty of the subject. The Registrar was therefore directed to notify the Chairman of the Judicial Service Commission for action. In SC 136/2014; the Court accepted submissions that the learned magistrate had no jurisdiction to make an order of deportation. Thus, hereto the copy of the Judgement was forwarded to the Judicial Service Commission.

- SC 136/2014 (Coleman v. Attorney General and Others) was the only case found where Leave to Proceed was granted under Article 11, 12(1) and 13(1) to a foreign national. The Court held that Article 12(1) and 13(1) was infringed.

7. DIRECT ISSUES:

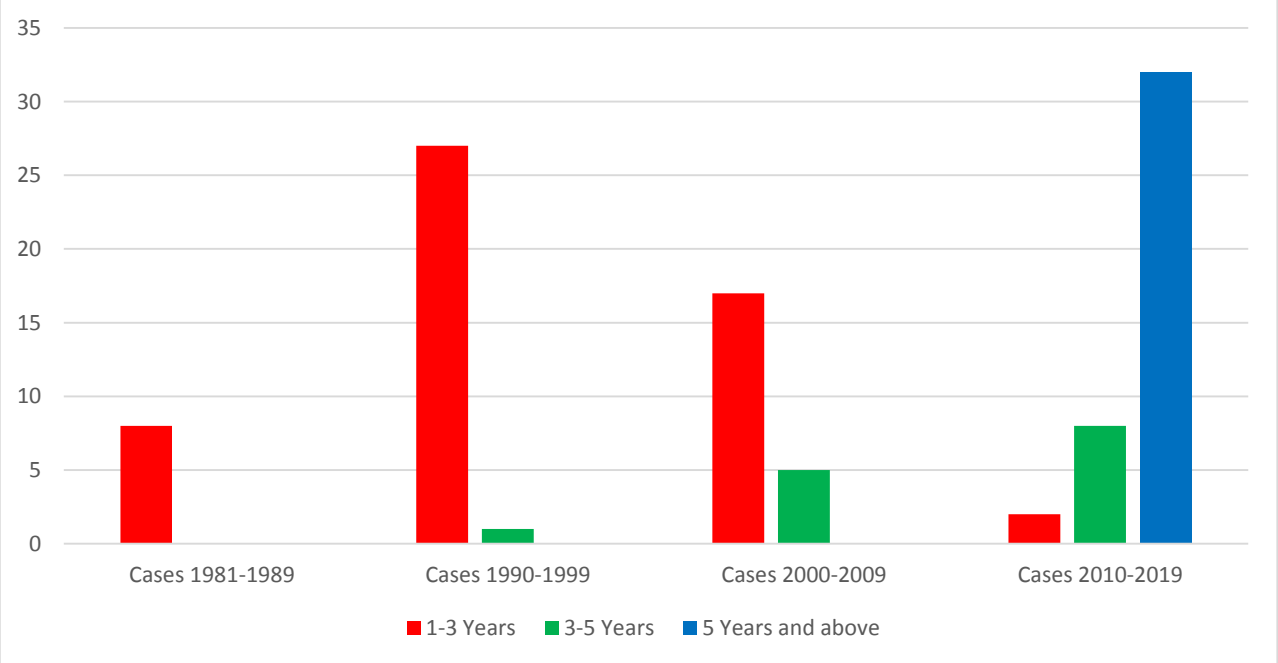
7.1 Duration:

Over the years, it is evident that the number of petitions had increased creating a backlog of cases especially after year 2000. In the years 1980-2000, all applications were heard, and judgments were passed within a period of one year.

However perhaps due to the increase in the number of cases the duration of cases had increased to more than 5 years. This delay could have repercussions. Whilst the Petitioner receives a delayed judgement that would be far costlier than that of a case heard within a period of one year, the Respondents would also enjoy a level of impunity until a decision on the matter has been made.

A table depicting the duration of a case over the years has been provided below:

1981-1989		
Number of Cases:	08	
# of cases within 1-3 years -08	# of cases within 3-5 years: 0	# of cases 5years and above: 0
1990-1999		
Number of Cases:	28	
# of cases within 1-3 years -27	# of cases within 3-5 years: 01	# of cases 5years and above: 0
2000-2009		
Number of Cases:	22	
# of cases within 1-3 years -17	# of cases within 3-5 years: 05	# of cases 5years and above: 0
2010-2019		
Number of Cases:	42	
# of cases within 1-3 years -02	# of cases within 3-5 years: 08	# of cases 5years and above: 32



7.2 Compensation:

Compensation varies depending on the circumstances of each case. However, it is observed that within the timeframe between 2000-2019, State Compensation has increased. Whilst the average state compensation was between 50,000 and 100,000/-, there were four cases in which the State paid Rs. 500,000/- each to Petitioners. Furthermore, in **SC FR 471/2000** the State paid Rs. 700,000/- as compensation and in **SC FR 328/2002** (Sanjeewa, Attorney at Law on behalf of Gerald Mervin Perera Vs Suraweera, OIC Police Station Wattala and others) the State paid Rs. 650,000/- as State Compensation (exclusive of costs which was also paid) The State also bore the cost of a private hospital bill of Rs. 704, 708/- in this case.

In SC FR 136/2014 (Coleman v. Attorney General and Others) State Compensation of Rs. 500,000 was granted to the Petitioner for the litany of abuse and harassment, arbitrary arrest at the hands of the Katunayake Police, and the events that transpired at the Negombo Magistrate's Court (MC), detention at the Negombo Prison and the Mirihana Immigration Detention Camp.

Thus, in the case of Coleman, a large sum of compensation was paid due to the degrading treatment she faced at every stage. Whilst all other cases were due to how severe the torture was. Most Petitioners had suffered permanent disability or the manner in which the individual was tortured was extremely severe.

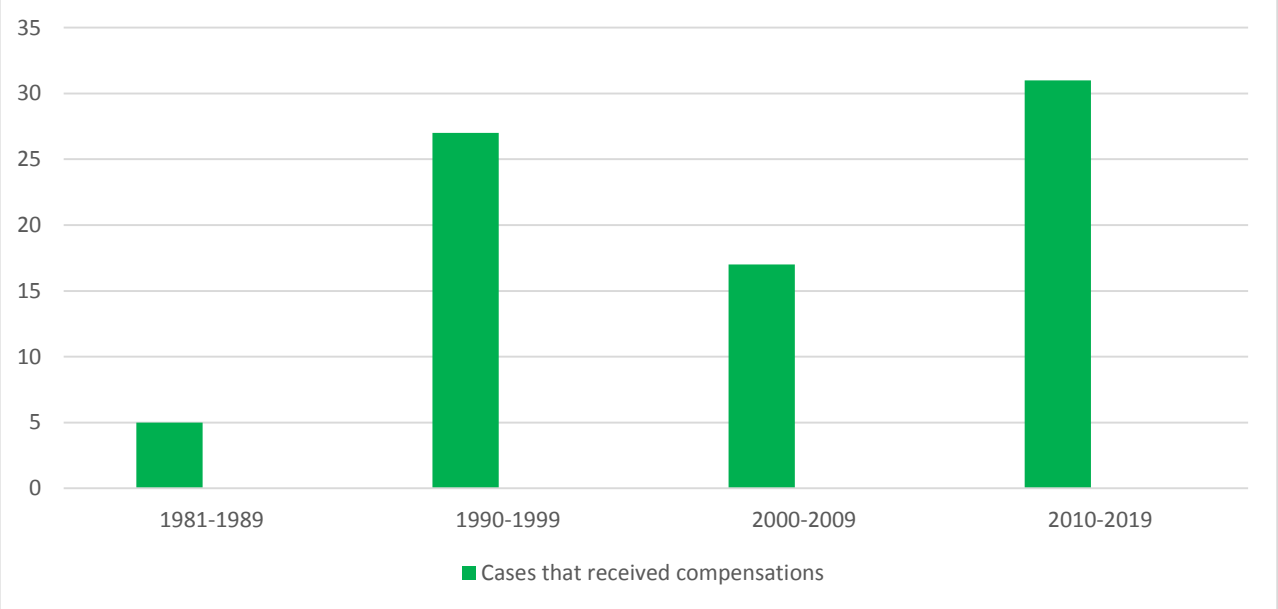
Further, Courts were of the view that **State liability** would exist if it is established to the satisfaction of the Court that the act in question was done by a State official. Therefore, State compensation was metered out to Petitioners whose rights were infringed despite the State not authorizing such violations. The issue with State Compensation however is that Respondents (State Official) may not feel the gravity or the magnitude of their actions. Ironically if the State uses tax payer's money to continue to pay out violations of fundamental rights it could be stated that as citizens we are all sanctioning such acts of violence. Furthermore, state compensation provided to a Petitioner would also mean that the Petitioner may have ultimately contributed to the compensation he receives via the tax money he pays the State.

Finally, how the courts determine the ratio between private and public compensation is rather ambiguous and no reasoning for provided as to why or how this was determined.

The table below provides an overview:

<table>
<tr><td>Number of Cases that received compensation: (1981-1989)</td><td colspan="2">05</td></tr>
<tr><td># of cases that received private compensation only? 01</td><td># of cases that received state compensation only? 04</td><td rowspan="3"># of cases that received a mix of state and private compensation? 0</td></tr>
<tr><td>Minimum compensation award</td><td>Rs. 2500/= (state)</td></tr>
<tr><td>Highest compensation award</td><td>Rs. 50, 000/= and costs Rs. 1500/= (state)</td></tr>
<tr><td>Number of Cases that received compensation: (1990-1999)</td><td colspan="2">27</td></tr>
<tr><td># of cases that received private compensation only? 02</td><td># of cases that received state compensation only? 10</td><td rowspan="3"># of cases that received a mix of state and private compensation? 15</td></tr>
<tr><td>Minimum compensation award</td><td>Rs. 2500/= and Rs. 2500 /=cost</td></tr>
<tr><td>Highest compensation award</td><td>Rs. 200,000 /= and Rs. 5000/= cost</td></tr>
</table>

Number of Cases that received compensation: (2000-2009)	**17**	
# of cases that received private compensation only? 02	# of cases that received state compensation only? 05	# of cases that received a mix of state and private compensation? 10
Minimum compensation award	Rs. 15 000/=	
Highest compensation award	Rs. 1, 504, 788/=	
Number of Cases that received compensation: (2010-2019)	**31**	
# of cases that received private compensation only? 07	# of cases that received state compensation only? 07	# of cases that received a mix of state and private compensation? 17
Minimum compensation award	Rs. 50,000/=	
Highest compensation award	Rs. 1,075,000/= and Rs. 50,000/=	



Discrepancies of how compensation was determined was also observed. As the discretion of compensation is upon the Courts, and no formula/procedure is followed in determining how much compensation an individual should receive. This causes concern as one individual may receive less compensation compared to that of another individual. As torture cannot be quantifiable deciding on an amount would not be an easy task, however it should nevertheless be more transparent to avoid injustice.

7.3 Minors:

Only 6 judgements between 1981-2019 were found. Minors were between the age of 13 years and 15 years. Two females and four males. In all cases minors complained of assault. However, it is unclear how Courts handle instances when a minor is the Petitioner, especially when extracting evidence from minors and assessing the long-term impacts of these assaults when deciding on compensation.

The following cases are related to minors:

a. SC 191/88, was however dismissed due to the lack of evidence.

b. SC 190/94, was a 17 year old boy that was assaulted by his deputy principal and teachers, however the accused was found guilty

c. SC 615/95, was a 14 year old female girl that was assaulted due to alleged theft. She was assaulted with a hose pipe, thereafter hung on a tree by a rope and assaulted. Violation of Article 11, 13(1) and 13(2) was found.

d. SC 126/2008, a 14-year-old male was assaulted for alleged theft and was assaulted. Violation of Article 12(1) was allowed.

e. SC 578/2011, a 13 year old male was assaulted for alleged theft, the accused was guilty of a violation of Article 11.

However, it was only in the landmark judgement (*in 2018*) Landage Ishara Anjali (Minor) and Wijesinghe Chulangani Vs. Officer-in-Charge, Matara Police Station and others (SC FR 677/2012), that the Courts took the opportunity to address and provide the following guidelines for law enforcement authorities to ensure the rights of the public are secured:

- Law Enforcement Officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
- Law enforcement officials shall respect the principles of legality, necessity, non-discrimination, proportionality and humanity.
- Law enforcement officials shall at all times protect and promote, without discrimination, equal protection of law. All persons are equal before the law, and are entitled, without discrimination, to equal protection of the law.
- They shall not unlawfully discriminate on the basis of race, gender, religion, language, colour, political opinion, national origin, property, birth or other status.
- It shall not be considered unlawful or discriminatory to enforce certain special measures designed to address the special status and needs of women (including pregnant women and new mothers), juveniles, the sick, the elderly, and others requiring special treatment in accordance with international human rights standards.
- Children are to benefit from all the human rights guarantees available to adults. In addition, children shall be treated in a manner which promotes their sense of dignity and worth; which facilitates their reintegration into society; which reflects the best interests of the child; and which takes into account the needs of a person of that age.
- Detention or imprisonment of children shall be an extreme measure of last resort, and detention shall be for the shortest possible time.
- Children shall be detained separately from adult detainees.
- Detained children shall receive visits and correspondence from family members.

- Law Enforcement Officials shall exercise due diligence to prevent, investigate and make arrests for all acts of violence against women and children, whether perpetrated by public officials or private persons, in the home, in the community, or in official institutions.
- Law Enforcement Officials shall take rigorous official action to prevent the victimization of women and shall ensure that revictimization does not occur as a result of the omissions of police or gender-insensitive enforcement practices.
- Arrested or detained women shall not suffer discrimination and shall be protected from all forms of violence or exploitation.
- Law Enforcement Officials shall not under any circumstance use Torture and other cruel, inhuman or degrading treatment.
- No one shall be subjected to unlawful attacks on his or her honour or reputation.
- Law Enforcement Officials shall at all times treat victims and witnesses with compassion and consideration.
- Law Enforcement Officials shall at all times promptly inform anyone who is arrested of reasons for the arrest.
- Law Enforcement Officials shall maintain a proper record of every arrest made. This record shall include: the reason for the arrest; the time of the arrest; the time the arrested person is transferred to a place of custody; the time of appearance before a judicial authority; the identity of involved officers; precise information on the place of custody; and details of the interrogation.
- Anyone who is arrested has the right to appear before a judicial authority for the purpose of having the legality of his or her arrest or detention reviewed without delay.
- Law Enforcement Officials as far as possible shall take every possible measure to separate juveniles from adults; women from men; and non-convicted persons from convicted persons.
- Law Enforcement Officials shall at all times ensure to obey and uphold the law and these rules.

The impact of the above guidelines would have to be assessed in future cases

8. Factors which the Court took into consideration when analyzing infringement:

8.1 Medical Evidence:

Medical evidence is an integral component in assessing if an infringement or violation has occurred, especially in relation to Article 11 as physical evidence of torture would support a Petition.

It was observed that both public medical reports and private medical reports were accepted by the Judiciary.

In instances where a JMOs report was incompatible with a Petitioner's narrative or if a Petitioner has failed to provide a medical report, it was observed that it weakened a Petition. It was further observed that there were instances where a Government medical report and a private medical report were contradictory. However, in circumstances where a government medical officer had stated no evidence of torture whilst a private hospital had stated evidence of torture the Judges have reviewed and accepted the private medical report based on the circumstances of each case.

However, it was further observed that **police officers have threatened Petitioners to lie and provide a false narrative to JMOs,** and in certain instances the Petitioners have followed such instructions out of fear.

Furthermore, it was appalling to note that in some instances the **JMO had produced false reports obstructing the Petitioners right to justice by attempting to state that the injuries are not compatible with the narrative of the Petitioner.**

e.g.: In **SC FR 387/2013** (Hewa Munumullage Ajith and another Vs Kalinga de Silva HQ Inspector Police Station Weligama and others), it was stated that the Courts cannot rely on the report submitted by the Judicial Medical Officer Matara, since his conduct is highly suspicious. The Court further went on to state that the said Judicial Medical Officer in Matara should be investigated by the relevant authorities.

8.2 Time Bar:

In all cases assessed herein the Courts did not apply the time bar if it was brought into contention

Article 126(2) of the Constitution states as follows:

" Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney at law on his behalf within one month (emphasis added) thereof in accordance with such rules of court as may be in force, apply to the Supreme Court by way of Petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such applications may be proceeded with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be by not less than two judges"

In the case of SC FR 555/2009 (Koneshalingam Vs Major Muthalif), Tilakawardena J, went on to state that the exception to the rule exists in the Human Rights Commission of Sri Lanka Act No. 21 of 1996.

Section 13 of the Act states as follows:

"*Where a complaint is made by an aggrieved party in terms of Section 14 to the Commission within one month of the alleged infringement or imminent infringement of a fundamental right by executive or*

administrative action, the period within which the inquiry into such complaints is pending before the Commission, ***shall not be taken into account in computing the period of one month within an application may be made to the Supreme Court by such person in terms on Article 126(2) of the Constitution."***

Thus, the Petitioner could avoid the time bar if the application that was made to the Human Rights Commission was made within one month. Most of the cases herein that considered the time bar, had already made an application to the Human Rights Commission. This goes to show the importance of the HRC and its functions and more awareness of the functions of the HRC must be made known to the general public.

However, time bar would be dependent on the circumstances of each case. In the Case of SC FR 859/2009(W. N. D Gunasekara Vs Police Constable Chandana, Police Station Grandpass and others) Priyasath Dep PC CJ, stated that the question of time bar is a threshold issue which should have been taken as a preliminary objection to the maintainability of the action. Priyasath Dep PC J, quoted two cases:

Lewla Thithapajjalage Ilangaratne V Kandy Municipal Council and others (1995) where the Supreme court has held that the question of time bar is a relevant matter to be considered when granting leave to proceed and if an application is out of time the court has no jurisdiction to entertain it.

Romesh Cooray V Jayalath, Sub-Inspector of Police and Others (2008) hereto the question of time bar has been raised for the first time at the stage of argument and the statement of objection was completely silent on the said objection.

Thus, it would be interesting to observe how the argument of time bar is evaluated at the onset of an application as in most of the applications herein the argument of a time bar may not have not been raised as a preliminary objection in the first place, and therefore more research must be done on this matter.

8.3 Informing an authorized person:

It was observed that when the Courts evaluated the Petitioners story, who the Petitioner informed of the torture or the circumstances were taken into consideration. For e.g. informing the magistrate or the magistrates' observations of torture, the JMO's report, the application and the narrative to the Human Right Commission. The Courts have also observed that informing an official depends on circumstances as many times the Petitioner may have been threatened to not disclose torture to the magistrate or to the medical officer.

9. INDIRECT ISSUES:

9.1 Behavior of the Police:

The police are responsible for most of the abuses examined in this report. It is appalling to see the kind of behavior metered out towards the public by a police force that's meant to provide protection to the citizens it serves.

The researcher observed the following:

- Several times the police attempted to fabricate evidence or charges or threaten the lives of the petitioners by falsely charging the Petitioner with possession of a bomb, grenade, or cannabis. It was observed that there were instances where individuals were forcefully thumb printed on to grenades and/or forcefully requested to sign documents and statements.
  Whilst the magistrate has most often acquitted the Petitioners from these false charges, it is unclear if the relevant police stations are reprimanded for such despicable actions.

- The police have tortured individuals and **caused irreparable damage to the wellbeing of the person**. For e.g. in SC 162/91 (Rathnapala Vs. Dharmasiri HQ Inspector Rathnapura and others) the petitioner's lung had to be removed due to the extensive torture caused by the Police. In SC FR 471/2000, the Petitioner died due to his injuries, the Post Mortem showed 20 injuries inflicted on the deceased. In the case of SC FR 213/2001 (Siripala Vs Sub Inspector Wijesinghe and others) it was observed that the Petitioner had to use a catheter for the rest of his life and was impotent due to the torture he endured.

- In cases such as SC(FR) 430/2005 (H. A. Manoj Talis, OIC Police Station Gorakarella and others) it was observed that the Petitioner was taken to the police station and was assaulted in a separate room. Further, an s-lon pipe was also inserted through the Petitioner's rectum. In SC FR 66/97 (Jayasinghe Vs Sub Inspector of Police, Jayakody and Others) the Petitioner was handcuffed and stripped, and chili powder was put into his nose and private parts and he was hanged on a beam. In SC FR 244/2010 it was observed that Kotchi Miris was put into his eyes and nose. The Petitioner claimed he was put through physical and mental pain for the crime of theft he never committed (The Magistrate had subsequently acquitted him of this charge). The police for the purpose of torture usually use clubs or similar weapons, hosepipes to torture the victim. Often times the Petitioner suffers from fractures and contusions. There have been cases where the Petitioner was slapped to a point that the Petitioner had vomited or had fallen unconscious.
- In SC(FR) No. 1006/2009 (Hapugegoda Jagath Perera Vs. OIC Police Station Mirigama and others), the Petitioner had only gone to the Police station to assist his employee. The 2nd Respondent had questioned why the Petitioner was there at the station and had subsequently assaulted him and broken his teeth and put him in the cell (without reason). In SC FR No. 09/2011 (Suriyarachchige Lakshman de Silva, B.M Ajantha Weerasinghe Vs OIC, Police Station Kiribathgoda and others) the petitioner was tortured by burning him with charcoal and by the use of chili.

- A pattern was also observed that in certain cases individuals were blindfolded and taken to **unused houses**. It was also observed that arrests were sometimes made in private vehicles. Furthermore, there have been occasions in which police officers have been in civil at the time of arrest. This causes concern as it would be difficult for an individual to identify the police officer

for the purpose of evidence.

- **Assaulted by private parties**: SC(FR) 260/2011 (A.A Dinesh Priyankara Perera Vs OIC Plice Station Panadura North and Others), SC (FR) 09/2011(Suriyarachchige Lakshman de Silva, B.M Ajantha Weerasinghe Vs OIC, Police Station Kiribathgoda and others), SC 18/87 are examples for when private individuals have assaulted the Petitioner whilst in the custody of the Police.

- It was also observed that the police had **denied individuals opportunity or access to meet with lawyers** or had denied family member the right to visit the individuals in custody.

- **Public Shaming**: it was observed that in certain cases such as SC(FR) 514/2010 (Hewawasam Sarukkalige Rathnasiri Vs. OIC Police Station Welipena and others), the Petitioner was publicly shamed. In the above case, the Petitioner was dragged for about 8kms to a kovil and the First Respondent publicly stated he had caught one of the rioters. In SC 235/96 (Subasignhe Vs Police Constable Sandun and Others) a similar incident occurred, the policeman took the petitioner in a private vehicle and paraded him to the public with the intention to shame. SC FR No. 527/2011 (Sajith Suranga Bogahawatta Vs. OIC Thelikada and others) and 689/2012 (Rajapaksha Pathirage Justin Vs OIC, Police Station Homagama and others) are other examples in which the police publicly shamed the petitioners.

- It was also observed that in relation to arresting an individual the **police would sometimes detain family members to lure the individual**. In the case of SC FR 09/2011 the Courts stated that detention of the spouse or a family member or a relative of a suspect cannot be a reasonable reason for the peace officer to arrest and detain such a person in police custody under section 32 (1) (b) of the Criminal Procedure Code. The detention of a spouse or a family member or any other relative of the suspect by a peace officer must be discouraged by Courts of Law in this country. In the case of SC FR 387/2013, it was observed that the brother of the Petitioner was arrested to lure the Petitioner to the police station where he was subsequently assaulted.

- **Attitudes:** The research observed several instances in which the Respondents were alleged to have been drunk at the point of arresting an individual. Whilst from a perspective of sentencing this particular issue would be hard to assess, several Petitioners especially in the 2000-2019 timeframe have alleged that the Respondent was under the influence of alcohol. In case No.SC (FR) 26/2009 (Dodampe Gamage Asanka Vs. OIC Police Station Pitabeddara and others), it was alleged that the police had also consumed alcohol within the police station.
- **Detention:** It was observed that there have been many instances where an individual was simply taken to a police station on the basis of falsely fabricating a case. Thus, in SC FR 608/2008 (Sarath Kumara Naidos Vs OIC Police Station Moratuwa and others), the Petitioner was kept in remand for eight days with two false charges and then released. In the case of SC FR 1/2001 (Rohana Michael Vs. Saleh OIC Police Station Narahenpita and others) it was observed that the Petitioner was detained in excess. In the case of SC FR 198/2011(Tuduge Achalanka Srilal Perera Vs OIC Police Station Madampe and others) the Petitioner was never produced to a Magistrate from the point of arrest to release. In SC FR 241/14 the Police had lied to the petitioners stating that a case was filed in the Magistrate's Court when no such case was filed. It was further observed that law enforcement officials had many times attempted to falsify documents or to manipulate incidents to subvert the truth in violation of the law. This attempt was found especially when documenting the time of arrest.

In Abasin Banda V S. I Gunaratne and Others (SC No 109/95) Kulatunga J states the following *"I wish to add that infringements of fundamental rights by the police continue unabated even after*

nearly 18 years from the promulgation of the 1978 constitution and despite the numerous decisions of this court which have condemned such infringements. As this Court had observed in previous judgements, this situation exists because police officers continue to enjoy an immunity from appropriate departmental sanctions on account of such conduct. It is hoped that the authorities will take remedial action to end this situation."

All of the above goes to show that abuse is rampant in a police station and despite Court requesting the police to treat individuals with care and courtesy, nothing has changed over the years.

E.g.
In SC 65/88 the Courts informed the IGP that he must give instructions to all police stations concerning the manner in which a person who is taken into custody is treated.

In SC 89/91 (Faiz Vs AG and others), the IGP was requested to give instructions to all OIC's on care and courtesy.

In SC 71/96 (Rifaideen Vs Sub Inspector of Police Jayalath, Wellawatte Police Station and Others) the IGP was requested to give instructions to police stations on care and courtesy.

In SC 559/03 (Sarjun Vs Kamaldeen and two others) Judges commented on the abuse of authority

SC FR 107/2007 (Bandula Samarasekera Vs OIC Police Station Ginigathena and others) Courts stated that officers must possess a higher standard of moral and ethical values than that of an average person.

SC FR 689/2012 Courts directed the IGP to conduct an investigation and to consider instituting proceedings against the 1st Respondent.

In SC 677/2012 (Landage Ishara Anjali, Wijesinghe Chulangani Vs OIC Police Station Matara and Others) the Courts provided guidelines to the IGP such as law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons, etc.

Over the years as depicted above, Courts have called for disciplinary action and the Inspector General of Police has many times informed police stations of the way in which an individual must be treated when in custody. Despite these actions torture and fundamental right violations have continued by law enforcement officials. Compensation is not enough, what is needed is that a fundamental right should be treated as sacred constitutional rights and not be violated in the first place by the very officials who are placed by its citizens to safeguard it. Perhaps more stringent disciplinary action must be developed to curtail this matter because it is evident that despite such disciplinary action the Police continue to abuse their power and authority.

TORTURE ACT NO. 22 OF 1994

In 1994, to give effect to the obligations under Convention against Torture and other cruel inhuman or degrading treatment or punishment, the government enacted the Torture Act, No 22 of 1994. Torture is considered to be a non-bailable offence and state of war, threat of war, public emergencies or an order from a superior would not be considered as a defense for Torture.

However, while the Act is generally in conformity with the definition of torture in the Convention, it does not include "suffering" but only "severe pain, whether physical or mental" nevertheless this does not reduce the impact of the Act.

The definition of ***torture*** as per the Act shall mean:
"with its grammatical variations and cognate expressions, means any act which causes severe pain, whether Physical or mental, to any other person, being an net which is
(a) done for any of the following purposes that is to say"
(i) obtaining from such other person or a third person, any information or confession; or
(ii) punishing such other person for any act which he or a third person has committee, or is suspected of having committed ; or
(iii) intimidating or coercing such other person or a third person

or (b) done for any reason based on discrimination, and being in every case, an act which is done by, or at the initiation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity."

Despite the Act, having tough sanctions on offences related to torture, it is important to note that the first case under this Act was only filed in the year 2000 The Act covers all individuals, both citizens and law enforcements authorities are covered under this Act and if found guilty shall be punishable with 7-10 years imprisonment and a fine of Rs. 10,000-50,000/=

Section 2 of the Act states:

> *(1) Any person who tortures any other person shall be guilty of an offence under this Act.*
> *(2) Any person who"*
> *(a) attempts to commit;*
> *(b) aids and abets in committing;*
> *(c) conspires to commit,*
> *an offence under subsection (1), shall be guilty of an offence under this Act*
>
> *(3) The subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence under subsection (1).*
>
> *(4) A person guilty of an offence under this Act shall on conviction alter trial by the High Court be punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees*

Thus, this Report considers 10 cases under the Torture Act No. 22 of 1994 and has attempted to draw a pattern or an understanding in the manner in which the Act has been interpreted by Judges.

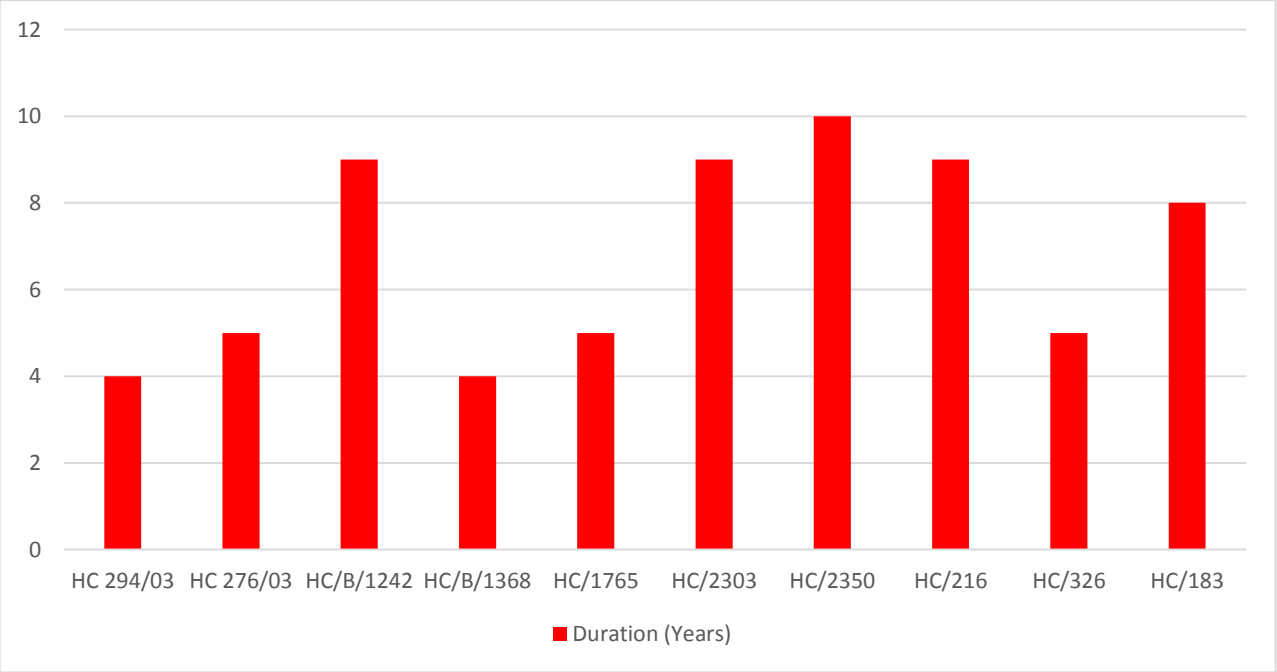
It was observed that unlike the infringement of fundamental rights, the Courts scrutinized the alleged offence deeply. This could be because the accused if found guilty would be imprisoned. Unlike an infringement of a fundamental right where compensation can be paid either in private capacity or by the State, a guilty verdict would entail an imprisonment between seven to ten years.

1. ANALYSIS OF CASES:

Observation: only 10 cases were analysed for this research. Each case was chosen at random and does not represent a particular location. A few cases that were subsequently appealed at the Court of Appeal are also included within the 10 cases herein.

Duration:
The duration between all cases varied from 4 to 10 years as depicted below.

Case Number	Duration (Years)
HC 294/03	4
HC 276/03	5
HC/B 1242/2009	9
HC/B/1368/11	4
HC/ 1765/2003	5
HC/ 2303/2007	9
HC/ 2350/2007	10
HC/216/16	9
HC/326/2003	5
HC/183/2007	8



Witness statements: In HC 1765/2003 (Panadura), the Court was of the view that a witness cannot be expected to have a photographic memory. The Court used the case of **Bhognibhain Hirjibhai V State of Gujarat (1983)** to further emphasize this. Furthermore, the case of **Arendtsz V Wilfred Peiris G.**

A. W 121 was quoted to state that "*just because the statement of a witness is belated the Court is not entitled to reject such testimony. In applying the test of spontaneity, the test of contemporaneity and the test of promptness, the Court ought to scrupulously proceed to exercise the reasons for the delay. If the reasons for the delay are justifiable and probable the trial judge is entitled to act on the evidence of a witness who had made a belated statement*"

In CA 277/2017 the decision delivered by Sisira de Abrew J, in **Dadimuni Indrasena Dadimuni Wimalasena V AG (2008)** was accepted. In the case of Dadimuni it was stated that "whenever the evidence given by a witness on a material point is not challenged in cross examination it has to be concluded that such evidence is not disputed and is accepted by the opponent. This principle was also echoed in **Philipu Mandige Nalaka Krishanth Kumara Tissera V AG (2007)** as well. In the case of CA 277/2017 the test of promptness and probability was also applied.

Furthermore, the courts evaluated medical evidence, Witnesses statements, HRC Statements, evidence presented at an SCFR case against an accused. However, despite the number of factors taken into consideration, as the accused had to be identified without any contradictions these statements held very little value. Thus, for e.g. even if medical evidence corroborated with what the victim stated, the identification of who committed the torture would be of far more importance and thus, to hold an accused guilty, it had to be proved beyond reasonable doubt that the accused committed the alleged violation.

It was observed that cases were dismissed due to the following reasons:

- A contradiction in medical evidence
- A contradiction in witness statements
- Victims unable to identify the accused.

However, it is important to state at this juncture that as the responsibility has been placed on the victim to prove that torture was committed by an accused, this may be difficult to prove in most cases as victims may be tortured blindfolded, in dark spaces or police officers would be in civil clothing. Further, due to the type of torture inflicted upon the victim, the victim may not be even be able to recall the perpetrators.

Thus, identification of the perpetrator may only be possible if the torture was inflicted in a public space. In the case of HC (Pandura) 1765/2003 it was stated that **"family members as witnesses should be treated with utmost caution"** as they are connected to a case. Therefore, in such a situation it would be nearly impossible to identify or determine the perpetrator because it has been narrowed down to a point of impossibility.

Mandatory Sentencing: As per the Torture Act, a mandatory sentencing of 7-10 years of imprisonment is required if the accused is found guilty. However, in the case of HC Panadura 1765/2003 the decision delivered by Lordship Justice Wanasundera in **Abagala Mudiyansela Samatha Sampath V AG** on mandatory sentencing was adopted. Wanasudenra J, went on to state "*sentencing is the most important part of a criminal case, and I find that the provision of any law with a minimum mandatory sentence goes against judicial discretion to be exercised by a Judge."* And thus, the mandatory sentence was not applicable.

Sentencing: Whilst various factors was taken into consideration to evaluate the guilt of the accused, certain other factors would be taken into consideration when deciding on the sentence to be imposed. In HC 1368/2011 the Courts evaluated the following factors:

- The duration of the case
- The fact that the accused had agreed to apologize

- Further, the Judge didn't want to ruin the family life and was of the opinion that a harsh sentence would affect the dependents of the accused.
- The Judge also took into consideration the number of years of service as a police officer and if this was a first-time offence.

Thus, more cases must be examined and researched under the TA to evaluate if the above factors were taken into consideration when evaluating a sentence against an accused.

In conclusion: Due to the heavy emphasis upon the victim to prove a case beyond doubt, many perpetrators may get away with fundamental violation rights, because from the view point of a victim it would be difficult to provide evidence especially based on the situation the victim is placed in. The general victim may not have investigative skills, the victim does not have access nor is given access to modern technology to pinpoint to a perpetrator, unlike a police investigations unit which is set up to do this job. In such an instance it would be nearly impossible for a perpetrator to be found guilty under the Torture Act No. 22 of 1994 and more substantive material would be required to evaluate the offence of torture under this Act.

GENERAL RECOMMENDATIONS:

1. **Law and Policy Reforms:**

- A transparent formula for compensation must be introduced so that disparities when awarding compensation is reduced.

- Remove the time bar period (30day limit) to filing a fundamental rights application in the Supreme Court. Physical and psychological abuse would create unimaginable amounts of trauma and stress and thus, a 30 day time period is not sufficient for a person to make a decision to progress with an application or not. A time bar does not take away the abuse carried out and therefore should not be used as an opportunity to discourage an individual from seeking justice.

- Duration of Court cases must be urgently addressed. The delay in justice has increased over the years and it is hereby recommended that more Judges perhaps must be appointed to reduce the backlog of cases.

- Magistrates must be trained to evaluate and ascertain if an individual produced before Court has suffered torture or has been denied any of his rights (especially the right to an Attorney), and to ensure confidential medical examinations are conducted so that a detainee would not have fear in vocalizing a problem.

- Proceedings must be instituted against accused/law enforcement authorities, Judicial Medical Officers, and other witnesses that have lied or attempted to provide fraudulent documents before Courts to discredit the Petitioner.

- Amendment of the Torture Act, No. 22 of 1994. The mandatory sentence between seven to 10 years must be re-evaluated. The Punishment must vary according to the abuse metered out and therefore a minimum sentencing period of 1 year should be introduced.

2. **Law Enforcement Authorities:**

- An independent authority must be established to investigate allegations of police abuse. Abusers of Power investigating abusers of power will not result in any vital change. Thus, a completely different body comprising of expertise in the field must be established to:

  - Conduct regular, unannounced checks of the police stations; and
  - Investigate allegations and complaints.

- Police officers that are been investigated for a violation of a fundamental right must be publicly listed so that the public is aware of the investigation and any similar infringement would be reported to authorities by the Public.

- Superior officers in a Police station must be held accountable for the abuse of powers within their police stations. These positions of power are given for leadership and responsibility and therefore they cannot be excused for failing to prevent such crimes or not knowing of such crimes.

- Disciplinary measures taken against police officers must be revaluated and appropriate practices must be adopted that is proportionate to the offence committed. Those that abuse power must know the gravity of what they have done and for example, merely transferring them from one police

station to another is insufficient.

- Compulsory learning programs for accused that have been found to infringe fundamental rights of an individual.

- Strict disciplinary action on enforcement authorities that use private locations for the purpose of torture and for permitting private individuals to harass or assault individuals under their custody.

3. FUTURE RESEARCH:

- Applications dismissed at the preliminary stage must be conducted and the number of complaints on Torture the Human Rights Commission received on an average.

- the psychological impact caused to the abuser must be researched. The reasoning behind it is that there is a lot of evidence showing the psychological trauma caused to the victim. Any negative impact caused to the abuser due to his acts could be used as a base for designing proper training programmes for law enforcement authorities.

- Number of Law enforcement authorities serving prison sentences for torture across the country.

4. OTHER:

- Strict disciplinary action against medical officers that attempt to tamper with evidence or maliciously attempt to discredit the Petitioner.

- Random tests for police officers for drug and alcohol abuse. This can be easily carried out if an independent authority is established to investigate allegations of police abuse.

- Urge the Government to adapt, provide, fund new technologies for police stations to extract evidence. Torture is widely believed to be an inefficient method to extract information and solve a crime. The police are in dire need of technology upgrades and new skills. Training programmes designed for enforcement authorities may not be sufficient if it only tells them torture is wrong but fails to provide an alternative method to problem solve.

- The Human Rights Commission has proved to be an extremely important support system thus, more awareness and outreach programmes designed to educate the citizenry is vital especially because time bar may not be considered if a complaint has been lodged within one month of the alleged incident with the Commission.

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Annexes 1 – Supreme Court Cases

No.	S.C Application No:	Year of Judgment	Leave to Proceed	Duration of Case	No of Petitioners	Genders of Petitioners	Respondent (State Institution)	Type of incident	Compensation	Judgment by Court	Names of Judges
1	SC(FR) Application No. 107/2007	2009	Article 11, 12(1) 13(1) 13(2)	2	1	Male	1. OIC Ginigathehena 2. OIC Kandy, 3. OIC, Divisional Crime prevention unit, Kandy Police Station	An argument with 1st respondent , the OIC Ginigahthena took the law to his hands	50,000 personal compensation, 15,000 by the State (65,000)(to be paid within 3months)	13(1) , 13(2) violated and 11 violated	DR. SHIRANI BANDARANAYAK E.J. EKANAYAKE, J. IMAM.J.
2	SC(FR) Application No. 258/2007	2009	Article 11,	2	1	Male	1. OIC-Cimes,Baduraliya 2. OIC, Baduraliya, 3. Inspector General of Police, Police headquarters, Colombo 01	was assaulted by police on the road demanding if he knew about the brewey called kasipu, and was also threatened to not tell the hospital that he was assaulted by the police	75,000 by the State	Article 11 was violated	DR. SHIRANI BANDARANAYAK E.J. JAGATH BALAPATABENDI J, SRIPAVAN J
3	SC(FR) Application No. 129/2007	2009	Article 11, 13(1)			Male	1. OIC police station, Pitigala. 2. Superintendent of Police, office of the superintendent of police Elpitiya, 3. IGP, Police Head Quarters, Colombo 1	While the Petitioner was waiting at the bus stand, a police jeep had an arrived with 4 police officers in civil, and questioned him, the 1st responded had slapped, and clubbed him for no reason. No reason of arrest was also given, but was released an hour later.	50,000 personal compensation, (to be paid within 3months)	13 (1) 11	DR. SHIRANI BANDARANAYAK E. J., N G AMARATUNGA J, CHANDRA EKANAYAKE J
4	SC(FR) No. 264/2006	2010	Article 11	4	1	Male	1Inspector of police, Police Station Kurunegala 2. Headqurters Inspector, Police Station Kurunegala	assaulted in the Kurunegala police station over a money order not sent to the ex-wife even though he claimed to have made the money order	50,000 by 1st respondent within 1 month	Article11 violated	SHIRANI TILAKAWARDENA J, SRIPAVAN J, RATNAYAKE.J.
5	SC (FR) No 429/2003	2010	Article 11, 13(1), 13(2) 13(4), 17	7	2	2 Females (representing diseased-Male)	1. Police Constable, Moragahahena Police Station, Moragahahena, 2. OIC, police station, Moragahahena, 3. *Police Constable, Moragahahena,* *4. Inspector General of Police, Police Headquarters, Colombo 3*	Victim supposedly died in custody. However there was contradictory evidence and it was believed that his head injuries was due to epilepsy. The medical report also agreed with this.	N/A	Application Dismissed	**SHIRANI TILAKAWARDENA J. SRIPAVAN J IMAM.J.**
6	SC(FR) No 326/2008	2010	Article 11, 12(1), 13(1), 13(2)	2	1	Male	1. Sub-Inspector, CID 2. OIC, CID, 3. The Inspector General of Police, Police Headquarters,	Petitioner was arrested believing to be LTTE, however the petitioner could not in any way prove that he had been tortured, not provide medical evidence/documents to substantiate his claims	N/A	Application Dismissed	**SHIRANI TILAKAWARDENA J. , SALEEM MARSOOF J. IMAM.J.**
7	SC(FR) NO 252/2006	2010	Article 11, 13(2)	4	1	Male	1. Sub-Inspector, OIC, Crime Division, Police station, Welikada 2. Inspector of Police, OIC, Police Station, Welikada, 3. The Inspector General of Police, Police Head Quarters, Colombo 1	Petitioner was still incarcerated at the time of filing this case. He was arrested with other family members for an alleged robbery, which subsequently the AG stated that charges would be dropped. He was arrested 5 days before it was actually noted down in the books of the police station. The issue of Time bar was also discussed	80,000 and a further sum of Rs.20,000 as costs for the petitioner to be paid by the State within 3months	11 and 13(2)	SRIPAVAN J ,P A RATNAYAKE.J., CHANDRA EKANAYAKE J,

8	SC(FR) No. 431/2010	2013	Article 11	3	1	Male	1. Police sergeant, police station, Madampe 2. Sub inspector, Police station, Madampe 3. Inspector of Police, OIC, Police station, Madampe 4. Inspector General of Police, Police Headquarters, Colombo 1	He (P) was arrested for a theft of desiccated coconut in the place of work. He was arrested for it by the first respondent and another police officer. And was supposedly subject to torture, Petitioner was taken to a room in the barracks where he was stripped naked and assaulted. However when he was produced before the magistrate he had not said anything, JMO's report also contained nothing. Only at the Remand prison was the injuries observed.. No sufficient evidence though to prove torture	N/A	Application Dismissed	Shiranee Tilakawardene J, P.A Ratnayake PC, J, S. I Imam J
9	SC(FR) No. 43 of 2008	2013	Article 11 and 13	5	1	Male	1. Police Commission, Manikkaratnam, Police Station, Tissamaharama 2. Constable, Police station, Tissamaharama 3. Police Constable, Motor traffic Unit, Police station, Tissamaharama 4. OIC, Police Station, Tissamaharama, 5. The inspector General of Police, Police Headquarters, Colombo 1	Petitioner was accosted outside a boutique and assaulted. Police however state that he was drunk and he fell off the bike and also had two packets of heroin in his possession. The medico legal report states that it was a fall he had and that he was drunk. So this is in line with what the police stated.		Application Dismissed	Tilakawardena J, Marsoof PC, J, Sripavan J.
10	SC(FR)NO.555/2009	2014	Article 11	5	1	Male	1. Police constable, Dummalasuriya 2. Police constable, Dummalasuriya 3. Police constable, Dummalasuriya 4. OIC, Dummalasuriya 5. Assistant Superintendent of Police, Office of the Assistant Super intendant, Kuliyapitiya 6. Inspector General of Police, SL Police Headquarters, Colombo 1	Petitioner claims that as he was walking after a musical show which he was a part of the org. committee, saw the 1st to the 4th respondents attacking a group of people. He was subsequently assaulted too: face, abdomen and head. He was in Kuliyapitiya Hospital for 2 days for head injuries.** petitioner claimed influence of alcohol of respondents	N/A	Application Dismissed	Tilakawardena J, Sathyaa Hettige P.C, J Marasinghe J
11	SC(FR) No. 1006/2009	2015	Article 11, 13(1) 13(2)	6	1	Male	1. Inpector of Police, OIC of the minor crime branch, Mirigama, 2. Inspector of Police OIC traffic branch, Mirigama 3. Sub Inspector of Police, Mirigama 4. Inspector General of Police, Police Head Quarters, Colombo 1	P, accompanied someone who was given notice to appear at the police station. P only went as an assistance to his employee. The 2nd Respondent questioned why P was there, and subsequently assaulted him and broke his teeth and put him in the cell.	Rs.500, 000 as compensation from State, 4th Respondents to ensure this payment is paid to Petitioner.	11 and 12 (1)	K. Sripavan CJ, Eva Wanasundera PC J, Sisira J de Abrew J

12	SC (FR) NO. 26/2009	2016	Article 11 and 12(1)		1	Male	1. Police Sergeant, Pitabeddara 2. Police Constable, Pitabeddara, 3. Police Sergeant, Pitabeddara, 4. Police Sergeant, Pitabeddara, 5. Police Sergeant, Pitabeddara 6. Police Sergeant, Pitabeddara, 7. Police Constable, Pitabeddara, 8. Police Constable Pitabeddara, 9. Police Constable, Pitabeddara, 10. Police Constable, Pitabeddara, 11. OIC, Pitabeddara, 12. P.V. Chandrasiri, 13. Deputy Inspector General of Police of Southern Range, office of the Deputy Inspector General of Police, Galle, 14.Inspector General of Police, Sri Lanka Police Headquarters, Colombo 1	P and friend states 12th respondent knocked his motor cycle deliberately, the friend sustained serious injuries, P was assaulted for no reason by Respondent 1 and 9 and 12. P claims 12 respondent opened his mouth and put a liquid which turned out to be acid which he spat out. !2th respondent threw it on two his face. P sustained burns. He was taken to the police station and assaulted without being taken to a hospital.	Rs.200,000 state Compensation, and directs the IGP o take steps to ensure that its paid to the Petitioner	Article 11 and 12(1)	Eva Wanasundera PC, J, Sisira J de Abrew, K T Chitrasiri
13	SC(FR) No.612/09	2016	Article 11 and 13(1)	7	1	Male	1. Police Inspector 2. Police Sergeant 3. Sub-Inspector, 4. OIC, Wennapuwa	the P alleges that even though he fell within the purview of Marawila police station, 1,3 5th 6th respondents, came to his home in a private vehicle(the police officers came in it too) the 6th respondent had made a complaint stating P had stolen. Because P refused to get into vehicle he was subsequently assaulted and handcuffed and dragged into said vehicle. P claims he was assaulted in the vehicle too. he had fainted and vomited that night at the station due to his injuries (he claims)	1-3 respondents personally liable, 35,000 separately, total- 105,000	13(1) was not violated, Article 11 was violated	Priyasath Dep PC J, K.T Chitrasiri, rasanna Jayawardena PC J.
14	SC (FR) NO. 138/2007	2016	Article 11, 13(1) and 13(2)	9	1	Male	1. OIC, 2. Inspector of Police, 3. Sub Inspector, 4. Sergeant, 5. Police Officer, 6. Police Officer, 7. Sergeant (all Katugastota Police Station) 8. Inspector General of Police, Police Head Quarters, Colombo	The P alleges that there was an altercation in a bus with the 7th respondent before this incident. The following day in the morning the police jeep was parked at the business premises of the petitioner. Petitioner states that the police failed to inform him of reason of arrest. 3 and 4th respondent severely beat him at the station. 5th respondent took him upstairs and that's where petitioner recognized 7th respondent. He was severely beaten and assaulted subsequently again. 6th respondent said he would be framed for possessing cannabis	2-7 respondents, 120,000 compensation by the State and further sum of Rs.30,000, within 30 months.	Article 11 was violated by 2-7 respondents, Article 13 (1) was violated, and 13(2)	Chandra Ekanayaka J, Wanasundera J, Jyawardena PC J
15	SC(FR) No. 578/2011	2016	Article 11	5	2	Male / Female	1. Sergeant, 2. Police inspector, 3. Hettiarachi . OIC, Yawatwatta	1st P, is a minor (15 years), hence why his mother was a part of the application as well. He arrested as it was alleged that he had committed a theft. (He had stolen some toys) the P was detained in a police cell and not provided meals and water. The police party seems to have continuously threatened the 1st P and warned that he would be killed if the incident of assault was divulged. The police had been threatening, berating and assaulting the P for committing theft and to recover other information	1- 4 respondents found guilty. The inspector general of police to pay (state) Rs. 50,000/ to the Petitioner.	Article 11 was violated	S. E. Wanasudenera J, Upaly Aberatne J, Anil Gooneratne J

16	SC(FR) 81/2011	2016	Article 12(1)	5	1	Male	1. Inspector of police (special unit-CID), 2, Police Sergeant (special Unit-CID), 3. Inspector of Police, OIC (CID), 4. Assistant Superintendant (special unit-CID), 5. Inspector General of Police, Police Headquarters, colombo 1	P (Gamini) was shown a warrant (which was subsequently proved to be issued for a different person named Gamini), and was taken to the CID. P's house was searched- nothing was found. P was told that he was charged for two cases (for a double murder case in 1982 and for threat. the Magistrate discharged P from both cases, as they were false.	State Compensation of Rs. 300,000/-. IGP(5th R) to take steps to pay said amount from the police department	Article 12(1) was violated	Sisira J deAbrew J, Anil Gooneratne J, K T Chitrasisri J
17	SC(FR) 689/2012	2016	Article 11, 12(1) 13(1) and 13(2)	4	1	male	1.Inspector of Police, Police Headquarters, Colombo 1 2. Inspector of Police, Homagama, 3. Police Constable, Homagama, 4. Police Sergeant, Homagama, 5. Police constable, Homagama, 6. Sub-inspector of Police Thalangama 7.Inspector of Police (OIC -Crime Investigation Unit), Homagama 8. Inspector General of Police, Police Head Quarters, Colombo 1, 9. Head Quarters Inspector, Homagama	1-3, entered a house, 2R dragged P and the 1R assaulted him with hands and legs. 1-3R did not give reasons for arrest. At a school the P's children went to the 1st R, stated that he had arrested the biggest illicit alcohol dealer who was now in the jeep. The P was in remand cell from 25/26/27 of May 2012 before being presented to a Magistrate. P was presented before the M for possession of 6 packets of cannabis (5g). The M discharged P as it was a false fabrication by the police	1st respondent-200,000, 6th respondent 10,000, State Compensation 25,000	Article 11, 12(1) 13(1) and 13(2)	Eva Wanasundera PC, J, Sisira J de Abrew, B P Aluwihate PC J.
18	SC(FR) 260/2011	2016	Article 11, 12(1), 13(1)		1	male	1. Police Constable, 2. Police Constable, 3. Police Constable, 4. Police Constable, 5. Police Officer, 6. Sub-Inspector 7. Acting OIC, (all the above R, belong to Keselwatta, Panadura North Police Station) 8. Assistant Superintendent of Police, Panadura, 9. Senior Superintendent of Police, Panadura 10. P.G Dhanushka Uyangoda, Akuressa, 11. W. Deeptha Kumarasignhe (chairman) Probuild Lanka Private Limited, 12.Pearl Chandragupta, Manager Supplies, Nugegoda, 13. Inspector General of Police, Police Headquarters, Colombo 1, 15. Police Constable Keselwatte, Pandura North	Police alleged that 1, 2 and 3 R of this application had come to his residence and had been told that he was required to go to Keselwatta police to have a statement taken. Neither respondent had apparently no knowledge why he was requested to do so. At the station however, 2R had slapped and 3rd R had held him by neck. P states he pleaded he had no knowledge of anything. Yet 2nd and 3R had assaulted him with fists. This issue was with regard to a loss of tiles belonging to a DIG. However once no connection was found the allegation of lost tiles by Probuild Lanka was blamed on P. Respondents from Probuild had also assaulted him in the station	State Compensation 20,000, Costs to P 10,000, 7th Respondent to pay 15,000 and 1,2,3,4 R to pay 10,000 each	violated Article 11, and 12(1)	Chandra Ekanyake J, Priyasath Dep P.C J, Buwaneka Aluwihar PC, J
19	SC(FR) 158/2008	2016	Article 11, 12(1) and 13(1)	8	2	2 Males	1. Sub-Inspector, 2. Police Constable, 3. OIC (all of the above Hikkaduwa) 4. Susani Anjala. 5. The Inspector General of Police	1st P, is the son of the 2nd P. 1P had cohabitated with 4th R. 1P states he maintained an intimate relationship with 4R. However there were arguments between the 2, and firing with the instigation of 4th R, 1R would try to arrest or assault him the 2nd P took the 1P to meet the 3rd Respondent (OIC) but unfortunately they couldn't meet, Subsequently on another day 1st	1st Respondent-75,000 (1st Petitioner), 50,000 for 2P 2nd Respondent-75,000 (1st Petitioner), 50,000 for 2P,	Article 11,12(1) and 13(1)	K. Sripavan CJ,, Sisira J De Abrew J, Priyantha Jayawardena PC J

								and 2nd R assaulted and dragged 1P and thereafter 2P to the Police Station, They further Assaulted 1P, and subsequently fabricated two cases against 1P and 2P. the Magistrate discharged both petitioners of it	State: 100,000 -1P and 50,000 for 2nd P to be paid within 2months and 5th R to ensure that it gets paid		
20	SC(FR) 244/2010	2016	Article 11,13(1) and 13(2)		1	Male	1. Sub Inspector, 2. Sergeant, 3. Constable 4. Sergeant 5. Security Assistant 6. OIC (all of the above Bandargama Police Station) 7. Assistant Superintendent of Police, Panadura Division. 8. The Inspector General of Police, HQ, Colombo 1.	P had come before the court stating that before he was presented to the Magistrate he was subject to inhuman, degrading treatment. In fact Kotchi was put into his eyes and nose. P claims he was out through physical and mental pain for the crime of theft he never committed (M acquitted him for it) P had no previous convictions. No goods were found in his possession.	500,000 to be paid by the P by 1, 3, 4, and 5R (each 125,000) State should pay a further compensation of Rs. 500,000/- for an on behalf of 6th respondent and cost of suit to be paid by the State.	Article 11, 13(1) and 13(2) violated	S E Wanasundera PC J, Upaly Abeyrathne J, H N J Perera J
21	SC(FR) 527/2011	2016	Article 11, and 13(1)	5	1	Male	1. Sub Inspector, 2. Sergeant, 3. Sergeant, 4 Civil Defense Officer, 5. Inspector of Police, OIC (Thelkanda Police station^) 6. Inspector General of Police, HQ, Colombo 1	P was 17 years and 10months when incident occurred. P was at a house when the incident occurred. 2nd and 3rd respondent and two other cops in civil came to the house in motor bicycles and without reason, slapped him thrice and arrested the Petitioner and another third party. They assaulted and degraded the P at the police station, and thereafter continuously at different occasions showed him off to the public stating that he was the Grease Devil.	5th R- 100,000/- , 1-4R to each pay 50,000/- payment to be made within three months	Article 11 violated	Sisira J de Abrew J, M H M U Abeyratne J, H N J Perera J
22	SC/FR No 368/2012	2016	Article 12(1), 13(1) and 13(2)	4	3	1 Female and Two kids		Custody issue between 1st Petitioner and 16th R, Despite the District Court giving an order for full custody to the 16th R, it was stayed by an appellate order. However the children remained in the custody	N/A	Application Dismissed	K. Sripavan CJ, B.P Aluwihare PC J, Sisira J De abrew J
23	SC(FR)126/2008	2017	Article 12(1)	9	2	2 Males	1. Sub Inspector, 2. Inspector (OIC) 3. Home Guard (above 3 from Meetiyagoda Police station), 4. W. T Siripala, Meetiyagoda, 5. The Inspector General of Police , HQ, Colombo 1	1st P, was a minor (14 years) 2nd Petitioner was the father. 1-4 R, had come looking for the 2nd petitioner to the house with a sniffer dog, but he was in the paddy field, and therefore the 1P had obliged to take them to him. 1st P got into the R's Vehicle but was instead taken to the police station as was assaulted by the 1st, 2nd and 3rd R.	1-3R -300,000/ (100,000 each for compensation for P), 1-3R- 75,000/- (25,000 each)	Article 12(1) was violated	B P Aluwihare PC J, Upaly Abeyratne, J, K.T Chitrasiri, J.
24	SC(FR) 430/ 2005	2017	Article 11, 12(1),, 13(1) and 13(2)	12	1	Male	1. Inspector (OIC- crimes branch), 2. Sub Inspector, 3. Sub Inspector, 4, Sergeant, 5. Police Constable, 6. Reserve Police Constable, 7.OIC (all above Police station Gokarella)	1-6R came to P's house and arrested him, and P was taken to the police station. 1-3 assaulted him. Subsequently he was taken to another room where 1-6R were present where he was further assaulted and a "slon" pipe was also sent through the P's rectum.	1, 2, 3, 5 and 6 ordered to pay compensation of 100,000 each within three months	Article 11, 12(1),, 13(1) and 13(2) was violated	Sisira J deAbrew J, Upaly Abeyrathne, J, Nalin Perera J.

25	SC(FR) 112/2010	2017	Article 11 , and 13(1)	7	1	Male	1. Inspector, OIC, 2. Sub inspector, 3. Police Constable (all of the above from Poddala police station) 5. Inspector General of Police Sri Lanka	A police jeep with 1-3 R and some other policeman came and assaulted him as per the P's story when he was having a friendly conversation about a minor dispute. He states no reason was given of arrest. At police station he claims he was assaulted till the club broke. Claimed 1R was drunk	N/A	Application Dismissed	Priyasath Dep PC J, Sisira J de Abrew J, Nalin Perera
26	SC(FR) 599/2011	2017	Article 11 and 12(1)	6	2 petitioners	Male and Female	1. Sergeant, 2. Civil Defense Officer, 3. Sub-Inspector of Police 4. Police Constable, 5. Police Constable 6. Chief Inspector of Police, (All of the above - Dodangama police station) 7. Inspector General of Police	1st-2nd Respondent came to take lorry belonging to 1P s it was blocking traffic. P took lorry away but was assaulted by 1-4R. P alleges that he was dragged on the road. , 2nd P states that she was assaulted by 2 and 3R.	N/A	Application Dismissed	Sisira J de Abrew, Anil Gooneratne J, Nalin Perera
27	SC(FR) 629/2010	2017	Article 11,13(1) and 13(2)	7	1	Male	1. Inspector General of Police, HQ, Colombo 1, 2. Headquarters Inspector of Police (Matugama)	Police had opened the door in the early hours to police officers who were knocking on the door. He was ordered him to get into a three wheeler. After a particular distance he was asked to get off three wheeler, then he was assaulted. Then asked to get back in. 2R had also demanded that he return a firearm.	State Compensation of 15,000 and costs of 10,000- Further for 2nd R to pay 20,000	Article 11 violated	Buwaneka Aluwihare PC J, Anil Gooneratne J, K T Chitrasiri J.
28	SC(FR)222/2014	2017	Article 11	3	1	Male	1. Chief Inspector (OIC) Teldeniya, 2. Sub-Inspector (OIC-complain division) Taldeniya 3. Deputy Inspector General of Police, Kandy. 4. Inspector General of Police, HQ, Colombo 1, 5. The Director General, civil Security Division, Ministry of Defense	Petitioner states, he was arrested by 1R and later produced before a magistrate for stealing 11 pieces of sandalwood from the Magistrate Court of Taldeniya. He (P) was a Civil Security guard attached the Taldeniya Police station	N/A	Application dismissed	Sisira J de Abrew J, .Anil gooneratne J, Vijith K. Malalgoda PC J.
29	SC (FR) 319/2012	2017	Article 11	5	1	Male	1. Sub-Inspector of Police 2. Sub Inspector of Police, 3. Police Sergeant 4. Police Sergeant 5. Police Constable (All of the above police station -Negombo), 6. Sub Inspector of Police- OIC, Kotadeniyaya. 7. Inspector General of Police, HQ, Colombo 1	Petitioner alleges that he was arrested in front of his business and was assaulted there, P states he was assaulted by 1, 3, 5R	N/A	Application Dismissed	Sisira J. de Abrew, Nalin Perera, Prasanna Jayawardena PC J.
30	SC(FR) 608/2008	2017	Article 11, and 13(2)	9	1	Male	1. Inspector, 2. Police constable 3. OIC, 4. Superintendent of Police (all of the above Moratuwa Police Station) 5. The Inspector General of Police, HQ, Colombo 1	P was a mason, ad at the time of the application filed he was married with children, He admists soemtime back he was charged with the possession of ganja and pleased guilty. This matter now was with regard to a house breaking and P was accused of it and subsequently beaten and assaulted for it	1R and 2R to pay 100,000 each and the State to pay a sum of Rs 100,000 (payments to be made within 4 weeks	Article 11 and 13(2) violated	K. Sripavan CJ, Priyantha Jayawardena PC J, Anil Gonneratne J
31	SC(FR) 136/2014	2017	Article 11, 12(1) and 13(1)	3	1	Female	2. Police Sargent, 3. Police Inspector, Acting OIC (Katunayake Police station for both) 4. OIC, Negombo,	P was a British citizen and is a devout Buddhist who goes on meditation retreats across Asia. She had a tatoo of Buddha on her arm and claims she was subsequently arrested, detained, and complained of degrading treatment. Police	State compensation of 500,000/- and costs in sum of Rs.200,000/ and 2R and 3R to pay	Article 11, 12(1) and 13(1) violated	S E Wanasundera PC J, Anil Gooneratne J, Nalin Perera J.

							5. Inspector General of Police HQ, Colombo 1, 6. Controller General of Immigration and Emigration	didn't inform her of charges, Police officers extracted money from her, /there were sexual lewd gestures and remarks made at her. P was not given an opportunity to contact British embassy	Rs.50,000 each		
32	SC(FR) 194/2012	2017	Article 11,12(1) 13(1) and 13(2)	5	1	Male	1. OIC, Bulathsinhala 2. /sub inspector, Bulathsinhala 3.ASP, office of the Assistant Superintendent, Kalutara, SI, office of the Superintendent, Kalutara	P was a 22-year-old three wheel driver at the time of incident. He was accused of the murder of Ex-girlfriend. He was assaulted at the Station, and supposedly hanged, beaten and then blindfolded and beaten again.	N/A	Application Dismissed	K. Siripavan CJ, Sisira J de Abrew J, H N J Perera J.
33	SCFR No 372/2015	2017	Article 12(1) and 11	2	3	A Male & 2 Females	1. Inspector General of Police, HQ, Colombo 01., 2. OIC Moratuwa, 3. OIC Moratumulla 4. Widanage Amesh (Moratuwa)	Mother, Sister and Brother as Petitioners on behalf of the **brother** (deceased). The deceased was 20 years old and was a victim of stabbing at the time of demise. The petitioners on behalf of the deceased claimed that despite clear evidence, the police **had failed to expeditiously prosecute this case**	50, 000 to each Petitioner be paid by the State	Article 12(1) was violated	Eva Wanasundera J, Priyantha Jaywardena PC J, Vijith K Malagoda PC J.
34	SC(FR) 09/2011	2017	Article 11, 12(1) and 13(1)	6	2	A Male and A Female	1. OIC, 2. OIC -Crime Division, 3. Sergeant, 4, Police Constable, (Kiribathgoda Police Station ^) 5. B Cramer (proprietor) 6. Deputy Inspector General of Police-Peliyagoda, 7. Inspector General of Police, Colombo 1	2nd P is married to 1P. 1st P is a subcontractor and for work that was complete, the 5th R owed him money, and thus a disagreement occurred. The 5th R had thereafter complained that there was a theft in his house. The events transpired to the point where the 2P was arrested to ensure the 1P would come to the Station. When the 1P was arrested he was assaulted (burnt with charcoal and chilli)	The State shall pay each Petitioner 50,000 each. And costs of Rs. 25,000. 1-4 R to each personally pay a sum of 25,000 to second petitioner. And 2nd to 4thR to pay 100,000 each to 1st Petitioner. Payment within three months	Article 13(1) and 11 had been violated for both parties	S E Wanasundera PC J, Upaly Aberathne J, H N J Perera J.
35	SC/ SP 19/2007	2018	Article 11, 12(1)	11	1	Male	1. Sub-Inspector of Police 2. Police Sergeant 3. OIC (Wattegama Police Station) 4. DIG Central Province -West HQ, Kandy 5. Inspector General of Police	P was summoned by the Police Station on a complaint made by the niece regarding an allegation that he obtained jewelry and a loan of 100,000 from her, at the police station he was assaulted by 1R and 2R. After receiving bail, he continued to deal with threats from them	N/A	Application Dismissed	Sisira J de Abrew J, Nalin Perera J, Prasanna Jayawardena PC J,
36	SC(FR) 56/2012	2018	11, 12(1) 13(1)	6	1	Male	1. Sergeant 2. Civil Security Constable 3. Civil Security Constable, 4. OIC 5. ASP (Theldeniya Police Station)	P was in the vicinity for There celebrations, when a riot broke off, in the haste of taking wife and child to safety 1, 2, 3R had assaulted him with a club. (Verbal and physical abuse for 20mins) he was dragged for about 8kms to a Kovil and 1R publicly stated he had caught one of the rioters (P's relatives were amongst crowd), after going to the police station and leaving said station he was hospitalized several times.	State to pay 20,000/- and the 1st, 2nd and 3rd R, to pay 25,000/- each	Article 11, 12(1) violated	Buwanaka Aluwihare PC J, L Tdehideniya J, Murdu N B Fernando PC J.

37	SC(FR) 514/2010	2018	11 and 12(1)	8	1	Male	1. Police Sergeant, 2. Police Constable 3. Police Staff Assistant 4. Police Inspector - OIC (Welipana Police station) 5. Inspector General of Police HQ, Colombo 1	P was 50 at the time of incident, 1R and 2R in civil had come in a motorbike and asked for toddy from the P (where P works). P said he had no toddy for sale. This agitated both respondents. 2R had grabbed the toddy knife from P and cut his shoulder. Then 1R and 2R had assaulted P, and dragged him for around 400m on the road, and then he was taken to the police station. That night he was taken to the hospital	State to pay 100,000 as compensation and 25,000 as costs, and 1R and 2R to personnaly pay 50,000 each to P	Article 11 and 12(1) violated	S Eva Wanasundera PC J, Prasanna Jayawardena PC J, Murdu N. B Fernando PC J
38	SC(FR) 859/2009	2018	Article 11	9	1	Male	1.Police Constable - Grandpas Police Station, 2. Individual from Police Transport Division-Sub garage (Kundasale) 3. Inspector General of Police, HQ, Colombo 01	When P was trying to cross the road to get to his place of work, 1R had grabbed him by the shirt and shouted at him. And had assaulted him and beaten him. 1R had then asked P to get into a red three-wheeler with him but P refused. He was then beaten again. 2R had joined in and tried to force P to get into a green three wheel, which P refused again, and was beaten till he lost conscience	1R to pay 50,000 to the Petitioner	Article 11 was violated	Priyasath Dep PC j, S E Wanasundera PC J, Prasanna Jayawardena PC J.
39	SC (FR) 599/2009	2018	Article 11, 12(1)		1	Female	1. Padma Kumari, Matale 2. OIC-Matale Prison, Matale 3. OIC- Rathtota, 4. PS, Rathtota 5. Superintendent of Prison, Bogambara Prison, 6. Female guard -Bogambar Prison, 7. Female Guard- Bogambara Prison 8. Female Guard, Bogambara Prison 9. Female Guard- Bogambara 10. Commissioner General of Prisons, Department of Prisons, 10. The Inspector General of Police, HQ, Colombo 1	Padma Kumari (1R) over a garbage issue had an argument with P. on the same day two female constables accompanied by two male constables came to her house in a private vehicle and took her to a police station, only to find out that 1R had allegedly made a false complaint. After presented to the Magistrate she was taken to the Remand prison, where she was assaulted and slapped to a point where she had puked (1R's husband is the 2nd R of this case)	State Compensation, 500,000/ and costs of Rs. 50,000/-, Compensation of Rs.200, 000 by 2R. Compensation of Rs.75,000/ (6 to 9th R each) (total 6-9R=300,000)	Article 11, 12 violated	Sisira J de Abrew J, Vijith K Malagoda PC J, Murdu N. B Fernando PC J.
39	SC (FR) 393/2008	2018	Article 11 (13(1) and 13(2)	10	1	Male	1. Inspector 2. Sub Inspector 3. Sub Inspector (Police Station Dam Street) 4. The Inspector General of Police, HQ, Colombo 01	Whilst crossing the road with wife (as the wife had negligently crossed the road, she got scolded by the 1R. Subsequently this led to an argument between Petitioner and 1R, where P was assaulted. P was subsequently put into a police vehicle taken to the police station an assaulted.	1R to pay 150,000 as compensation and State to pay 25,000 as costs	Article 11,13(1) and 13(2)	Buwaneka Aluwihare PC J, Priyantha Jayawardena PC J, K T Chitrasiri J.
40	SC(FR) 241/14	2018	Article 12(1), 13(1) and 14 (1) e	4	2	2 Females	1. OIC, 2. Acting OIC,(Kekirawa Police Station) 3. Swarnasheeli, 4. Anura P, 5. Inspector General of Police, HQ, Colombo 01	Both P's are mother and daughter, and are Jehovah witnesses, at the invitation of a woman, they had walked into her home and discussed the bible. Whilst doing so, two Buddhist monks and two policemen had walked in, berated them and forced them to get into a three-wheeler and taken them to the police station. At the police station they were berated and the petitioners were detained overnight and they also feared for their life. They received bail but was hassled to come on many days for an inquiry which was a fabricated one. The police had also lied to them telling them of a case filed at the Magistrate Court. No such case was filed	State to pay Petitioners each Rs.50,000	Article 12(1) and 13(1)	S Eva Wanasundera PC J, H N J Perera J, Prasanna Jayawardena PC J.

41	SC(FR)479/2009	2018	Article 11	9	3	1P- Male 2- Male (deceased) 2A female (wife of deceased	1. Sub inspector, Meegathhenna Police Station, 2. Anuruddha Mangala, 3. OIC, Meegathhenna Police Station, 4. The Inspector General of Police, HQ, Colombo 1	**1Petitooner:,**((first of all states that due to a previous dispute the officers of the police station had ill-will towards him and had already framed a case which is currently ongoing)) -One afternoon in relation to this incident the 1R and two unidentified men came to his house assaulted him and dragged him out of the house and put him into a police cab and was taken to the police station. At the police station he was assaulted as the police claimed that he was involved in a theft. They had assaulted him to a point he felt dizzy. .**2nd Petitioner (now deceased):** 2R had come to his house and inquired about a theft which 2P denied. 2R thereafter hit him, thereafter 1R and 2R took him to an unused house and assaulted him, and took him to the police station. There too he was severely assaulted h he vomited blood.	1-3R shall each pay 1P and 2A (wife of deceased) 50,000/- each. State shall pay compensation of Rs. 50,000 to each P too.	Article 11 violated	S Eva Wanasundera PC J, Prasanna Jayawardena PC J, Murdu N. B Fernando PC J
42	SC(FR) 208/2012	2019	Article 11	7	1	Male	1. OIC 2. Sergeant (Sevangala police station) 3, Medical Officer in Charge- Divisional Hospital (Sevangala) 4. Inspector General of Police, HQ, Colombo 01	P is a sanitary laborer attached to the Sevangala divisional hospital. P states 3R had called the P to the staff rest room and questioned the P if he had poisoned the water tank, and that thereafter 3R assaulted him	P entitled to receive a sum of Rs.50,000/- from 3R, within three months	Article 11 violated	Sisira J de Abrew J, L T B Dehideniya J, Murdu Fernando PC J
43	SC (SPL) No. 12/2004	2005	Article 11, 13(1)	1	1	Male	Not Stated	P, 54 years of age- complained that the 1st respondent OIC came near his boutique in a jeep and had summoned and assaulted him in the face, and thereafter was taken to the police station.	N/A	Application Dismissed	Bandaranyake J, Weeraisuriya J, Udalagama J
44	SC(FR) 231/2003	2005	Article 11, 12(1), 14(1) (g)	2	2	Male and Female	Not Cleary stated- Deputy General of Police (Kandy) and (4)others	P's were owners of Hotel-Sunray Kandy and complained that at an event they had organised , 30 persons dressed in camourflage had arrived with t56 rifles and had entered the hotel and searched it.	N/A	Application Dismissed	Bandaranyake J, Jaysinghe J, Udalagama J
45	SC (FR) 263/2001	2005	Article 11, 12(1), 12(2)	4	1	Male	Not Cleary stated- 6 respondents from the Army	The P, an OIC alleged that when he and his wife was having lunch 1, and 2R had come and kicked their plates and took the P away in a truck, assaulted him and chased him away	N/A	Application Dismissed	Weerasuriya J, Udalagama J, Fernando J
46	SC(FR) 121/2004	2006	Article 11, 13(1) and 13(2)	2	1	Male	Not clearly stated - Sub inspector of Police from Welipenna and 4 other respondents	The Petitioner, claimed to be an artisan who agreed to paint the police emblem on independence day. He was taken to Welipena Police station by 1R (sub inspector) in a jeep and was assaulted along with another party. At the police station P claims to have been taken to the 1R room and assaulted with a wicket over 80times. R claims P was arrested for alleged theft	1R had violated Article 11 and therefore a sum of Rs.5,000 personally, and State Compensation 20,000 as compensation and costs	Article 11	Bandaranayake J, Weerasuriya J and Udalagama J
47	SC (FR) 559/03	2007	Article 11	4	1	Male	Not clearly stated- 1R is a reserve constable (Habarana Police)	The P and three others, transporting household furniture in their lorry, from Colombo to Katuwana, as they reached Habrana at night the P decided to spend the night at Habarana and parked lorry on the side of road. 1R later at night had wanted to inspect furniture, demanded a bribe and when not given the P was arrested for the illegal transportation of furniture, when P denied he was assaulted.	1R to pay 100,000 as compensation. State will pay a sum of Rs. 50,000/- as costs	Article 11	Sarath N Silva CJ., Dissanayake J, Somawansa J

48	SC FR 463/464/465/2003	2007	Article 11 and 13(1)	4	3	Three Males	Not clearly stated, Inspector of Police and 10 other respondents	Three separate applications on one incident. This was on the last day Kandy Esela Perehara. When one of the Petitioners who owned the three wheel stopped at a particular place to drop the rest of the P, there was an argument between the Police and the Petitioners , and was assaulted	no compensation because P were drunk	Article 11 (463/465 of 2003 only)	Sarath N Silva CJ.,Thilakawardane J, Marsoof J,
49	SC(FR) 328/2002	2003	Article 11, 13(1) and 13(2)	1	1	Male	Not clearly stated. OIC in charge of Wattala and others (8 Respondets)	The P was arrested by the 1R (OIC) police station Wattala by subordinate police officers. The arrest was effected admittedly on information that one Gerard had committed murder. He was hung up and assaulted.	800,000 in compensations and costs(1R- 70,000, 3R-40,000, 6R-20,000, State- 650,000) State to further pay medical bills in Nawaloka- 704,788/-)	Article 11, 13(1) and 13(2)	Fernando J, Edussuriya J, Wigneswaran J
50	SC (FR) 290/2002	2003	Article 11 and 13(1) and 13(2)	1	2	2 Males	Not clearly stated, OIC of Mount Lavinia and others	1P and 2P were proceeding in a three-wheeler to a telecommunications office when the police attempted to arrest them for an offence. An informant was misled by the identity of the P's. 1P was violent and had bit a part of the police earlobe and the 2P was involved in the fray. They were arrested for obstructing justice and produced the next day afternoon to the magistrate.	no compensation because behavior of P	Article 13(2)	Sarth N Silva CJ, Bandaranayake J, Edussuriya J
51	SC App 251/2002	2003	Article 11	1	2	Male, Female	Not clearly stated, R's were state officers attached to Ministerial Security Division	1P, 2P husband and wife and others were on their way in the car when at after a traffic block, and the vehicles had been moving 1R and 2R had pulled P out of car and abused him and slapped the 2P when she tried to intervene. R's claimed they were security for a Minister. R's had threatened 1P that they would shoot and kill him	1R and 2R to pay 5000/- each and state to pay 15,000/- as compensation and costs within three months.	Article 11	Bandaranayake J, Edussuriya J, Yapa J.
52	SC (FR) 471/2000	2003	Article 11, 13(2), 13(4) and 17	3	1	Female on behalf of deceased	Not clearly stated, Police Station in Payagala, OIC and others	The P is the widow of army deserter (deceased) who had an open warrant for the possession of illicit liquor and distilling equipment. The deserter was subsequently arrested on the 12th but only produced on the 17th, between those dates he had been severely assaulted by the police, he died on the 20th.	State Compensation 700,000, 1R and 2R to pay 50,000 each a total of 800,000. from the total, 400,000 to the minor child to be invested in)	Article 11, 13(2) and 17	Fernando J, Yapa J, J. A. N. De Silva J
53	SC (FR) 431/2001	2003	Article 11, 13(1) and 14 (1) (h)	2	1	Male	Not clearly stated, Senior SP of Police and others from Nugegoda Police station	There was a protest which P was not involved in. when the P was returning to his car, 1R had ordered subordinates to fire at the P, to injure him, and thereafter ordered his arrest.	Total sum of Rs,200,000 in compensation for article 11, and sum of 10,000 for violation of article 13(1) and 14(1) (h) and 25,000 in costs. 1R to pay a sum of 20,000 (of the total compensation and state to bear the rest.	Article 11, 13(1) and 14(1) (h)	Fernando J, Gunasekera J, Wigneswaran J
54	SC (FR) 213/ 2001	2002	Article 11, 13(1) and 13(2)	1	1	Male	Not clearly stated, Sub Inspector and others	The P was dealing with illicit liquor but claims to have stopped 3-4 months before incident. Date of incident P had stepped out of the house and gone to the edge of forest to relieve himself when a man (a respondent) had come from behind with a pistol and demanded for illicit liquor. P said he didn't have any, and had escaped. Subsequently he was caught, put into jeep where he was assaulted and then also at the police station.	State to pay compensation of Rs.50,000/- and 5000/- for costs	Article 11 and 13(2)	Fernando J, Gunasekera J, J A N De Silva J

55	SC (FR) 343/99	2001	Article 11, 13, 126	2	1	Male	Not clearly stated, Seeduwa police station	the P was taking an injured person /9motor vehicle mishap) to hospital when he was prevented in doing so by one ZF, who thereafter stabbed the P on the chest twice, upon going to the station to complain, they were shot at by the police and also assaulted	2R and 3R to pay 100,000 each, State to pay Rs. 500,000 as compensation and costs	Article 11	Amerasinghe J, Wadugodapitiya J, Edussuriya J
56	SC (FR) 401/ 2001	2002	Article 11 and 13(1)	1	1	Female	Not clearly stated	The P was stopped at a check point and allowed to go home, Later R's (police army officers) had come home ordered that she accompany them to Maradana Police station, but she was forciably taken behind a check point and raped	State compensation of 150,000	Article 11 and 13(1)	Fernando J, Ismail J, Wigneswaran J
57	SC (FR) 555/2001	2003	Article 11, 13(1) and 13(2)	2	1	Male	Not clearly stated,	The P complains that the army arrested him on 19.4.2001 and kept him in detention, till 21.5.2001 and was assaulted. Thereafter P was handed over to special investigation unit where he was kept in detention till 26.6.2001 and assaulted.	State to pay compensation and costs of 15,000	Article 11, 13(1) and 13(2)	Sarath N Silva CJ, Bandaranayake J, Edussuriya J
58	SC (FR) 63/2001	2004	Article 11	3	2	2 Males	Not clearly stated, OIC and others Hakmana Police Station	2 petitioners were arrested by 2R and 3R for alleged theft of a water pump. They were examined by Medical officer on the same day who found no injuries on them, subsequently they were remanded by Magistrate, till 23.8.2001, but on 22.8 2001 the P were examined by JMO who found injuries.	State to pay compensation and costs of 25,000/- to each P within three months	Article 11	Sarath N Silva CJ, Bandaranayake J, Jayasinghe J
59	SC(FR) 1/2001	2002	Article 11,13(1) and 13(2)	1	1	Female	Not clearly stated. OIC (Crimes) and others Narahenpitiya police Station	The P, a visiting domestic servant; at her employers house a gold wristlet went missing. The employer questioned P, but it wasn't found. The employer had thereafter made a complaint at Narahenpita police station, and P was subsequently arrested. She was assaulted at complainant's house and at the station.	100,000 compensation and costs, 70,000 by the State, 30,000 by 1R	Article 11, 13(1) and 13(2)	Fernando J, Gunasekera J, Wigneswaran J
60	SC No. 860/99	2001	Article 11, 13(1)	2	1	Male	not clearly stated, Reserve Police Constables and others from Polpithigama	The P, a teacher, on the way to board a bus with the principal 1R and 2R had come on a motor bike and questioned P, and asked place of birth. When P stated he was from Batticaloa, they assumed him to a tiger they assaulted him.	1R and 2R to pay 5000/- each and the State to Pay Rs.20,000/- as Compensation and costs.	Article 11, 13(1)	Sarath N Silva Cj, Perera J, Bandaranayake J
61	SC No. 255/98	2000	Article 11,13(1) and 13(2)	2	1	Female	Not clearly stated. OIC Dehiwela Police station and others	The P complains that her fundamental rights were violated as she was evicted from her sisters shop in Dehiwela market, and claims to have been assaulted	60,000/- for 1R to personally pay, and 30,000 for the 5th Respondent to pay (total 60,000)	Article 11,13(1) and 13(2)	Fernando , Weerasekera J, Ismail J
62	SC (FR) 290/98	1999	Article 11,13(1) and 13(2)	1	3	2 Males, 1 Female	not clearly stated, 7Respondents, (Matara police station)	3 Petitioners state that police party entered the guesthouse and caused a search to be made, The P's also allege that they were brutally assaulted. The P's were also charged under the Brothels Ordinance in the Magistrates Court, and all P's were acquitted	1R to pay 20,000 each to all three petitioners, 2R to 7th R- pay 5000 each to all three P's, State will pay 25,000/- each for compensation and costs. The Three P's will therefore be entitled to a sum of Rs. 150,000/- from 1 to 7R as compensation. And a sum of Rs. 25,000 from the State (thus a total 175,000)	13(1) and 13(2) and 11 /	Dheeraratne J, Perera J, Bandaranayake J

63	SC App 126/94	1994	Article 11		1	Male	not clearly stated, 1-10R attached to guard room, Borlesgamuwa, which comes under Maharagama Police Station	P was arrested for a traffic offence by 1R and 2R and taken to the Guard room Boralesgamuwa after using much force on him, and was subsequently assaulted. He was also assaulted by a rubber hose	1R to 5R to pay Rs.2000 each as compensation, and Rs.500/- each as costs (10,000 as compensation and 2500 as costs)	Article 11,	Amerasinghe J, Dheeraratne J, Wijetunga J
64	SC (spl) No. 106/97	1999	Article 11, 13(1) and 13(2)	2	1	Male	Not clearly stated, OIC and others Kataragama Police station	Postmaster made a complaint to Katargama Police for loss of monies. The Petitioner was a messenger. However no specific complaint was made against him. However 2R (Inspector of Police) arrested the Petitioner for theft and assaulted him	Total Sum of Rs.25,000/- as a compensation out of which 1R must pay 5000) state shall pay Rs.5,000/- as costs	Article 11, 13(1) and 13(2)	G P S De Silva CJ, Perera J, Bandaranayake J
65	SC (spl) No. 235/96	1998	Article 11, 13(1) and 13(2)	2	1	Male	Police Constable and others from Dankotuwa Police Station.	P made a complaint to third Respondent regarding a commercial transaction. In the evening 1R had threatened him at a public market. The next day 1R and 2R arrested P at the Public market and took him to the police station where he was assaulted, thereafter taken to the private bus junction, where they paraded him.	10,000 state Compensation, and Rs.5000/- as costs. 1R is required to pay Rs.5000/- as well	Article 11, 13(1) and 13(2)	G P S De Silva CJ, Wadugodapitiya J, Bandaranayake J
66	SC No. 524/96	1998	Article 11, 13(1) and 13(2)	2	1	Male	Sub Inspector and others from Meetiyagoda Police Station	At the time of application P was unconscious. On 2/6/1996 when P was asleep, the 1R and other Policeman had arrived and arrested him and taken him to the police station where he was assaulted to the point where he was unconscious	Rs.50,000/- of Compensation by the State, and Rs.5,000/- as cost from the state, 1R will pay 5000 personally	Article 11, 13(1) and 13(2)	G P S De Silva CJ, Wijetunga J, Bandaranayake J
67	SC (spl) 71/96	1998	Article 11	2	1	Male	Sub Inspector and others, Wellawatte Police Station	P, 59 year old broker, states that on his way from Panadura to Colombo, 1R and other policeman from Wellawatta took him into custody ad assaulted him(hands, legs head and eyes	State-20,000/- 1R to personally pat 20,000/-, to be paid within three months	Article 11	G P S De Silva CJ, Wijetunga J, Bandaranayake J
68	SC (SPL) 214/96	1998	Article 11, 13(1) and 13(2)	2	1	Male	1R, 2R and 3R police station of Puttalam	P was travelling to Puttalam in the bus, when a passenger that boarded lit a cigarette. When the conductor tried to stop him, the passenger had scolded him in obscene language, at this juncture the P intervened. At the bus halt the P was thereafter assaulted by the Passenger. when the P went to lodge a complaint at the Putalam police station he was assaulted and held in custody (it was then that the P found out 1R was the passenger)	3R to pay Rs.20,000/- 1R and 2R a sum of 7500 each, 1R, 2R and 3R to pay 6000/- jointly as costs and state to pay 15,000 as compensation to the Petitioner	Article 11, 13(1) and 13(2)	G P S De Silva CJ, Wadugodapitiya J, Perera J
69	SC No. 858/97	1998	Article 11, 13(1) and 13(2)	1	1	Female	Inspector of Police and others from Nuwaraeliya Police Station	Petitioners, Husband and wife- the husband was called to the Nuwaraeliya police station and the husband took his wife and went. Both parties were detained until the next day exceeding 24hours, and was not produced before a magistrate but released on	1R to pay 5000/- as compensation and 1500/- costs, State will pay 2000 as compensation and 1000 as costs	Article 11, 13(1) and 13(2)	G P S De Silva CJ, AnandaCoomaraswamy J, Bandaranayake J

	SC/ No. 117/97	1998	Article 11, 13(1) and 13(2)	1	1	Male		police bail. During that time frame the husband was subject to assault for an alleged theft of 3R	1R and 2R 7500/- each as compensation and 2500/- each as costs. 4R and 5R to pay 2500/- each as compensation and 1000/- as costs. State will pay 3500/- as compensation and 2000/- as costs (total 23500 as compensation and 9000 as costs)	Article 11, 13(1) and 13(2)	
70	SC App. 66/97	1998	Article 11, 13(1) and 13(2)	1	1	Male	Subinspector and others at Marawila Police station	The Petitioner, was arrested by sub-Inspector for alleged robbery, although reason of arrest wasn't stated at that point. P was thereafter taken to the Marawila Police station and was assaulted.	1R and 2R (each) 3500/- as compensation, and 1000 each as costs. 3R and 4R-1500 each as compensation and 500 each as costs. State 2000/- compensation and 1000 as costs (Total- 12000, 4000)	Article 11, 13(1) and 13(2)	G P S De Silva CJ, Perera J, Bandaranayake J
71	SC (SPL) 93/96	1997	Article 11, (13(1)	1	1	Male	Chief Inspector and others of Maradana Police Station	P, who was a three wheel driver had taken a passenger on a hire, and after arriving to the police station with the passenger as requested by him, he was assaulted by the police (for no reason), taken into custody and produced before AJMO	State to pay 12,000/- as compensation and 3000/- as costs	Article 11, (13(1)	G P S De Silva CJ, AnandaCoomaraswamy J, Bandaranayake J
72	SC (FR) 615/95	1995	Article 11, 13(1) and 13(2)		1	Female	OIC and others from Hungama Police Station	The Petitioner was a 14 year old girl that was arrested at her house, taken to the Hunugama Police Station. She was questioned for theft of a gold chain. She was assaulted with a hose pipe, trampled, and she was hung on a tree by a rope and assaulted as well	State to pay 150,000 as compensation. (Deposited at National Savings Bank in a fixed deposit) 1R to personally pay Rs 50,000 to P in five installments. State will pay Rs. 5000 for costs	Article 11, 13(1) and 13(2)	Fernando ACJ, Dheeraratne J, Anandacoomaraswamy J
73	SC 190/94	1995	Article 11	1	1	Male	Principles and Teacher of Sri Subuthi Vidyalaya	P was a 17 year old Minor, a good student, who was assaulted by the Deputy principle, vice principle and teacher during school hours	State shall pay 50,000, (1R and 2R shall pay 4000 each and 3R shall pay 2000 as costs)	Article 11	G P S De Silva CJ, Kulatunga J, Ramanathan J
74	SC 109/95	1995	Article 11, 13(1) and 13(2)		1	Male	Sub Inspector of Police and others from Haguranketha Police Station	P alleges that he was arrested for no reason, and was taken to the police station and assaulted	State Compensation 20,000/- 5000/- costs and 1R to pay 10,000	Article 11, 13(1) and 13(2)	Amerasinghe J, Kulatunga J, Wijetunga J
75	SC 87/94	1994	Article 11, 13(1)		1	Male	Not clearly stated, Negombo Police Station	The Petitioner, and another individual boarded a bus in the night at around 7:35pm, and subsequently assaulted the 3rd Respondent (a police officer who was on his way home) P was intoxicated and was provoked at the sight of the police officer	n/a	application dismissed	Fernando J, Amerasinghe Jdheeraratne J
76	SC 157/91	1993	Article 11, 13(1) and 13(2)	2	1	Male	OIC Eheliyagoda Police Station and others and OIC Daraniyagala Police Station and others	The Petitioner was arrested on 23.07.91,(the police gave the date of 6/8/91)and was taken to Eheliyagoda Police station and questioned about suspected links (to jvp) he was thereafter taken to the Deraniyagala Police Station and Tortured, and bought back to Ehaliyagoda Police Station	State to pay 18,500, and costs of 1500/- and 3R to pay 7000,4R to pay 5000/-5R to pay 8000/-	Article 11, 13(2)	G P S De Silva CJ, Kulatunga J, Ramanathan J
77	SC App 87/94	1994	Article 11, 13(1)		1	Male	Not clearly stated, Police officer from Negombo Police station (unsure)	The P boarded a bus drunk and got aggravated at the sight of 3R who had sometime before arrested the P over some mischief.	n/a	application dismissed	Amersinghe J, Dheeraratne J, Fernando J,

78	SC App 4/91 SC App 3/91	1992	Article 11	1	1 1	Male Male	Inspector of Police Slave Island and others	No 4/91 is 1P the bus driver, No. 3/91 is 2P the Conducter, in the Bus in which 3R was travelling, when an argument over fares occurred between 2P and 3R. As 3R was in civil his identity as a police officer was unknown. Nevertheless at town hall bus halt a mobile police truck arrived and arrested both Petitioners. The P's allege to have been assaulted at the police station.	1p= Rs. 5000/- as compensation and 750 as costs, 2P= Rs 3000 compensation and 750 as costs	Article 11	G P S De Silva CJ, Kulatunga J, Ramanathan J
79	SC App 89/91	1993	Article 11, 12, 13(1) and 13(2)	2	1	Male	Polonaruwa Police station and others	Petitioner, with four game guards had arrested several persons illicitly felling timber. However, a MP came and intercepted the P wanting them released. Thereafter at a junction he was assaulted by the same persons. At the Police station too he was assaulted, reasons for his arrest was not given either	State- 10,000 and 5000 in costs. 5th to the 7th Respondents- 10,000 each. 2rd and 4th R- 2000 each, 2R- 4000/- and 3R 2000.	Article 11, 12, 13(1) and 13(2)	Fernando J, Goonewardena J, Perera J
80	SC App 162/91	1993	Article 11	2	1	Male	Inspector and others, Police Station of Rathnapura	Petitioner, was 23 years old at the time of arrest for the suspicion of having been a party to a robbery.	State-75,000/- together with 5000/- as costs. 1R- Rs.9,000/- 2R Rs.8,000/-, 3R- Rs.6,000/- 5R- 5,000/, 6R-2,000/-and 7R- 2,000/-	Article 11	G P S De Silva CJ, Kulatunga J, Ramanathan J
81	SC SPL 852/91	1992	Article 11, 12, 13(1) and 13(2)	1	1	Male	not specifically stated, Police station of Rathnapura	Petitioner, was a mill security officer at the Embilipitiya mill of National Paper Corporation. P had an exemplary record of service. P was arrested and detained under emergency regulations stating that P had links with the JVP and of a possible attack of the Mill. He was thereafter transferred to Pelawatta Detention Camp and assaulted	State to pay Rs.35,000	Article 11, 12, 13(1) and 13(2)	Fernando J, Kulatunga J, Wadugodapitiya J
82	SC 18/87	1990	Article 11, 12, 13 and 14	3	1	Female (Mother)	not specifically stated, Police station of Chillaw, Banaragama and Kalutara	Petitioner claims that her son, a university student (6R)was arrested at their house in chillaw by a police party that assaulted him with fists, and took him a way without giving reason 6R was detained in Bandargama Police station and thereafter transferred to Kalutara Police station	State- 25,000/- as compensation and costs as 2500/-	Article 11, and 13(1).(2) (4)	Fernando J, Amerasinghe J, Kulatunga J.
83	SC 1/91	1991	Article 11, 13(1) and 13(2)		1	Male	OIC Police Station Gampaha and others	P was a medical practitioner. He was arrested on a complaint that he had assaulted another doctor. He was arrested on 19/07/89 and remained for around 2years in remand	State Compensation Rs. 9000/= and costs 1500/-	Article 13(2)	Bandaranayake J, M D H Fernando J, Kulatunga J.
84	SC 27/90	1991	Article 11, 13(1) and 13(2		1	Male and Female	not clearly stated, Badulla police station, Beragala Army Camp	1P a married female with three male children, 2P is one of the sons. 1P was detained on 29/1/90: 1P was suspected for the murder of a former driver of 1P. 1P complained of alleged assault. 2P was arrested because he had accompanied 1P	State Compensation 20,000/- and 2000/- costs	Article 13(2)	Amersinghe J, Kulatunga J, Wadugodapitiya J,
85	SC App 1/92 SC App 2/92 SC App 3/92	1992	Article 11, 13(1) and 13(2		1 1 1	Male Male Male	OIC crime detectives bureau, Slave Island Police station and others	detainees were arrested in connection to a bomb blast, Habeas Corpus applications were referred to the Supreme Court, by Court of Appeal on the grounds of prima facie infringement of Article 11,13(1) and 13(2)	Each a Compensation of Rs. 2500/= and 2500/- as costs	Article 13(1)	Fernando J, Kulatunga J, Wadugodapitiya J,

86	SC 14/90	1991	Article 11, 13(1) and 13(2	1	5	3 Males, 2 Females	OIC traffic branch and others Bambalapitiya Police station	A jeep belonging to Ariyapala, a businessman collided with a car. The driver of that car died due to the injuries. 1P and 2P were believed to be in the Jeep, but were arrested to get information to implicate Ariyapalas son (a minor) 3P was the wife of 1P, 4P and 5P are the parents of 2P. (3P,4P and 5P were arrested when they visited the coroners court at General Hospital)	State Compensation for 1P and 2P each-3000/- and Rs.500/- from 2R and 3R each. 3P, 4P and 5P compensation of 500/- by the State each. 250/- from 2R and 3R	Article 13(1) and 13(2)	Bandaranayake J, Fernando J, Kulatunga J.
87	146/92 TO 154/92 AND 155/92 (Ten APPLICATIONS)	1994	Articles 11, 13(1), 13(2), 14(1) (a) and 14(1)c)	2	16	16 Males (not clear)	OIC Wadduwa Police station, Pettah and Maradana and others	There were about 15 participants at the Kawduduwa temple meeting. On an anonymous telephone call received at the Wadduwa Police Station that a meeting of the Janatha Vimukthi Peramuna was being held behind closed doors at the Kawduduwa temple by some University students led by one Champika Ranawaka, the third respondent Inspector Ekanayaka went with a party of police officers and stood outside a window of the closed room where the meeting was being held and listened to the discussions that were taking place, and the police formed the impression that the participants were engaged in a conspiracy to overthrow the Government. therefore they tapped on the door and arrested them, giving reason for arrest	13(1) 5000 by the State to all applications except 150/92. 150/92 shall receive 10,000/-. 13(2) 5000 by the State to applications (except 147, 148,149, 151/2, they receive 9000 and 150/92. shall receive 10,000) 14(1) (a) all applications shall receive 5000/- from the State except 150/92. 14(1) (c) only 146/147/148/149/ 151/151/154/155/ 92 shall receive 5000/- from the State. 5000/- each as costs by the State to each applicant.	Article 13(1) and 13(2) and 14(1) (a) and 14 (1) (c)	AMARASINGHE, J. GOONEWARDENE , J. AND WIJETUNGA, J.
88	SC No . 65/88	1990	Article 11, 13(1) and 13(2	2	1	Female	Police Officers of Gampaha Police Station and others	Petitioner, a 16 year old female student was looking for a brother who she subsequently found at the Gampaha Police station. On another date in connection to her brother she was questioned and threatened to reveal information about an alleged murder. She was there after taken to the police station and assaulted, and was made to watch her brother assaulted. Police officer had also attempted to seduce her.	State to pay Rs.25,000 as compensation and 2500 as costs	Article 11, 13(1) and 13(2	H A G De Silva J, Amersinghe J, Dheeraratne J,
89	SC No, 166/86	1987	Article 11, 13(1) and 13(2	1	1	Male	Police Officers of Ginigathena and Hatton	The Petitoner was travelling in a bus to Nawalapitiya when he was arrested by 3rd respondent. He was taken to a security personnel camp and repeatedly assaulted by 3rd R, and others, and was forced to make a statement in line that he was working with Tamil Eelam Liberation Extremists.	State to pay 3000	Article 13(1)	Sharvananda CJ, Atukorale J, H A G De Silva J

90	SC No. 191/88	1989	Article 11	1	1	Male	Police officers of Kandy Police Station	The Petitioner a 16 year old, in Kandy had been served a pamphlet directing him to get the students of his school to protest throughout the week on pain of death. The P attended school that day and found that no students in his classroom and that they were in the streets. Subsequently after sometime he joined the slogan shouting students. Petitioner was not in school uniform, he was also 6 feet tall. He was subsequently apprehended by the police mistaking him for an outsider. he complained of police assault	N/A	Application Dismissed	Fernando J, Dheeraratne J, Ramanathan J
91	SC No. 4/88	1988	Article 11		1	Male	Prison Guard of Galle Prison and others	The Petitioner, a school teacher was arrested on 29/7/1987 and produced before Elpitiya magistrate on 18/10/1987 and remanded in the Galle prison on his orders made from time to time. Whilst in prison custody when the P was bathing at a water tank near prison cell, the prison guard had allegedly assaulted the Petitioner. stating he was not entitled to bathe there	State to pay 15,000 as compensation and 1500 as costs.	Article 11	Ranasinghe J, Fernando J, Amarasinghe J
92	SC No. 186/86	1987	Article 11	1	1	Male	Police station of Panandura and others	The Petitioner was arrested by the Police for having committed theft of side mirrors of several motor vehicles. He (P) was kept in custody for 5 days without being produced in front of a magistrate. P was hung on a beam, hands tied, his Penis was crushed as a result of a drawer closed on it. , when the P asked for water he was given water mixed with chili powder.	State to pay 10,000/- and cost of 1000/-	Article 11	Sharvananda CJ, Atukorale J, L H De Alwis J
93	SC 80/84	1984	Article 11, 13(1), 13(2) 13(3) and 14(1)(g)		1	Male	not clearly stated, 1st and 2nd Respondent from the CID	The Petitioner, a suspect in a murder case complained that at around 6pm (13.6.1984)1st and 2nd respondent allegedly entered and searched house, took custody of files and documents without a search warant and thereafter without a warrant of arrest arrested him took him to the 4th floor of the CID where he was humilitated and tortured	Rs. 10,000 to be paid by both 1st and 2nd Respondent, and the Petitioner shall be entitled to costs of this application	Article 13(2)	Samarakoon CJ, Wimalaratne J, Colin Thome J
94	SC No. 2/1983	1983	Article 10, 11, 13(1) and 14(1)		1	Male	Police station of Vavuniya	The Petitioner, a doctor, states that he was attending a peaceful protest for a fast against the detention of three Christian clergymen, a doctor, a university lecturer and his wife. When the police violated his freedom of thought, assaulted him and illegally arrested him	N/A	application dismissed	Samarakoon CJ, Wanasundera J, Victor Perera J
95	SC No, 20/1983	1983	Article 11 and 13(1)		1	Female	Police station of Kolpetty	The Petitioner, a veteran politician staged a protest outside the American Embassy along with others. At the end of the demonstration when walking along and passing the Kollupitiya police station a policeman had snatched the banners which a cameraman had taken pictures of. Upon the information that this cameraman had taken pics he was arrested. Thus, the Petitioner had therefore gone to the police station for this matter, where she was assaulted and subsequently arrested	State to pay 2500/- to the Petitioner, and no costs	Article 13(1)	Ratwatta J, Colin thome J, Soza J

96	SC No. 74/81	1981	Article 11 and 13(1)		1	Male	Unclear. Central Camp Police, Amparai	The Petitioner, a member of the District Development Council, Ampara was prevented by Army officers from proceeding to the 4th colony when travelling by car. (The P then turned back). On the way he received information of houses been burnt and assault. So he turned back. On his way he met a priest travelling on a motor bike towards 4th colony. So the P proceeded with the priest. However at the junction he was taken into custody by army personnel, reason for arrest wasn't stated and he was assaulted in the truck.	N/A	application dismissed	Ismail J, Weeraratne J, Sharvananda J, Wanasundera J, and Ratwatta J
97	SC No. 198/2011	2019	Article 11, 12(1), 13(1) and 13(2)	8	1	Male	Police officers of Matara Police Station	On 24th April, 2011 Tuduge Achalanka Srilal Perera, the petitioner had been arrested by the police officers attached to Madampe police station. The petitioner was assaulted by the 1st respondent. On 28th April, 2011 petitioner had been produced before a medical officer at the Madampe district hospital. The petitioner had not been produced before a magistrate. Later, the petitioner had been released on police bail.	sum of Rs. 25, 000 to the Petitioner by the state, Rs. 75, 000 by the 1st respondent and Rs. 30, 000 by the 2nd respondent	Articles 13 (1), 13 (2) and 11	Buwaneka Aluwihare, PC, J. Priyantha Jayawardena, PC, J. & H.N.J Perera, J
98	SC No. 387/2013	2019	Articles 11, 12(1), 13(1) and 13 (2)	6	2	Male	Head Quarters Inspector of Weligama Police Station and Others	On 10th September, 2013 several police officers attached to Weligama police station had visited workshop owned to Hewa Munumullage Akila, 2nd petitioner and 2nd petitioner under took to produce Hewa Munumullage Ajith, 1st petitioner before Weligama police station on his return.When the 2nd petitioner questioned the 1st respondent the reason for him being taken into custody, the 1st respondent, took him out of the jeep and assaulted him. Having been informed of the arrest of the 2nd petitioner, 1st petitioner surrendered to Weligama police station. Thereafter, 1st respondent severely assaulted to the 1st petitioner. Then 1st petitioner was taken to the hospital. After the medical examination by the judicial medical officer the 1st petitioner was brought back to the police station and released on police bail.	1st and the 2nd Petitioners are entitled to receive as compensation Rs. 150000/- and 50, 000/- respectively from the 1st Respondent and Rs.25,000/- to each of the Petitioner as cost by the state	Articles 11, 13 (1)	Chief Justice H.N.J. Perera Justice B.P. Aluwihare PC Justice Vijith K. Malalgoda PC
99	SC No. 677/2012	2019	Article 11, 12 (1), 13 (1) and 13 (2)	7	2	Female	Police officers of Madampe Police Station	Landage Ishara Anjali, the 1st petitioner was arrested and detained by the 1st respondent attached to Matara police station. 17th July, 2012 1st respondent took 1st petitioner to the police station that they have received information that the 1st petitioner was subjected to an alleged sexual abuse. Thereafter, 1st respondent locked 1st petitioner in a cell. On 19th July, 2012 the 1st petitioner was subjected to a judicial medical examination.	Rs, 50,000 by the state and sum of Rs.100, 000 by 1st respondent	Articles 11, 12 (1), 13 (1) and 13 (2).	Buwaneka Aluwihare PC. J Priyantha Jayawardena PC. J Vijith K. Malalgoda PC. J
100	SC No. 660/ 2012	2019	Article 11	7	2	2 Males. Petitioner represented his deceased son	1. Superintendent, Vavuniya Prison, Vavuniya. 2. Superintendent, Anuradhapura Prison, Anuradhapura. 3. Superintendent, Mahara Prison, Mahara. 4. Commissioner General of Prisons, Prisons Head Quarters, Colombo 08. 3 5. Director, Criminal Investigations Department, Colombo 01. 6. Director, Ragama Teaching Hospital, Ragama. 7. Director, Special Task Force, Colombo 01.	Petitioner's son had died in Prison. P's son was in prison and had engaged in a hunger strike at the time of incident. During the process of the protest, inmates had vandalized and taken hostage three prison guards and a number of other imitates. As the tension increased the Special Task Force conducted a rescue operation and had used force, persons like the Petitioner's son requiring medical attention was subsequently hospitalized. Due to injuries however the P's son passed away.	N/A	Application Dismissed	Murdu N B Fernando PC J, P. Padman Surasena J, E. A. G. R. Amarasekara J

Annexes 2 - Torture Act Cases

101	HC 294/03	2006		4			Sub Inspector of Police		Arrested for suspicion of gambling and torture for information		Defendant was acquitted and released without hearing of defenses.	K.A.S. De Abrew
102	HC 276/03	2006		5			Police		Assault for obtaining information on a person arrested on suspicion of possession of illicit liquor.		Have been acquitted.	H.D.J.Perera
103	HC 1242/2009	2018		10					Suspected torture for drunken behavior. Beating by a gun and causing serious injuries.		Have been acquitted.	Namal Bandara Balalle
104	HC 1368/11	2015					Ambalangoda Police		They have being brutally assaulted by a group of Policemen while returning home with their sister after attending to a funeral. Inhuman assault by the police.		The court acknowledges that the plaintiff has suffered mental and physical harm. All defendants must apologize to the plaintiff in the open court. Government charges have been fixed at Rs.1,500/= . If it is not paid, he is sentenced to one week in jail	M.I. Senevirathne
105	HC 1765/2003	2009		5			Panadura Police Station		Torture for punishing and intimidating any act which he allegedly committed to the Victim at Jubilee College, Walana, on 30.07.2002		The 1st accused was sentenced to two years rigorous imprisonment and a fine of Rs. 10000 fine. Later, that sentence was suspended for 10 years. Rs. One lakh compensation has been paid for victim's wife.	Malini Gunarathna
106	HC 2303/2007	2016		12			Sub Inspector of Police		Between 01.06.2004 and 03.06.2004 Torture for obtaining information or for intimidating a suspect in an alleged police arrest.		Defendant was acquitted of the indictment filed against him.	Vikum A. Kaluarachchi
107	HC 2350/2007	2017		17			Sub Inspector of Police		Brutal inhuman assault for obtaining information on suspicion of possessing a firearm		01, 02,04,05,06 Defendants have been convicted. 03 The accused has been acquitted.	Sarojini Kusala Weerawardena
108	HC 216/16	2016		9			Negombo Police		Attacking at home. Naked and beaten while taking police. Assault at the police station.		Defendant was acquitted and released without hearing of defenses.	P. Wickramasinhe
109	HC 326/2003	2008		7			Wattala Police		Arrest and inhuman treatment for taking information.		Have been acquitted. After the appeal, The 4th accused has been acquitted. 01, 02 the accused have been fined Rs.50, 000 each. 01, 02, the accused was sentenced to 10 years rigorous imprisonment each.	J.M.T.M.P.U. Thennakoon After the appeal R.A. Ranaraja
110	HC 183/2007	2015		10			Police Constable Wattegama Police		Punishment and brutal intimidation at the time he has opposed for allegedly attempting to seize his motorcycle.		Have been found guilty of the charges	Menaka Wijesundara

වධහිංසනය සම්බන්ධ දඬුවම් පැමිණවීමේ ප්‍රතිපත්ති පිළිබඳ කෙටි විශ්ලේෂණයක්

රයිට් ටු ලයිෆ් මානව හිමිකම් මධ්‍යස්ථානය

1. සාරාංශය:

ශ්‍රී ලංකාවේ වධහිංසනය සම්බන්ධ දඬුවම් පැමිණවීමේ ප්‍රතිපත්තිය පිළිබඳ කෙටි විශ්ලේෂණයක් මෙම පර්යේෂණය විසින් සපයනු ලැබේ. එය විශේෂයෙන් ම ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 11 වගන්තිය උල්ලංඝනය කිරීම සමග සම්බන්ධ ය. 1981 සිට 2019 දක්වා කාලය තුළ ශ්‍රේෂ්ඨාධිකරණයේ පමණක් නඩු තීන්දු 100ක් ගොනු කරගෙන විශ්ලේෂණය කරන ලදී. අප විසින් 12(1), 13(1) සහ 13(2) වගන්ති ද මෙම පර්යේෂණයට ඇතුළත් කර තිබේ. එයට හේතුව වන්නේ පෙත්සම්කරුවන් විසින් 11 වගන්තිය උල්ලංඝනය පිළිබඳ පැමිණිලි කිරීමේදී එම වගන්ති බොහෝ විට සඳහන් කර තිබීමයි.

11, 12(1), 13(1) සහ 13(2) වගන්ති උල්ලංඝනය සම්බන්ධයෙන් ශ්‍රේෂ්ඨාධිකරණය බොහෝ විට වන්දි ලබාදෙන බව නිරීක්ෂණය කරන ලදී. එහෙත්, වන්දි බොහෝ විට පෞද්ගලික වන්දි හෝ පෞද්ගලික හා රාජ්‍ය වන්දිවල හෝ මිශ්‍රණයක් විය.

විනිශ්චයකාරවරුන් විසින් නඩු 100න් සෑම එකක් ම වෙන වෙන ම විෂයමූලිකව ඇගයීමට ලක් කරන ලද අතර ඒ සඳහා පදනම් කරගනු ලැබුවේ පෙත්සම්කරුවා සහ වගඋත්තරකරුවන් විසින් ඉදිරිපත් කරන ලද සාක්ෂි ය. විනිශ්චයකාරවරුන් විසින් පහත දැක්වෙන කරුණු සැලකිල්ලට ගන්නා ලදී.

- වෛද්‍ය සාක්ෂි
- කාල බාධක
- වගකිවයුතු පුද්ගලයන්ට දැනුම්දීම
- දෙපාර්ශ්වයේ ම සාක්ෂිකරුවන්ගේ ප්‍රකාශ

අධිකරණය තම තීන්දුවලට එළැඹී ආකාරය විවේචනය කිරීමට නොහැකි ය. ඒ අතරතුර නිරීක්ෂණය කරන ලද කරුණක් වන්නේ වන්දි ප්‍රමාණය නිර්ණය කිරීමේදී විෂමතා සිදු වී ඇති බවයි. වන්දි ප්‍රමාණය සහ රජය හා පුද්ගලයන් විසින් ගෙවනු ලබන අතර වන්දි අනුපාතය නිර්ණය කරනු ලැබුවේ විනිසුරුවරුන්ගේ අභිමතය පරිදි ය.

කාලය සමග නඩු සංඛ්‍යාව ද වැඩි වී තිබෙන බව නිරීක්ෂණය කරන ලදී. 1981-1989 අතර තිබුණේ නඩු තීන්දු අටක් පමණි. කෙසේ වෙතත්, 2010-2019 අතර නඩු තීන්දු 42ක් දී තිබිණි. මෙම කාලය තුළ නඩුවක් විසඳීමට ගත වන කාලය වසර පහකට වඩා වැඩි වී තිබෙන්නේ ඇතැම් විට නඩු සංඛ්‍යාව වැඩි වීම නිසා විය හැකි ය. මෙමගින් පෙත්සම්කරුවාට යුක්තිය ලබාගැනීම සඳහා අධිකරණයට පැමිණීමට සිදුවන වාර ගණන වැඩි වීමෙන් නරක බලපෑමක් ඇති විය හැකි ය. එමගින් 11 වගන්තිය උල්ලංඝනය වීම සම්බන්ධයෙන් සහන ලබාගැනීම පිණිස තවත් අයදුම්පත් ඉදිරිපත් කිරීම අධෛර්යවත් වීමට ද ඉඩ තිබේ.

පොලිසියේ චර්යාව ද ගැටලු සහගත බව වැඩිදුරටත් නිරීක්ෂණය කරන ලදී. පොලිසිය විසින් ශාරීරිකව හා මානසිකව වධහිංසා පැමිණවීමෙන්, බොරු සාක්ෂි ගෙතීමෙන් සහ බොරු නඩු පැනවීමෙන් පෙත්සම්කරුවන්ගේ යහපැවැත්මට ආපසු හැරවිය නොහැකි හානියක් කර තිබේ. පෙත්සම්කරුවන් ප්‍රසිද්ධියේ ලජ්ජාවට පත් කරන ලදී. ඇතැම් අවස්ථාවලදී තුන්වන පාර්ශ්වවල පහරදීමට ද ඔවුහු ලක්වූ හ.

කෙසේ වෙතත්, 1988 තරම් ඈත වකවානුවේදී පවා අධිකරණය විසින් විනය ක්‍රියාමාර්ග ගෙන තිබෙන නමුදු සහ පොලිස්පතිවරයා විසින් අත්අඩංගුවේ සිටින පුද්ගලයනට සැලකිය යුතු අන්දම පොලිසියට දැනුම් දී තිබෙන නමුදු, නීතිය බලාත්මක කිරීමේ නිලධාරීන් අතින් වධහිංසනයන් සහ මූලික මානව හිමිකම් උල්ලංඝනයන් දිගින් දිගට ම සිදු වේ.

ඉහත දක්වන ලද පරිදි නඩු 100ක් විශ්ලේෂණය කිරීමට අමතරව, 1994 අංක 22 දරණ වධහිංසන පනත යටතේ දෙන ලද තීන්දු 10ක් ද පර්යේෂණයේ අරමුණු උදෙසා තෝරාගන්නා ලදී. මෙම තීන්දු 10 තෝරාගනු ලැබුවේ අහඹු ලෙසයි. ඒ සඳහා නිශ්චිත නිර්ණායාක නැත. මෙම නඩු 10 ම පොලිස් ස්ථානවල නිලධාරීන් සමග සෘජුව ම සම්බන්ධ විය.

මූලික හිමිකම් උල්ලංඝනය මෙන් නොව, වධහිංසන පනත යටතේ පුද්ගලයකු වරදකරුවකු වුවහොත්, එම්පුද්ගලයාට සිර දඬුවම් හිමි වේ. එම සිර දඬුවම අවුරුදු හතකට නොඅඩු හා අවුරුදු 10කට නොවැඩි වේ. එසේම,රු. 10,000කට නොඅඩු හා රු. 50,000ට නොවැඩි දඩයක් ද පැනිවේ. ඒ අනුව, වධහිංසන පනත යටතේ අර්ථ නිරූපණ සපයා තිබෙන ආකාරය මූලික හිමිකම් උල්ලංඝනයන් වඩා හාත්පසින් ම වෙනස් ය.

පුද්ගලයකුට වධහිංසනය ඔප්පු කිරීම ඉතා දුෂ්කර වන අන්දමින්, අධිකරණයන් වෙත ඉදිරිපත් කරනු ලබන සාක්ෂි දැඩි ලෙස අර්ථ නිරූපණය කර ඇති බව ද නිරීක්ෂණය කරන ලදී. පුද්ගලයකු වරදකරුවකු බව ඔප්පු වුවහොත්, නඩු තීන්දුවෙන් වසර 7-10 අතර සිර දඬුවමක් වීම එසේ දැඩි අර්ථ නිරූපණයක් සැපයීමට හේතුව වන්නට පුළුවන.

වධහිංසන පනත යටතේ දෙන ලද දණ්ඩනයක් ඇගයීමේදී, විනිසුරුවරුන් විසින් පහත දැක්වෙන කරුණු සැලකිල්ලට ගනු ලබන බව නිරීක්ෂණය කරන ලදී.

- වෛද්‍ය සාක්ෂි
- සාක්ෂිකරුවන්ගේ ප්‍රකාශ
- හඳුනාගැනීමේ පෙරට්ටු

වූදිතයා සේවය කර තිබෙන වසර ගණන සහ තීන්දුවෙන් යැපෙන්නන්ට සිදු විය හැකි බලපෑම ද විනිසුරුවරයා විසින් සැලකිල්ලට ගෙන තිබෙන අවස්ථාවක් ද තිබිණි.

වධහිංසන පනත යටතේ චින්දිතයා විසින් නඩුව සැකයෙන් තොරව ඔප්පු කිරීම සඳහා තිබෙන දැඩි අවධාරණය හේතුවෙන් බොහෝ වැරදිකරුවන් ගැලවී යාමට ඉඩ තිබේ.

ඒ අනුව, 11, 12, 13(1) සහ 13(2) වගන්ති යටතේ ශ්‍රේෂ්ඨාධිකරණ නඩු තීන්දු 100ක් සහ වධහිංසන පනත යටතේ දෙන ලද නඩු තීන්දු 10ක් අධ්‍යයනය කිරීමෙන් පසු අප විසින් කරනු ලබන ප්‍රධාන නිර්දේශ මෙසේ ය:

a. චන්දි වෙනුවෙන් විනිවිද පෙනෙනසුළු ක්‍රමවේදයක් හඳුන්වාදිය යුතු ය. එමගින් චන්දි ගෙවීමේ විෂමතා අවම කළ හැකි ය.

b. අධිකරණය වෙත ඉදිරිපත් කරන ලද පුද්ගලයකු වධහිංසනයට ලක්කර තිබේ ද, එම පුද්ගලයාගේ අයිතිවාසිකම්වලට (විශේෂයෙන් ම නීතිඥ සහාය ලබාගැනීමට) බාධා කර තිබේ දයන්න ඇගයීමට හැකි වන පරිදි මහේස්ත්‍රාත්වරුන් පුහුණු කළ යුතු ය.

c. 1994 අංක 22 දරණ වධහිංසන පනත සංශෝධනය කළ යුතු ය. වසර 7-10 අතර අනිවාර්ය දණ්ඩනය නැවත සලකා බැලිය යුතු ය.කරනු ලබන හිංසනය අනුව දණ්ඩනය වෙනස් විය යුතුය. අවුරුද්දක අවම දඬුවම් හඳුන්වා දිය යුතු ය.

d. පොලිස් හිංසා පිළිබඳ ක්‍රියා කිරීමට ස්වාධීන අධිකාරියක් පිහිටුවිය යුතු ය. බලය අපහරණය කරන්නන් පිළිබඳ විමර්ශනයන් හේතුවෙන් වැදගත් වෙනසක් සිදුවන්නේ නැත. එබැවින්, පහත දැක්වෙන කරුණු සම්බන්ධයෙන් විමර්ශනයට ක්ෂේත්‍රයේ විශේෂඥයන්ගෙන් සමන්විත සම්පූර්ණයෙන් ම වෙනස් ව්‍යූහයක් පිහිටුවිය යුතු ය.

   - පොලිස් ස්ථානවල නිරන්තර, කලින් දැනුම් නොදුන් පරීක්ෂා සිදුකිරීම
   - චෝදනා සහ පැමිණිලි විමර්ශනය කිරීම

2. ක්‍රමවේදය:

මෙම වාර්තාව සකසනු ලැබුවේ විශේෂයෙන් ම 11, 13(1) සහ 13(2) වගන්ති කෙරෙහි විශේෂ අවධානය යොමුකරමින් ශ්‍රේෂ්ඨාධිකරණයේ නඩු 100ක ප්‍රතිඵල විශ්ලේෂණය කරමිනි. වාර්තාව විසින් ප්‍රධාන වශයෙන් ම අධ්‍යයනය කරනු ලැබුවේ විනිශ්චයකාරවරුන් විසින් ඉහත දක්වන ලද වගන්ති ඇගයීමට සහ අර්ථ නිරූපණයට ලක්කරන ලද ආකාරයයි.ඒ අනුව ඔවුන් විසින් වධහිංසනය හඳුනාගැනීමේදී සහ නිර්දේශ සැපයීමේදී සැලකිල්ලට ගන්නා ලද කරුණු ද අධ්‍යයනය කරන ලදී.

ඒ අනුව, රයිට් ටු ලයිෆ් සංවිධානය විසින් 1981-2010 කාලය තුළ නඩු 100ක් එක්රැස් කර, එය වධහිංසනය පිළිබඳ අනාගත පර්යේෂණවල පදනම නිර්මාණය කිරීම සඳහා යොදාගන්නා ලදී.

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 11, 13(1) සහ 13(2) වගන්ති උල්ලංඝනය තක්සේරු කිරීම සඳහා ශ්‍රී ලංකා නීති වාර්තාවල නඩු වාර්තා සහ නඩු රාශියක් තක්සේරු කරන ලදී.

1994 අංක 22 දරණ වධහිංසන පනත තක්සේරු කිරීම සඳහා අභිබූ ලෙස නඩු 10ක් තෝරාගන්නා ලදී.

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 11, 13(1) සහ 13(2) වගන්ති යටතේ නඩු 100ක් සහ වධ හිංසන පනත යටතේ නඩු 10ක් දැක්වෙන වගු, ඔබගේ පරීක්ෂාව සඳහා A හා B වගු ලෙස අමුණා ඇත.

නඩු නාමයන් වෙනුවට නඩු අංක භාවිතා කර තිබෙන අවස්ථාවලදී, එවැනි නඩු මෙහි දක්වා තිබෙන වගුවලින් සොයාගත හැකි ය.

අදාළත්වය අනුව, 12(1) හා 13(4) වගන්ති පිළිබඳ සාරාංශයක් පර්යේෂණයට ඇතුළත් කර තිබේ. එසේ කරනු ලැබුවේ ප්‍රධාන වශයෙන් ම 12(1) වගන්තිය අනුව නඩුවක් ඉදිරියට ගෙන යාම ද සැලකිල්ලට ගත් බැවිනි. අප ඒ පිළිබඳ සිතනුයේ අර්ථ නිරූපණය පිළිබඳ පොදු අවබෝධය අනාගත පර්යේෂවලට උපකාර වනු ඇති බවයි.

කෙසේ වෙතත්, නඩු තීන්දු කියවනු ලබන්නේ සමස්තයක් ලෙස මිස තෝරාගත් කොටස් ලෙස නොවේ. එබැවින් 11 වගන්තිය හැර පොදු වගන්ති කෙරෙහි ද මෙම පර්යේෂණයේදී අවධානය යොමු කරන ලදී.

ශ්‍රේෂ්ඨාධිකරණ නඩු තීන්දු ලේඛනගත කිරීම සඳහා පහත දැක්වෙන ආකෘතිය යොදාගන්නා ලදී.

අංකය	ශ්‍රේෂ්ඨාධිකරණයේ අයදුම්පත් අංකය	ඉදිරියට ගෙන යෑමේ අවසර	නඩුවේ කාලය	පෙත්සම්කරුවන් සංඛ්‍යාව	පෙත්සම්කරුවන්ගේ ස්ත්‍රී පුරුෂ සම්පුස්තාවය	වගඋත්තරකරුවන්	සිද්ධියේ වර්ගය	වන්දිය	අයිකරණ තීන්දුව	විනිසුරුවරුන්ගේ නම්

* නීතිපති දෙපාර්තමේන්තුව සෑමනඩුවක ම වගඋත්තරකරුවකු ලෙස දැක්වෙන බැවින් එය වගඋත්තරකරුවන්ගේ කොලමෙහි සඳහන් කර නැත.

වධහිංසන පනත යටතේ නඩු තීන්දු 10 ලේඛනගත කිරීම සඳහා පහත දැක්වෙන ආකෘතිය භාවිතා කරන ලදී

නඩු අංකය	විනිසුරු අංකය	වගඋත්තරකරු	වගඋත්තරකරුගේ රැකියාව	සිද්ධිය	නඩුව ගොනු කළ දිනය	තීන්දුව දුන් දිනය	තීන්දුව	තීන්දුවට හේතු	විනිසුරුවරයාගේ නම

මෙම විශ්ලේෂණයේ හා එහි අනුබද්ධ කොටස්වල ඉංග්‍රීසි බසින් යොදා තිබෙන කෙටි යෙදුම්:

AG: Attorney General - නීතිපති
CID: Criminal Investigation Department - අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව
CAT: convention Against Torture - වධහිංසනයට එරෙහි සම්මුතිය
FR: fundamental right - මූලික හිමිකම්
PTA: Prevention of Terrorism Act - ත්‍රස්තවාදය වැළැක්වීමේ පනත
J: Judge - විනිසුරු
JMO: Judicial Medical Officer - අධිකරණ වෛද්‍ය නිලධාරි
R: Respondent - වගඋත්තරකරු
M: Magistrate - මහේස්ත්‍රාත්
SC: Supreme Court - ශ්‍රේෂ්ඨාධිකරණය
OIC: Officer in charge - ස්ථානාධිපති

පර්යේෂණ සීමා:

- මූලික අදියරේදී ඉවත දමන ලද පෙත්සම් සැලකිල්ලට ගනු ලැබුවේ නැත.
- පෙත්සම ගොනුකිරීමේ සිට නඩු තීන්දුව ලබාදෙන ලද දින දක්වා සමස්ත ක්‍රියාවලිය සැලකිල්ලට ගත්තේ නැත. ඇගයීමට ලක්කරනු ලැබුවේ නඩු තීන්දුව පමණි.
- වසර පුරා ලැබුණු නඩු තීන්දු සමග සන්සන්දනාත්මකව මානව හිමිකම් කොමිෂන් සභාව වෙත ලැබුණු පැමිණිලි එකතුව ඇගයීමට ලක් කර නැත.
- වෘත්තීය පෙත්සම්කරුවන් විශ්ලේෂණය කිරීම දුෂ්කර ය. නඩු වාර්තා හා ලේඛන විවිධ වීම එයට හේතුවයි. කෙසේ වෙතත්, උල්ලංඝනයන් තක්සේරු කිරීමේදී වැදගත් සාධකයක් ලෙස අප වෙත ලැබුණු ලේඛනවලින් දක්නට ලැබුණු පරිදි, පෙත්සම්කරුවකුගේ රැකියාව විනිසුරුවරයකු විසින් කිසිදු අවස්ථාවක සඳහන් කර නැත.
- වධහිංසන පනත යටතේ වැඩිපුර නඩු තීන්දු ඇගයීමෙන් පනතට අදාළ තීන්දු ලබාදීමේ ප්‍රතිපත්තිය පිළිබඳ වඩා හොඳ අවබෝධයක් ලබාගත හැකි ය.
- ත්‍රස්තවාදය වැළැක්වීමේ පනත යටතේ වධහිංසනය හා සම්බන්ධ නඩු තීන්දු ඇගයීමට ලක් නොකරන ලදී.

3. පසුබිම

රයිට් ටු ලයිෆ් මානව හිමිකම් කේන්ද්‍රය (R2L) යනු 2003දී පිහිටුවන ලද, උද්දේශනය, නීති ආධාර සැපයීම හා සමාන සංවිධාන සමග ජාලගත වීම කෙරෙහි අවධානය යොමුකරන සංවිධානයකි. සංවිධානයේ සමාරම්භක සාමාජිකයන් සතුව අයිතිවාසිකම් උල්ලංඝනයන්ට ලක්වූ පුද්ගලයන් බලසතු කිරීම සම්බන්ධයෙන් දීර්ඝකාලීන ඉතිහාසයක් තිබේ. 1980 දශකයේ පටන් ම ඔවුන් වධහිංසනය සහ අතුරුදහන් කිරීම් වැනි මානව හිමිකම් උල්ලංඝනයන්ට ලක්වූ පුද්ගලයන් බලසතු කිරීමේ කටයුතුවල නියැලුණ හ. එම නිසා, මෙම සංවිධානය ප්‍රජාව නගාසිටුවීම සඳහා අධ්‍යාපනය, සහයෝගය සහ දැනුවත් කිරීම ඔස්සේ පුළුල් වැඩකොටසක් ඉටුකර තිබේ.

මේ දක්වා ම රයිට් ටු ලයිෆ් සංවිධානය වධහිංසනයේ සහ වෙනත් මානව හිමිකම් උල්ලංඝනයන්ගේ වින්දිතයන්ට මානව හිමිකම් ප්‍රථමාධාර මධ්‍යස්ථාන කීපයක් ඔස්සේ නීතිමය උපදේශන සේවා සපයා තිබේ.

එම නිසා, මෙම පර්යේෂණය වධහිංසනය සහ එයට සම්බන්ධ මානව හිමිකම් උල්ලංඝනයන් පිළිබඳ අනාගත පර්යේෂණ සඳහා පදනම් ලේඛනයක් වනු ඇතැයි රයිට් ටු ලයිෆ් සංවිධානය බලාපොරොත්තු වේ. එමගින් අරමුණු කරනු ලබන්නේ, විනිසුරුවරුන් අදාළ අයිතිවාසිකම් උල්ලංඝනයන් පිළිබඳ විශ්ලේෂණ ඉදිරිපත් කළ රටා සහ ගැටලු හැකි අන්දමින් පෙන්වා දීම හා පොදු විශ්ලේෂණයක් සැපයීමයි.

4. හැඳින්වීම

ඉතිහාසය පුරාමත්, ලොව පුරාමත්, කෲර බවට පත්වීමේ මානව හැකියාව තුළ හමු වූ නිර්මාණශීලිත්වය පිළිබඳ සඳහන් කරන්නේ නම්, එය වැළැක්වීමට කුමන උත්සාහය දැරුවත්, නිරතුරුව ම අපට වධහිංසනය වළක්වාගැනීම පිළිබඳ සංවාද කිරීමට සිදු වී තිබේ.

එම නිසා, නවීන ප්‍රජාතන්ත්‍රවාදී රාජ්‍යයන් වධහිංසනයට එරෙහි ජාත්‍යන්තර සම්මුතියේ පාර්ශ්වකරුවන් වී සිටියත්, එම සාමාජික රාජ්‍ය ද කලින් කලට අතපසුවීම් කරන බව අප නිරීක්ෂණය කර තිබේ. විශේෂයෙන් ම ශ්‍රී ලංකාවේ සංදර්භයට අදාළව පහත දැක්වෙන කරුණු නිසා එසේ විය හැකි ය:

- **ජාතික ආරක්ෂාව:** ජවිපෙ කැරැලිකාරිත්වය, තිස් අවුරුදු යුද්ධය, පාස්කු ඉරිදා බෝම්බ ප්‍රහාර ආදිය හේතුවෙන් ශ්‍රී ලංකාවට අඛණ්ඩව ප්‍රති ත්‍රස්ත ක්‍රියාමාර්ග ගැනීමට සිදු වී තිබේ. 2015 මානව හිමිකම් වාර්තාව විසින් දක්වනු ලබන පරිදි පොලිස් වධහිංසනයන් පුළුල්ව සිදු වේ. වධහිංසනය භාවිතා කිරීම පොලිස් විමර්ශනවල කොටසක් බවට පත් වී තිබෙන බව එක්සත් ජාතීන්ගේ වධහිංසනය පිළිබඳ විශේෂ රැපෝටර්වරයා පැවසී ය.
- **සිවිල් කීකරුකම** හා නීති විරෝධී ක්‍රියාකාරකම්වලට හැඩගැසීම: පුරවැසියන් විනයගත කිරීම වෙනුවෙන් හෝ එවැනි කිසිදු නීති විරෝධී ක්‍රියාකාරකමක් හෝ චර්යාවක් නැවත සිදුවීම වළක්වාගැනීම තහවුරු කිරීම වෙනුවෙන් පුද්ගලයන් විනගයගත කිරීම සඳහා වධහිංසනය භාවිතා කිරීම සිදු වේ
- **රාජ්‍ය දැක්ම:** නිදසුනක් ලෙස ශ්‍රී ලංකාව මේ වන විට සිටින්නේ මරණීය දණ්ඩනය පිළිබඳ ජාතික සංවාදයක ය . එබැවින්, මානව හිමිකම් උල්ලංඝනය කෙසේ වෙතත්, යහපාලනය වෙනුවෙන් වධහිංසනය අවශ්‍ය බවට ඉහළ දේශපාලනික තනතුරු හොබවන්නන් තුළ අදහසක් තිබිය හැකි ය. එය පොදු ජනතාවට ඒ අන්දමින් ඒත්තු ගැන්වුවහොත්, එවැනි මානව හිමිකම් උල්ලංඝනයන් හා වධහිංසනයන් රජය විසින් සිදුකිරීම සම්බන්ධයෙන් පොදු ජනතාව විරුද්ධ නොවී සිටිය හැකි ය.

දශක තුනේ යුද්ධය අතරමැද, 1994දී, ශ්‍රී ලංකාව විසින් වධහිංසනයට එරෙහි එක්සත් ජාතීන්ගේ සම්මුතිය අපරානුමත කරන ලදී. එසේ වුව ද, භාවිතයේදී එයට අනුගත වීමෙහි වෙනස්කම් දක්නට ලැබේ. වධහිංසනයට එරෙහි එක්සත් ජාතීන්ගේ සම්මුතියේ අර්ථ නිරූපණය අනුව වධහිංසනය යනු, අදාළ පුද්ගලයාගෙන් හෝ වෙනත් තුන්වන පාර්ශ්වයකින් එම පුද්ගලයා හෝ එකී තුන්වන පාර්ශ්වය විසින් කරන ලදැයි සැකයට භාජනය වී තිබෙන ක්‍රියාවක් සම්බන්ධයෙන් පාපොච්චාරණයක් ලබාගැනීම සඳහා පුද්ගලයකුට සිතාමතා සිදුකරනු ලබන ශාරීරික හෝ මානසික හෝ ඕනෑම බලපෑම් ක්‍රියාවකි. (*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*)

1994 අංක 22 දරණ වධහිංසන පනත හඳුන්වා දී මෙම සම්මුතිය අපරානුමත කිරීමට පෙර ම, ශ්‍රී ලංකාව විසින් පුරවැසියන් ආරක්ෂා කිරීම සඳහා මූලික හිමිකම් හඳුන්වා දී තිබිණි. එහෙත්, ව්‍යවස්ථාමය ආරක්ෂාව තිබියදීත්, වධහිංසනය පවතින අතර, ඒ සම්බන්ධයෙන් කටයුතු කිරීමේදී රජය පසුබායි. රාජ්‍ය අවයව වෙන වෙන ම ගත් විට හිංසනයට එරෙහිව ක්‍රියා කරන ආකාරය අවබෝධ කරගැනීම දුෂ්කර ය. එහෙත්, මෙම පර්යේෂණයෙන් අදහස් කරන්නේ ශ්‍රේෂ්ඨාධිකරණ තීන්දු සම්බන්ධ රටා හඳුනාගැනීම ඔස්සේ පද්ධතිය වඩා විධිමත් කිරීම සඳහා උපකාර කිරීමයි.

මෙම පර්යේෂණය විසින් එක් එක් වගන්ති වෙන වෙන ම විශ්ලේෂණය කරනු ලැබේ. ඉන් පසු ශ්‍රේෂ්ඨාධිකරණ තීන්දුවල සෘජු හා වක්‍ර ගැටලු විශ්ලේෂණය කරනු ලැබේ. එහි අරමුණ වන්නේ රටා හඳුනාගෙන නිර්දේශ සැපයීමයි. වධහිංසන පනත යටතේ නඩු තින්දු 10 ඇතුළත් කර තිබෙන්නේ එම පනතේ දණ්ඩන ප්‍රතිපත්ති තේරුම්ගැනීමට හා තක්සේරු කිරීමටයි.

5. 11, 12(1) 13(1), 13(2) සහ 13(4) වගන්ති විශ්ලේෂණය

5.1 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 11 වගන්තිය:

"කිසිම තැනැත්තකු වධ හිංසාවලට හෝ කෲර, අමානුෂික හෝ අවමන් සහගත සැලකිල්ලකට නැතහොත් දඬුවමකට යටත් නොකළ යුත්තේ ය."

වධහිංසනය ශාරීරික මෙන් ම මානසික ද විය හැකි බව අධිකරණ මතයයි.කෙසේ වෙත්, මෙම අර්ථ නිරූපණ පුළුල් කිරීම පිළිගෙන තිබෙන්නේ කාලයක් තුළදී ය. ශ්‍රී ලංකාවේ සර්ජුන්එදිරිව කමල්ඩින් සහ තවත් දෙදෙනෙකු (SC FR 559/03) නඩුවේදී ආචාර්ය වික්‍රමරත්න විසින් 11 වගන්තිය සම්බන්ධයෙන් සපයන ලද අර්ථ නිරූපණය අධිකරණය විසින් භාරගෙන තිබේ:

"වධහිංසනයෙන් නිදහස 11 වගන්තියේ ප්‍රකාශයට පත්කර තිබෙන්නේ පරම අයිතියක් ලෙසයි. පාර්ලිමේන්තුවේ තුනෙන් දෙකේ බහුතරයක් සහ ජනමතවිචාරණයකදී මහජන අනුමැතිය නොමැතිව ආණ්ඩුක්‍රම ව්‍යවස්ථාවට අනුකූල නොවන නීති ගෙන ඒම වළක්වන 83 වගන්තිය මගින් එය ආරක්ෂා කෙරේ. ඒ අනුව, එහි සාමාන්‍ය තේරුම විය යුත්තේ සිතාමතා කරනු ලබන, දරුණු වේදනාවක් හෝ පීඩාවක් ඇතිකරන ඕනෑම ශාරීරික හෝ මානසික ක්‍රියාවක් තහනම් කිරීමයි. එහි අරමුණ කුමක්දැයි ඔප්පු කිරීමේ අවශ්‍යතාවක් නැත. නීති සංකල්පයේ මූලිකාංගයක් වන මානව ගරුත්වය මෙමගින් තහවුරු කරනු ලැබේ."

අධිකාරිට සහ තවත් අයෙකුඑදිරිව අමරසිංහ හා තවත් අය (SC FR 251/2002) නඩුවේදී ද සමාන ප්‍රවේශයක් අනුගමනය කරන ලදී. අධිකරණය එහිදී දරන ලද මතය මෙසේ ය. හිංසාකාරී, කෲර,අමානුෂික, නින්දාශීලී සැලකිලි සහ දඬුවම් මගින් ඇති වන බොහෝ ස්වරූපවල තුවාල ශාරීරික සහ මානසික ලෙස පුළුල් අරුතින් වර්ග කළ හැකි ය. චින්දිතයන්ට මුහුණ දෙන්නට සිදුවන අනන්ත තත්වයන් එයට අයත් වේ. සිල්වාඑදිරිව පොහොර සංස්ථාවේ සභාපති (1989) නඩුවේදී විනිසුරු අමරසිංහ විසින් වෙනම ලබාදෙන ලද තීන්දුව ද අධිකරණය විසින් උපුටා දක්වන ලදී. අමානුෂික සැලකීම් පිළිබඳ සංකල්පය විශ්ලේෂණය කරමින් විනිසුරු අමරසිංහ මෙසේ පැවසී ය.

"11 වගන්තිය විසින් සලකා බලන ලද සැලකීම් ශාරීරික හිංසනයේ අර්ථයට පමණක් සීමා වන්නේ නැත. ආත්මය හෝ මනස සම්බන්ධ අවකාශය ද එයට අයත් වේ."

වධහිංසනය නිසා මියගිය පුද්ගලයකුට අදාළ ශ්‍රියානි සිල්වාඑදිරිව ඉද්දමල්ගොඩ (SC FR 471/2000) නඩුවේදී අධිකරණ විසින් වධහිංසනයට එරෙහි සම්මුතියේ 14.1 වගන්තිය උපුටා දක්වන ලදී.

"සෑම රාජ්‍ය පාර්ශ්වයක් ම තම නීති පද්ධතිය තුළ හිංසන ක්‍රියාවක විනිදිතයකුට සහන ලබාදීම තහවුරු කළ යුතු ය. සාධාරණ සහ ප්‍රමාණවත් වන්දි ගෙවීම ක්‍රියාත්මක කළ හැකි විය යුතු ය. එයට හැකි උපරිම පුනරුත්ථාපන ක්‍රියාමාර්ග ඇතුළත් වේ. වධහිංසන ක්‍රියාවක ප්‍රතිඵලයක් ලෙස චින්දිතයකුගේ මරණයක් සිදු වූ විට, එම පුද්ගලයාගේ යැපෙන්නන්ට වන්දි සඳහා හිමිකම තිබේ."

ඒ අනුව, මෙම නඩුවේදී අධිකරණය අර්ථ නිරූපණය කරන්නේ මියගිය පුද්ගලයාගේ නීත්‍යානුකූල උරුමකරුවන්ට සහ/හෝ යැපෙන්නන්ට ලබාදිය යුතු වන්දි සඳහා අයිතිය ජාත්‍යන්තර වගවීම් සමග නීතියේ අනුකූලතාව නිර්මාණය කරන බවයි.

11 වගන්තිය යටතේ, දඬුවම් හෝ වෙනත් ආකාරයකින් ජීවිතය අහිමි නොකිරීමේ අයිතිය (13(4)වගන්තිය සමග කියවන්න) ද අධිකරණය විසින් වැඩිදුරටත් පිළිගන්නා ලදී. එයින් ගම්‍ය වන්නේ ජීවත් වීමට තිබෙන අයිතියයි. ඉහත සඳහන් කරන ලද නඩුවේදී අධිකරණය වැඩිදුරටත් ප්‍රකාශ කළේ මෙම හිමිකම පුළුල් ලෙස අර්ථ නිරූපණය කළ යුතු බවයි. විධායක ක්‍රියාවන්ගෙන් මූලික හිමිකම් ආරක්ෂා කිරීමේ පරම අරමුණින් ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් මෙම අධිකරණයට ලබා දී තිබෙන බලාධිකාරය අනුව, හිමිකම් කාර්යක්ෂම ලෙස ආරක්ෂා කිරීම සඳහා සාධාරණ අන්දමින් කටයුතු කිරීමට අවශ්‍ය සියලු බලය එයට පවරා තිබේ.

කෙසේ වෙතත්, උල්ලංඝනයක් තක්සේරු කිරීමේදී අධිකරණය විසින් එම සිද්ධියේ ස්වභාවය සහ පසුබිම ද විමසා බලන බව සටහන් කළ යුතු ය.

සිසිර කුමාරඑදිරිව සාජන් පෙරේරා සහ වෙනත් අය (1998) නඩුවේදී අධිකරණය එළැඹි නිගමනය වූයේ බලය පාවිච්චි කිරීම යන්නෙන් කෲර, අමානුෂික සහ නින්දා සහගත සැලකිලි අදහස් නොවිය යුතු බවයි. විශේෂයෙන් ම වධහිංසනය පිළිබඳ චෝදනාවක් තහවුරු වීමට අවම මට්ටමේ දරුණුකමක් ද ප්‍රමාණවත් ය. චන්න පීරිස් සහ වෙනත් අයඑදිරිව නීතිපති (1994) නඩුවේදී ඔප්පු කිරීමේ වගකීම් භාරය පැහැදිලි කරන ලදී. ඓතිහාසික තීන්දුවක් වන එහිදී අවධාරණය කරනු ලැබූ

පරිදි, යමෙකු කෲර, අමානුෂික, නින්දා සහගත සැලකීමකට හෝ දණ්ඩනයකට ලක් වී තිබෙන බව ඔප්පු කිරීමේ වගකීම ඉටුකිරීමේදී වියහැකිභාවයට සාපේක්ෂව නියතත්වයේ ඉහළ මට්ටමක් පැවතීම පෙන්වා දීමේ වගකීම සම්බන්ධ වැඩි බරක් දරන්නට ඕනෑම පෙත්සම්කරුවකුට සිදු වන බව කියැවේ. (the gravity of the matter in issue a high degree of certainty is required before the balance of probability might be said to tilt in favour of any petitioner seeking to discharge his burden of proving that he was subject to torture, or to cruel, inhuman, degrading treatment or punishment.) **ඒ අනුව, අධිකරණයට ප්‍රමාණවත් සාක්ෂි සැපයීමේ වගකීම තිබෙන්නේ පෙත්සම්කරුවාට ය.**

එම නිසා, 11 වගන්තිය ශාරීරික මෙන්ම මානසික වධහිංසනය ද ආවරණය කරන බව නිරීක්ෂණය කළ හැකි ය. අධිකරණය එය අර්ථ නිරූපණය කර පිළිගනියි. එවැනි වධහිංසනයන් ඔප්පු කිරීමේ වගකීම තිබෙන්නේ පෙත්සම්කරුවාට ය. රජයට සාක්ෂි සැඟවීමේ සහ තැතිගැන්වීමේ හැකියාව තිබෙන අවකාශයන්හිදී පෙත්සම්කරුවාට වධහිංසන චෝදනා ඔප්පු කිරීම දුෂ්කර වේ.

SC FR No 244/2010 නඩුවේදී අධිකරණය මෙසේ සඳහන් කළේ ය. *"වගඋත්තරකරුවන් වධහිංසනය පිළිබඳ කිසිසු සලකුණක් ඉතිරි කළේ නැත. වෛද්‍ය විශේෂඥයන්ට හඳුනාගත නොහැකි තරම් අසාමාන්‍ය වර්ගයේ වධහිංසනයක් පාවිච්චි කිරීම එයට හේතුවයි."*

පොලිසිය වැනි රාජ්‍ය බලවේග විසින් වධහිංසනය සඳහා අලුත් ක්‍රම සොයාගන්නා සංදර්භයක් තුළ වධහිංසනය ඔප්පු කිරීමේ සම්පූර්ණ වගකීම පෙත්සම්කරුවාට පැවරීම ගැටලුකාරී බව එමගින් වැඩිදුරටත් පෙන්වා දෙයි. එම නව ක්‍රම මගින් ඉතිරි කරන්නේ ශාරීරික සලකුණු ස්වල්පයකි. එය වධහිංසනය ඔප්පු කිරීම සඳහා ප්‍රමාණවත් සාක්ෂි සපයන්නේ නැත. 11 වගන්තිය උල්ලංඝනය වීම මනෝමූලික තත්වයකි. එය එක් එක් සිද්ධියට සාපේක්ෂ වේ. පොලිසිය වැනි වගඋත්තරකරුවන් වධහිංසනය සඳහා නව ක්‍රම භාවිතා කර අධිකරණ වෛද්‍ය නිලධාරියකුට හඳුනාගත හැකි ශාරීරික සාක්ෂි ඉතිරි නොකරන විටදී උල්ලංඝනයක් ඔප්පු කිරීම පෙත්සම්කරුවන්ට දුෂ්කර වේ. එබැවින්, යුක්තිය පසිඳලීමෙහිදී අධිකරණය විසින් මෙම නව වධහිංසන ක්‍රම නොදැන සිටීම වළක්වාගැනීම සඳහා පූර්ව ආරක්ෂක ක්‍රම අනුගමනය කළ යුතුව තිබේ.

5.2 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12(1) වගන්තිය:

"නීතිය පසිඳලීම සහ ක්‍රියාත්මක කිරීම ද, නීතියේ රැකවරණය ද, සර්ව සාධාරණ විය යුත්තේ ය."

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12(1)වගන්තිය තක්සේරු කිරීමේදී විනිශ්චයකාරවරුන් බොහෝ විට 11 වගන්තිය හා 12(1) වගන්තිය එකට සලකා බලනවා ද නැතිනම් වෙන වෙන ම උල්ලංඝනයන් දෙකක් ලෙස සලකනවා ද යන්න තහවුරු කිරීම දුෂ්කර ය. කෙසේ වෙතත්, ඉදිරිපත් කර තිබුණු වෛද්‍ය වාර්තාවල අව්‍යාජත්වය, නඩුවට සම්බන්ධ වෙනත් අධිකරණ ක්‍රියාමාර්ග, වගඋත්තරකරුවන්ගේ සහ පෙත්සම්කරුවන්ගේ ප්‍රකාශ තක්සේරු කරන ලදී. 12(1) වගන්තිය උල්ලංඝනය වීම තක්සේරු කිරීමේදී නීතිය ක්‍රියාත්මක කිරීමේ අධිකාරීන්ගේ අක්‍රියභාවය ද සැලකිල්ලට ගන්නා ලදී. බොහෝ විට 12(1) වගන්තිය ගොනු කරනු ලැබුවේ 11 වගන්තිය සමග ය. හේතුව, තමන්ට නීතියෙන් සමාන ආරක්ෂාවක් ලබාගැනීමට තිබෙන අයිතිය 11 වගන්තිය උල්ලංඝනය වීමත් සමග උල්ලංඝනය වී ඇතැයි පෙත්සම්කරුවා සිතීමයි.

ශ්‍රේෂ්ඨාධිකරණයේ මූලික අයිතිවාසිකම් නඩු අංක 241/14 (කරුවලගස්වැව විදානෙලාගේ ස්වර්ණා මංජුලා සහ නවරත්න හේනලාගේ රොසලියා එදිරිව 1. C.I.V.P.J. පුෂ්පකුමාර - කැකිරාව පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී, යෙහෝවාගේ සාක්ෂිකරුවන් වූ පෙත්සම්කරුවන් මුදල් වෙනුවෙන් පුද්ගලයන් බලෙන් අන්‍යාගම්වලට හැරවීමට උත්සාහ කිරීම සම්බන්ධයෙන් අත්අඩංගුවට ගන්නා ලදී. මෙම කරුණු විශ්ලේෂණය කළ අධිකරණය වගඋත්තරකරුවන් 12(1) වගන්තිය උල්ලංඝනය කර ඇති බව නිගමනය කළේ ය.

මුත්තුසාමි එදිරිව කන්නන්ගර නඩුවේදී මෙසේ කියැවිණි. ''වරෙන්තුවකින් තොරව අත්අඩංගුවට ගැනීමට පොලිස් නිලධාරීන්ට දී තිබෙන බලය අත්දැකීම් නැතිකම, අධික උනන්දුව හා තනතුරට ගරු නොකිරීම හේතුවෙන් අපහරණය නොවන බවට වගබලාගැනීමට අධිකරණය විමසිලිමත් විය යුතු ය". ජෝසප් පෙරේරා එදිරිව නීතිපති නඩුවේදී මෙසේ කියැවිණි: ''අපගේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් සහතික කර තිබෙන නිදහස් සමාජයක එක් මූලික වටිනාකමක් පදනම් වන්නේ, අප දරණ යහපත් අදහස්වලට පමණක් නොව වෙරී අදහස්වලට ද නිදහස තිබිය යුතු බව ය."

ඒ අනුව, 12(1) වගන්තිය යනු හරයෙන් හුදකලා විධිවිධානයක් නොවන බව පෙනේ. එය බොහෝ විට සැලකෙන්නේ 11වන වගන්තිය උල්ලංඝනය කිරීමේ ප්‍රතිඵලයක් ලෙස ඇති වන උල්ලංඝනයක් සේ ය. එබැවින්, මෙම නඩු විභාග කරන ආකාරය තහවුරු කිරීම සඳහා තිබෙන්නේ ඉතා සුළු තොරතුරු ප්‍රමාණයක් පමණි.

ශ්‍රේෂ්ඨාධිකරණයේ අංක 56/2012 දරණ (සුප්පයියා සිවකුමාර් එදිරිව තෙල්දෙනිය පොලිස් ස්ථානාධිපති සහ තවත් අය) මානව හිමිකම් නඩුවේදී, චිත්තිකරුට එරෙහිව දැනටමත් විනය ක්‍රියාමාර්ග ගෙන තිබේ නම්, එය 12(1) වගන්තිය

උල්ලංඝනය වීමේ ප්‍රතිඵල අවම කිරීම සඳහා ගන්නා ලද පියවරක් ලෙස සැලකිනි. එසේ වන්නේ පෙත්සම්කරුගේ පැමිණිල්ල විමර්ශනය කරනු ලැබ ඇති බැවින් හා එබැවින් ඔහු නීතිය ඉදිරියේ සමානයකු ලෙස සලකා ඇති බව ඇඟවෙන හෙයිනි.

5.3 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 13(1) වගන්තිය:

"නීතියෙන් නියම කරනු ලැබූ කාර්ය පටිපාටියට අනුකූලව මිස කිසිම තැනැත්තකු සිරභාරයට ගැනීම නොකළ යුත්තේ ය. යම් තැනැත්තකු සිරභාරයට ගනු ලබන්නේ යම් හේතුවක් මත ද ඒ හේතුව ඒ තැනැත්තාට දැන්විය යුත්තේ ය."

ශ්‍රේෂ්ඨාධිකරණයේ අංක 241/14 (කරුවලගස්වැව විදානෙලාගේ ස්වර්ණා මංජුලා සහ නවරත්න හේනලාගේ රොසලියා එදිරිව 1. C.I.V.P.J. පුෂ්පකුමාර - කැකිරාව පොලිස් ස්ථානාධිපති සහ තවත් අය) මූලික හිමිකම් නඩුවේදී, අධිකරණය පළමුව නිගමනය කළේ ඇත්තෙන් ම 'අත්අඩංගුවට ගැනීමක්' සිදු වී තිබේ ද යන්නයි. ඒ අන්දමින්, පියසිරිට එරෙහිව ප්‍රනාන්දු (1988) සහ නමාසිවයම් එදිරිව ගුණවර්ධන (1989) නඩුවේදී ප්‍රකාශ වන්නේ, කිසියම් පුද්ගලයකු පොලිස් නිලධාරියකුට අවශ්‍යව හෝ පොලිස් නිලධාරියකු විසින් පොලිසියට පැමිණීමට යොමු කර හෝ තිබෙන විටදී, එම පුද්ගලයා එම අවශ්‍යතාවේ හෝ යොමුකිරීමේ හෝ හේතුවෙන් පොලිස් ස්ථානයට තම කැමැත්තට එරෙහිව යාමට පෙළඹෙන්නේ නම්, එම තැනැත්තා අත්අඩංගුවට ගෙන තිබේ.

නමාසිවයම් එදිරිව ගුණවර්ධන (1989) නඩුවේදී අග්‍ර විනිශ්චයකාර ෂර්වානන්ද මෙසේ පැවසී ය: ''මගේ දැක්ම අනුව, තුන්වන වගඋත්තරකරුට පෙත්සම්කරු ඔහු සමග පොලිස් ස්ථානයට යාම අවශ්‍ය වූ හෙයින්, නීතිය යටතේ පෙත්සම්කරු තුන්වන වගඋත්තරකරු විසින් අත්අඩංගුවට ගෙන තිබේ. තුන්වන වගඋත්තරකරුගේ ක්‍රියාව නිසා පෙත්සම්කරුට ඔහුට අවශ්‍ය පරිදි බසයේ ගමන් කළ නොහැකි විය. එමගින් පෙත්සම්කරුගේ නිදහසට බාධා විය. එහිදී සත්‍ය බලයක් භාවිතා කිරීමේ අවශ්‍යතාවක් නැත. පෙත්සම්කරු යටත් කරගැනීම සඳහා බලය පාවිච්චි කරන බවට තර්ජනය වුව ප්‍රමාණවත් ය..."

සිරිසේන එදිරිව පෙරේරා (1991) නඩුවේදී ද සමාන ස්ථාවරයක් ගනිමින් විනිසුරු ප්‍රනාන්දු කියා සිටියේ මෙසේ ය: "පුද්ගලයකු අත්අඩංගුවට ගෙන තිබේ ද නැද්ද යන කරුණ රඳාපවතින්නේ අත්අඩංගුවට ගැනීමේ නීත්‍යානුකූලභාවය තුළ නොවේ. එම පුද්ගලයා කැමති තැනකට යාමට තිබෙන නිදහස අහිමි කර තිබේ ද යන්න මත ය."

ශ්‍රේෂ්ඨාධිකරණයේ අංක 241/14 දරණ මූලික හිමිකම් නඩුව විසින් ද නීති ප්‍රකාර අත්අඩංගුවට ගැනීම විභාග කර තිබේ. අපරාධ නඩුවිධාන සංග්‍රහ පනතෙහි 32(1) වගන්තිය ප්‍රකාරව පොලිස් නිලධාරියෙකුට 32(1) වගන්තියේ (a) සිට (i) දක්වා උප වගන්ති යටතේ දැක්වෙන එක් අවස්ථාවකට පමණක් යටත්ව වරෙන්තුවක් නොමැතිව පුද්ගලයකු අත්අඩංගුවට ගැනීමට බලය තිබේ..

ඒ අනුව, විනිසුරු ප්‍රසන්න ජයවර්ධන මෙසේ පවසයි. ''අත්අඩංගුවට ගැනීම නීතියට අනුව සිදුවන්නේ අත්අඩංගුවට ගන්නා නිලධාරියා සාධාරණ පදනම් මත, අත්අඩංගුවට ගන්නා නිලධාරිවරයාගේ පෞද්ගලික නිරීක්ෂණ මත, දැනුම මත හෝ සාධාරණ පැමිණිල්ලක් මත හෝ නිලධාරිවරයා වෙත ලැබුණු විශ්වසනීය තොරතුරක් මත අත්අඩංගුවට ගැනීම කරන්නේ නම් පමණක් බව අධිකරණය විසින් නැවත නැවතත් තීන්දු කර තිබේ. එම අවස්ථාවේදී නිලධාරිවරයාට සාධාරණ සැකයක් ඇති කරගැනීමට පුළුවන. ඒ ඔහු විසින් අත්අඩංගුවට ගැනීමට යන පුද්ගලයා සංඥෙය (cognizable) වරදක් කර ඇති බව පිළිබඳව ය."

වන්න පීරිස් එදිරිව නීතිපති (1994) නඩුවේදී විනිසුරු අමරසිංහ මේ පිළිබඳ පුළුල් ලෙස සාකච්ඡා කර පහත දැක්වෙන ප්‍රකාශ කරයි.

"අත්අඩංගුවට ගැනීම සම්බන්ධ විධිවිධාන අත්අඩංගුවට ගත් පුද්ගලයකුගේ වරද හෝ නිවැරදිභාවය නිර්ණය කිරීමට වඩා විෂයමූලිකව වෙනස් ය. එක් ක්‍රියාවක් ඇත්තේ නීතිමය ක්‍රියාවලිය ආරම්භයේ ය. අනෙක තිබෙන්නේ අවසානයේ ය. අවසානය එළඹෙන්නේ විනිසුරුවරයා විසින් සියලු පාර්ශ්වවලින් කරුණු විමසීමෙන් අනතුරුව ය. අත්අඩංගුවට ගැනීමේ බලය චෝදනාව ඔප්පු කිරීමට ප්‍රමාණවත් සාක්ෂි තිබේ ද නැද්ද යන කරුණ මත රඳාපවතින්නේ නැත. අත්අඩංගුවට ගැනීම කරන නිලධාරිවරයාට අවශ්‍ය වන්නේ අදාළ පුද්ගලයා වරදක් කරමින් තිබේ ද හෝ කර තිබේ ද යන්න පිළිබඳ සාධාරණ පදනමකි. .... සාධාරණ සැකයක් නිලධාරිවරයාගේ දැනුම හෝ ඔහු වෙත මූලාශ්‍ර ගණනාවකින් සපයන ලද විශ්වසනීය තොරතුරු මත පදනම් විය හැකි ය. ඔහු තමන්ගේ පෞද්ගලික තොරතුරුවලින් හෝ ඔහුට සපයන ලද තොරතුරුවලින් හෝ ඒ දෙකම මගින් හෝ තමන් ම දැනුවත් කරගනියි. ...තොරතුරු මූලාශ්‍රය විශ්වසනීය වූ පමණින් සැකයක් 'සාධාරණ' වන්නේ නැත. අවිශ්වසනීය තොරතුරු මත පදනම්ව ක්‍රියා කරන්නේ නම්, නිලධාරිවරයා වඩා විවක්ෂණ අන්දමින් කටයුතු කිරීම අවශ්‍ය ය.කෙසේ වෙතත්, අවසානයේදී ප්‍රශ්නය වන්නේ තොරතුරු මූලාශ්‍රවල විශ්වසනීයත්වය ද ඇතුළත්ව, අත්අඩංගුවට ගැනීම කරනු ලබන පුද්ගලයා විසින් සාධාරණ පුද්ගලයකු ලෙස, අත්අඩංගුවට පත්වන පුද්ගලයා වරදක් කර ඇති බවට සැකකරන්නේ ද යන කරුණයි. ...කෙසේ වෙතත්, අත්අඩංගුවට ගැනීම කරන පුද්ගලයාට හුදෙක් අනුමානය

හෝ අපැහැදිලි විශ්වාසයන් මත පදනම්ව ක්‍රියා කළ නොහැකි ය. ඔහුගේ තොරතුරු මගින් සැකකරු සම්බන්ධයෙන් එම පුද්ගලයා වරෙන්තුවක් නොමැතිව අත්අඩංගුවට ගැනීමට හැකි වරදක් කර ඇති බවට සාධාරණ සැකයක් ඇති විය යුතු ය. සැකය අපැහැදිලි හෝ දූෂමාන ස්වභාවයක් නොගත යුතු ය. එය සාධනීය හා නිශ්චිත ස්වරූපයකින් විය යුතු ය. අත්අඩංගුවට ගනු ලබන පුද්ගලයා වරදක් කර තිබේ යයි සැක කිරීමට සාධාරණ පදනමක් සැපයිය යුතු ය."

ඒ අනුව, මෙය නිර්ණය කිරීම සඳහා අධිකරණය විසින් **සාධාරණ පදනම තක්සේරු කිරීමේ විෂයමූලික පරීක්ෂණයක්** සිදුකරනු ඇත. එහිදී නිලධාරිවරයාගේ මනෝමූලික හේතු දැක්වීම මත යැපෙන්නේ නැත.

අපගේ දැක්ම අනුව, සාධාරණ පදනම් තත්වය අනුව වෙනස් විය හැකි ය. මෙහි සමාලෝචනය කර තිබෙන ඇතැම් නඩුවලදී අත්අඩංගුවට ගෙන තිබෙන්නේ අභිංසක පුද්ගලයන් ය.ඔවුන් විරෝධතාවක් වැනි ස්ථානයක සිට තිබෙන්නේ සිතාමතා නොවේ. කෙසේ වෙතත්, බොහෝ නඩුවලදී 13(1) වගන්තිය සමාලෝචනය කර තිබෙන්නේ ඉහත සාකච්ඡා කරන ලද පරිදි විෂයමූලිකව ය.

විනිසුරු ශිරානි බණ්ඩාරනායක විසින් ඩබ්. නන්දන එදිරිව වී.යූ.ජී. චන්ද්‍රෙස්න - පොලිස් ස්ථානාධිපති (20015) නඩුවේදී මෙසේ විග්‍රහ කරයි.

"නිවැරදි ක්‍රියාවලිය අනුගමනය කිරීමේ අරමුණ වන්නේ නිදහස මෙන් ම නීතිය හා පිළිවෙල ආරක්ෂා කිරීමත්, එමගින් යුක්තිය හා සාධාරණත්වය ඇතිකිරීමත් ය."

5.4 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 13(2) වගන්තිය:

"අත් අඩංගුවෙහි තබා ගනු ලැබූ හෝ රඳවා තබා ගනු ලැබූ හෝ අන්‍යාකාරයකින් පෞද්ගලික නිදහස අහිමි කරනු ලැබූ හෝ සෑම තැනැත්තකු ම නීතියෙන් නියම කරනු ලැබූ කාර්ය පටිපාටිය අනුව ආසන්නතම නිසි අධිකරණයේ විනිශ්චයකාරවරයා ඉදිරියට ගෙන යා යුතු අතර, නීතියෙන් නියම කරනු ලැබූ කාර්ය පටිපාටියට අනුකූලව ඒ විනිශ්චයකාරවරයා විසින් කරනු ලැබූ ආඥාව මත සහ ආඥාව ප්‍රකාරව මිස, ඒ තැනැත්තා තවදුරටත් අත් අඩංගුවෙහි තබා ගැනීම හෝ රඳවා තබා ගැනීම හෝ ඒ තැනැත්තාගේ පෞද්ගලික නිදහස අහිමි කිරීම හෝ නොකළ යුත්තේ ය"

ඉහත සාකච්ඡා කරන ලද පටිපාටිය 1979 අංක 15 දරණ අපරාධ නඩු විධාන සංග්‍රහ පනතේ 37 වගන්තියේ දැක්වෙන පරිදි, "කිසිදු සාම නිලධාරිවරයෙකු වරෙන්තුවක් නොමැතිව අත්අඩංගුවට ගත් වුද්ගලයකු නඩුව සාධාරණ වන කිසිදු තත්වයක් යටතේ අත්අඩංගුවට ගන්නා ලද ස්ථානයේ සිට මහේස්ත්‍රාත්වරයා වෙත රැගෙන යාමට ගත වන කාලය හැර පැය 24කට වැඩි කාලයක් අත්අඩංගුවේ රඳවා තබා නොගත යුතු ය."

වන්න පීරිස් එදිරිව නීතිපති (1994) නඩුවේදී විනිසුරු අමරසිංහ විසින් නිරීක්ෂණය කරන ලද පරිදි *"නීතිමය අවශ්‍යතාව සාධාරණ අන්දමින්, සාධාරණ කාලයක් තුළ සම්පාදනය කළ යුතු ය. එය අධිකරණය විසින් සෑම නඩුවක ම සංදර්භයට අනුව තීරණය කළ යුතු ය."*

රැජින එදිරිව ජිනදාස (1960) නඩුවේදී, අපරාධ නඩු විධාන සංග්‍රහයේ 37 වගන්තිය සහ පොලිස් ආඥාපනතේ 66 වගන්තිය අනුව, වරෙන්තුවක් නොමැතිව අත්අඩංගුවට ගන්නා ලද පුද්ගලයෙකු හැකිතරම් ඉක්මණින් මහේස්ත්‍රාත්වරයකු වෙත ඉදිරිපත් කළ යුතු යයි ශ්‍රේෂ්ඨාධිකරණය තීන්දු කළේ ය. මෙම වගන්ති දෙකෙහි ම දක්වා තිබෙන පැය 24ක සීමාවෙන් ඊට පෙර කාලයක් තුළ මහේස්ත්‍රාත්වරයා වෙත ඉදිරිපත් කිරීමට හැකියාව තිබියදී තවදුරටත් රඳවා තබාගැනීමටත්, සිතාමතා එසේ නොකර සිටීමටත් බලය ලැබෙන්නේ නැත.

අග්‍ර විනිශ්චයකාර බස්නායක, මේ පිළිබඳ වැඩිදුරටත් මෙසේ පැවසී ය. *"පොලිස් ආඥාපනතේ 66 වගන්තිය අනුව, පොලිස් නිලධාරිවරයා විසින් වරෙන්තුවක් නොමැතිවඅත්අඩංගුවට ගන්නා ලද වුදිතයා ඉන්පසු පොලිස් ස්ථානාධිපතිවරයා වෙත භාරදිය යුතු ය. ඒ, එම සැකකරු නීති ප්‍රකාරව මහේස්ත්‍රාත්වරයා වෙත ඉදිරිපත් කරන තෙක් ය. එය රඳවා තබාගැනීමේ නීතිමය අරමුණයි. පොදු භාවිතාවක් බවට පත් වී ඇති බව පෙනෙන වුදිතයකු අපරාධ හඳුනාගැනීම සඳහා පොලිසිය සමග තැනින් තැන යාම අපි තිර ලෙස සහ බලවත් ලෙස ප්‍රතික්ෂේප කරන්නෙමු. නීති විරෝධී අරමුණු ඉටුකරගැනීමේ බලාපොරොත්තුවෙන් වුදිතයා මහේස්ත්‍රාත්වරයකු වෙත ඉදිරිපත් කිරීම පමා කිරීම නීති විරෝධී වන අතර එය අනුමත නොකළ යුතු ය"*

කපුගීකියන එදිරිව හෙට්ටිආරච්චි සහ තවත් දෙදෙනෙක් නඩුවේදී (SC No. 80/84), අපරාධ නඩුවිධාන සංග්‍රහයේ 36, 37 වගන්ති අනුව, කලකදී නීතිමය හිමිකම් වූ මේවා දැන් ව්‍යවස්ථාවෙන් ම හිමිකම් බවට පත් කර ඇති බව අධිකරණය පැවසී ය. අධිකරණය වැඩිදුරටත් පැවසුවේ, **නොකර ම බැරි හේතු නැතිනම්** අධිකරණ ක්‍රියාවලිවලදී එය දැඩිව පිළිපැදිය යුතුය.

පැය 24කට වඩා රඳවාගැනීම අවශ්‍ය අවස්ථාවලදී ද, අපරාධ නඩු විධාන සංග්‍රහයේ 115(4) වගන්තියෙහි දැක්වෙන ක්‍රියාවලිය අනුගමනය කළ යුතු ය. විමර්ශන පැය 24කින් අවසන් කළ නොහැකි පරිදි දිග්ගැසේ නම් පොලිස් ස්ථානාධිපතිවරයා වැඩිදුර විමර්ශන පිණිස රිමාන්ඩ් බන්ධනාගාරය වෙත පිවිසීම පිණිස පළමුව මහේස්ත්‍රාත්වරයාගේ අවසරය ලබාගත යුතුය.

5.5 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 13(4) වගන්තිය:

"නීතියෙන් නියම කරනු ලැබූ කාර්ය පටිපාටියට අනුකූලව නිසි අධිකරණයක් විසින් කරනු ලැබූ ආඥාවක් අනුව මිස, කිසිම තැනැත්තකු මරණීය දණ්ඩනයට යටත් කිරීම හෝ කිසිම තැනැත්තකු බන්ධනාගාරගත කිරීම හෝ නොකළ යුත්තේ ය. එහෙත් විමර්ශනයක් පවත්වන තෙක් හෝ නඩු විභාගයක් පවත්වන තෙක් හෝ යම් තැනැත්තකු සිරභාරයට ගැනීම, අත්අඩංගුවේ තබා ගැනීම, රඳවා තබා ගැනීම හෝ අන්‍යාකාරයකින් ඒ තැනැත්තාගේ පෞද්ගලික නිදහස අහිමි කිරීම දඬුවමක් නොවන්නේ ය."

13(4) වගන්තිය හා සම්බන්ධයෙන් විභාග කිරීමට අවසර දී තිබෙන්නේ නඩු තුනක් පමණක් බව නිරීක්ෂණය කරන ලදී. ශ්‍රේෂ්ඨාධිකරණයේ අංක 18/87 දරණ මූලික හිමිකම් නඩුවේදී (ඇන්සලින් ප්‍රනාන්දු එදිරිව සරත් පෙරේරා - හලාවත පොලිස් සථානාධිපති සහ තවත් අය) වගඋත්තරකරුවන් 13(4) වගන්තිය උල්ලංඝනය කර ඇති බව තීරණය කරන ලදී. 13(4) වගන්තිය අර්ථ නිරූපණය කර තිබෙන ආකාරය විග්‍රහ කිරීම සඳහා ප්‍රමාණවත් තරම් නඩු නැත.

ශ්‍රේෂ්ඨාධිකරණයේ 18/87 අංක දරණ **නානායක්කාර එදිරිව හෙන්රි පෙරේරා** මූලික හිමිකම් නඩුවේදී එය සමාලෝචනය කරන ලදී. අධිකරණය පැවසුවේ නිශ්චිතව නොදක්වන ලද, නෙදන්නා අරමුණක් වෙනුවෙන් පුද්ගලයකු රඳවා තබාගැනීම 13(4) වගන්තිය උල්ලංඝනය කිරීමක් බවයි. ඒ අනුව, පුද්ගලයකු නොදන්නා අරමුණක් වෙනුවෙන් දිගුකලක් රඳවා තබාගැනීමේදී, නඩුවේ කරුණු අනුව, 13(4) වගන්තිය අදාළ වේ.

ශ්‍රේෂ්ඨාධිකරණ මූලික අයිතිවාසිකම් පෙත්සම් අංක 471/2000 (ශ්‍රියානි සිල්වා එදිරිව ඉද්දමල්ගොඩ - පයාගල පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී විනිසුරු ප්‍රනාන්දු මෙසේ පැවසී ය:

"ජීවත් වීම සඳහා අයිතිය මූලික හිමිකමක් ලෙස ඍජුව පිළිගෙන නැතිමුත්, එය ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ තුන්වන පරිච්ඡේදයේ ඇතැම් විධිවිධාන මගින් පිළිගෙන ඇති බව සැලකිය හැකි ය. විශේෂයෙන් ම 13(4) වගන්තිය අනුව, නිසි අධිකරණයකින් හැර කිසිදු පුද්ගලයකු මරණීය දණ්ඩනයට හෝ සිරගත කිරීමට නොහැකි ය. අධිකරණ නියෝගයක් නොමැතිව, තමන්ගේ වරදක් නිසා මරණයට ලක් නොකර සිටීමේ අයිතිය පුද්ගලයකු සතු බව මෙයින් කියැවේ. (පෞද්ගලික ආරක්ෂාවට තිබෙන අයිතිය වැනි වෙනත් ව්‍යතිරේක ද තිබේ.) එම විධිවිධානය සාධනීය ලෙස අර්ථ දැක්වෙන්නේ අධිකරණ නියෝගයකින් වැළැක්වුවහොත් හැර ජීවත් වීමට තිබෙන අයිතිය ලෙසයි. ඒ අනුව, පුද්ගලයකුට ජීවත් වීමට තිබෙන අයිතිය 13(4) වගන්තිය විසින් අනිවාර්යයෙන් ම පිළිගනු ලැබේ. එහිදී ජීවන ගුණාත්මකභාවය හුදු පැවැත්ම පමණක් වීම වුව අදාළ වන්නේ නැත. එය පැහැරගත හැක්කේ අධිකරණ නියෝගයකින් පමණි. එබැවින්, පුද්ගලයකු තම කැමැත්තෙන් නොරව, අධිකරණ නියෝගයකින් නොරව, නීති විරෝධී ලෙස මරණයට පත් කරනු ලැබුවහොත්, 13(4) වගන්තිය යටතේ එම පුද්ගලයාගේ හිමිකම් පැහැදිලිව ම උල්ලංඝනය වේ. එවැනි සෑම අවස්ථාවකට ම අදාළව, උල්ලංඝනය හේතුවෙන් පුද්ගලයාගේ ජීවත් වීම නතර වේ. ...එයින් අදහස් වන්නේ 13(4) වගන්තිය උල්ලංඝනය කරමින් මරණයක් සිදුකිරීම සම්බන්ධයෙන් ප්‍රතිකර්මයක් නැති බවයි. එම වගන්තිය විසින් පිළිගෙන ඇති බව සැලකිය හැකි ජීවත් වීමේ අයිතිය මායාවක් වන්නේ එය උල්ලංඝනය කිරීම සම්බන්ධයෙන් දණ්ඩනයක් නැති බැවිනි."

විනිසුරු ප්‍රනාන්දු වැඩිදුරටත් පවසන්නේ 13(4) වගන්තියෙන්, ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 126(2) වගන්තියෙන් ඇඟවෙන ජීවත් වීමේ අයිතිය උල්ලංඝනය කිරීම සිදු වීමක් අර්ථකථනය කළ යුත්තේ විෂමතා, අසංගතතා සහ අයුක්තිය වැළැක්වීම සඳහා ය. එමගින් නීත්‍යානුකූල උරුමකරුවන්ට/ යැපෙන්නන්ට නඩු පැවරීමට අයිතියක් තිබේ.

ව්‍යවස්ථාවෙන් ඍජුව ප්‍රකාශ නොවුණත්, 13(4) වගන්තිය ජීවිතයට ඇති අයිතිය අහවන බව ඒ අනුව අර්ථ නිරූපණය කළ හැකි ය. පුද්ගලයකු වැරදි අන්දමින් මරණයට පත් කළහොත්, නීත්‍යානුකූල උරුමකරුවන් හට නඩු පැවරීම සඳහා අවසර දීමට අධිකරණය විසින් 13(4) වගන්තිය අර්ථ නිරූපණය කරනු ලැබේ. එයට හේතුව, 13(4) වගන්තියේ අර්ථය පටු අර්ථ නිරූපණයක් හේතුවෙන් දුර්වල වීමේ හැකියාවයි.

SC FR 18/87, SC FR 471/2000 සහ SC FR 429/2003 (ගුණෙත්තිගේ මිස්ලින් නෝනා සහ තවත් අය එදිරිව පොලිස් ස්ථානාධිපති මහීපාල සහ තවත් අය) මූලික අයිතිවාසිකම් නඩුවලදී 13(4) වගන්තිය යටතේ නඩු ඉදිරියට ගෙන යාම පිළිගන්නා ලදී.

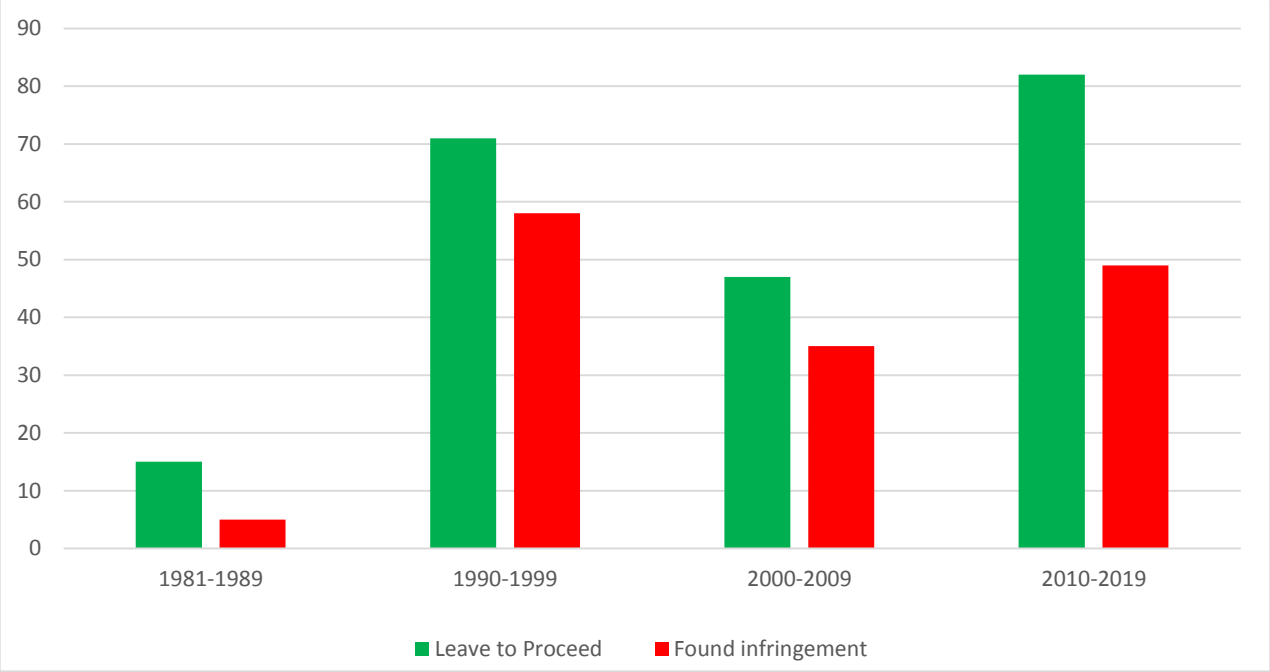
6. 11, 13(1) සහ 13(2) වගන්ති උල්ලංඝනය සම්බන්ධ නඩු විශ්ලේෂණය :

නඩු තීන්දුවක් සකසනු ලබන ආකාරයේ රටා සහ ගැටලු හඳුනාගැනීම පිණිස නඩු 100ක් ඇගයීමට හා සමාලෝචනයට ලක් කරන ලදී. ඒ අනුව, අප විසින් පහත දැක්වෙන කරුණු නිරීක්ෂණය කරන ලදී:

- 1981- 2019 වකවානුව තුළ, මූලික අයිතිවාසිකම් (11, 13(1) සහ 13(2) වගන්ති) උල්ලංඝනයන් සම්බන්ධයෙන් ශ්‍රේෂ්ඨාධිකරණයේ වැඩිපුර ම මූලික හිමිකම් පෙත්සම් ගොනු කර තිබෙන්නේ පිරිමින් ය. කාන්තාවන් සංඛ්‍යාව ඉතා අඩු ය. කාන්තාවන් වැඩිපුරම කටයුතු කර තිබෙන්නේ මියගිය පුද්ගලයන්ගේ භාරකරුවන් ලෙස ය. පෙත්සම් ගොනු කළ කාන්තාවන් කිහිපදෙනෙකුට එසේ කිරීමට හේතු වුණේ ලිංගික ප්‍රහාර සම්බන්ධයෙන් තර්ජන සහ ලිංගික ප්‍රහාරයි. ඇතැම් අවස්ථාවලදී පිරිමින් නිරුවත් කිරීම සහ බට වැනි ඇතැම් උපකරණ ගුද මාර්ගයට ඇතුළු කිරීම සිදුකර තිබේ. එහෙත්, මේ කිසිදු ක්‍රියාවක් ලිංගික ප්‍රවණ්ඩත්වයන් ලෙස සටහන් වී නැත.
- ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 126 වගන්තිය යටතේ නිර්දේශ කර තිබෙන ප්‍රතිකර්ම අදාළ වන්නේ විධායක හෝ පරිපාලන හෝ ක්‍රියාවක් හේතුවෙන් සිදු වූ උල්ලංඝනයකදී පමණක් ද, නැතිනම් සිදුවීමට නියමිත උල්ලංඝනයකට ද අදාළ වේ ද යන්න 1980 දශකයේදී අධිකරණය විසින් සාකච්ඡා කරන ලදී. මෙම සාකච්ඡාව ඉන්පසු නිල වශයෙන් මේ හා සම්බන්ධ කාර්යවල යෙදී සිටින, එහෙත්, ඒ වෙනුවෙන් බලය නොපැවරුණු වෙනත් පුද්ගලයන් වෙත විහිදිනි.
- **නඩු කටයුතු ඉදිරියට ගෙන යාම:** බොහෝ විට පෙත්සම්කරුවා විසින් ඉදිරිපත් කරන ලද පෙත්සමෙහි බොහෝ උල්ලංඝනයන් තිබුණත් ඒවා නඩුව ඉදිරියට ගෙන යාමේ අදියරේදී අඩු කරනු ලබන බව නිරීක්ෂණය කරන ලදී. ඒ අනුව, වගන්ති උල්ලංඝනයවීම් අඩු කරන්නේ ඇයි ද යන්න සහ විශේෂයෙන් ම මූලික විරෝධතා අදියරේදී එයට හේතු ලෙස දක්වන්නේ කුමක් ද යන්න සම්බන්ධයෙන් පර්යේෂණයක් සිදුකරන්නේ නම් එය පොදු මහජනතාවට වැදගත් වනු ඇත.

පහත දැක්වෙන වගුවෙන් සාරාංශගත කරන්නේ එක් එක් උල්ලංඝනයන් සම්බන්ධයෙන් නඩු ඉදිරියට ගෙන යාමට අවසර ලබා දුන් ආකාරය සහ 11, 13(1) සහ 13(2) වගන්ති උල්ලංඝනය සම්බන්ධයෙන් ඉදිරිපත් කරන ලද පෙත්සම් සංඛ්‍යාවයි.

වසර	නඩුව ඉදිරියට ගෙන යාම්	උල්ලංඝනය වීම්
1981-1989		
11 වගන්තිය	**08**	**02**
13(1) වගන්තිය	**05**	**02**
13(2) වගන්තිය	**02**	**01**
1990-1999		
11 වගන්තිය	**28**	**21**
13(1) වගන්තිය	**23**	**18**
13(2) වගන්තිය	**20**	**19**
2000-2009		
11 වගන්තිය	**22**	**18**
13(1) වගන්තිය	**15**	**09**
13(2) වගන්තිය	**10**	**08**
2010-2019		
11 වගන්තිය	**41**	**27**
13(1) වගන්තිය	**25**	**12**
13(2) වගන්තිය	**16**	**10**



(කොළ පැහැයෙන් දැක්වෙන්නේ නඩු ඉදිරියට ගෙන යාම් ය. රතු පැහැයෙන් දැක්වෙන්නේ සොයාගන්නා ලද උල්ලංඝනයන් ය)

- SC FR No 244/2010 නඩුවේදී, වගඋත්තරකරුවන් විසින් වධහිංසනය සම්බන්ධ සලකුණු ඉතිරි කර නොතිබිණි. ඇත්ත වශයෙන් ම, වෛද්‍ය වාර්තාවෙන් පැවසුණේ සුව වෙමින් පැවති තුවාල වැලමීටේ සහ වළලුකරේ පමණක් තිබුණු බවයි. කෙසේ වෙතත්, හෝස් පයිප්පයකින් පහරදීම නිසා කැළැල් ඇති වී නොතිබිණි. වගඋත්තරකරුවන් පෙත්සම්කරුට බලෙන් කොච්චි මිරිස් කවා එහි ඉස්ම ඇස් හා නාස්වලට වක්කර තිබිණි. ඒ අනුව, 11 වගන්තිය යටතේ උල්ලංඝනයක් ඔප්පු කිරීම පෙත්සම්කරුගේ වගකීමක් වී තිබේ. වගඋත්තරකරුවන් චින්දිතයාගේ ශරීරයේ කැළැල් සලකුණු නොවන සේ වධහිංසනය සඳහා නිර්මාණාත්මක ක්‍රම භාවිතා කරන්නේ නම්, 11 වගන්තිය උල්ලංඝනය සම්බන්ධයෙන් ඇසින් දැකිය හැකි සාක්ෂිවලට එහා ගිය සාක්ෂි විමසීමට අනාගතයේ අධිකරණයට සිදු වනු ඇත.

- සමස්තයක් ලෙස නිෂ්ප්‍රභ කරන ලද පෙත්සම් සංඛ්‍යාව: **නඩු 100කින් පෙත්සම් 21ක් ම නිෂ්ප්‍රභ කරන ලදී.** බොහෝ පෙත්සම් නිෂ්ප්‍රභ කරනු ලැබුවේ වධහිංසනය පිළිබඳ සාක්ෂි අප්‍රමාණවත්කම මත ය. උදා: පෙත්සම්කරුගේ කතාව අධිකරණ වෛද්‍ය වාර්තාව සමග නොගැලපීම. වැඩිදුරටත්, පෙත්සම්කරුගේ සාක්ෂිකරුවන් විසින් පරස්පර ප්‍රකාශ සිදුකිරීම ද අධිකරණය විසින් සැලකිල්ලට ගන්නා ලදී. පෙත්සම්කරුගේ චර්යාව ද විශේෂයෙන් ම 13 වගන්තිය සමාලෝචනය කිරීමේදී සැලකිල්ලට ගන්නා ලදී. බීමත් චර්යාව, ප්‍රසිද්ධ කලහ ආදිය ද පෙත්සමක් නිෂ්ප්‍රභ කිරීමේදී සැලකිල්ලට ගත් කරුණු ය. කෙසේ වෙතත්, වගඋත්තරකරුවන් (නීතිය බලාත්මක කිරීමේ නිලධාරීන්) පරස්පර විරෝධී සැක්ෂි සැපයීම ද උල්ලංඝනයන් පිළිබඳ සාක්ෂි ලෙස සැලකිණි. එමගින් පෙත්සම්කරුගේ පාර්ශ්වය ශක්තිමත් විය.

- SC FR 555/2009 (හේරත් මුදියන්සේලාගේ යොහාන් මල්ලිකා හේරත් එදිරිව දුම්මලසූරිය පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී, 11 වගන්තිය යටතේ දැක්වෙන මූලික අයිතිවාසිකම් 1994 අංක 22 දරණ වධහිංසන පනතින් ඌනපූරණය වන බව අධිකරණය පිළිගත්තේ ය. වධහිංසන පනතින් සිදු කරන්නේ වධහිංසනයට සාපරාධී දණ්ඩන පැනවීමයි. SC FR 112/2010 (ඉෂාන්ත කලන්සූරිය එදිරිව පෝද්දල පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී, වධහිංසන පනත යටතේ වධහිංසනය පිළිබඳ අර්ථ නිරූපණය නඩුවේ කරුණු විශ්ලේෂණය සඳහා භාවිතා කරන ලදී.
- යුද සමයේ හෝ ජවිපෙ කැරැල්ල සමයේ මානව හිමිකම් චෝදනා ප්‍රමාණය අනුව, පෙත්සම් 100ක් ප්‍රමාණවත් නැත. මෙම පෙත්සම් රටෙහි දිස්ත්‍රික් රැසකින් බව ද සඳහන් කළ යුතු ය. එහෙත්, ඇතැම් දිස්ත්‍රික්කවලින් පෙත්සම් ලැබී නොතිබිණි. දෙමළ ඊලාම් විමුක්ති කොටි සංවිධානය සමග සම්බන්ධ වූයේ නඩු තුනක් පමණි. SC FR 326/2008 (එඩ්වඩ් සිවලිංගම් එදිරිව උප පොලිස් පරීක්ෂක - රහස් පොලිසිය) නඩුව සාක්ෂි මදකම

නිසා නිෂ්ප්‍රභ කරන ලදී. අධිකරණය විසින් වෙනත් කරුණුවලට අමතරව ජාත්‍යන්තර රතුකුරුස කමිටුවේ නිරීක්ෂණ වාරිකා දෙකක් ද සමාලෝචනය කරන ලදී. මෙම නිරීක්ෂණ වාරිකා දෙකෙහි විස්තර අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව විසින් පවත්වාගෙන යනු ලබන ක්‍රම චර්යා වාර්තා පොතෙහි සටහන් කර තිබිණි. එහි කිසිදු වධහිංසනයක් හෝ වැරදි අන්දමින් සැලකීමක් සටහන් කර නොතිබිණි. දෙවෙනි නඩුව SC 860/99 (ප්‍රියන්ත ඩයස් එදිරිව ඒකනායක - අතිරේක පොලිස් කොස්තාපල්, පොල්පිතිගම පොලිස් ස්ථානය සහ තවත් අය) වේ. එහි පෙත්සම්කරු වෘත්තියෙන් ගුරුවරයකු වන අතර සිය විදුහල්පති සමග බසයකට නැගීමට සිටියදී වගඋත්තරකරු විසින් ඔහුගේ උපන් ස්ථානය ප්‍රශ්න කර තිබේ. පෙත්සම්කරු සිංහල ජාතිකයකු වුව ද, ඔහුගේ උපන් ස්ථානය මඩකලපුවයි. වගඋත්තරකරු ප්‍රශ්න කිරීමෙන් අනතුරුව, පෙත්සම්කරු කොටි සංවිධානයට සම්බන්ධ අයෙකු ලෙස සැක කර පහර දුන්නේ ය. වගඋත්තරකුරුවන් 11 වගන්තිය උල්ලංඝනය කර ඇති බව විනිසුරුවරයා තීන්දු කළේ ය.

- SC 555/2001 (කෝනේශලිංගම් එදිරිව මේජර් මුතාලිෆ්) නඩුවේදී පෙත්සම්කරු පැමිණිලි කර සිටියේ ඔහු අත්අඩංගුවට ගෙන, පහර දී, තමන් දෙමළ ඊලාම් විමුක්ති කොටි සංවිධානයේ සාමාජිකයකු බව පිළිගැනීමට බල කළ බවයි. අධිකරණය ඒ පිළිබඳ විග්‍රහ කළේ ඔහු අත්අඩංගුවට ගෙන තිබෙන්නේ අපැහැදිලි සැකය මත බවයි. ඒ අනුව වගඋත්තරකරුවන් විසින් 11, 13(1) සහ13(2) වගන්ති උල්ලංඝනය කර තිබිණි.
- මහේස්ත්‍රාත් නියෝග සම්බන්ධයෙන් අධිකරණ සේවා කොමිෂන් සභාව වෙත යොමු කර තිබුණේ නඩු දෙකක් පමණි. 126/94 දරණ ශ්‍රේෂ්ඨාධිකරණ පෙත්සමේදී යටත්වැසියාගේ නිදහස උල්ලංඝනය වන රිමාන්ඩ් නියෝගයක් සිදුකිරීම සඳහා මහේස්ත්‍රාත්වරයකුට බලය හිමි වන විධිවිධානයක් සොයාගත නොහැකි විය. එබැවින් ක්‍රියාමාර්ගයක් ගැනීම සඳහා අධිකරණ සේවා කොමිෂන් සභාවේ සභාපතිවරයාට දැනුම් දෙන ලෙස ලේඛකාධිකාරිවරයාට නියෝග කරන ලදී.

- SC 136/2014 නඩුවේදී උගත් මහේස්ත්‍රාත්වරයාට පිටුවහල් කිරීමේ නියෝගයක් නිකුත් කිරීමේ බලයක් නැති බව අධිකරණය විසින් පිළිගන්නා ලදී. ඒ අනුව, නඩු තීන්දුවේ පිටපතක් අධිකරණ සේවා කොමිෂන් සභාව වෙත යොමුකරන ලදී.

- SC 136/2014 (කෝල්මන් එදිරිව නීතිපති සහ වෙනත් අය) නඩුව 11, 12(1) සහ 13(1) වගන්ති යටතේ විදේශිකයකු සම්බන්ධයෙන් ඉදිරියට ගෙන යන ලද එකම නඩුවයි. 12(1) සහ 13(1) වගන්ති උල්ලංඝනය වී තිබෙන බව අධිකරණය විසින් තීන්දු කරන ලදී.

7. සෘජු ප්‍රශ්න

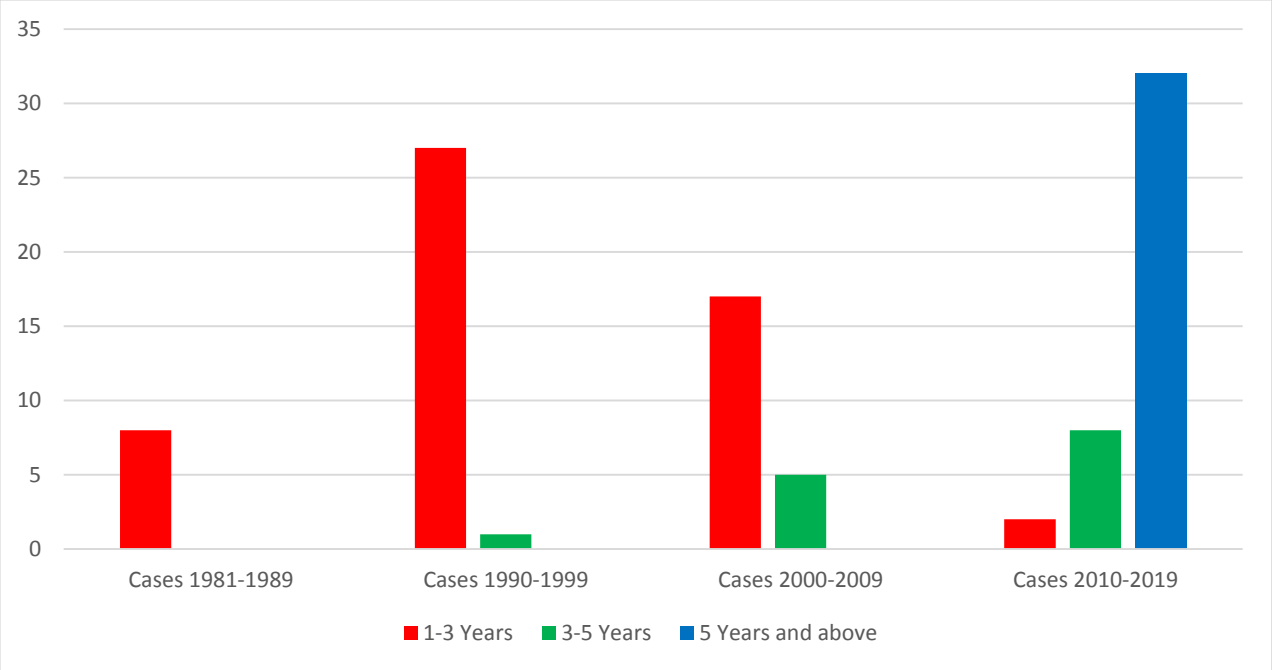
7.1 කාලසීමාව:

පසුගිය වසර ගණනාවක් තිස්සේ, විශේෂයෙන් 2000 වසරින් පසු, පෙත්සම් සංඛ්‍යාව ඉහළ යාමෙන් නඩු ගොඩගැසීම වැඩි වී තිබේ. 1980-2000 කාලයේදී සියලු පෙත්සම් වසරක් ඇතුළත විභාග කර තීන්දු දෙන ලදී.

කෙසේ වෙතත්, ඇතැම්විට නඩු සංඛ්‍යාව වැඩි වීම හේතුවෙන්, නඩුවක් විභාග කිරීමට ගතවන කාලය අවුරුදු පහකට වඩා වැඩි වී තිබේ. මෙම ප්‍රමාදයෙහි ප්‍රතිවිපාක තිබිය හැකි ය. පෙත්සම්කරුවන්ට තීන්දුව ලැබෙන්නේ ප්‍රමාදව ය. එසේම, වසරකින් විභාග කර අවසන් වන නඩුවකට වඩා වියදම ඉහළ යයි. තීන්දුව ලැබෙන තෙක් වගඋත්තරකරුවන්ට දණ්ඩ මුක්තියක් ද ලැබේ.

නඩුවකට ගත වන කාලය නිරූපණය වන වගුවක් පහත දැක්වේ:

1981-1989		
නඩු සංඛ්‍යාව:	**08**	
# වසර 1-3 අතර -08	**# වසර 3-5 අතර: 0**	**# වසර 5 හා ඊට වැඩි: 0**
1990-1999		
නඩු සංඛ්‍යාව :	**28**	
# වසර 1-3 අතර -27	**# වසර 3-5 අතර : 01**	**# වසර 5 හා ඊට වැඩි : 0**
2000-2009		
නඩු සංඛ්‍යාව:	**22**	
# වසර 1-3 අතර -17	**# වසර 3-5 අතර : 05**	**# වසර 5 හා ඊට වැඩි : 0**
2010-2019		
නඩු සංඛ්‍යාව:	**42**	
# වසර 1-3 අතර -02	**# වසර 3-5 අතර : 08**	**# වසර 5 හා ඊට වැඩි : 32**



7.2 වන්දි ලබාදීම:

එක් එක් නඩුවේ සංදර්භය අනුව වන්දි වෙනස් වේ. කෙසේ වෙතත්, 2000-2019 කාලසීමාව තුළ රාජ්‍ය වන්දි වැඩි වී ඇති බව නිරීක්ෂණය කර තිබේ. සාමාන්‍ය රාජ්‍ය වන්දි රු. 50,000 සහ 100,000/- අතර වේ. නඩු හතරකදී රජය පෙත්සම්කරුවන්ට රු. 500,000/- බැගින් ගෙවන ලදී. **SC FR 471/2000** නඩුවේදී රජය රු. 700,000/-ක් වන්දි ලෙස ගෙව්වේ ය. **SC FR 328/2002** (නීතිඥ සංජීව -ජෙරාඩ් මර්වින් පෙරේරා වෙනුවෙන් එදිරිව සුරවීර - වත්තල පොලිස් ස්ථානාධිපති සහතවත් අය) නඩුවේදී රජය රු. 650,000/- ක් රාජ්‍ය වන්දි ලෙස ගෙව්වේ ය (ඊට අමතරව නඩු ගාස්තු ද ගෙවන ලදී). මෙම නඩුවේදී රජය විසින් රු. 704, 708/-ක පෞද්ගලික රෝහල් ගාස්තුවක් ද ගෙවන ලදී.

SC FR 136/2014 (කෝල්මන් එදිරිව නීතිපති සහ තවත් අය) නඩුවේදී රජය රු. 500,000/-ක් වන්දි පෙත්සම්කරුට ගෙවූයේ කටුනායක පොලිසිය විසින් හිතුවක්කාර ලෙස අත්අඩංගුවට ගැනීම, හිංසනය හා වධදීම සම්බන්ධයෙන් වන්දි ලෙසයි. මීගමුව මහේස්ත්‍රාත් අධිකරණයේදී සිදු වූ දේ, මීගමුව බන්ධනාගාරයේ හා මිරිහාන සංක්‍රමණික රැඳවුම් කඳවුරේ රඳවා තබාගැනීම ද එයට අදාළ වේ.

ඒ අනුව, කෝල්මන් නඩුවේදී, සෑම අදියරකදී ම ඇය මුහුණ දුන් අවමන් සහගත සැලකීම් වෙනුවෙන් විශාල වන්දියක් ගෙවන ලදී. අනෙකුත් සියලු නඩුවලදී සලකා බලනු ලැබුවේ වධහිංසනය කෙතරම් දරුණු ද යන්නයි. බොහෝ පෙත්සම්කරුවෝ ස්ථාවර ආබාධිතභාවයට ගොදුරු වූ හ. නැතහොත්, පුද්ගලයා වධහිංසනයට ලක්කරන ලද ආකාරය අතිශය දරුණු විය.

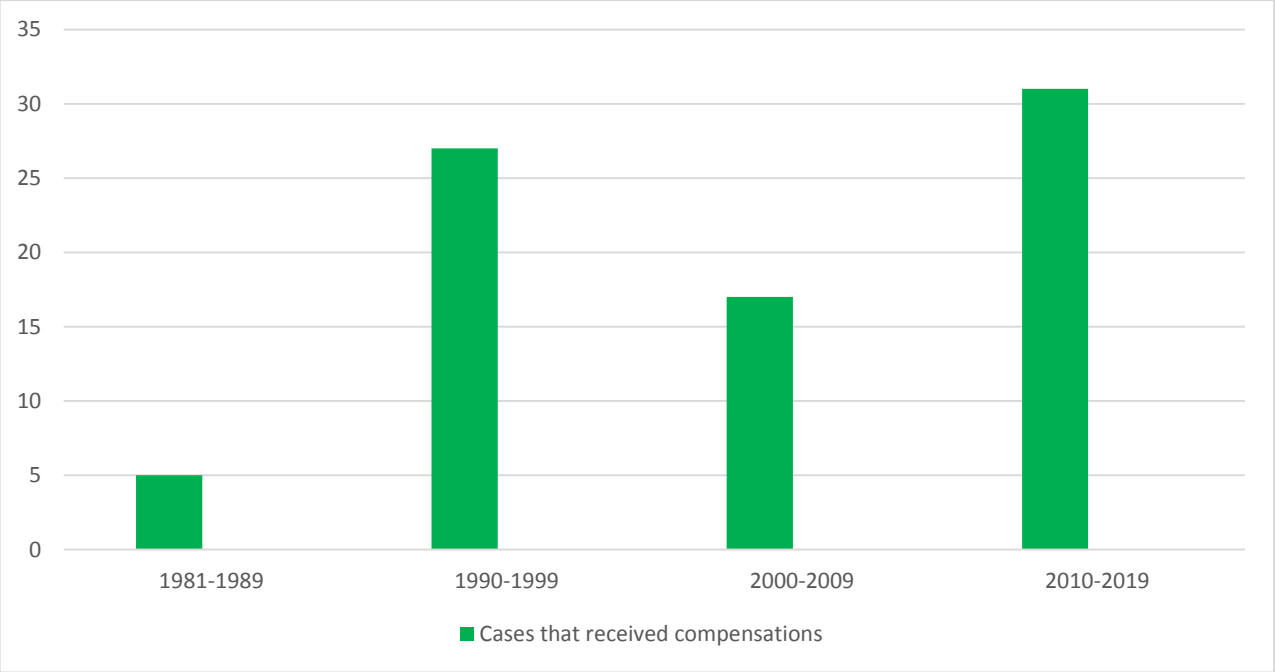
වැඩිදුරටත්, අධිකරණය දැරූ ස්ථාවරය වන්නේ **රාජ්‍ය වගකීම** පවතින්නේ අධිකරණය තෘප්තිමත් වන පරිදි රාජ්‍ය නිලධාරියකු විසින් ප්‍රශ්නයට හේතු වන ක්‍රියාව සිදුකර තිබේ නම් බවයි. එබැවින්, උල්ලංඝනය රජයේ අනුදැනුම මත සිදු නොවුණත්, රජය විසින් පෙත්සම්කරුවන්ට වන්දි ගෙවන ලදී. රාජ්‍ය වන්දි සම්බන්ධයෙන් තිබෙන ප්‍රශ්නය වන්නේ වගඋත්තරකාර රාජ්‍ය නිලධාරීන්ට තම ක්‍රියාවේ බර හෝ විශාලත්වය නොදැනීමයි. උත්ප්‍රාසය වන්නේ මූලික අයිතිවාසිකම් උල්ලංඝනය සම්බන්ධයෙන් වන්දි ගෙවීමට යොදාගන්නේ බදු ගෙවන්නන්ගේ මුදල් වීමයි. එම නිසා එවැනි උල්ලංඝනයන් සම්බන්ධයෙන් පුරවැසියන් වන අප සැම වන්දි ගෙවන්නෙමු. වන්දිය ලබාගන්නා පෙත්සම්කරුවකු ද බදු ගෙවන්නකු ලෙස එම වන්දියට සම්බන්ධ වී තිබේ.

අවසන් වශයෙන් රාජ්‍ය සහ පෞද්ගලික වන්දි අතර අනුපාතය අධිකරණය විසින් තීරණය කරන ආකාරය අපැහැදිලි ය. ඒ සම්බන්ධයෙන් පැහැදිලි කිරීමක් සිදු වී නැත.

පහත දැක්වෙන වගුව සාරාංශයකි:

වන්දි ගෙවන ලද නඩු සංඛ්‍යාව: (1981-1989)	**05**	
# පෞද්ගලික වන්දි පමණක් ගෙවන ලද නඩු? 01	**# රාජ්‍ය වන්දි පමණක් ගෙවන ලද නඩු?** 04	**# රාජ්‍ය හා පෞද්ගලික යන දෙවර්ගයේ ම වන්දි ලැබුණු නඩු?** 0
පිරිනමන ලද අවම වන්දිය	රු. 2500/= (**රාජ්‍ය**)	
පිරිනමන ලද ඉහළම වන්දිය	රු. 50, 000/= **සහ නඩු ගාස්තු** 1500/= (**රාජ්‍ය**)	
වන්දි ගෙවන ලද නඩු සංඛ්‍යාව: (1990-1999)	**27**	
# පෞද්ගලික වන්දි පමණක් ගෙවන ලද නඩු? 02	**# රාජ්‍ය වන්දි පමණක් ගෙවන ලද නඩු?** 10	**# රාජ්‍ය හා පෞද්ගලික යන දෙවර්ගයේ ම වන්දි ලැබුණු නඩු?** 15
පිරිනමන ලද අවම වන්දිය	රු. 2500/= **සහ** රු. 2500 /= **නඩු ගාස්තු**	
පිරිනමන ලද ඉහළම වන්දිය	රු. 200,000 /= **සහ** රු. 5000/= **නඩු ගාස්තු**	
වන්දි ගෙවන ලද නඩු සංඛ්‍යාව:		

(2000-2009)	**17**	
# පෞද්ගලික වන්දි පමණක් ගෙවන ලද නඩු? 02	# රාජ්‍ය වන්දි පමණක් ගෙවන ලද නඩු? 05	# රාජ්‍ය හා පෞද්ගලික යන දෙවර්ගයේ ම වන්දි ලැබුණු නඩු? 10
පිරිනමන ලද අවම වන්දිය	රු. 15 000/=	
පිරිනමන ලද ඉහළම වන්දිය	රු. 1, 504, 788/=	
වන්දි ගෙවන ලද නඩු සංඛ්‍යාව:: **(2010-2019)**	**31**	
# පෞද්ගලික වන්දි පමණක් ගෙවන ලද නඩු? 07	# රාජ්‍ය වන්දි පමණක් ගෙවන ලද නඩු? 07	# රාජ්‍ය හා පෞද්ගලික යන දෙවර්ගයේ ම වන්දි ලැබුණු නඩු? 17
පිරිනමන ලද අවම වන්දිය	රු. 50,000/=	
පිරිනමන ලද ඉහළම වන්දිය	රු. 1,075,000/= සහ රු. 50,000/=	



වන්දි ලැබුණු නඩු

වන්දි තීරණය කිරීමේ විෂමතා ද නිරීක්ෂණය කරන ලදී. වන්දි සම්බන්ධයෙන් අභිමතය අධිකරණයට තිබේ. කොපමණ වන්දියක් පුද්ගලයකුට ලබාදිය යුතු ද යන කාරණය ගැන සූත්‍රයක්/ පටිපාටියක් අනුගමනය කරනු නොලැබේ. එම නිසා එක් පුද්ගලයකුට සාපේක්ෂව තවත් පුද්ගලයකු අඩු වන්දියක් ලැබිය හැකි ය. වධහිංසනය ප්‍රමාණකරණය කළ නොහැකි බැවින්, වන්දි ප්‍රමාණය ගණනය කිරීම පහසු කාර්යයක් නොවේ. කෙසේ වෙතත්, අසාධාරණයන් වැළැක්වීම සඳහා එය විනිවිද පෙනෙනසුළු අන්දමින් සිදු විය යුතු ය.

7.3 බාල වයස්කරුවෝ:

1981-2019 වකවානුවේදී සොයාගත හැක්කේ නඩු තීන්දු හයක් පමණි. බාල වයස්කරුවන් යනු වයස 13-15 අතර පුද්ගලයන් ය. එම නඩුවලට සම්බන්ධ ගැහැණු ළමයින් දෙදෙනෙකු හා පිරිමි ළමයින් සිව්දෙනෙකි. සියලු සිදුවීම්වලදී බාල වයස්කරුවන් පහරදීම් පිළිබඳ පැමිණිලි කළ හ. කෙසේ වෙතත්, බාල වයස්කරුවකු පෙත්සම්කරු වූ විට අධිකරණය නඩුව මෙහෙයවන ආකාරය පැහැදිලි නැත. විශේෂයෙන් ම බාල වයස්කරුවන්ගෙන් සාක්ෂි ලබාගැනීමේදී

සහ මෙම ප්‍රහාරයන්ගේ දීර්ඝ කාලීන බලපෑම තක්සේරු කිරීම හා වන්දි තීරණය කිරීම සිදුකරන ආකාරය පැහැදිලි නැත.

පහත සඳහන් නඩු බාල වයස්කරුවන් සමග සම්බන්ධ ය:

a. SC 191/88, සාක්ෂි මඳකම නිසා නිෂ්ප්‍රභ කරන ලදී.

b. SC 190/94, 17 හැවිරිදි පිරිමි ළමයකුට පාසලේ නියෝජ්‍ය විදුහල්පති සහ ගුරුවරුන් විසින් පහරදීම සමග සම්බන්ධ ය. චූදිත වරදකරු විය.

c. SC 615/95, 14 හැවිරිදි ගැහැණු ළමයකුට සොරකම් චෝදනාවක් මත පහරදීම සමග සම්බන්ධ ය. ඇයට හෝස් පයිප්පයකින් පහර දී ගසක එල්ලන ලදී. එයින් 11, 13(1) සහ 13(2) වගන්ති උල්ලංඝනය වී ඇති බව තීරණය කරන ලදී.

d. SC 126/2008, 14 හැවිරිදි පිරිමි ළමයකුට සොරකම් චෝදනාවක් මත පහරදීම සමග සම්බන්ධ ය. 12(1) වගන්තිය උල්ලංඝනය වීම පිළිගන්නා ලදී.

e. SC 578/2011, 13 හැවිරිදි පිරිමි ළමයකුට සොරකම් චෝදනාවක් මත පහර දීමකි. චූදිත විසින් 11 වගන්තිය උල්ලංඝනය කර ඇති බව පිළිගැනිණි.

(*2018*) ලන්දගේ ඉෂාරා අංජලී (බාල වයස්කරු) සහ විජේසිංහ චූලාංගනී එදිරිව මාතර පොලිස් ස්ථානාධිපති සහ තවත් අය ඓතිහාසික නඩු තීන්දුවේදී (SC FR 677/2012), මහජන අයිතිවාසිකම් ආරක්ෂා කරනු පිණිස නීතිය ක්‍රියාත්මක කිරීමේ අධිකාරීන්ට පහත දැක්වෙන මාර්ගෝපදේශ ලබාදීමට පියවර ගන්නා ලදී:

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් මානව ගරුත්වයට ගරු කළ යුතු අතර සියලු පුද්ගලයන්ගේ මානව හිමිකම් ආරක්ෂා කරමින් පවත්වාගත යුතු ය.
- නීතිය ක්‍රියාත්මක කරන නිලධාරීන් නීත්‍යානුකූලත්වයේ, අවශ්‍යතාවේ, අනුපාතිකත්වයේ සහ මානුෂිකත්වයේ මූලධර්මවලට ගරු කළ යුතු ය.
- නීතිය ක්‍රියාත්මක කරන නිලධාරීන් හැම විටම වෙනස්කම් කිරීමකින් තොරව නීතියේ සමාන ආරක්ෂාව සුරක්ෂා කර ප්‍රවර්ධනය කළ යුතු ය. සියලු පුද්ගලයන් නීතිය ඉදිරියේ සමාන වන අතර වෙනස්කමකින් තොරව නීතියේ සමාන ආරක්ෂාවට ඔවුන්ට අයිතිය තිබේ.
- ජාති, ස්ත්‍රී පුරුෂ සමාජභාවය, ආගම්, භාෂා, වර්ණ, දේශපාලන අදහස්, ජාතික සම්භවය, දේපල, උපත හෝ වෙනත් තත්වයන් මත නීති විරෝධී ලෙස වෙනස්කම් නොකළ යුතු ය.
- කාන්තාවන්ගේ, බාලවයස්කරුවන්ගේ, අසනීප පුද්ගලයන්ගේ සහ ජාත්‍යන්තර මානව හිමිකම් ප්‍රමිති ප්‍රකාරව වෙනත් විශේෂ සැලකිලි අවශ්‍ය අයගේ විශේෂ තත්වය සහ අවශ්‍යතා වෙනුවෙන් සිදුකරන ඇතැම් විශේෂ විධිවිධාන අනුගමනය කිරීම අනීතික වෙනස්කම් කිරීමක් ලෙස සැලකෙන්නේ නැත (ඒ අතරට ගර්භණී කාන්තාවන් සහ නවජාත බිළිදුන්ගේ මව්වරුන් ඇතුළත් වේ).
- වැඩිහිටියන්ට හිමි සියලු මානව හිමිකම් ළමයින්ට ද හිමි ය. එයට අමතරව ළමයින්ට ඔවුන්ගේ ගරුත්වය සහ වටිනාකම පිළිබඳ හැඟීම ප්‍රවර්ධනය වන අයුරින් සැලකිය යුතු ය. එමගින් ඔවුන් නැවත සමාජයට ඇතුළත් කිරීම දිරිගැන්වේ. එය ළමයාගේ සුබවාදී රුචිකත්වයන් පරාවර්තනය කරයි. එම වයසේ පුද්ගලයන්ගේ අවශ්‍යතා සැලකිල්ලට ගනියි.
- ළමයින් රඳවා තබාගැනීම හෝ සිරගත කිරීම කළ යුත්තේ අවසන් පිළියම ලෙසයි. රඳවා තබාගන්නා කාලය හැකි තරම් කෙටි විය යුතු ය.
- ළමයින් වැඩිහිටි රැඳවුම්කරුවන්ගෙන් වෙන්කර රඳවා තැබිය යුතු ය.
- රඳවන ලද ළමයින්ට අමුත්තන් හමුවීමට සහ පවුලේ සාමාජිකයන් සමග සන්නිවේදනය පවත්වාගැනීමට හැකි ය.

- කාන්තාවන් සහ ළමයින්ට එරෙහි සියලු ප්‍රචණ්ඩ ක්‍රියා වැළැක්වීමේදී, ඒ සම්බන්ධයෙන් විමර්ශනය කිරීමේදී සහ අත්අඩංගුවට ගැනීම් කිරීමේදී, ඒ හා සම්බන්ධ වන්නේ රජයේ නිලධාරීන් ද, වෙනත් පුද්ගලයන් ද, එය සිදු වන්නේ නිවසේදී ද, ප්‍රජාවේදී ද, නැතිනම් නිල ආයතනයකදී ද යන කරුණු නොසලකා නීතිය ක්‍රියාත්මක කරන නිලධාරීන් නිසි ක්‍රියා පිළිවෙත් අනුගමනය කළ යුතු ය.

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් කාන්තාවන් චින්දිතයන් බවට පත්කිරීම වැළැක්වීම සඳහා දැඩි ක්‍රියාමාර්ග ගත යුතු ය. ස්ත්‍රී පුරුෂ සමාජභාවය කෙරෙහි අසංවේදී පොලිස් භාවිතාවන් හේතුවෙන් ඔවුන් නැවත චින්දිතයන් බවට පත්වීම සිදු නොවන බව තහවුරු කිරීම සඳහා ක්‍රියාමාර්ග ගත යුතු ය.

- අත්අඩංගුවට ගන්නා ලද හෝ රඳවන ලද කාන්තාවන් වෙනස්කම්වලින් පීඩාවට පත්කිරීම වැළැක්විය යුතු ය. සෑම ආකාරයක ම ප්‍රචණ්ඩත්වයෙන් හා සූරාකෑමෙන් ආරක්ෂා කළ යුතු ය.

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් කිසිදු තත්වයක් යටතේ වධහිංසනය සහ වෙනත් කෲර, අමානුෂික සහ නින්දා සහගත සැලකීම් නොකළ යුතු ය.

- කිසිදු පුද්ගලයකුගේ ගෞරවයට හා කීර්තියට නීති විරෝධී අන්දමින් පහර නොදිය යුතු ය.

- සෑම විටම, නීතිය බලාත්මක කිරීමේ නිලධාරීන් චින්දිතයන්ට සහ සාක්ෂිකරුවන්ට දයාවෙන් සහ කරුණාවෙන් සැලකිය යුතු ය.

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් හැමවිට ම පුද්ගලයකු අත්අඩංගුවට ගත් සැණින් අත්අඩංගුවට ගැනීමට හේතුව දැනුම්දිය යුතු ය.

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් විසින් සෑම අත්අඩංගුවට ගැනීමක් පිළිබඳව ම නිසි වාර්තා පවත්වාගත යුතු ය. අත්අඩංගුවට ගැනීමට හේතුව, අත්අඩංගුවට ගත් වේලාව, අත්අඩංගුවට ගත් පුද්ගලයා රැඳවුම් ස්ථානයකට ගෙන ගිය වේලාව, නීතිමය අධිකාරියක් වෙත ඉදිරිපත් කළ වේලාව, සම්බන්ධ නිලධාරීන්ගේ අනන්‍යතා, අත්අඩංගුවට ගත් ස්ථානය පිළිබඳ නිවැරදි තොරතුරු සහ ප්‍රශ්න කිරීම් පිළිබඳ විස්තර එම වාර්තාවට ඇතුළත් විය යුතු ය.

- අත්අඩංගුවට ගන්නා ලද ඕනෑම පුද්ගලයකුට නීතිමය අධිකාරියක් ඉදිරියේ පෙනී සිට තම අත්අඩංගුවට ගැනීම හෝ රඳවා තබාගැනීම සම්බන්ධ නීත්‍යානුකූලත්වය ප්‍රමාදයකින් තොරව සමාලෝචනය කරගැනීමේ අයිතිය තිබේ.

- නීතිය බලාත්මක කිරීමේ නිලධාරීන් බාල වයස්කරුවන් වැඩිහිටියන්ගෙන් ද, කාන්තාවන් පිරිමින්ගෙන් ද, දඬුවම් ලැබූ පුද්ගලයන් දඬුවම් නොලැබූ පුද්ගලයන්ගෙන් ද වෙන් කර තැබීමට හැකි සෑම පියවරක් ම ගත යුතු ය.

- නීතිය ක්‍රියාත්මක කිරීමේ නිලධාරීන් හැමවිට ම, නීතියට ගරු කළ යුතු අතර මෙම නීති ද අනුගමනය කළ යුතු ය.

මෙම මාර්ගෝපදේශවල බලපෑම අනාගත නඩුවලදී ඇගයීමට ලක්කරනු ඇත.

8. උල්ලංඝනයක් විශ්ලේෂණය කිරීමේදී අධිකරණය සැලකිල්ලට ගන්නා සාධක

8.1 වෛද්‍ය සාක්ෂි:

වෛද්‍ය සාක්ෂි වනාහි උල්ලංඝනයක් සිදු වී තිබේ ද යන්න තක්සේරු කිරීමේ අභ්‍යන්තර උපාංගයකි. විශේෂයෙන් ම 11 වගන්තියට අදාළව වධහිංසනය පිළිබඳ සාක්ෂි පෙත්සමකට උපකාරී වනු ඇත.

රජයේ වෛද්‍ය වාර්තා මෙන්ම පෞද්ගලික වෛද්‍ය වාර්තා ද අධිකරණය විසින් පිළිගනු ලබන බව නිරීක්ෂණය කරන ලදී.

අධිකරණ වෛද්‍ය නිලධාරි වාර්තාවක් පෙත්සම්කරුවාගේ කථනය සමග අනුකූල නොවන විට හෝ පෙත්සම්කරුවා වෛද්‍ය වාර්තාවක් සැපයීමට අසමත් වන විට, පෙත්සම දුර්වල වනු නිරීක්ෂණය කර තිබේ. රජයේ සහ පෞද්ගලික වෛද්‍ය වාර්තා පරස්පර වන අවස්ථා ද නිරීක්ෂණය කර තිබේ. කෙසේ වෙතත්, රජයේ වෛද්‍ය නිලධාරීන් විසින් වධහිංසනය පිළිබඳ සාක්ෂි නොමැති බව පවසා තිබියදී පෞද්ගලික රෝහලකින් එවැනි සාක්ෂි තිබෙන බව ප්‍රකාශ කළ විට, විනිසුරුවරුන් විසින් නඩුවේ සංදර්භයට අනුකූලව පෞද්ගලික වෛද්‍ය වාර්තාව සමාලෝචනය කර පිළිගෙන තිබේ.

කෙසේ වෙතත්, **පොලිස් නිලධාරීන් පෙත්සම්කරුවන්ට තර්ජනය කර අධිකරණ වෛද්‍ය නිලධාරිවරයාට බොරු කීමට බල කළ අවස්ථා** ද නිරීක්ෂණය කර තිබේ. ඇතැම් අවස්ථාවලදී බිය නිසා පෙත්සම්කරුවන් එවැනි උපදෙස් පිළිපැද තිබේ.

ඇතැම් අවස්ථාවලදී, **අධිකරණ වෛද්‍ය නිලධාරිවරයා විසින් ව්‍යාජ වාර්තා ඉදිරිපත් කර පෙත්සම්කරුවන්ට යුක්තිය ලබාගැනීමට කළ හැකි උත්සාහයන් වළක්වා ඇති ආකාරය පිළිකුල් සහගත ය. එවැනි අවස්ථාවලදී, තුවාල පෙත්සම්කරුවාගේ කතාව සමග අනුකූල නොවන බව අධිකරණ වෛද්‍ය නිලධාරිවරයා වාර්තා කර තිබේ.**

උදා: **SC FR 387/2013** (හේවා මුනුමුල්ලගේ අජිත් සහ වෙනත් අය එදිරිව කාලිංග ද සිල්වා - වැලිගම පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී, මාතරඅධිකරණ වෛද්‍ය නිලධාරි විසින් ඉදිරිපත් කරන ලද වාර්තාව ඔහුගේ අතිශය සැකසහිත චර්යාව නිසා විශ්වාස කළ නොහැකි බව ප්‍රකාශ කරන ලදී. එම අධිකරණ වෛද්‍ය නිලධාරිවරයා සම්බන්ධයෙන් අදාළ අංශ විසින් විමර්ශනයක් සිදුකළ යුතු බව අධිකරණය වැඩිදුරටත් පැවසී ය.

8.2 කාල බාධක:

මෙහිදී සමාලෝචනය කරන ලද සියලු නඩුවලදී අධිකරණය විසින් කාල බාධක (ඒවා අදාළ වී නම්) සැලකිල්ලට ගෙන නැත.

ව්‍යවස්ථාවේ 126(2) වගන්තියේ මෙසේ දැක්වේ:

"තමාට සම්බන්ධ එවැනි යම් මූලික අයිතිවාසිකමක් නැතහොත් භාෂා අයිතිවාසිකම යම් විධායක ක්‍රියාවක් මගින් හෝ පරිපාලන ක්‍රියාවක් මගින් කඩ කොට ඇති බවට හෝ කඩ කිරීමට අත්‍යාසන්නව පවතින බවට යම් තැනැත්තකු විසින් දෝෂාරෝපණයක් කරනු ලබන අවස්ථාවක ඔහු විසින් ම නැතහොත් ඔහු වෙනුවෙන් පෙනී සිටින නීතිඥවරයකුගේ මාර්ගයෙන්, එතැන් පටන් මාසයක් ඇතුළත, එම කඩ කිරීමෙන් සහනයක් හෝ පිහිටක් ලබා දෙන ලෙස ශ්‍රේෂ්ඨාධිකරණයෙන් අයැද සිටින ඉල්ලීමක්, තත්කාලයේ බලපවත්නා අධිකරණ රීතිවලට අනුකූලව ශ්‍රේෂ්ඨාධිකරණය අමතා ඉදිරිපත් කරන ලිඛිත පෙත්සමක් මගින් කළ හැක්කේ ය. එවැනි ඉල්ලීමක් පිළිබඳව ක්‍රියා කිරීමට ශ්‍රේෂ්ඨාධිකරණයෙන් පූර්ව අවසරයක් ලබා ගැනීමෙන් පසුව පමණක් එවැනි ඉල්ලීමක් පිළිබඳව ක්‍රියා කරගෙන යා හැක්කේ ය. එසේ අවසරය ඉල්ලා සිටි විට අවස්ථාවෝචිත පරිදි ඒ අවසරය ප්‍රදානය කිරීම හෝ අවසරය දීම ප්‍රතික්ෂේප කිරීම හෝ විනිශ්චයකාරවරයන් දෙදෙනකුට නොඅඩු සංඛ්‍යාවක් විසින් කළ හැක්කේ ය."

SC FR 555/2009 (කෝනේෂලිංගම් එදිරිව මේජර් මුතාලිෆ්) නඩුවේදී විනිසුරු තිලකවර්ධන ප්‍රකාශ කළේ මෙම නීතියේ ව්‍යතිරේඛය 1996 අංක 21 දරණ ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභා පනතෙහි තිබෙන බවයි.

පනතෙහි 13 කොටසෙහි මෙසේ දැක්වේ.

*"විධායක හෝ පරිපාලන ක්‍රියාවක් හේතුකොට ගෙන සිදු වී යයි කියනු ලබන මූලික අයිතිවාසිකම් උල්ලංඝනය කිරීමේ හෝ උල්ලංඝනය කිරීමට අත්‍යාසන්නව තිබීමේ හෝ දින සිට එක් මාසයක් ඇතුලත දී ඒ පිළිබඳ පැමිණිල්ලක් අතෘප්තියට පත් පාර්ශ්වයක් විසින් 14 වන වගන්තිය ප්‍රකාර කොමිෂන් සභාව වෙත කර ඇති අවස්ථාවක දී **ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 126(2) වන ව්‍යවස්ථාව ප්‍රකාර ඒ තැනැත්තා විසින් ශ්‍රේෂ්ඨාධිකරණය වෙත ඉල්ලීමක් ඉදිරිපත් කල යුතු කාලය වශයෙන් දක්වා ඇති එක් මාසයක කාලය ගණන් බැලීමේදී යට කී පැමිණිල්ල පිළිබ පරීක්ෂණය කොමිෂන් සභාව ඉදිරියේ පවත්නා කාල පරිච්ඡේදය ගණන් නොගත යුතුය."***

ඒ අනුව, මානව හිමිකම් කොමිෂන් සභාවට මාසයක් ඇතුළත පෙත්සම යොමුකර තිබේ නම්, පෙත්සම්කරුට කාල බාධකය මගහැරිය හැකි ය. කාල බාධකය සැලකිල්ලට ගත් බොහෝ නඩුවලදී මානව හිමිකම් කොමිෂන් සභාව වෙත පෙත්සම් ඉදිරිපත් කර තිබිණි. මෙමගින් මානව හිමිකම් කොමිෂන් සභාවේ සහ එහි කාර්යයන්ගේ වැදගත්කම පෙන්නුම් කරනු ලැබේ.ඒ පිළිබඳ මහජනයා තවත් දැනුවත් කළ යුතු ය.

කෙසේ වෙතත්, කාල බාධකය එක් එක් නඩුවේ සංදර්භය මත රඳාපවතී. SC FR 859/2009 (W. N. D ගුණසේකර එදිරිව පොලිස් කොස්තාපල් චන්දන - ග්‍රෑන්ඩ්පාස් පොලිස් ස්ථානය සහ තවත් අය) නඩුවේදී අග විනිසුරු ප්‍රියසාද් ඩෙප් පැවසුවේ කාල බාධක ප්‍රශ්නය නඩුව පවත්වාගෙන යාම සම්බන්ධයෙන් මූලික විරෝධතා මට්ටමේදී මතුකළ යුතු කරුණක් බවයි. විනිසුරුවරයා විසින් නඩු දෙකක් උපුටා දක්වන ලදී:

ලෙව්ලා කිත්තපජ්ජලගේ ඉලංගරත්න එදිරිව මහනුවර මහ නගර සභාව සහ තවත් අය (1995) නඩුවේදී ශ්‍රේෂ්ඨාධිකරණ දැරූ මතය වන්නේ කාල බාධක ප්‍රශ්නය විභාගය ඉදිරියට ගෙන යාමට අවසර දෙන අවස්ථාවේ සැලකිය යුතු කාරණයක් බවයි. ඉල්ලීමක් කාල රාමුවෙන් බැහැර නම්, අධිකරණයට එය විභාග කිරීමේ බලාධිකාරය නැත.

රොමේෂ් කුරේ එදිරිව උප පොලිස් පරීක්ෂක සහ වෙනත් අය (2008) නඩුවේදී කාල බාධක ප්‍රශ්නය පළමුවරට තර්ක මට්ටමේදී මතු කර තිබේ. එම විරෝධය සම්බන්ධයෙන් විරෝධතා ප්‍රකාශයෙහි කිසිවක් සඳහන් වූයේ නැත.

ඒ අනුව, ඉල්ලීමක් ඉදිරියට ගෙන යන අතරතුර කාල බාධක තර්කය ඇගයීමට ලක්කරන ආකාරය නිරීක්ෂණය කිරීම රසවත් ය. බොහෝ ඉල්ලීම්වලදී කාල බාධක පිළිබඳ තර්ක මූලික විරෝධතා මට්ටමේදී පළමුව මතු කර නොතිබිය හැකි ය. එම නිසා ඒ පිළිබඳ පර්යේෂණ අවශ්‍ය ය.

8.3 වගකිවයුතු පුද්ගලයකුට දැනුම්දීම:

අධිකරණය විසින් පෙත්සම්කරුගේ කතාව විභාග කරන විට, වධහිංසනය පිළිබඳ පෙත්සම්කරු දැනුම්දුන්නේ කාටද යන්න හා ඒ හා සම්බන්ධ සංදර්භය සැලකිල්ලට ගනු ලැබේ. උදා: මහේස්ත්‍රාත්වරයාට දැනුම්දීම හෝ වධහිංසනය පිළිබඳ මහේස්ත්‍රාත්වරයාගේ නිරීක්ෂණ, අධිකරණ වෛද්‍ය නිලධාරි වාර්තාව, අයදුම්පත සහ මානව හිමිකම් කොමිෂන් සභාවේ ආඛ්‍යානය. නිලධාරියකුට දැනුම්දීම සංදර්භය මත රඳාපවතින බව අධිකරණය විසින් නිරීක්ෂණය කර තිබේ. මහේස්ත්‍රාත්වරයාට හෝ වෛද්‍ය නිලධාරිවරයාට වධහිංසනය හෙළිදරව් නොකරන ලෙස චින්දිතයාට තර්ජනය කිරීමට තිබෙන ඉඩ එයට හේතුවයි.

9. වක්‍ර ප්‍රශ්න

9.1 පොලිස් චර්යාව:

මෙම වාර්තාවේ විභාග කර තිබෙන බොහෝ අපචාරවලට වගකිවයුත්තේ පොලිසියයි. තමන් සේවය සලසන පුරවැසියන් ආරක්ෂා කිරීමේ වගකීම ඇති පොලිස් බලකාය විසින් මහජනයා වෙත මුදාහැර තිබෙන චර්යාව පිළිකුල් සහගත ය.

පර්යේෂකයන් විසින් පහත දැක්වෙන කරුණු නිරීක්ෂණය කරන ලදී:

- අවස්ථා කීපයකදී ම පොලිසිය සාක්ෂි හෝ චෝදනා නිර්මාණය කිරීමට හෝ චින්දිතයන්ගේ ජීවිතවලට තර්ජනය කිරීමට උත්සාහ කළේ ය. ඒ සඳහා පෙත්සම්කරු සතුව බෝම්බයක්, අත් බෝම්බයක් හෝ ගංජා තිබුණු බවට ව්‍යාජ චෝදනා යොදාගන්නා ලදී. පුද්ගලයන්ගේ ඇඟිලි සලකුණු බෝම්බ මත බලෙන් සටහන් කරගත් අවස්ථා සහ/ හෝ කටඋත්තර ලේඛන බලහත්කාරයෙන් අත්සන් කරගත් අවස්ථා නිරීක්ෂණය කරන ලදී. මහේස්ත්‍රාත්වරයා විසින් බොහෝ විට පෙත්සම්කරුවන් ව්‍යාජ චෝදනාවලින් නිදොස්කොට නිදහස් කර තිබේ. එහෙත්, අදාළ පොලිස් ස්ථාන මෙම නින්දිත ක්‍රියාව සම්බන්ධයෙන් දෝෂාරෝපණයට ලක්කළා ද යන්න පැහැදිලි නැත.

- පොලිසිය විසින් වධහිංසා පමුණුවා **පුද්ගලයන්ගේ යහපැවැත්මට නිවැරදි කළ නොහැකි හානි සිදුකර තිබේ**. උදාහරණයක් ලෙස SC 162/91 (රත්නපාල එදිරිව ධර්මසිරි - රත්නපුර මූලස්ථාන පොලිස් පරීක්ෂක සහ තවත් අය) නඩුවේදී පෙත්සම්කරුගේ පෙණහලු පොලිසිය විසින් කරන ලද අධික වධහිංසනය නිසා ඉවත්කිරීමට සිදු විය. SC FR 471/2000 නඩුවේදී, පෙත්සම්කරු මියගියේ තුවාල නිසා ය. ඔහුට කරන ලද තුවාල 20ක් පශ්චාත් මරණ පරීක්ෂණයේදී හඳුනාගන්නා ලදී. SC FR 213/2001 (සිරිපාල එදිරිව උප පොලිස් පරීක්ෂක විජේසිංහ සහ තවත් අය) නඩුවේදී වධහිංසනය හේතුවෙන් පෙත්සම්කරු ලිංගික අකර්මන්‍යභාවයට පත් වූ අතර ජීවිතයේ ඉතිරි කාලය තුළ මුත්‍රා කිරීම සඳහා කැතීටරයක් භාවිතා කිරීමට ඔහුට සිදු විය.

- SC(FR) 430/2005 (H. A. මනෝජ් ටෙල්ස් එදිරිව ගොකරැල්ල පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී නිරීක්ෂණය කරන ලද පරිදි පෙත්සම්කරු පොලිසිය තුළට ගෙන වෙනම කාමරයකදී පහරදෙන ලදී. පෙත්සම්කරුගේ ගුදයට එස්ලෝන් බටයක් ඇතුළු කරන ලදී. SC FR 66/97 (ජයසිංහ එදිරිව උප පොලිස් පරීක්ෂක ජයකොඩි සහ තවත් අය) නඩුවේදී පෙත්සම්කරු මාංචු දමා, නිරුවත් කර, ඔහුගේ නහයට සහ ලිංගික අවයවවලට මිරිස් කුඩු දමන ලදී. ඔහුව කුලුනක එල්ලන ලදී. SC FR 244/2010 නඩුවට අනුව පෙත්සම්කරුගේ නහයට සහ ඇස්වලට කොච්චි මිරිස් දමන ලදී. තමන් නොකළ සොරකමක් සම්බන්ධයෙන් තමන් වධහිංසනයට ලක්කරන ලද බව පෙත්සම්කරු පවසයි (මහේස්ත්‍රාත්වරයා විසින් පසුව ඔහු මෙම චෝදනාවෙන් නිදොස් කොට නිදහස් කරන ලදී). වධහිංසා කිරී ම සඳහා පොලිසිය සාමාන්‍යයෙන් භාවිතා කරන්නේ පොලු, හෝස් පයිප්ප හෝ සමාන ආයුධයි. බොහෝ අවස්ථාවලදී චින්දිතයන් අස්ථි බිඳීම් හා තැලීම්වලට ලක්වූ හ. පෙත්සම්කරුවන්ට වමනය යනතෙක් හෝ සිහි නැතිවන තෙක් කම්මුල් පහර දුන් අවස්ථා ද තිබේ.

- In SC(FR) No. 1006/2009 (හපුගේගොඩ ජගත් පෙරේරා එදිරිව මීරිගම පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී පැමිණිලිකරු පොලිසියට ගොස් තිබෙන්නේ තම සේවකයාට උදව් කිරීමටයි. දෙවන වගඋත්තරකරු ඔහු එහි සිටින්නේ ඇයිදැයි විමසා, පහර දී ඔහුගේ දත් කඩා, හේතුවකින් තොරව ඔහු සිර මැදිරියකට දමා තිබේ. SC FR No. 09/2011 (සූරියආරච්චිගේ ලක්ෂ්මන් ද සිල්වා එදිරිව බී.එම් අජන්ත වීරසිංහ - ස්ථානාධිපති කිරිබත්ගොඩ පොලිස් ස්ථානය සහ තවත් අය) නඩුවේදී පෙත්සම්කරු වධහිංසනයට ලක් කරනු ලැබුවේ අඟුරුවලින් පුළුස්සා මිරිස් දැමීමෙනි.

- ඇතැම් නඩුවලදී පුද්ගලයාගේ ඇස් බැඳ, **පාළු නිවෙස්** වෙත ගෙන යන ලදී. ඇතැම් අත්අඩංගුවට ගැනීම් කර තිබෙන්නේ පෞද්ගලික වාහන මගිනි. අත්අඩංගුවට ගැනීම කරන අවස්ථාවේ පොලිස් නිලධාරීන් සිවිල් ඇඳුමින් සැරසී සිටි අවස්ථා ද තිබේ. එවැනි අවස්ථාවලදී සාක්ෂි පිණිස පොලිස් නිලධාරීන් හඳුනාගැනීමට පුද්ගලයන්ට දුෂ්කර විය.

- **වෙනත් පෞද්ගලික පාර්ශ්ව විසින් පහරදීම**: SC(FR) 260/2011 (A.A දිනේෂ් ප්‍රියංකර පෙරේරා එදිරිව පානදුර උතුර පොලිස් ස්ථානාධිපති සහ තවත් අය), SC (FR) 09/2011(සූරියආරච්චිගේ ලක්ෂ්මන් ද සිල්වා, බී.එම් අජන්ත වීරසිංහ එදිරිව කිරිබත්ගොඩ පොලිස් ස්ථානාධිපති සහ තවත් අය), SC 18/87 යන නඩු පෙත්සම්කරුවන් අත්අඩංගුවේ සිටියදී වෙනත් පෞද්ගලික පාර්ශ්ව විසින් පහරදීම පිළිබඳ උදාහරණ වේ.

- පොලිසිය අත්අඩංගුවේ සිටින පුද්ගලයන්ට **නීතිඥවරුන් මුණගැසීමේ අවස්ථාව අහිමි කිරීමේ** හෝ පවුලේ අය හමුවීමේ අවස්ථාව අහිමි කිරීමේ හෝ අවස්ථා ද නිරීක්ෂණය කර තිබේ.

- **ප්‍රසිද්ධියේ ලැජ්ජාවට පත්කිරීම**: SC(FR) 514/2010 (හේවාවසම් සරුක්කාලිගේ රත්නසිරි එදිරිව වැලිපැන්න පොලිස් ස්ථානාධිපති සහ තවත් අය) වැනි නඩුවලදී, පෙත්සම්කරු ප්‍රසිද්ධියේ අවමානයට පත්කරන ලදී. එම සිද්ධියේදී පෙත්සම්කරු කිලෝමීටර් අටක් ඇනින් පිහිටි කෝවිලකට ඇදගෙන යන ලදී. පළමු වගඋත්තරකරු විසින් එක් කැරැලිකරුවකු අල්ලාගන්නා ලද බව ප්‍රසිද්ධියේ පවසන ලදී. SC 235/96 (සුබසිංහ එදිරිව පොලිස් කොස්තාපල් සඳුන් සහ තවත් අය) නඩුවේදී ද සමාන සිදුවීමක් වාර්තා විය. පොලිස් නිලධාරීන් පෙත්සම්කරු පෞද්ගලික වාහනය ප්‍රසිද්ධියේ ප්‍රදර්ශනාත්මකව රැගෙන යමින් ලැජ්ජාවට පත්කරන ලදී. SC FR No. 527/2011 (සජිත් සුරංග බෝගහවත්ත එදිරිව තෙලිකඩ පොලිස් ස්ථානාධිපති සහ තවත් අය) සහ 689/2012 (රාජපක්ෂ පතිරගේ ජස්ටින් එදිරිව පොලිස් ස්ථානාධිපති - හෝමාගම සහ තවත් අය) නඩු පොලිසිය පෙත්සම්කරුවන් ප්‍රසිද්ධියේ ලජ්ජාවට පත්කිරීම පිළිබඳ වෙනත් උදාහරණ වේ.

- **පුද්ගලයකු අත්අඩංගුවට ගැනීම සඳහා ගෙන්වාගැනීම වෙනුවෙන් පොලිසිය ඇතැම්විට පවුලේ සාමාජිකයන් රඳවා තබාගැනීම** කරන බව නිරීක්ෂණය කර තිබේ. SC FR 09/2011 නඩුවේදී, සාම නිලධාරියකුට අපරාධ නඩු විධාන සංග්‍රහයේ 32(1) වගන්තිය ප්‍රකාරව සැකකරුවකු අත්අඩංගුවට ගැනීම හා රඳවා තැබීම සඳහා ගෙන්වාගැනීම වෙනුවෙන් එම සැකකරුගේ කලත්‍රයා හෝ පවුලේ සාමාජිකයකු රඳවා තබාගැනීම සාධාරණීකරණය කළ නොහැකි බව අධිකරණය පැවසී ය. එවැනි ක්‍රියා රටේ නීතිය මගින් අධෛර්යවත් කළ යුතු ය. SC FR 387/2013 නඩුවේදී, පෙත්සම්කරුගේ සහෝදරයා අත්අඩංගුවට ගනු ලැබුවේ පෙත්සම්කරු පොලිසියට ගෙන්වාගැනීමටයි. එහිදී පොලිසිය ඔහුට පහරදුන්නේ ය.

- **ආකල්ප**: වගඋත්තරකරුවන් පුද්ගලයකු අත්අඩංගුවට ගැනීම කරන අවස්ථාවේදී බිමත්ව සිටි අවස්ථා කිපයක් පර්යේෂණය විසින් නිරීක්ෂණය කරන ලදී. දඩුවම් පැමිණවීමේ පර්යායෙන් ගත් කල මෙම සුවිශේෂ කරුණ තක්සේරු කිරීම අපහසු මුත්, විශේෂයෙන් ම 2000-2019 කාල රාමුවේදී පෙත්සම්කරුවන් කිපදෙනෙකු ම වගඋත්තරකරුවන් මත්පැන් පානය කර සිටි බව පැවසූ හ. SC (FR) 26/2009 (දොඩම්පෙ ගමගේ අසංක එදිරිව පිටබැද්දර පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී දී පොලිසිය පොලිස් ස්ථානය තුළදී ම මත්පැන් පානය කරන ලද බවට චෝදනාවක් එල්ල විය.

- **රඳවා තබාගැනීම**: ව්‍යාජ ලෙස ගොතන ලද නඩුවක් මත පුද්ගලයන් පොලිසියට රැගෙන යාමේ සිදුවීම් රැසක් නිරීක්ෂණය කරන ලදී. SC FR 608/2008 (සරත් කුමාර නයිදොස් එදිරිව මොරටුව පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී පෙත්සම්කරු ව්‍යාජ චෝදනා දෙකක් මත දින අටක් රිමාන්ඩ් භාරයේ තබා පසුව නිදහස් කරන ලදී. SC FR 1/2001 (රෝහණ මයිකල් එදිරිව සලේ - නාරාහේන්පිට පොලිස් ස්ථානාධිපති සහ තවත් අය) පෙත්සම්කරු ඕනෑවට වැඩි කාලයක් රඳවා තබාගත් බව නිරීක්ෂණය කරන ලදී. SC FR 198/2011 (තුඩුගේ අවලංක ශ්‍රීලාල් පෙරේරා එදිරිව මාදම්පේ පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී පෙත්සම්කරු කිසි සේත් ම මහේස්ත්‍රාත්වරයකු වෙත ඉදිරිපත් කළේ නැත. SC FR 241/14 නඩුවේදී පොලිසිය පෙත්සම්කරුට බොරුවක් පැවසී ය. ඒ මහේස්ත්‍රාත් උසාවියේ පෙත්සම්කරුට එරෙහිව නඩුවක් ගොනු කර ඇති බවයි. එහෙත් එවැන්නක් සිදු කර නොතිබිණි. නීතිය බලාත්මක කිරීමේ නිලධාරීන් විසින් ව්‍යාජ ලේඛන සැකසීමට සහ සිදුවීම් පාවිච්චි කරමින් නීති උල්ලංඝනය පිළිබඳ සත්‍යය යටපත් කිරීමටත් උත්සාහ කළ බව සොයාගන්නා ලදී. එසේ උත්සාහ කළේ විශේෂයෙන් ම අත්අඩංගුවට ගත් වේලාව පිළිබඳ ලේඛනගත කිරීමෙහිදී බව සොයාගැනිණි.

අබසිං බණ්ඩා එදිරිව ගුණරත්න සහ තවත් අය (SC No 109/95) නඩුවේදී, විනිසුරු කුලතුංග මෙසේ පැවසී ය: *"පොලිසිය විසින් කරනු ලබන මූලික අයිතිවාසකම් උල්ලංඝනය කිරීම් 1978 ආණ්ඩුක්‍රම ව්‍යවස්ථාව ක්‍රියාත්මක කිරීමෙන් අවුරුදු 18ක් පමණ කාලයකට පසුව පවා සිදුවෙන බව කිව යුතුයි. මෙම අධිකරණය විසින් එවැනි උල්ලංඝනයන් ගණනාවක් ම හෙළා දැක තිබුණත්, එය තවමත් සිදුවෙනවා. මෙම අධිකරණය කලින් නඩු තීන්දුවලදී මෙම තත්වය පවතින බව නිරීක්ෂණය කර තිබෙනවා. එයට හේතුව වන්නේ එවැනි ක්‍රියා*

සම්බන්ධයෙන් තවමත් පොලිස් නිලධාරීන් දඬුවමින් නිදහස් වීමයි. අධිකාරීන් විසින් මෙම තත්වය අවසන් කිරීමට ප්‍රතිකර්ම ක්‍රියාමාර්ග ගනු ඇතැයි බලාපොරොත්තු වෙනවා.”

ඉහත සියලු කාරණයන්ගෙන් පෙන්නුම් කරනු ලබන්නේ පොලිස් ස්ථානවල වධහිංසනයන් සුලබ බවයි. පුද්ගලයන්ට ආචාරශීලීව සහ පරිස්සමෙන් සලකන ලෙස අධිකරණය ඉල්ලා සිටියත් එයින් ඵලක් වී නැත. පසුගිය කාලය තුළ කිසිදු වෙනසක් සිදු වී නැත.

උදා:
SC 65/88 නඩුවේදී, අත්අඩංගුවට ගන්නා ලද පුද්ගලයකුට සැලකිය යුතු ආකාරය පිළිබඳ සියලු පොලිස් ස්ථානවලට උපදෙස් දිය යුතු බව අධිකරණය විසින් පොලිස්පතිවරයාට දැනුම් දෙන ලදී.

SC 89/91 (ෆායිස් එදිරිව නීතිපති සහ තවත් අය) නඩුවේදී සියලු පොලිස් ස්ථානාධිපතිවරුන්ට ආචාරශීලිත්වය හා පරිස්සම පිළිබඳ උපදෙස් දෙන ලෙස පොලිස්පතිවරයාගෙන් ඉල්ලා සිටින ලදී. .

SC 71/96 (රිෆයිඩීන් එදිරිව පොලිස් පරීක්ෂක ජයලත් - වැල්ලවත්ත පොලිස් ස්ථානය සහ තවත් අය) නඩුවේදී ද පොලිස්පතිගෙන් ඉහත කී ආකාරයේ උපදෙස් පොලිස් ස්ථානවලට ලබාදෙන ලෙස ඉල්ලා සිටින ලදී.

SC 559/03 (සර්ජුන් එදිරිව කමල්ඩීන් සහ තවත් දෙදෙනෙක්) නඩුවේදී බලය අපහරණය පිළිබඳ විනිසුරුවරුන් විසින් අදහස් දක්වන ලදී.

SC FR 107/2007 (බන්දුල සමරසේකර එදිරිව ගිනිගත්හේන පොලිස් ස්ථානාධිපති සහ තවත් අය) නඩුවේදී, නිලධාරීන් සාමාන්‍ය ජනතාවට වඩා ඉහළ සුචරිතයකින් හා ආචාරධාර්මික වටිනාකම්වලින් යුක්ත විය යුතු බව අධිකරණය ප්‍රකාශ කළේ ය.

SC FR 689/2012 නඩුවේදී විමර්ශනයක් සිදුකර, පළමු වගඋත්තරකරු සම්බන්ධයෙන් ක්‍රියාමාර්ග ගන්නැයි අධිකරණය පොලිස්පතිවරයාට දැනුම් දුන්නේ ය.

In SC 677/2012 (ලන්දගේ ඉෂාර අංජලී, විජේසිංහ චූලාංගනී එදිරිව මාතර පොලිස් ස්ථානාධිපති සහ වෙනත් අය) නඩුවේදී, නීතිය බලාත්මක කිරීමේ නිලධාරීන් මානව ගරුත්වයට ගරු කරමින් රැකගත යුතු ආකාරය සහ සියලු පුද්ගලයන්ගේ මානව හිමිකම් නහාසිටුවමින් පවත්වාගත යුතු ආකාරය ආදිය පිළිබඳ මාර්ගෝපදේශ අධිකරණය විසින් පොලිස්පතිවරයාට ලබාදෙන ලදී.

ඉහත දක්වන ලද පරිදි පසුගිය කාලය පුරා අධිකරණය විසින් බොහෝ වර විනය ක්‍රියාමාර්ග ගැනීම පිළිබඳ පොලිස්පතිවරයා දැනුවත් කර තිබේ. අත්අඩංගුවේදී පුද්ගලයන්ට සැලකිය යුතු ආකාරය පිළිබඳ පැහැදිලි කර දී තිබේ. එනමුදු, නීතිය බලාත්මක කිරීමේ නිලධාරීන් විසින් සිදුකරන වධහිංසන සහ මූලික අයිතිවාසිකම් උල්ලංඝනයන් දිගින් දිගට ම පවතියි. වන්දි ප්‍රමාණවත් නැත. අවශ්‍ය වන්නේ මූලික අයිතිවාසිකම් පූජනීය ව්‍යවස්ථාමය හිමිකම් ලෙස සැලකීම හා ඒවා ආරක්ෂා කිරීම පුරවැසියන් විසින් භාර දී තිබෙන නිලධාරීන් ම ඒවා උල්ලංඝනය නොකර සිටීමයි. මෙම තත්වය වළක්වාගැනීම සඳහා වඩා තද විනය ක්‍රියාමාර්ග අවශ්‍ය ය. එවැනි විනය ක්‍රියාමාර්ග තිබියදී පවා පොලිසිය බලය හා අධිකාරය අපහරණය කරන බවට සාක්ෂි තිබේ.

1994 අංක 22 වධහිංසන පනත

වධහිංසනය සහ වෙනත් කෲර අමානුෂික හෝ නින්දා සහගත සැලකිලි හෝ දඬුවම්වලට එරෙහි සම්මුතිය යටතේ වගකීම් ප්‍රකාරව, 1994දී රජය විසින් අංක 22 දරණ වධහිංසන පනත බලාත්මක කරන ලදී. ඒ අනුව, වධහිංසනය ඇප ලබා නොදිය හැකි වරදක් ලෙස සැලකේ. යුද තත්වය, යුද තර්ජන, පොදු හදිසි අවස්ථා හෝ ඉහළ නිලධාරීන්ගෙන් ලැබෙන නියෝගයක් වධහිංසනය සම්බන්ධයෙන් දඬුවම් නොලැබ සිටීමට ආරක්ෂාවක් ලෙස නොසැලකේ.

කෙසේ වෙතත්, පනත පොදුවේ සම්මුතියේ වධහිංසනය පිළිබඳ අර්ථ නිරූපණයට අනුකූල වන මුත්, එහි 'විඳවීම' ඇතුළත් වන්නේ නැත. ඒ වෙනුවට තිබෙන්නේ 'දැඩි ශාරීරික හෝ මානසික වේදනාව' යි. ක්‍රියාවේ බලපෑම මෙයින් අඩුවන්නේ නැත.

පනතට අනුව වධහිංසනය යන්නෙන් අදහස් වන්නේ:

"වධදීම යන්නෙහි ව්‍යාකරණානුකූල වෙනස්වීම් සහ සජාතීය යෙදුම් ඇතුළුව, 'වධදීම' යන්නෙන් වෙනත් යම් තැනැත්තෙකුට දැඩි ශාරීරික හෝ මානසික වේදනා ගෙන දෙන්නා වූ ද -

(අ) පහත දැක්වෙන කාර්යයන් සඳහා

එනම්:-

(i) එකී වෙනත් තැනැත්තාගෙන් හෝ තුන්වන තැනැත්තකුගෙන් යම් තොරතුරක් හෝ පාපොච්චාරණයක් ලබාගැනීම; හෝ

(ii) එකී වෙනත් තැනැත්තා හෝ තුන්වන තැනැත්තකු වසින් කරන ලද හෝ කරන ලදැයි සැක කෙරෙන යම් ක්‍රියාවක් සඳහා එම තැනැත්තාට දඬුවම් කිරීම සඳහා වූ ද;

(iii) එකී වෙනත් තැනැත්තා හෝ තුන්වන තැනැත්තකු බියගැන්වීම හෝ ඔහුට බලකිරීම සඳහා;

(ආ) වෙනස්කම් කිරීම මත පදනම් වූ වෙනත් හේතුවක් නිසා කරන්නා වූ ද

සෑම අවස්ථාවකදී ම රජයේ නිලධරයකු හෝ නිල තත්වයකින් කටයුතු කරන වෙනත් තැනැත්තකු විසින් හෝ එම නිලධරයාගේ හෝ තැනැත්තාගේ මුල්වීමෙන් හෝ කැමැත්ත ඇතිව හෝ එම නිලධරයාගේ හෝ තැනැත්තාගේ විරුද්ධ නොවීම මත කරන්නා වූ ද ක්‍රියාවක් අදහස් වේ."

පනත හා වධහිංසනය සම්බන්ධ වැරදිවලට එහි දැඩි දඬුවම් තිබුණ ද, මෙම පනත යටතේ මුල්ම නඩුව පවරනු ලැබුවේ 2000 වසරේදී බව සටහන් කිරීම වැදගත් ය. පනත මගින් පුද්ගලයන්, පුරවැසියන් සහ නීතිය බලාත්මක කිරීමේ අධිකාරීන් ආවරණය වන අතර වැරදිකරුවන් බවට ඔප්පු වුවහොත්, වසර 7-10 දක්වා සිරදඬුවම් සහ රු. 10,000-50,000 දක්වා දඩයක් නියම කළ හැකි ය.

පනතේ 2 කොටසෙහි මෙසේ දැක්වේ:

2. (1) වෙනත් යම් තැනැත්තකුට වධදෙන යම් තැනැත්තකු මේ පනත යටතේ වරදකට වරදකරු විය යුතු ය.

(2) (1) වන උපවගන්තිය යටතේ වූ වරදක් -

(අ) සිදු කිරීමට තැත් කරන;

(ආ) සිදු කිරීමට ආධාර හා අනුබල දෙන;

(ඇ) සිදු කිරීමට කුමන්ත්‍රණය කරන

යම් තැනැත්තකු මේ පනත යටතේ වරදකට වරදකරු විය යුතු ය.

(3) ලිඛිත නීතිය මගින් පිළිගත් කවර හෝ ස්වරූපයක දඬුවමකට නිසි බලය ඇති අධිකරණයක ආඥාව අනුව යම් තැනැත්තකු යටත් කිරීම (1) වන උපවගන්තිය යටතේ වරදක් වන ලෙස නොසැලකිය යුතු ය.
(4) මේ පනත යටතේ වරදකට වරදකරු වන තැනැත්තකු මහාධිකරණය විසින් නඩු විභාගයකින් පසුව වරදකරු කරනු ලැබූ විට අවුරුදු හතකට නොඅඩු සහ රුපියල් පනස් දහසකට නොවැඩි දඩයකට යටත් විය යුතු ය.

ඒ අනුව, මෙම වාර්තාව විසින් 1994 අංක 22 දරණ වධහිංසන පනත යටතේ නඩු 10ක් සලකා බලමින් විනිශ්චයකාරවරුන් විසින් පනත අර්ථ නිරූපණය කර ඇති ආකාරය පිළිබඳ රටාවක් හෝ අවබෝධයක් හෝ සලකුණු කිරීමට උත්සාහ කරයි.

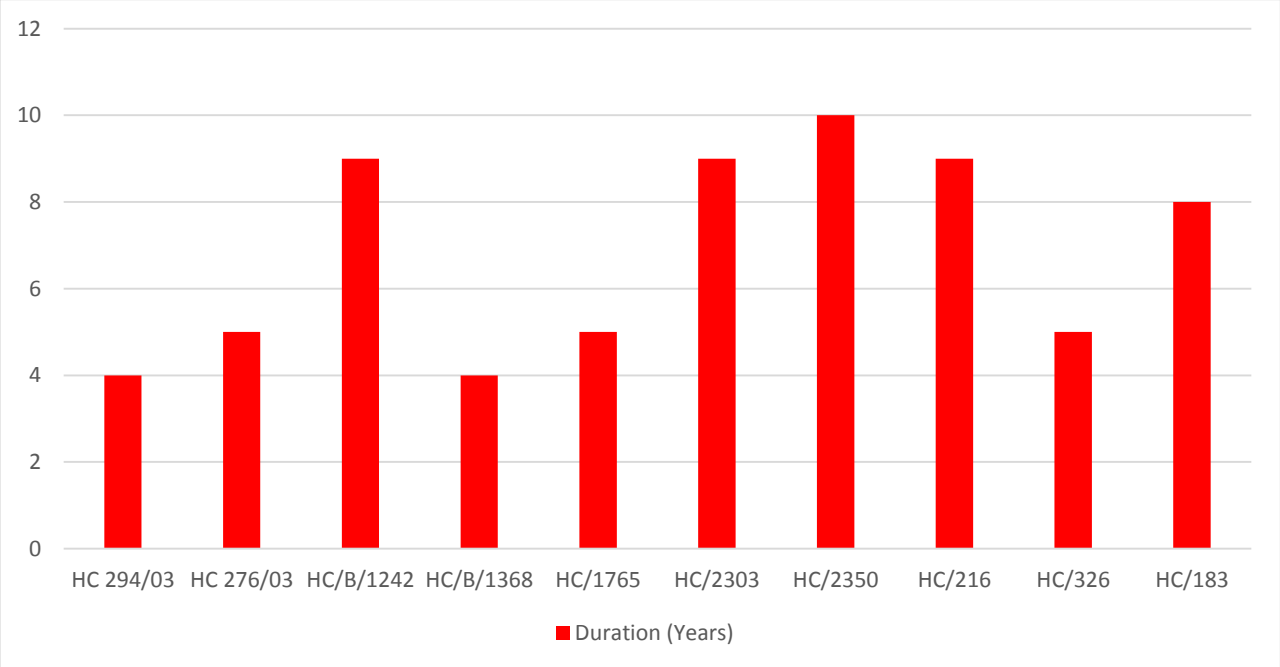
මූලික අයිතිවාසිකම් උල්ලංඝනය කිරීම මෙන් නොව, මෙහිදී අධිකරණය විසින් චෝදනාව එල්ල වූ වරද ගැඹුරින් විභාග කරන ලද බව නිරීක්ෂණය කරන ලදී. වූදිත වරදකරු වුවහොත් සිරගත කරනු ලැබීම එයට හේතු විය හැකි ය. පෞද්ගලික හෝ රාජ්‍ය මට්ටමින් වන්දි ගෙවිය හැකි මූලික අයිතිවාසිකම් උල්ලංඝනයකදී මෙන් නොව වැරදිකරු වන නඩු තීන්දුවක් සමග වසර 7-10 දක්වා සිරදඬුවමක් ද පැනවේ.

1. නඩු විශ්ලේෂණය:

නිරීක්ෂණ: මෙම පර්යේෂණය සඳහා විශ්ලේෂණය කරනු ලැබුවේ නඩු 10ක් පමණි. සෑම නඩුවක් ම තෝරාගනු ලැබුවේ අහඹු ලෙස ය. එමගින් කිසියම් ස්ථානයක් නියෝජනය වන්නේ නැත. අභියාචනා ලෙස පසුව අභියාචනාධිකරණයට ඉදිරිපත් කරන ලද නඩු කීපයක් ද මෙම නඩු 10 අතරට ඇතුළත් කර තිබේ.

කාල පරාසය:
සියලු නඩු සඳහා කාල පරාසය පහත දැක්වෙන පරිදි අවුරුදු 4-10 අතර විය.

නඩු අංකය	කාලය (අවුරුදු)
HC 294/03	4
HC 276/03	5
HC/B 1242/2009	9
HC/B/1368/11	4
HC/ 1765/2003	5
HC/ 2303/2007	9
HC/ 2350/2007	10
HC/216/16	9
HC/326/2003	5
HC/183/2007	8



සාක්ෂිකරුවන්ගේ ප්‍රකාශ: HC 1765/2003 (පානදුර) නඩුවේදී, අධිකරණය විසින් දැරූ අදහස වන්නේ සාක්ෂිකරුවකුට සියලු විස්තර සහිතව ගත් ඡායාරූපයක් වැනි මතකයක් තිබිය නොහැකි බවයි. අධිකරණය විසින් **Bhognibhain Hirjibhai එදිරිව ගුජරාට් රජය (1983)** මෙම කරුණ වැඩිදුරටත් අවධාරණය කිරීම සඳහා උපුටා දැක්වී ය. වැඩිදුරටත්, **Arendtsz එදිරිව Wilfred Peiris G. A. W 121** උපුටා දක්වමින් මෙසේ පවසන ලදී: *"සාක්ෂිකරුවකුගේ ප්‍රකාශය ප්‍රමාද වූ පමණින් අධිකරණය එවැනි සාක්ෂියක් ප්‍රතික්ෂේප කිරීමට බැඳී නැත. ස්වයංසිද්ධබවෙහි, සමකාලීනත්වයෙහි සහ කාලීනත්වයෙහි පරීක්ෂාවන් යොදාගනිමින්, අධිකරණය විසින් පරිස්සම් සහගතව ඉදිරියට යමින් ප්‍රමාදය සඳහා හේතු විමසා බලයි.එම හේතු සාධාරණ නම් සහ විය හැකිනම්, නඩුව විභාග කරන විනිසුරුවරයාට ප්‍රමාද වී සාක්ෂියක් ලබාදුන් සාක්ෂිකරුවකුගේ සාක්ෂියක් මත ක්‍රියාත්මක විය හැකි ය."*

CA 277/2017 නඩුවේදී විනිසුරු සිසිර ද ආබෘ විසින් **දැඩිමුනි ඉන්ද්‍රෙස්න, දැඩිමුනි විමලසේන එදිරිව නීතිපති (2008)** නඩුවේ තීන්දුව පිළිගන්නා ලදී එහිදී මෙසේ ප්‍රකාශ විය: "සාක්ෂිකරුවකු විසින් භෞතික ලෙස දෙන ලද සාක්ෂියක් අභියෝගයට ලක් නොකරන විට, එම සාක්ෂිය සැක සහිත නොවන බව හා එය විරුද්ධ පාර්ශ්වය විසින් පිළිගෙන ඇති බව සැලකේ. මෙම මූලධර්මය **පිලිප්පු මැන්ඩිගේ නාලක ක්‍රිශාන්ත කුමාර තිසේරා එදිරිව නීතිපති (2007)** නඩුවේදී ද ප්‍රතිරාවය විය. CA 277/2017 නඩුවේදී, කාලීනභාවයේ හා සම්භාවිතාවේ පරීක්ෂාව යොදාගන්නා ලදී.

අධිකරණ විසින් වැඩිදුරටත් වෛද්‍ය සාක්ෂි, සාක්ෂිකරුවන්ගේ ප්‍රකාශ, මානව හිමිකම් කොමිෂන් සභාවේ ප්‍රකාශ, ශ්‍රේෂ්ඨාධිකරණයේ මූලික අයිතිවාසිකම් පෙත්සම්වලදී චූදිතයකුට එරෙහිව ඉදිරිපත් කරන ලද සාක්ෂි ආදිය තක්සේරු කරන ලදී. කෙසේ වෙතත්, චූදිතයා කිසිදු පරස්පරතාවකින් තොරව හඳුනාගත යුතු වූ හෙයින්, සැලකිල්ලට ගන්නා ලද සාධක සංඛ්‍යාව කොපමණ වුණත්, මෙම ප්‍රකාශවල තිබුණේ අඩු වටිනාකමකි. ඒ අනුව, නිදසුනක් ලෙස, වෛද්‍ය සාක්ෂි චින්දිතයාගේ ප්‍රකාශ සමග ගැලපුණ විටදී පවා වධහිංසනය සිදුකළේ කවුරුද යන්න වඩා වැදගත් විය හැකි ය. ඒ අනුව, චූදිතයකු වැරදිකරුවකු කිරීම සඳහා එම සැකකරු එකී උල්ලංඝනය සිදු කළ බව සාධාරණ සැකයකින් තොරව ඔප්පු කළ යුතු ය.

පහත දැක්වෙන හේතු නිසා නඩු නිෂ්ප්‍රභ කරන බව නිරීක්ෂණය කරන ලදී:

- වෛද්‍ය සාක්ෂිවල පරස්පරයක්
- සාක්ෂිකරුවන්ගේ ප්‍රකාශවල පරස්පරයක්
- චින්දිතයන්ට චූදිතයා හඳුනාගැනීමට බැරිවීම

කෙසේ වෙතත්, මෙම සන්ධිස්ථානයේදී, වධහිංසනය සිදුකර තිබෙන බව ඔප්පු කිරීම චින්දිතයාගේ වගකීමක් වී තිබෙන බැවින්, එය බොහෝ නඩුවලදී ඔප්පු කිරීම දුෂ්කර බව පැවසිය යුතු ය. එයට හේතුව චින්දිතයා වධහිංසනයට ලක්කරන්නේ දෑස් බැඳ විය හැකි වීමයි. එසේම, අඳුරු ස්ථානයකදී විය හැකි ය. පොලිස් නිලධාරීන් සිවිල් ඇඳුමින් සැරසී සිටිනවා විය හැකි ය. වැඩිදුරටත්, චින්දිතයා භාජනය කරනු ලබන වධහිංසනය හේතුවෙන් චින්දිතයාට වැරදි සිදු කළ පුද්ගලයන් මතක් කරගැනීමට බැරි විය හැකි ය.

ඒ අනුව, වැරදිකරුවන් හඳුනාගැනීම හැකි වන්නේ වධහිංසනය පොදු ස්ථානයක සිදුකළා නම් පමණි.

පානදුර මහාධිකරණයේ 1765/2003 නඩුවේදී පවසන ලද පරිදි **"සාක්ෂිකරුවන් ලෙස පවුල් සාමාජිකයන්ට සැලකිය යුත්තේ අතිශය පරිස්සමෙනි."** ඔවුන් නඩුවකට සම්බන්ධ වී තිබීම හේතුවයි. එබැවින්, එවැනි තත්වයකදී වැරදිකරුවන් හඳුනාගැනීමට ආසන්න වශයෙන් බැරි විය හැකි ය. හේතුව, එය විය නොහැකියාවක මට්ටම දක්වා පටු කර තිබෙන හෙයිනි.

අනිවාර්ය දණ්ඩනය: වධහිංසන පනත අනුව, චූදිත වරදකරු බව ඔප්පු වුවහොත්, අනිවාර්ය දඬුවම් පැමිණවීම වසර 7-10 අතර සිර දඬුවමකි. කෙසේ වෙතත් පානදුර මහාධිකරණයේ 1765/2003 නඩුවේදී ගරු විනිසුරු වනසුන්දර විසින් **අබගල මුදියන්සේලාගේ සමන්ත සම්පත් එදිරිව නීතිපති** නඩුවේදී දෙන ලද තීන්දුව වූයේ අනිවාර්ය දණ්ඩනය පිළිනොගැනීමයි. "*අපරාධ නඩුවක වඩාත් ම වැදගත් කොටස වන්නේ දඬුවම් පැමිණවීමයි. කිසියම් නීතියක විධිවිධාන මගින් අවම අනිවාර්ය දඬුවමක් පැනවීම විනිසුරුවරයා විසින් භුක්ති විඳින අධිකරණ අභිමතයට පටහැණි ය."* ඒ අනුව, අනිවාර්ය දණ්ඩනය අදාළ නොවේ.

දණ්ඩන පැනවීම: චූදිතයකුගේ වැරදිකාරිත්වය තීරණය කිරීමට සාධක ගණනාවක් සැලකිල්ලට ගනු ලැබේ. පනවනු ලබන දණ්ඩනය තීරණය කිරීමේදී වෙනත් කාරණා ද සැලකිල්ලට ගනු ලැබේ. මහාධිකරණයේ 1368/2011 නඩුවේදී අධිකරණය විසින් පහත දැක්වෙන සාධක සමාලෝචනය කරන ලදී:

- නඩුවට ගත වූ කාලය

- චිත්තිකරු සමාව ගැනීමට එකඟවීම
- දැඩි දඬුවමක් හේතුවෙන් චිත්තිකරුගේ යැපෙන්නන්ට හානි සිදුවීම හා එමගින් පවුල් ජීවිතය අවුල් කිරීමට විනිසුරුවරයා අකැමැති වීම
- චිත්තිකරුගේ සේවා කාලය සහ එය පළමු වතාවට කරන ලද වරද ද යන කාරණය

ඒ අනුව, චූදිතයකුට දණ්ඩන පැනවීම සම්බන්ධයෙන් ඉහත දක්වන ලද සාධක සමාලෝචනය කිරීම සඳහා වධහිංසන පනත යටතේ පවරන ලද තවත් නඩු සම්බන්ධයෙන් පර්යේෂණ කළ යුතු ය.

නිගමනය: චින්දිතයාට වධහිංසනය සැකයෙන් තොරව ඔප්පු කිරීමට පැවරෙන වගකීම හේතුවෙන් බොහෝ වැරදිකරුවන් මූලික අයිතිවාසිකම් උල්ලංඝනය සිදු කර ගැලවී යති. චින්දිතයකුගේ දෘෂ්ටි කෝණයෙන් ගත් කල චින්දිතයා පත් වී සිටින තත්වය තුළ සාක්ෂි සැපයීම දුෂ්කර ය. සාමාන්‍ය චින්දිතයාට විමර්ශන කුසලතා නැත. එසේම, චින්දිතයකු හඳුනාගැනීම සඳහා ඉවහල් කරගත හැකි නවීන තාක්ෂණය වෙත ප්‍රවේශය හෝ එසේ ප්‍රවේශය ලබාගැනීමේ අවස්ථාව නැත. ඒ වෙනුවෙන් පිහිටුවන ලද පොලිස් විමර්ශන ඒකකවලට නම් ඒවා තිබේ. එවැනි තත්වයක් තුළ, වැරදිකරුවකු 19994 අංක 22 දරණ වධහිංසන පනත යටතේ වැරදිකරුවකු බව ඔප්පු වීම විය නොහැකි අන්දමේ දෙයකි. මෙම පනත යටතේ වධහිංසනය යන වරද ඇගයීම සඳහා තවදුරටත් ප්‍රාමාණික සාක්ෂි විමසිය යුතු ය.

පොදු නිර්දේශ

1. නීති සහ ප්‍රතිපත්ති සංශෝධන:

- වන්දි ලබාදීම සඳහා විනිවිද පෙනෙනසුළු සූත්‍රයක් හඳුන්වා දිය යුතු ය. වන්දි ලබාදීමේදී සිදුවන විෂමතා එයින් අවම කළ හැකි ය.

- ශ්‍රේෂ්ඨාධිකරණයේ මූලික අයිතිවාසිකම් පෙත්සමක් ඉදිරිපත් කිරීම සඳහා අදාළ වන දින 30 කාල බාධකය ඉවත් කරන්න. ශාරීරික හා මානසික හිංසනයන් නිසා සිතාගත නොහැකි තරමේ ක්ෂතියක් හා ආතතියක් ඇති විය හැකි ය. එබැවින් දින 30ක කාල රාමුව පුද්ගලයකුට ශ්‍රේෂ්ඨාධිකරණයේ පෙත්සමක් ඉදිරිපත් කරන්නේ ද යන්න තීරණය කිරීමට ප්‍රමාණවත් කාලයක් නොවේ. කාල බාධාවක් හේතුවෙන් සිදු වූ විෂමතාව ඉවත් වන්නේ නැත. එබැවින් එය පුද්ගලයකු යුක්තිය සොයා යාම අධෛර්යවත් කිරීම සඳහා භාවිතා නොවිය යුතු ය.

- අධිකරණයේ නඩු විභාග සඳහා ගත වන අධික කාලය පිළිබඳ ප්‍රශ්නය වහා විසඳිය යුතු ය. පසුගිය වසර කීපය තුළ යුක්තිය ප්‍රමාද වීම වැඩි වී තිබේ. වැඩිපුර විනිසුරුවරුන් පත්කිරීමෙන් නඩු ගොඩගැසීම වළක්වා ගතහැකි වනු ඇත.

- අධිකරණය වෙත ඉදිරිපත් කරන ලද පුද්ගලයකු වධහිංසනයට ලක්වී තිබේ ද, එම පුද්ගලයාගේ අයිතිවාසිකම් උල්ලංඝනය කර තිබේ ද (විශේෂයෙන් ම නීතිඥ සහාය සඳහා) යන කරුණු තක්සේරු කර තහවුරු කිරීමට හැකි වන පරිදි මහේස්ත්‍රාත්වරුන් පුහුණු කළ යුතු ය. රෝදවුම්කරුවන්ට බිය නැතුව තම ප්‍රශ්නය ඉදිරිපත් කළ හැකි වන පරිදි රහස්‍ය ලෙස වෛද්‍ය පරීක්ෂණ පැවැත්විය යුතු ය.

- පෙත්සම්කරුට අවාසි වන පරිදි අසත්‍ය ප්‍රකාශ කර ඇති හෝ වංචනික ලේඛන අධිකරණය වෙත ඉදිරිපත් කිරීමට ක්‍රියා කර ඇති චූදිතයාට/ නීතිය බලාත්මක කිරීමේ අධිකාරියට, අධිකරණ වෛද්‍ය නිලධාරීන්ට සහ වෙනත් සාක්ෂිකරුවන්ට එරෙහිව නීති මගින් ක්‍රියාත්මක විය යුතු ය.

- 1994 අංක 22 දරණ වධහිංසන පනත සංශෝධනය කළ යුතු ය. වසර 7-10 අනිවාර්ය දණ්ඩනය නැවත සලකා බැලිය යුතු ය. සිදු කර තිබෙන වරදේ ස්වභාවය අනුව දණ්ඩනය වෙනස් විය යුතු ය. අවම දණ්ඩනය එක් වසරක සිර දඬුවමක් ලෙස හඳුන්වා දිය යුතු ය.

2. නීතිය බලාත්මක කිරීමේ අධිකාරීන්:

- පොලිස් විෂමාචාර විමර්ශනය කිරීම සඳහා ස්වාධීන අධිකාරියක් පිහිටුවිය යුතු ය. බලය අපහරණය කරන්නන් විමර්ශනය කිරීම බලය අපහරණය කරන්නන් විසින් ම කිරීමෙන් කිසිදු වෙනසක් සිදුවන්නේ නැත. ඒ අනුව, ක්ෂේත්‍රයේ විශේෂඥයන්ගෙන් සමන්විත සම්පූර්ණයෙන් ම වෙනස් ව්‍යූහයක් පහත දැක්වෙන කරුණු වෙනුවෙන් පිහිටුවිය යුතු ය.
  - ස්ථාවර, කලින් දැනුම් නොදුන් පරීක්ෂා පොලිස් ස්ථානවල සිදුකිරීමට
  - චෝදනා සහ පැමිණිලි විමර්ශනය කිරීමට .

- මූලික අයිතිවාසිකම් උල්ලංඝනයක් සම්බන්ධයෙන් විමර්ශනයට ලක්වන පොලිස් නිලධාරීන් ප්‍රසිද්ධ ලැයිස්තුවකට ඇතුළත් කළ යුතු ය. එමගින් මහජනයාට විමර්ශන ගැන දැනගැනීමට හැකි ය. මහජනයා විසින් සමාන උල්ලංඝනයන් අධිකාරීන්ට වාර්තා කරනු ඇත.

- පොලිස් ස්ථානයක සිදුවන බලය අපහරණය කිරීම් සම්බන්ධයෙන් එම ස්ථානයේ ඉහළ නිලධාරීන් වගකිව යුතු ය. මෙම බලවත් තනතුරු ලබා දී තිබෙන්නේ නායකත්වය සහ වගකීම් සහගතබව වෙනුවෙනි. එම නිසා, එවැනි අපරාධ වැළැක්වීමට අසමත් වීම හෝ එවැනි අපරාධ පිළිබඳ නොදැන සිටීම සමාව දිය නොහැකි වරදකි.

- පොලිස් නිලධාරීන්ට එරෙහිව ගනු ලබන ක්‍රියාමාර්ග නැවත සමාලෝචනය කර, කරනු ලබන වරදට අනුපාතික හා යෝග්‍ය වන පරිදි භාවිතාවන් හඳුන්වා දිය යුතු ය. බලය අපහරණය කරන පුද්ගලයන් තමන් විසින් කරනු ලබන ක්‍රියාවෙහි බරපතලකම අවබෝධ කරගත යුතු ය. නිදසුනක් ලෙස, දඬුවමක් ලෙස එක් පොලිස් ස්ථානයකින් තවත් ස්ථානයකට මාරු කිරීම ප්‍රමාණවත් නැත.

- මූලික අයිතිවාසිකම් උල්ලංඝනයන්ට සම්බන්ධ චිත්තිකරුවන්ට අනිවාර්ය අධ්‍යාපන වැඩසටහන් හඳුන්වා දිය යුතු ය.

- වධහිංසනය සඳහා පෞද්ගලික අවකාශ භාවිතා කරන හා අත්අඩංගුවේ සිටින සැකකරුවන් හිංසනයට ලක්කිරීමට හා පහර දීමට පිටස්තර පුද්ගලයන්ට ඉඩ දෙන නීති බලාත්මක කිරීමේ අධිකාරීන්ට එරෙහිව දැඩි විනය ක්‍රියාමාර්ග ගත යුතු ය.

3. අනාගත පර්යේෂණ:

- මූලික අදියරේදී නිෂ්ප්‍රභ කරන ලද අයදුම්පත් පිළිබඳ පර්යේෂණයක් සිදුකිරීම සහ වධහිංසනය පිළිබඳ මානව හිමිකම් කොමිෂන් සභාව වෙත ලැබී තිබෙන පැමිණිලි සාමාන්‍යය ගණනය කිරීම.

- හිංසකයා විසින් ඇතිකරන ලද මානසික ප්‍රතිඵලය පිළිබඳ පර්යේෂණ කළ යුතු ය. එය පසුපස ඇති හේතු දැක්වීම වන්නේ, චින්දිතයාට සිදු වී තිබෙන මානසික ක්ෂතිය පිළිබඳ සාක්ෂි රැසක් තිබීමයි. හිංසකයාට මෙම ක්‍රියා නිසා සිදු වන කිසියම් නිශේධනීය බලපෑමක් තිබේ නම්, එය නීතිය බලාත්මක කිරීමේ අධිකාරීන්ට නිසි පුහුණුවීම් සංවිධානය කිරීම සඳහා පදනමක් ලෙස භාවිතා කළ හැකි ය.

- වධහිංසනය හේතුවෙන් රටපුරා බන්ධනාගාරගතව සිර දඬුවම් විඳින නීතිය බලාත්මක කිරීමේ අධිකාරීන් සංඛ්‍යාව පිළිබඳ පර්යේෂණ.

4. වෙනත්:

- චින්දිතයාට අවාසි සිදුවන පරිදි, ද්වේෂ සහගත ලෙස සාක්ෂි වෙනස් කිරීමට උත්සාහ කිරීමට සම්බන්ධ වන වෛද්‍ය නිලධාරීන්ට එරෙහිව දැඩි විනය පියවර ගත යුතු ය.

- පොලිස් නිලධාරීන්ගේ මත්පැන් හා මත්ද්‍රව්‍ය භාවිතය පිළිබඳ අහඹු පරීක්ෂා සිදුකළ යුතු ය. පොලිස් විෂමාචාර පිළිබඳ විමර්ශනයට ස්වාධීන අධිකාරියක් පිහිටුවීමෙන් මෙය පහසුවෙන් සිදුකළ හැකි ය.

- සාක්ෂි ලබාගැනීම සඳහා නවීන තාක්ෂණය පොලිස් ස්ථානවලට ලබාදීමටත්, ඒවා ලබාගැනීම පිණිස අරමුදල් ලබා දීමටත්, ඒවාට හැඩගැසීමට උනන්දු කිරීමටත් රජයට බලකිරීම. අපරාධයක් විසඳීම සඳහා තොරතුරු ලබාගැනීමට වධහිංසනය භාවිතා කිරීම ඉතා අකාර්යක්ෂම ක්‍රමයක් බවට පුළුල් පිළිගැනීමක් තිබේ. තාක්ෂණික හා කුසලතා යාවත්කාලීන කිරීමේ දැඩි අවශ්‍යතාවක් පොලිසියට තිබේ. බලාත්මක කිරීමේ අධිකාරීන් වෙනුවෙන් සැලසුම් කර තිබෙන පුහුණු වැඩසටහන් පවසන්නේ වධහිංසනය වැරදි බව පමණක් නම් හා ප්‍රශ්නය විසඳීම සඳහා විකල්ප ක්‍රම හඳුන්වා දීමට අසමත් වන්නේ නම් එම පුහුණුවීම් ප්‍රමාණවත් නැත.

- මානව හිමිකම් කොමිෂන් සභාව අතිශය වැදගත් සහායක පද්ධතියක් බව ඔප්පු වී තිබේ. පුරවැසියන් දැනුවත් කිරීම සඳහා වැඩිපුර දැනුවත් කිරීමේ වැඩසටහන් සැලසුම් කිරීම වැදගත් ය. අදාළ උල්ලංඝනය වීම පිළිබඳ පැමිණිල්ලක් මානව හිමිකම් කොමිෂන් සභාව වෙත මාසයක් ඇතුළත ඉදිරිපත් කර තිබේ නම්, කාල බාධකය අදාළ නොවන බව විශේෂයෙන් දැනුවත් කළ යුතු ය.

இலங்கையில் சித்திரவதை தொடர்பான தண்டனைக் கொள்கைகள் பற்றிய சிறு பகுப்பாய்வு

ரயிட் டு லயிவ் மனித உரிமைகள் நடுநிலையம்

1. சாராம்சம்

இலங்கையில் சித்திரவதை தொடர்பான தண்டனைக் கொள்கைகள் பற்றிய குறிப்பாக இலங்கையின் அரசியலமைப்பின் பிரிவு 11 இனை மீறுவது தொடர்பில் ஒரு குருகிய பகுப்பாய்வை இந்த ஆராய்ச்சி வழங்குகின்றது. 1981-2019 வரையிலான வழக்குகளை பகுப்பாய்வு செய்வதற்கு இலங்கையின் உச்ச நீதிமன்றத்தின் 100 வழக்குகளினை மட்டும் சேகரித்து ஆய்வு செய்துள்ளோம். மனுதாரர் உறுப்புரை 11 மீறுகை தொடர்பில் வழக்கு தாக்கல் செய்யும் போது ஆதிகமாக கருத்திற் கொள்ளப்பட்ட உறுப்புரை 12(1), 13(1) மற்றும் 13(2) ஆகியனவற்றையும் எமது ஆய்வில் உள்ளடக்கியுள்ளோம்.

உறுப்புரை 11,12(1),13(1) மற்றும் 13(2) மீறுகைக்கு உச்ச நீதிமன்றம் இழப்பீடுகளை வழங்கியுள்ளமையினையும் காணலாம். இவ் இழப்பீடானது தனியார் இழப்பீடு அல்லது அரச இழப்பீடு அல்லது இரண்டினையும் கலந்து வழங்கப்பட்டமையினையும் காணலாம்.

மனுதாரர் மற்றும் எதிராளிகள் முன்வைத்த ஆதாரங்களின் அடிப்படையில் ஒவ்வொரு வழக்காக நீதிபதிகள் 100 வழக்கினையும் மதிப்பீடு செய்துள்ளனர். பின்வரும் விடயங்களினை நீதிபதிள் கருத்திற்கொண்டனர்:

- மருத்துவ சான்றுகள்
- நேரப்பட்டி
- அதிகாரமுடைய நபர்களின் தகவல்கள்
- இரு தரப்பினரின் சாட்சி கூற்றுக்கள்

நீதித்தறை தங்கள் தீர்ப்புக்களில் ஒரு முடிவிற்கு வந்தது தொடர்பில் ஒரு தவறினையும் கூற முடியாது. நீதிபதிகளின் தற்துனிபின் அடிப்படையில் தீர்மானிக்கப்பட்ட தனியார் தனிநபர் மற்றும் அரச தரப்பினர்க்கியைிலரன இழப்பீட்டின் அளவு மற்றும் விகிதம் தொடர்பில் இழப்பீடானது எவ் அடிப்படையில் நிர்ணயிக்கப்பட்டது என்பது தொடர்பில் முரண்பாடுகள் இருப்பதினை காணக்ககூடியதாக இருந்தது.

பல ஆண்டுகளாக வழக்குகளின் எண்ணிக்கை அதிகரித்துள்ளமையினை காணக்கூடியதாக இருந்தது. 1981-1989 ஆம் ஆண்டுகளுக்கிடயில் மொத்தமாக 8 தீர்ப்புக்கள் மட்டுமே வழங்கப்பட்டது. ஆயினும் 2010-2019 ஆண்டு காலப்பகுதியில் 42 தீர்ப்புக்ள் மொத்தம் காணப்படுகின்றது. வழக்குகளின் எண்ணிக்கையின் அதிகரிப்பு காரணமாக வழக்கிற்கான காலமானது 5 ஆண்டுகளுக்கு மேலாக அதிகரித்தது. இது மனுதாரருக்கு பாதகமான தாக்கத்தினை ஏற்படுத்திதுடன் நீதியினை பெற்றக்கொள்ள பல ஆண்டுகளாக அடிக்கடி நீதிமன்றத்திற்கு செல்லவேண்டியதிருக்கும். இத்தன்மையானது எதிர்காலத்தில் உறுப்புரை 11 மீறல் தொடர்பில் தீர்வினை பெறுவதற்கான விண்ணப்பங்களினை மேழும் தாமதத்திற்குட்படுத்தும்.

மேழும் காவல் தறையின் நடத்தை மற்றும் சட்ட அமுலாக்க அதிகாரசபை ஒன்றினது நடத்தையானது வெறுக்கத்தக்கதாக இருந்தமை காணக்கூடியதாக இருந்தது. உளவியல் மற்றும் உடலியல் ரீதியிலான சித்திரவதை மற்றம் மனுதாரருக்கு எதிராக சோடிக்கப்பட்ட பொய்யான சான்றுகள் மற்றும் வழக்குகள் மனுதாரருக்கு சமூகத்தில் அவமரியாதையினை ஏற்படுத்தியதுடன் சில சமயம் மூன்றாம் தரப்பினரினால் தாக்குதலுக்கும் உட்படவும் செய்ததுடன் மனுதாரரின் நல்வாழ்வினை ஈடு செய்ய முடியாத வகையிலான சேதத்தினை காவல் துறையினர் ஏற்படுத்தியுள்ளனர்.

எவ்வாறாயினும் நீதிமன்றங்கள் 1988 ஆம் ஆண்டிற்கு காலப்பகுதியில் ஒழுக்க நடவடிக்கைகளுக்கு ஏற்பாடுகள் செய்திருந்தாலும், தனது கட்டுப்பாட்டின் கீழ் நபர்கள் எவ்வாறு நடத்தப்பட வேண்டும் என பொலிஸ் மா அதிபர் பொலிஸ் நிலையங்களுக்கு அறிவித்திருந்தாலும் சட்ட அமுலாக்க அதிகாரிகளினால் சித்திரவதை மற்றும் அடிப்படையுரிமை மீறலானது தொடர்ந்தவண்ணமே இருந்தது..

மேற்கண்ட 100 வழக்குகளை பகுப்பாய்வு செய்வதற்கு மேலதிகமாக 1994 ஆம் ஆண்டின் 22 ஆம் இலக்க சித்திரவதைக்கெதிரான சட்டத்தின் கீழ்தீர்க்கப்பட்ட 10 தீர்ப்புக்களையும் ஆய்வின் நோக்கத்திற்காக தெரிவு செய்யப்பட்டள்ளது. இவ் 10 தீர்ப்புக்களும் எவ்விதமான குறிப்பிட்ட விடயம் சார்ந்ததாக இல்லாமல் எழுமானதாக தேர்ந்தெடுக்கப்பட்டுள்ளது. இவ் 10 வழக்குகளும் நேரடியாக காவல் நிலையங்களுடன் தொடர்புடைய அதிகாரிகளுடன் தொடர்பானது.

ஒரு அடிப்படையுரிமையினை மீறுவதனை போலன்றி சித்திரவதை சட்டத்தின் கீழ் ஒருவர் குற்றவாளி என நிருபிக்கப்பட்டால் இந்த நபர் 7 வருடங்களுக்கு குறையாததும் மற்றம் பத்து வருடங்களுக்கு மிகாமல் சிறை தண்டனை மற்றும் பத்தாயிரம் ரூபாவிற்கு குறையாததும் ஐம்பதாயிரத்திற்கு கூடாததுமான அபராதம் ஆகியவாறு தண்டிக்கப்படுவர. ஆகவே வுயு ஆனது பொருள்கோடல் செய்யப்பட்டமையானது அடிப்படையுரிமை மீறலில் இருந்த வேறுப்பட்டதாகும்.

நீதிமன்றங்கள் தங்களுக்கு முன் வைக்கப்பட்டுள்ள ஆதாரங்களையும், தனிநபருக்கு சித்திரவதைகளை நிரூபிப்பதில் கடினமாக இருந்த விடயங்களினையும்நீதிமன்றங்கள் கடுமையாக பொருள்கோடல் செய்துள்ளமையினை காணலாம். நீதிமன்றங்களின் கடுமையான பொருள்கோடலுக்கு காரணமானதுஇரு நபர் குற்றவாளி என நிரூபிக்கப்பட்டால் அதற்கான தீர்ப்பானது ஏழு முதல் பத்து ஆண்டுகள் வரையிலான சிறைத்தண்டனையாகும் என்பதினாலாக இருக்கலாம்.

சித்திரவதைச் சட்டத்தின் கீழ் ஒரு தண்டனையை தீர்மானிக்கும் போது, நீதிபதிகள் பின்வருவனவற்றை மதிப்பீடு செய்வார்கள்:

- மருத்துவ சான்றுகள்
- சாட்சி அறிக்கைகள்
- அடையாள அணிவகுப்புகள்

குற்றம் சாட்டப்பட்டவரின் சேவை காலத்தினையும் அது சார்ந்து இருப்பவர்களுக்கு ஏற்படும் தாக்கத்தையும் நீதிபதி மதிப்பீடு செய்த ஒரு நிகழ்வு இருந்தது.

ஒரு வழக்கை நியாயமான சந்தேகத்திற்கு அப்பால் நிரூபிக்க வேண்டும் என பாதிக்கப்பட்டர் சார்பாக அதிக முக்கியத்துவம் கொடுப்பதால், பல குற்றவாளிகள் சித்திரவதைச் சட்டத்தின் கீழ் சித்திரவதைக்கு ஆளாகாமலிருந்தனர்..

ஆக,உறுப்புரைகள் 11, 12, 13 (1) மற்றும் 13 (2) தொடர்பான உச்சநீதிமன்றத்தின் 100 தீர்ப்புகள் மற்றும் சித்திரவதைச் சட்டத்தின் கீழ் ஆராயப்பட்ட 10 தீர்ப்புகள் ஆகியவற்றின் அடிப்படையில் எங்கள் முக்கிய பரிந்துரைகள் சில கீழே கொடுக்கப்பட்டுள்ளன:

அ. இழப்பீடு வழங்கும்போது ஏற்படும் ஏற்றத்தாழ்வுகள் குறைக்கப்பதற்கு இழப்பீட்டுக்கான வெளிப்படையான வழிமுறையானது(சூத்திரம்)அறிமுகப்படுத்தப்பட வேண்டும்.

ஆ. நீதிமன்றத்திற்கு முன் ஆஜர்படுத்தப்பட்ட ஒரு நபர் சித்திரவதைக்கு ஆளானாரா அல்லது அவரது உரிமைகள் எதுவும் மறுக்கப்பட்டுள்ளாரா (குறிப்பாக ஒரு வழக்கறிஞரை பெறுவதற்கான உரிமை) என்பதை மதிப்பீடு செய்யவும் அறிந்துக்கொள்ளவும் நீதிபதிகள் பயிற்சி பெற வேண்டும்.

இ. 1994 ஆம் ஆண்டின் 22 ஆம் இலக்க சித்திரவதைச் சட்டத்தின் திருத்தம். ஏழு முதல் பத்து ஆண்டுகள் வரையிலான கட்டாய சிறை தண்டனை மறு மதிப்பீடு செய்யப்பட்டது. துஷ்பிரயோகத்திற்கு ஏற்ப தண்டனை மாறுபட வேண்டும், எனவே குறைந்தபட்சம் தண்டனை 1 ஆண்டாக தண்டனை காலம் அறிமுகப்படுத்தப்பட வேண்டும்.

ஈ. பொலிஸ் துஷ்பிரயோக குற்றச்சாட்டுகளை விசாரிக்க ஒரு சுயாதீன அதிகாரசபை நிறுவப்பட வேண்டும். அதிகாரத்தை துஷ்பிரயோகம் செய்பவர்களைவிசாரிப்பது எந்தவொரு முக்கிய மாற்றத்தையும் ஏற்படுத்தாது. எனவே, இந்த துறையில் நிபுணத்துவம் கொண்ட முற்றிலும் மாறுபட்ட அமைப்பு இதற்கு நிறுவப்பட வேண்டும்:

- காவல் நிலையங்களின் வழக்கமான, அறிவிக்கப்படாத சோதனைகளை நடத்துதல் மற்றும்

- குற்றச்சாட்டுகள் மற்றும் புகார்களை விசாரித்தல்.

2. முறைமை:

உறுப்புரை 11, 13(1) மற்றும் 13(2) ஆகிய உறுப்புரைகளை குறிப்பாக கவனம் செலுத்திய 100 உச்சநீதிமன்ற தீர்ப்புகளை பகுப்பாய்வு செய்ததன் விளைவாக இந்த அறிக்கை ஆகும். மேற்சொன்ன கட்டுரைகளை நீதிபதிகள் மதிப்பீடு செய்து விளக்கும் விதம் மற்றும் சித்திரவதைகளை அடையாளம் காணவும் பரிந்துரைகளை வழங்கவும் முயற்சிக்கும்போது அவர்கள் கவனத்தில் எடுத்துக் கொண்டவைகளை இவ் அறிக்கை முக்கியமாக ஆராய்கிறது.

இவ்வாறு, சித்திரவதை தொடர்பான எதிர்கால ஆராய்ச்சிக்கு ஒரு அடித்தளத்தை உருவாக்க 1981-2019 முதல் 100 வழக்குகளை ரைட் டு லை.ப் அமைப்பு சேகரித்தது.

அரசியலமைப்பின் பிரிவு 11, 13 (1) மற்றும் 13 (2) மீறல்களை மதிப்பிடுவதற்காக இலங்கை சட்ட அறிக்கைகளிலிருந்து வழக்கு பதிவுகள் மற்றும் வழக்குகளின் கலவையானது மதிப்பீடு செய்யப்பட்டது.

மதிப்பீடு செய்வதற்கு 1994 ஆம் ஆண்டின் 22 ஆம் இலக்க சித்திரவதைச் சட்டத்தின் கீழ் 10 வழக்குகள் எழுமாறான முறையில் தேர்ந்தெடுக்கப்பட்டன.

அரசியலமைப்பின் பிரிவு 11, 13 (1) மற்றும் 13 (2) இன் கீழ் 100 வழக்குகளையும், சித்திரவதைச் சட்டத்தின் கீழ் 10 வழக்குகளையும் சித்தரிக்கும் அட்டவணைகள் இங்கு அட்டவணை அ மற்றும் ஆ என இணைக்கப்பட்டுள்ளன.

வழக்கு பெயருக்கு பதிலாக வழக்கு எண்கள் பயன்படுத்தப்பட்டவற்ற அத்தகைய வழக்குகளை இங்கே இணைக்கப்பட்ட அட்டவணையில் காணலாம்.

உறுப்புரை 12 (1) மற்றும் 13(4) க்கான சுருக்கம் இந்த ஆராய்ச்சியில் சேர்க்கப்பட்டுள்ளது. உறுப்புரை 12(1) ஐத் தொடர்வதற்கான விடயங்களினையும் கருத்திற்க்கொள்ளப்பட்டமையே இதற்கு காரணமாகும், மேலும் பொருள்கோடல் பற்றிய பொதுவான புரிதல் எதிர்கால ஆராய்ச்சிக்கு உதவும் என்பது எமது கருத்தாகும்.

எந்தவொரு சந்தர்ப்பத்திலும் தீர்ப்புகளானது முழுமையாக வாசிக்கப்படுகின்றது தேர்ந்தெடுக்கப்பட்ட பகுதிகள் மட்டுமல்ல, எனவே பொது கட்டுரைகளின் அக்கறைகளுக்கு அப்பால் உறுப்புரை 11 ஆனது இந்த ஆராய்ச்சியில் கவனத்திற்கொள்ளப்பட்டது.

100 உச்சநீதிமன்ற தீர்ப்புகளை ஆவணப்படுத்த கீழேயுள்ள அட்டவணை பயன்படுத்தப்பட்டது

இலக்கம்	உச்ச நீதிமன்ற விண்ணப்ப இல.	Leave to Proceed	வழக்கு காலம்	மனுதாரர்களின் எண்ணிக்கை	மனுதாரரின் பால்	பதிலாளிகள்	சம்பவத்தின் தன்மை	இழப்பீடு	நீதிமன்ற தீர்ப்பு	நீதிபதிகளின் பெயர்கள்

** அனைத்து வழக்குகளிலும் பதிலாளிகளாக சட்டமா அதிபர் காணப்படுவதால் அட்டவணையில் பதிலாளிகள் விபரம் உள்ளடக்கப்படவில்லை*

மேலும் சித்திரவதை சட்டத்தின் கீழான 10 தீர்ப்புக்கள் கீழ்வரும் அட்டவணையில் காணப்படுகின்றது.

வழக்கு இல	தீர்ப்பு இல	எதிராளி	எதிராளியின் தொழில்	சம்பவம்	வழக்கு பதிவு செய்த திகதி	தீர்ப்பு திகதி	தீர்ப்பு	தீர்ப்பிற்கான காரணம்	நீதிபதியின் பெயர்

பயன்படுத்தப்படும் சுருக்கங்கள் (பகுப்பாய்வு மற்றும் அதன் இணைப்புக்கள்)

- **AG சட்டமா அதிபர்**
- **CID குற்றவியல் விசாரணைத்திணைக்களம்**
- **CAT சித்திரவதைக்கு எதிரான சமவாயம்**
- **FR அடிப்படை உரிமை**
- **PTA தீவிரவாத தடுப்புச்சட்டம்**
- **J நீதிபதி**
- **JMO நீதித்துறை மருத்துவ அதிகாரி**
- **R பதிலளிப்பவர்**
- **M நீதிபதி**
- **SC உயர் நீதிமன்றம்**
- **OIC பொறுப்பதிகாரி**

ஆய்வு எல்லை:

- ஆரம்ப கட்டத்தில் தள்ளுபடி செய்யப்பட்ட மனுக்கள் கவனத்தில் கொள்ளப்படவில்லை.

- மனு தாக்கல் செய்வதிலிருந்து தீர்ப்பு தேதி வரை முழு நடைமுறையும் கவனத்தில் கொள்ளப்படவில்லை, தீர்ப்புகள் மட்டுமே மதிப்பீடு செய்யப்பட்டன.

- மனித உரிமைகள் ஆணைக்குழுவால் பெறப்பட்ட மொத்த புகார்களின் எண்ணிக்கை மதிப்பீடு செய்யப்படவில்லை

- வழக்கு பதிவுகள் மற்றும் அறிக்கைகள் கலந்திருப்பதால் மனுதாரர்களின் தொழில்களை பகுப்பாய்வு செய்வது கடினம். எவ்வாறாயினும், உரிமை மீறலை மதிப்பிடும்போது ஒரு முக்கியமான காரணியாக ஒரு மனுதாரரின் தொழிலின் முக்கியத்துவத்தை நீதிபதி குறிப்பிடவில்லை.

- இந்தச் சட்டம் தொடர்பான தண்டனைக் கொள்கையைப் பற்றி நன்கு புரிந்துகொள்ள வுயு இன் கீழ் கூடுதல் தீர்ப்புகள் மதிப்பீடு செய்யப்பட வேண்டும்.

- பி.டி.ஏ (PTA) மற்றும் வேறு எந்த சட்டத்தின் கீழும் சித்திரவதை தொடர்பான வழக்குகள் மதிப்பீடு செய்யப்படவில்லை

3. பின்னணி

ரயிட் டு லை.ப் மனித உரிமைகள் மையம் (R2L), 2003 இல் நிறுவப்பட்ட ஒரு சிவில் சமூக அமைப்பாகும், இது நீதித்துறை, சட்ட உதவி வழங்குதல் மற்றும் இதனுடன் ஒத்த அமைப்புகள் போன்ற விடயங்கள் தொடர்பில் கவனத்திற்கொள்கிறது. R2L இன் ஸ்தாபக உறுப்பினர்கள் 1980 களில் ஆரம்பத்திலிருந்து தங்கள் உரிமைகளை இழந்த தனிநபர்களை மேம்படுத்துவதற்கான செயன் முறையில் நீண்ட வரலாற்றைக் கொண்டுள்ளனர் மற்றும் தனிநபர் மேம்பாடு, சித்திரவதை மற்றும் காணாமல் போதல் போன்ற மனித உரிமை மீறல்கள் தொடர்பான பிரச்சினைகளைத் அடையாளம் காண்பதிலும் தொடர்ந்து பணியாற்றி வருகின்றனர். இவ்வாறு, கல்வி, உதவி மற்றும் விழிப்புணர்வு மூலம் சமூகத்தை மேம்படுத்த இந்த அமைப்பு விரிவாக செயல்பட்டுள்ளது.

பல மனித உரிமைகள் முதலுதவி மையங்களை நிறுவுவதன் மூலம் சித்திரவதை மற்றும் பிற மனித உரிமை மீறல்களால் பாதிக்கப்பட்டவர்களுக்கு சட்ட ஆலோசனை சேவைகளை இன்றுவரை ஆர் 2 எல் தொடர்ந்து வழங்கி வருகிறது.

ஆகையால், சித்திரவதை மற்றும் அடிப்படை உரிமை மீறல்கள் குறித்த எதிர்கால ஆராய்ச்சியை மேலும் ஊக்குவிக்கும் அடிப்படை ஆவணமாக இவ் ஆராய்ச்சி இருக்கும் என்று ஆர் 2 எல் எதிர் பார்க்கிறது, இது சாத்தியமான இடங்களில் பிரச்சினைகள் அல்லது வடிவங்களை அடையாளம் காண்பதையும், அதனுடன் தொடர்புடையதாகக் கூறப்படும் மீறல் குறித்து நீதிபதிகள் எவ்வாறு பகுப்பாய்வு செய்தார்கள் என்பதற்கான பொதுவான கண்ணோட்டத்தை வழங்குவதையும் நோக்கமாகக் கொண்டுள்ளது.

4. அறிமும்

உலகளவில் வரலாறு முழுவதும் கொடூரமாக இருக்கும் மனிதனின் திறனில் காணப்படும் படைப்பாற்றலுக்காக ஏதாவது சொல்ல வேண்டும் இதைக் குறைப்பதற்கான முயற்சிகள் இருந்தபோதிலும், சித்திரவதை பற்றிய விவாதத்திலே நாம் தொடர்ந்து காணப்படுகிறோம்.

எனவே, நவீன ஜனநாயகங்கள் சித்திரவதைக்கு எதிரான மாநாட்டின் கட்சிகளாக இருந்தாலும், காலத்திற்கு காலம் உறுப்பு நாடுகள் தடுமாறிக் கொண்டிருப்பதைக் காண்கிறோம். இது பின்வரும் பல காரணங்களால் இருக்கலாம், குறிப்பாக இலங்கையின் சூழலில்:

- தேசிய பாதுகாப்பு: ஜேவிபி கிளர்ச்சி, மூன்று தசாப்த கால போர்,ஈஸ்டர் தாக்குதல்கள் என்பவற்றினபெப்படையில் தொடர்ச்சியான பயங்கரவாத எதிர்ப்பு முயற்சிகளின் தேவை இலங்கைக்கு உள்ளது. மனித உரிமைகள் கண்காணிப்பு அறிக்கை 2015 பரவலான பொலிஸ் சித்திரவதைகளை சுட்டிக்காட்டியது, அதே நேரத்தில் சித்திரவதை தொடர்பான ஐ.நா. சிறப்பு அறிக்கையாளர் பொலிஸ் விசாரணையின் ஒரு பகுதியாகவும், பாகுபாடாகவும் பரவலாக சித்திரவதைகளைப் பயன்படுத்துவதாகக் குற்றம் சாட்டினார்.

  குடியியல் கீழ்ப்படிதல் மற்றும் சட்டவிரோத நடவடிக்கைகளுக்கு எதிரான தடுப்பு: குடிமக்களை ஒழுங்கில் வைத்திருப்பதற்கான நோக்கத்திற்காக, அல்லது இதுபோன்ற எந்தவொரு சட்டவிரோத நடவடிக்கை அல்லது நடத்தை மீண்டும் நிகழாமல் பார்த்துக் கொள்வதற்காக, அத்தகைய நபர்களை ஒழுங்குபடுத்த சித்திரவதை பயன்படுத்தப்படுகிறது.

மாநில கருத்து: உதாரணமாக இலங்கை தற்போது மரணதண்டனை தொடர்பான தேசிய விவாதத்தின் மத்தியில் உள்ளது. எனவே, வெளிப்படையான மனித உரிமை மீறல்கள் இருந்தபோதிலும் சித்திரவதை அவசியம் அல்லது நல்லாட்சிக்கு தேவை என்று உயர் அரசியல் பதவிகளை வகிப்பவர்கள் பொது மக்களில் தாக்கம் செலுத்தலாம். இவ்வாறு, பொதுமக்கள் திருப்தி படுத்தப்பட்டால், பின்னர் அத்தகையமனித உரிமை மீறல்கள் அல்லது சித்திரவதைகள் நிகழும்போது அத்தகைய மீறல்களுக்கு பொதுமக்கள் மறுப்பு தெரிவிக்காததால், அரசு மன்னிக்கப்படும்.

இவ்வாறு, மூன்று தசாப்த கால யுத்தத்தின் மத்தியில், 1994 ல் இலங்கை சித்திரவதைக்கு எதிரான ஐக்கிய நாடுகளின் மாநாட்டை (CAT) கைச்சாத்திட்டது. ஆயினும்கூட, நடைமுறையில் ஏற்றத்தாழ்வு இருப்பதைக் காட்டுகிறது. CAT வரைவிளக்கணத்திற்கமைவாக, சித்திரவதை என்பது உடலுக்கோ மனதுக்கோ கடுமையான வலி அல்லது தாக்கம் ஏற்படுத்துபின்ற ஒரு செயலை அவரிடமிருந்து அல்லது மூன்றாம் நபரிடமிருந்து தகவல்களை அல்லது ஒப்புதல் வாக்குமூலத்தை பெறுவதற்கு, அவரோ அல்லது மூன்றாமவரோ செய்த அல்லது செய்யாத செயலுக்கு ஒரு அவரை தண்டித்தல்இஅவரை அல்லது மூன்றாவது நபரை அடிபணிய வைக்க அல்லது அவமதிக்க அல்லது ஆவறு ஏதாவது பாகுபாட்டிற்காக செய்யப்படின்,அதற்கு அரசின் அனுமதியோ ஆணையோ அல்லது அரச அதிகாரியின் நேரடி அல்லது மறைமுக ஈடுபாடோ இருப்பின் சித்திரவதையாக கொள்ளப்படும் சட்டப்படியாக நிறைவேற்றப்படும் செய்கைகளிலான வலியோ துன்பமோ கருத்திற் கொள்ளப்படாது.

1994 ஆம் ஆண்டின் 22 ஆம் இலக்க சித்திரவதைச் சட்டத்தை (PTA) அறிமுகப்படுத்துவதன் மூலம் இந்தச் சட்டத்தை அங்கீகரிப்பதற்கு முன்பே, இலங்கை தனது குடிமக்களைப் பாதுகாப்பதற்காக அடிப்படை உரிமைகளை அறிமுகப்படுத்தியது. ஆயினும்கூட அரசியலமைப்பு பாதுகாப்பு இருந்தபோதிலும் சித்திரவதை நடைமுறையில் இருப்பதுடன் அரசு தொடர்ந்து தடுமாறுகிறது. சித்திரவதைக்கு எதிராக மாநில உறுப்புகள் எவ்வாறு தனித்தனியாக செயல்படுகின்றன என்பதைப் புரிந்துகொள்வது கடினமாக இருக்கும்போது, இவ் ஆராய்ச்சி, உச்சநீதிமன்ற தீர்ப்புகளில் இருந்து இந்த அமைப்பை மேம்படுத்துவதற்காகசிறந்த முறைமையினை அடையாளம் காண எதிர்ர்க்கிறது.

இந்த ஆராய்ச்சி ப ஒவ்வொரு உறுப்புரைகளினையும் தனித்தனியாக பகுப்பாய்வு செய்யுது மேலும் உச்சநீதிமன்ற தீர்ப்புகளின் நேரடி மற்றும் மறைமுக சிக்கல்களை ஆராய்ந்த பின்னர் பரிந்துரைகளை வழங்கும்வுயு இன் தண்டனைக் கொள்கைகளைப் புரிந்துகொள்வதற்கும் மதிப்பீடு செய்வதற்கும் சித்திரவதைச் சட்டத்தின் கீழ் 10 தீர்ப்புகள் சேர்க்கப்பட்டுள்ளன

5. உறுப்புரை 11, 12 (1) 13 (1), 13 (2) மற்றும் 13 (4) இற்கான பகுப்பாய்வு

5.1 அரசியலமைப்பின் 11 வது உறுப்புரை

ஆளெவரும் சித்திரவதைக்கு அல்லது கொடூரமான மனிதாபிமானமற்ற அல்லது இழிவான நடாத்துகைக்கு அல்லது தண்டனைக்கு உட்படுத்தப்படலாகாது:

நீதிமன்றங்களின் கருத்துப்படி சித்திரவதை என்பது உடல் மற்றும் உளவியல் ரீதியானதாக இருக்கலாம். எவ்வாறாயினும், இந்த விளக்கத்தின் விரிவாக்கம் காலப்போக்கில் ஏற்றுக்கொள்ளப்பட்டது என்பதைக் காண முடிந்தது. சர்ஜுன் எதிர் கமல்தீன் மற்றும் இருவர் வழக்கில் (SC FR 559/03) டாக்டர் விக்ரமரத்னவால் இலங்கையில் அடிப்படை உரிமைகள் உறுப்புரை 11 ஐ பகுப்பாய்வு செய்ததனை பயன்படுத்தியது, மேலும் நீதிமன்றம் பின்வரும் கருத்தை ஏற்றுக்கொண்டது:

"சித்திரவதையிலிருந்து விடுபடுவது 11 வது உறுப்புரையில் ஒரு முழுமையான உரிமையாக அறிவிக்கப்பட்டுள்ளதுடன் இது 83 வது பிரிவினால் உறுதிப்படுத்தப்பட்டுள்ளது, இது பாராளுமன்றத்தில் மூன்றில் இரு பெரும்பான்மையுடன் மக்கள் தீர்ப்பினால் அங்கீகரிக்கப்படாத சட்டத்தினை தடை செய்வதுடன் மற்றும் எந்தவொரு நோக்கத்திற்கும் ஆதாரம் இல்லாமல் வேண்டுமென்றே ஏற்படுத்தப்படும் உடல் அல்லது மனரீதியான கடுமையான வலி அல்லது துன்பத்திற்கு எந்தவொரு செயலையும் தடைசெய்வதற்கான அதன் சாதாரண அர்த்தத்தை வழங்க வேண்டும இது தனிமனித கௌரவத்திற்கான பாதுகாப்பாவதுடன் சட்டத்தின் அடிப்படை கூறாகவும் இருக்கிறது.

அதிகாரி மற்றும் மற்றும் சிலர் எதிர் அமரசிங்க மற்றும் பிறர் (SC FR 251/2002) வழக்கிலும் கூட இதேபோன்ற அணுகுமுறை காணப்பட்டது. நீதிமன்றங்கள் சித்திரவதை, கொடூரமான, மனிதாபிமானமற்ற, இழிவான நடாத்துகை அல்லது தண்டனையானது உடல் மற்றும் உளவியல் ரீதியிலான பல வகையான காயங்களை ஏற்படுத்தும் செயற்பாடுகள் என பரவலாக வகைப்படுத்தியதை காணலாம் மற்றும் பாதிக்கப்பட்டவர்கள் எதிர்கொள்ளக்கூடிய எண்ணற்ற சூழ்நிலைகளைத் உள்ளடக்குகின்றது. சில்வா எதிர் உரக் கூட்டுத்தாபனம் (1989) வழக்கு தீர்ப்பில் நீதிபதி அமரசிங்க தனது தனித் தீர்ப்பில் மனிதாபிமானமற்ற நடாத்துகை தொடர்பில் பகுப்பாய்வு செய்தமையினை காணலாம்.

"உறுப்புரை 11 ஆல் குறிப்பிடப்பட்ட நடாத்துகையானது உடல் ரீதியான வன்முறைக்கு மட்டும் உட்பட்டது அல்ல. இது ஆத்மா அல்லது மனதின் விடயங்களினையும் உள்ளடக்கும்."

சித்திரவதை காரணமாக இறந்த ஒரு இறந்தவர் தொடர்பாக,உதாரணமாக ஸ்ரியானி சில்வா எதிர் இந்தமல்கொட (SC FR 471/2000) வழக்கில் சித்திரவதைக்கு எதிரான சமவாயத்தின் பிரிவு 14.1 ஐ நீதிமன்றம் மேற்கோள் காட்டியுள்ளது.

"ஒவ்வொரு அரச தரப்பினரும் அதன் சட்ட அமைப்பில் சித்திரவதைச் செயலால் பாதிக்கப்பட்டவர் நிவாரணம் பெறுகிறார் என்பதையும்.நிவாரணமானது போதுமானதாகவும் நடைமுறைப்படுத்தக்கூடியதுமன இழப்பீடாகவும் முடிந்தவரை முழுமையாக மறுவாழ்வு பெறுவதற்கான வழிமுறைகளாகவும் உள்ளது என்பதனை உறுதிப்படுத்த வேண்டும். சித்திரவதைச் செயலின் விளைவாக பாதிக்கப்பட்டவர் இறந்தால், அவரைச் சார்ந்தவர்களுக்கு இழப்பீடு வழங்கப்படும்."

எனவே, இந்த வழக்கில் நீதிமன்றம், இழப்பீடு வழங்குவதற்கான உரிமையினை இறந்தவரின் சட்டபூர்வமான வாரிசுகள் மற்றும் அல்லது சார்புடையவர்களுக்கு பகிர்ந்தளிக்கிறது என்று விளக்கம் அளித்ததின் மூலம் சர்வதேச கடமைகளுக்கு ஏற்பவும் இணக்கமாகவும் சட்டத்தை கொண்டு பொருள்கோடல் செய்கிறது.

அவசியமான செயற்படுத்தகை இல்லாத போதுதண்டனை காரணமாக உறுப்புரை 11 இன் கீழ் உயிரை பறிக்கப்படாமைக்கான உரிமையையும் உயிர் வாழ்வதற்கான உரிமையையும் நீதிமன்றம் மேலும் அங்கீகரித்ததுள்ளது. (உறுப்புரை 13(4) உடன் படிக்கவும்) மேலேயுள்ள வழக்கில் நீதிமன்றம் இந்த உரிமையை பரந்த அளவில் பொருள்கோடல் செய்ய வேண்டும் என்று கூறியது, மேலும் நிறைவேற்று நடவடிக்கைக்கு எதிராக அடிப்படை உரிமைகளைப் பாதுகாக்கும் ஒரே நோக்கத்திற்காக நீதிமன்றத்திற்கு அரசியலமைப்பால் வழங்கப்பட்ட நியாயாதிக்கமானது இந்த நீதிமன்றங்கள் அடிப்படை உரிமைகளை திறம்பட பாதுகாக்க நியாயமாக அவசியமானதான கருதப்படும்.

இருப்பினும், உரிமை மீறலை மதிப்பிடும்போது நீதிமன்றங்கள் ஒவ்வொரு வழக்கின் சூழ்நிலைகளையும் அதன் தன்மையையும் கவனித்துள்ளன என்பதை கவனத்தில் கொள்ள வேண்டும்.

சிசிரா குமாரா எதிர் சார்ஜெண்ட் பெரேரா மற்றும் பிறர் (1998) வழக்கில், பலப்பிரயோகம் கொடூரமான, மனிதாபிமானமற்ற அல்லது இழிவான நடத்தை என்று சொல்ல முடியாது என்ற கருத்தை நீதிமன்றம் எடுத்துக்கொண்டதுடன் சித்திரவதை

குற்றச்சாட்டின் குறைந்தபட்ச அளவு தீவிரத்தை நிறுவ வேண்டும் எனவும் கூறியது. மேலும், **சன்ன பீரிஸ் மற்றும் பிறர் எதிர்சட்டமா அதிபர் (1994**) எனும் பிரதான தீர்ப்பில் சித்திரவதை, அல்லது கொடூரமான, மனிதாபிமானமற்ற, இழிவான நடத்தை அல்லது தண்டனைக்கு உட்பட்ட மனுதாரர் ஒருவர் தொடர்பில் ஆதரவாக தீர்ப்பளிக்க முன் இதன் தீவிர தன்மை தொடர்பில் நிரூபிப்பு தராதரமானது நிகழ்தவு சமநிலையின் உச்ச கட்டமாக இருக்க வேண்டும். **அதன்படி, நீதிமன்றத்தில் போதுமான ஆதாரங்களைச் சேர்க்கும் பொறுப்பு மனுதாரர் மீது உள்ளது**.

ஆகையால், 11 வது உறுப்புரை உடல் மற்றும் உள ரீதியிலான சித்திரவதைகளை உள்ளடக்கியது என்பதைக் காணலாம், நீதிமன்றங்கள் இதை விளக்கி ஏற்றுக்கொள்கையில், அத்தகைய சித்திரவதைகளை நிரூபிக்க நிரூபிக்கும் பொறுப்பானது மனுதாரரின் மீது சுமத்தப்பட்டுள்ளது. ஆதாரங்களை மறைக்க மற்றும் அச்சுறுத்துவதற்கு அரசுக்கு அதிகாரம் உள்ள ஒரு இடத்தில், ஒரு மனுதாரர் சித்திரவதை குற்றச்சாட்டுகளை நிரூபிப்பது கடினம்.

SC FR எண் 244/2010 வழக்கில், நீதிமன்றம் பின்வருமாறு கூறியது. பதிலாளிலிகள் சித்திரவதைக்கான எந்த தடையங்களினையும் விடவில்லை. மருத்துவ வல்லுநர்களால் கண்டுபிடிக்க முடியாத ஒரு அசாதாரண வகையான சித்திரவதைகளை அவர்கள் பயன்படுத்தியமையே இதற்கு காரணம்

காவல்துறை போன்ற அரச உறுப்புகள் புதிய புதிய விதமான சித்திரவதை முறைகளைக் கண்டுபிடிப்பதால், சித்திரவதைக்கு குறைந்த உடலியல் ஆதாரங்களைக் மடடுமே இவை வெளிப்படுத்தவதால் சித்திரவதைக்கு உட்படுத்தப்பட்டமைக்கான குறைந்த பட்ச சான்றுகளினையே இவை காட்டும் என்பதால் மனுதாரர் மீதானநிரூபிப்பு பொறுப்பானது மனுதாரருக்கு சிக்கலாக இருக்கும்.

பிரிவு 11 இன் மீறல் ஒவ்வொரு வழக்குக்கும் தனியானதுடன் நீதித்துறை வைத்தியர்களால் கண்டுபிடிக்க முடியாத வகையிலான குறைந்த பட்ச சான்றுகளினை வெளிப்படுத்தும் வகையிலான புதி வகையான சித்திவதை முறைகளினை காவல் துறை போன்ற பதிலாளிகள் கண்டு பிடிப்பதனால் மனுதாரரால் சித்திரவதையினை நிரூபிப்பது கடினமாகும். ஆகவே, சித்திரவதைகளைத் தூண்டும் இந்த புதிய முறைகள் நீதித்தறையின் முன் கவனிக்கப்படாமல் இருப்பதனை தடுப்பதில் நீதிமன்றங்கள் முன்னெச்சரிக்கையாக இருக்க வேண்டும்.

5.2 அரசியலமைப்பு உறுப்புரை 12(1)

"அனைத்து நபர்களும் சட்டத்தின் முன் சமமானவர்கள் மற்றும் சட்டத்தின் சம பாதுகாப்புக்கு தகுதியுடையவர்கள்"

பிரிவு 12 (1) ஐ மதிப்பிடும்போது கவனத்தில் எடுத்துக் கொள்ளப்பட்ட வழக்குகளை கண்டறிவது கடினம், ஏனெனில் பெரும்பாலும் இரண்டு தனித்தனி மீறல்களுக்கு மாறாக 11 மற்றும் 12 (1) தொடர்பான நிகழ்வுகளை நீதிபதிகள் ஒன்றாகக் கண்டுபிடிப்பார்கள். இருப்பினும், சமர்ப்பிக்கப்பட்ட மருத்துவ அறிக்கைகளின் நம்பகத்தன்மை, வழக்கு தொடர்பான வேறு எந்த நீதிமன்ற நடவடிக்கைகளும், பதிலளித்தவர்கள் மற்றும் மனுதாரர் சமர்ப்பித்த விடயங்களும் மதிப்பீடு செய்யப்பட்டன. பிரிவு 12 (1) இன் கீழ் மீறலை மதிப்பிடும்போது சட்ட அமலாக்க அதிகாரிகளின் செயலற்ற தன்மையும் கவனத்தில் கொள்ளப்பட்டது. பெரும்பாலும் பிரிவு 12 (1) பிரிவு 11 உடன் தாக்கல் செய்யப்பட்டது, ஏனெனில் சட்டத்தின் கீழ் சமமான பாதுகாப்பைப் பெறுவதற்கான தனது உரிமை விதி 11 இன் மீறலுடன் மீறப்படுவதாக மனுதாரர் கருதினார்.

உச்ச நீதிமன்ற அடிப்படையுரிமை வழக்கு(குருவலகஸ்வெவ விதானலாகே சுவர்னா மஞ்சுலா மற்றும் நவரத்ன ஹேனலாகே ரொசலியா எதிர் C.I.V.P.J புஸ்பகுமார OIC காவல் துறை கெக்கிராவ மற்றும் பிறர்) இவ்வழக்கில் ஜெஹோவாவின் சாட்சியாளரான மனுதாரர் பலவந்தமாக கைது செய்யப்பட்டார். இந்த விவகாரத்தின் உண்மைகளை ஆராய்ந்த நீதிமன்றம் பதிலளாலிகள் 12 (1) வது உறுப்புரையினை மீறியமையினை கண்டன. முத்துசாமி எதிர் கண்ணங்கராவின் வழக்கை நீதிமன்றங்கள் பரிசீலித்தன. இதில் "வாரண்ட் இல்லாமல் கைது செய்ய காவல்துறை அதிகாரிகளின் அதிகாரங்கள் குறித்து காவல்துறை அதிகாரிகளுக்கு வழங்கப்பட்ட அதிகாரங்கள் அனுபவமின்மையால் அல்லது அதிக வைராக்கியம், அல்லது அலுவலகத்தின் கொடுமை காரணமாக துஷ்பிரயோகம் செய்யப்படுவதில்லை என்பதை உறுதிப்படுத்த நீதிமன்றங்கள் விழிப்புடன் இருக்க வேண்டும். ஜோசப் பெரேரா எதிர் சட்டமா அதிபர் வழக்கையும் நீதிமன்றங்கள் கருத்தில் கொண்டன.

இலங்கை அரசியலமைப்பின் கீழ் நாம் உறுதியளிக்கப்பட்ட ஒரு சுதந்திர சமுதாயத்தின் அடிப்படை அமைவாகும். நாம் மதிக்கும் சிந்தனைக்கு மட்டுமல்ல நாம் வெறுக்கும் சிந்தனைகளுக்கும் சுதந்திரம் இருக்க வேண்டும் என்ற நம்பிக்கையின் அடிப்படையில் இவ் அரசியமைப்பு நிறுவப்பட்டுள்ளது.

ஆகவே, உறுப்புரை 12(1) இன் சாரம்சமானது தன்னளவில் மட்டும் இயங்கக்கூடியதல்ல. விதி 11 இன் மீறல் மற்றும் இது போன்ற ஏனைய ஒவ்வொரு சூழ்நிலை மீறல்களுக்கும் 12ஆம் உறுப்புரையின் சாராம்சம் அடிப்படையாக அமைந்திருக்கிறது. இதை உறுதிப்படுத்துவதற்கு மிக குறைவான தகவல்கள் கிடைத்துள்ளன.

S.C FR வழக்கு எண் 56/2012 இல் (சுப்பையா சிவகுமார் ஏள முஜஊ காவல் நிலையம் தெல்தெனியா மற்றும் பலர்) குற்றம் சாட்டப்பட்டவர்கள் மீது ஏற்கனவே ஒழுக்காற்று நடவடிக்கை மேற்கொள்ளப்பட்டிருந்தால் அது 12ஆவது

உறுப்புரை மீறலை தணிப்பதற்கான ஒரு களமாக கருதப்பட்டது. இது மனுதாரர்களின் புகார் விசாரிக்கப்பட்டதன் காரணமாகவும் இருக்கலாம். எனவே அவர் சட்டத்தின் முன் சமமாக கருதப்பட்டார் என்பதை குறிக்கின்றது.

5.3 அரசியலமைப்பின் உறுப்புரை 13(1):

"சட்டத்தால் நிறுவப்பட்ட நடவடிமுறைகளுக்கு அமைவாக அன்றி வேறு எந்த ஒரு முறையிலும் ஒரு நபர் கைது செய்யப்படுதல் ஆகாது. கைது செய்யப்பட்ட எந்த ஒரு நபருக்கும் அவர் கைது செய்யப்பட்டமைக்கான காரணம் அறிவிக்கப்பட வேண்டும்."

S.C FR வழக்கு எண் 241/14 (கருவலகஸ்வேவா விதானலகே சுவர்ண மஞ்சுலா மற்றும் நவரத்ன ஹேனலகோ ரொசலியா Vs C.I.V.P.J புஸ்பகுமார OIC பொலிஸ் நிலையம் கெகிராவ மற்றும் பல) வழக்கில் நீதிமன்றம் "கைது" தொடர்பாக முதன்முதலில் மதிப்பிட்டது. பியசிரி Vs பெர்னாந்து (1988) மற்றும் நமசிவாயம் ஏள குணவர்தன (1989) ஆகிய வழக்குகளில் குறித்த ஒரு நபர் பொலிஸ் அதிகாரியினால் பொலிஸ் நிலையத்துக்கு செல்லும் படி அறிவுறுத்தப்பட்டால் அல்லது அவரது விருப்பத்திற்கு மாறாக தேவைக்கேற்றவாறு பொலிஸ் நிலையத்துக்கு அனுப்பி வைக்கப்பட்டால் அது கைதாகவே கருதப்பட வேண்டும் என கூறப்பட்டுள்ளது.

நமசிவாயம் Vs குணவர்தன (1989) வழக்கில் பிரதம நீதியரசர் சர்வானந்தா கூறும் போது : "மூன்றாவது பிரதிவாதி மனுதாரரை தன்னுடன் காவல் நிலையத்திற்கு வருமாறு கோரிய போது மனுதாரர் மூன்றாவது பிரதிவாதியால் கைது செய்யப்பட்டுள்ளார். மூன்றாவது பிரதிவாதியின் நடவடிக்கையால் மனுதாருக்கு பேரூந்தில் தனது பயணத்தை தொடர முடியாமல் போயுள்ளது. மனுதாரர் தான் விரும்பிய இடத்திற்கு செல்லும் சுதந்திரத்தை இழந்துள்ளார். இங்கு ஒரு உறுதியான பலாத்காரம் பயன்படுத்தப்பட்டிருக்க வேண்டும் என்ற அவசியம் இல்லை. பலாத்காரத்தை பயன்படுத்துவதற்கான ஒரு சிறு அச்சுறுத்தல் இருந்தாலே அது மனுதாரரின் வாதத்திற்கு போதுமானதாகும்."

சிரிசேனா ஏள பெரேரா (1991) வழக்கிலும் இதே போன்ற நிலைப்பாடு எடுக்கப்பட்டது. "ஒரு நபர் கைது செய்யப்பட்டாரா இல்லையா என்பது கைது செய்யப்படுவதற்கான சட்டப்பூர்வமான தன்மையை பொருத்தது அல்ல ஆனால் அவர் விரும்பும் இடத்துக்கு செல்வதற்கான சுதந்திரத்தை அவர் இழந்துவிட்டாரா என்பதை பொறுத்ததாகும்."

SC FR வழக்கு எண் 241/14 கைது செய்யப்படுதல் சட்டத்தின் நடவடிமுறைபடி மதிப்பீடு செய்யப்படுதல் வேண்டும் என்றும் குற்றவியல் நடவடிமுறைக் கோவையின் பிரிவு 32(1)இன் படி காவல்துறை அதிகாரி ஒரு நபரை கைது செய்யும் போது 32 (1) ஆம் பிரிவை மதிப்பீடு செய்யவேண்டும் என்றும் கூறுகிறது. குற்றவியல் நடவடிமுறைக்கோவையின் 32ஆம் பிரிவின் உப பிரிவுகளில் ஏதேனும் ஒன்றின் அடிப்படையிலன்றி வேறெந்த முறையிலும் கைதாணை பத்திரம் இன்றி ஒருவரை கைது செய்ய முடியாது என ஏற்பாடு செய்கிறது.

இவ்வாறு நீதிபதி பிரசன்ன ஜயவர்தன என்பவர் கூறும்போது, " கைது செய்த அதிகாரியின் அறிவு குறித்த தனிப்பட்ட அவதானிப்புகள் அல்லது நியாயமான புகார் அல்லது நம்பகமான தகவல்களின் அடிப்படையில் கைதுக்கு நியாயமான காரணங்கள் இருந்தால் மட்டுமே கைதானது சட்டபூர்வமாக இருக்குமென்று நீதிமன்றங்கள் தொடர்ந்தும் கருதி வருகின்றன. இத்தகைய கைதானது குறித்த நபர் குறித்த குற்றத்தில் தொடர்புபட்டுள்ளார் அல்லது அக்கறை கொண்டுள்ளார் என்ற நியாயமான சந்தேகத்தை உருவாக்க உதவுகிறது.

சன்ன பீரிஸ் Vs சட்டமாஅதிபர் (1994) வழக்கில், நீதிபதி அமரசிங்க அவர்கள் இதைப்பற்றி விரிவாக விவாதித்து பின்வருவனவற்றை குறிப்பிடுகின்றார் : "கைது செய்யப்படுவது தொடர்பான விதிகள் கைது செய்யப்பட்ட நபரின் குற்றத்தை அல்லது குற்றமற்ற தன்மையை தீர்மானிக்க விண்ணப்பிப்பவர்களுக்கு பொருள் ரீதியாக வேறுபட்டதாக காணப்படுகிறது. அதில் ஒன்று குற்றவியல் நடவடிக்கைகளின் தொடக்கப் புள்ளியில் அல்லது அருகில் உள்ளது, மற்றொன்று அந்த நடவடிக்கைகளை நிறுத்துவதோடு அனைத்து தரப்பினரிடமிருந்தும் சமர்ப்பிப்புக்களை கேட்டபின் நீதிபதியால் செய்யப்படுகிறது." கைது செய்யப்படுவதற்கான அதிகாரம் குற்றச்சாட்டு ஆணைக்குழுவின் தெளிவான அல்லது போதுமான ஆதாரங்களால் ஆனதாக இருக்க வேண்டும் என்ற அவசியம் இல்லை. கைது செய்யும் அதிகாரி கைது செய்பவரின் மீது சந்தேகிப்பதற்கான நியாயமான காரணங்கள் உண்டா என்பதை பார்க்க வேண்டும். ஒரு நியாயமான சந்தேகம் அதிகாரியின் அறிவுக்குள் அல்லது அவருக்கு வழங்கப்பட்ட நம்பகமான தகவல்களின் அடிப்படையில் அல்லது இரு ஆதாரங்களின் கலவையின் அடிப்படையில் இருக்கலாம். தனிப்பட்ட விசாரணையின் மூலமாகவொ அல்லது அவருக்கு வழங்கப்பட்ட தகவல்களை ஏற்றுக்கொள்வதன் மூலமாகவோ அல்லது இரண்டையும் செய்வதன் மூலமாகவோ அவர் தன் வாதத்தை தெரிவிக்கலாம். தகவலின் ஆதாரம் நம்பகத்தன்மை வாய்ந்ததாக இருப்பதனால் மாத்திரம் அது நியாயமானதாக மாறாது. ஒரு நம்பமுடியாத தகவல் தருனரால் அவ் அதிகாரி செயற்படுத்தப்பட்டிருந்தால் தகவல் எந்த மூலத்திலிருந்து பெறப்பட்டுள்ளது என்பதை அவர் கவனத்திற் கொள்ள வேண்டும். எவ்வாறாயினும் தகவல் ஆதாரங்களின் நம்பகத்தன்மை உள்ளிட்ட சூழ்நிலைகளில், கைது செய்யப்பட்ட நபர் ஒரு நியாயமான மனிதனாக இதை செய்துள்ளார் அல்லது இது போன்ற குற்றச்செயல்களில் ஏற்கனவே அக்கறையுடைய ஒருவராக இருந்துள்ளார் என்ற அடிப்படையில் சந்தேகிக்க முடியுமா என்பது கேள்வி. எப்படியாயினும் கைது செய்யும் அதிகாரி வெறும் அனுமானம் அல்லது தெளிவற்ற ஊகத்தின் அடிப்படையில் நிறுவப்பட்ட

சந்தேகத்தின் பேரில் செயல்பட முடியாது. விசாரணையின் போது கைது செய்யப்பட்ட நபர் நியாயமான சந்தேகத்துக்கு உட்பட்டவர் என்பதை அதிகாரியின் தகவல்கள் நிரூபித்துக்காட்ட வேண்டும்.

எனவே, இதை தீர்மானிக்க நீதிமன்றங்கள் நியாயமான காரணங்களை மதிப்பிடுவதற்கான ஒரு புறநிலை சோதனையை பரிசீலிக்கும் என்பதோடு கைது செய்யும் அதிகாரியின் அகநிலை பகுத்தறிவை இது உள்ளடக்காது. எவ்வாறாயினும் நியாயமான காரணங்கள் நிலமைக்கு ஏற்ப வேறுபடும். எதிர்ப்பு அல்லது பொது இடத்தில் சண்டை போன்ற தற்செயலான விடயங்களில் அப்பாவி நபர்கள் கைது செய்யப்பட்ட வழக்குகள் இங்கு மதிப்பீடு செய்யப்பட்டுள்ளன. இருப்பினும் பெரும்பாலான சந்தர்ப்பங்களில் பிரிவு 13(1) புறநிலை ரீதியான விவாதமாகவே மதிப்பிடப்பட்டது.

டப்ளியூ. நந்ததாச Vs யு.ஜி.சந்திரதாச O.I.C காவல் நிலையம் (2005) வழக்கில் ஷிராணி பண்டாரநாயக்க அவர்களின் அவதானிப்பின்படி, "சரியான நடைமுறையை பின்பற்றுவதன் மூலம் சுதந்திரத்தை பாதுகாப்பதோடு, சட்டம் மற்றும் ஒழுங்கை பராமரிப்பதும் இதன் மூலம் நீதி மற்றும் நியாயமான நிலையை உருவாக்குவதும் ஆகும்."

5.4 அரசியலமைப்பின் உறுப்புரை 13(II):

"காவலில் வைக்கப்பட்டுள்ள, தடுத்து வைக்கப்பட்டுள்ள அல்லது தனிப்பட்ட சுதந்திரத்தை இழந்த ஒவ்வொரு நபரும் சட்டத்தால் நிறுவப்பட்ட நடைமுறையின் படி அருகிலுள்ள தகுதி வாய்ந்த நீதிமன்றத்தின் நீதிபதி முன் கொண்டுவரப்படுதல் வேண்டும். காவலில் வைக்கப்படுதல் தடுத்து வைக்கப்படுதல் அல்லது தனிப்பட்ட சுதந்திரத்தை இலக்க நேரிடுதல் போன்றவை நீதிபதியின் உத்தரவின் விதிமுறைகள் மற்றும் சட்டத்தால் நிறுவப்பட்ட நடைமுறைகளுக்கு மேலே வாதிக்கப்பட்ட நடவடிமுறையானது குற்றவியல் நடவடிமுறைக் கோவை சட்டம் இலக்கம் 15, 1979 இன் 37ஆம் பிரிவில் கீழ்வருமாறு ஏற்பாடு செய்யப்பட்டுள்ளது. "எந்த ஒரு சமாதான அதிகாரியும் காவலில் வைக்கப்பட முடியாது அத்துடன் வழக்கின் அனைத்து சூழ்நிலைகளுக்கும் தேவையான காலத்தை விட நீண்ட காலத்திற்கு உத்தரவாதமின்றி கைது செய்யப்பட்ட ஒருவரை சிறையில் அடைக்கக் கூடாது. இக்காலமானது பயணத்துக்கு தேவையான நேரத்தை தவிர 24 மணித்தியாலங்களுக்கு மிகாமல் அருகிலுள்ள மஜிஸ்றேட்டுக்கு கொண்டு செல்லப்படுதல் வேண்டும்.

சன்னா பீரிஸ் ஏள சட்டமாஅதிபர் (1994) வழக்கில் அமரசிங்க நீதிபதி கூறுவதாவது "அரசியலமைப்பு தேவை என்பது ஒரு நியாயமான நேரத்திற்குள் ஒரு நியாயமான வழியில் இனங்க வேண்டும் என்பதாகும். இது ஒவ்வொரு வழக்கின் சூழ்நிலையிலும் நீதிமன்றம் தீர்மானிகக்க வேண்டிய விடயமாகும்.

ராணி Vs ஜினதாச (1960) வழக்கில், குற்றவியல் நடைமுறை கோவை சட்டத்தின் பிரிவு 37 மற்றும் பொலிஸ் கட்டளை சட்டத்தின் 66 வது பிரிவு என்பன கைது ஆணைப்பத்திரம் இல்லாமல் கைது செய்யப்பட்ட ஒருவரை 24 மணித்தியாலத்திற்குள் அருகில் உள்ள மஜிஸ்றேட்டுக்கு முன் ஆஜர்படுத்த வேண்டும் என இவ்வழக்கை நடத்தியிருந்தது. இவ்விரு பிரிவுகளிலும் பரிந்துரைக்கப்பட்ட 24 மணி நேர வரம்பு என்பது சந்தேக நபரை 24 மணித்தியாலத்திற்கு மேல் பொலிஸ் அதிகரியால் தடுத்து வைக்கப்படுவதை வறிதாக்குகிறது. பிரதம நீதியரசர் பஸ்நாயக அவர்கள் கூறியதாவது "காவல் துறை கட்டளை சட்டத்தின் பிரிவு 66ஆவது கைதாணைப்பத்திரம் இல்லாமல் ஒரு காவல்துறை அதிகாரி ஒரு நபரை தடுத்து வைத்திருப்பார் எனின் அந்நபரானவர் உடனடியாக அந்த காவல்துறையின் தலைமை பொறுப்பதிகாரியின் காவலுக்கு கீழ் கொண்டுவரபட வேண்டும். அத்தகைய நபரை சட்டத்தின் படி கையாள ஒரு மஜிஸ்றேட்டுக்கு முன் கொண்டுவரும் வரை அந்த நபர் காவல்துறை தலைமை பொறுப்பதிகாரியால் பாதுகாக்கப்படுவார். தடுப்புக்காவல் மூலம் சேவை செய்யவேண்டிய சட்டபூர்வமான நோக்கம், குற்றங்களை கண்டறிவதில் பங்கேற்பதற்கான நோக்கத்திற்காக ஒரு குற்றவாளியை காவல்துறையினருடன் குறித்த இடத்திற்கு வருமாறு கட்டாயப்படுத்தும் பொதுவான நடைமுறையாக இது மாறியிருப்பதை நாங்கள் கடுமையாகவும் உறுதியாகவும் மறுப்போம். சட்டவிரோத நோக்கத்திற்காக மஜிஸ்றேட்டுக்கு முன் தயாரிக்கப்பட்ட தாமதமானது சட்டவிரோதமானது என்பதுடன் தணிக்கைக்கு தகுதியானது."

கபுகீக்கியான Vs ஹெட்டியாரச்சி மற்றும் 2பேர் (S.C.N80/84) வழக்கில், நிதிமன்றங்கள் ஒருகாலத்தில் சட்டரீதியான உரிமைகளாக இருந்த குற்றவியல் நடவடிமுறை கோவை சட்டத்தின் பிரிவு 36 மற்றும் 37 I அரசியலமைப்பு உரிமைகளாக மாற்றயுள்ளன. தகுந்த காரணங்கள் இல்லாவிட்டால் அவை நீதித்துறை கட்டுமானத்தால் குறைக்கப்படக்கூடாது என்பதை நீதிமன்றம் மேலும் கூறியிருந்தது. 24 மணி நேரத்திற்கு மேலாக தேவைப்பட்டாலும் கூட விசாரணைகள் நீண்ட காலமாக வரையப்படும் போது காவல்துறை அதிகாரிகள் கடைப்பிடிக்க வேண்டிய நடைமுறையை பிரிவு 115(4) வழங்குகிறது. 24 மணி நேர காலப்பகுதிக்குள் முடிக்க முடியாத நிலைமை ஒன்று ஏற்படுமாக இருந்தால் பொலிஸ் நிலையத்தின் பொறுப்பதிகாரி மேலதிக விசாரணையின் நோக்கத்திறகாக சிறையை அணுகுவதற்கு முதல் மஜிஸ்றேட்டின் அங்கிகாரத்தைப் பெற வேண்டும்.

5.5 அரசியலமைப்பின் உறுப்புரை 13 (4)

சட்டத்தால் நிறுவப்பட்ட நடைமுறைக்கு ஏற்ப செய்யப்பட்ட ஒரு திறமையான நீதிமன்றத்தின் உத்தரவைத்தவிர வேறு எந்த நபருக்கும் மரண தண்டனை அல்லது சிறைத்தண்டனை விதிக்கப்படலாகாது. மேலும், கைது, காவலில் வைத்தல்,

தடுப்புக்காவல் அல்லது ஒரு நபரின் தனிப்பட்ட சுதந்திரத்தை பறித்தல், விசாரணை அல்லது விசாரணை நிலுவையில் இருப்பது தண்டனையாக இருக்காது.

பிரிவு 13(4) இன் கீழ் தொடரப்பட்ட 3 வழக்குகள் மட்டுமே காணப்பட்டன. SC FR 18/87 (அன்சலின் பெர்னாந்து ஏள சரத் பெரேரா OIC காவல் நிலையம் சிலாவ் மற்றும் பிறர்) மட்டுமே 13(4) இனை மீறியதாக கண்டறியப்பட்டது. எனவே, 13(4) எவ்வாறு விளக்கப்பட்டுள்ளது என்பதை பகுப்பாய்வு செய்ய போதுமான பொருள் இல்லை.

SC FR 18/87 இல் நானயக்கார ஏள ஹென்றி பெரேரா வழக்கு மதிப்பீடு செய்யப்பட்டுள்ளது. இவ்வழக்கில் நீதிமன்றம் ஒரு நபரை சரியாக குறிப்பிடப்படாத அல்லது சரியாக அறியப்படாத நோக்கத்திற்காக தடுத்து வைப்பது சட்டவிரோதமானது என்ற கருத்தை வெளிப்படுத்தியது. காரணம் இது பிரிவு 13(4) இன் மீறலாகும். ஆகவே ஒரு நபர் அறியப்படாத நோக்கத்திற்காக தடுத்து வைக்கப்பட்டால் பிரிவு 13(4) ஐ கருத்திற்கொள்ளளாம். இது வழக்கின் உண்மைத்தன்மையை குறிக்கின்றது.

SC FR 471/2000 (ஸ்ரீயானி சில்வா ஏள சித்தமல்கொட OIC பொலிஸ் நிலையம் பயகல மற்றும் ஏனையோர்) வழக்கில் நீதிபதி பெர்னாந்து கூறுவதாவது "வாழும் உரிமையானது ஒரு அடிப்படை உரிமையாக அரசியல் அமைப்பில் வெளிப்படையாக கூறப்படவில்லை ஆனால் அத்தியாயம் 3இன் ஊடாக மறைமுகமாக அது கூறப்பட்டுள்ளது. குறிப்பாக உறுப்புரை 13 (4) இன் காப்பு வாசகமானது திறமையான நீதிமன்றத்தின் உத்தரவை தவிர வேறு எந்த ரீதியிலும் ஒரு நபர் மரண தண்டணைக்கோ சிறை தண்டணைக்கோ உள்ளாக்கப்படுதலாகாது என கூறப்பட்டுள்ளது. நீதிமன்றம் வேறு விதமாக உத்தரவிடாவிட்டால் ஒரு நபருக்கு வாழும் உரிமை எந்த ரீதியிலும் பாதிக்கப்பட மாட்டாது. உயிர்வாழும் உரிமையானது நீதிமன்ற உத்தரவின் கீழ் மட்டுமே இழக்கப்பட வேண்டும் என உறுப்புரை 13 (4) அங்கீகரிக்கின்றது. இம்முறையை தவிர வேறு ஏதேனும் முறையில் ஒரு நபர் மரண தண்டணைக்கு உட்படுத்தப்பட்டிருந்தால் அச்செயல் சட்டவிரோதமானது என்பதுடன் 13(4) பிரிவினை மீறியுள்ளது எனவும் பொருள்படும். இது போன்ற ஒவ்வொரு நிகழ்வுகளை பொருத்தவரை பாதிக்கப்பட்ட நபர் இறந்த பின் அவரின் உரிமைக்காக 13(4) ஆம் உறுப்புரையின் கீழ் அவருக்கு வழக்குதொடுக்க முடியாது என்பதால் அவரில் அக்கறையுடையோர் அல்லது தங்கிவாழ்வோர் எவராவது இம்மீறலின் மீது வழக்கு தொடர முடியும். நீதிபதி பெர்னாந்து அவர்கள் மேலும் கூறுகையில் உறுப்புரை 13(3) உறுப்புரை 126 (2) குறிக்கப்பட்டுள்ள வாழும் உரிமை மீறல் தொடர்பான விடயத்தில் ஒழுங்கின்மை, முரண்பாடு மற்றும் அநீதியை தவிர்க்க வேண்டும் என்பதற்காக சட்டபூர்வமான வாரிசுகள் அல்லது குறித்த நபர் மீது அக்கறையுடைய நபர்கள் வழக்கை கொண்டுவரலாம் என ஏற்பாடுசெய்துள்ளதாக கூறியுள்ளார். ஆகவே அரசியல் அமைப்பில் வெளிப்படையாக கூறப்படா விட்டாலும் 13(4) உறுப்புரை உயிர் வாழும் உரிமையை குறிக்கிறது என்றும் ஒரு நபர் சட்டத்துக்கு முறனாக கொல்லப்பட்டால் நீதிமன்றம் 13(4) ஆவது உறுப்புரையை விளக்கும். சட்டபூர்வமான வாரிசுகளை வழக்கை நடத்த அனுமதிப்பதென்பது உறுப்புரை 13(4) இன் பொருளை குறைக்கும் விடயமாகும். இவ் உறுப்புரையானது SC FR18/87, SCFR471/2000 மற்றும் SCFR 480/2003 (குணத்திக்கே மிஸ்லின் நோநா மற்றும் ஏனையோர் ஏள ழுஜஊ பொலிஸ் நிலையம் மகிபால மற்றும் ஏனையோர்).

6. உறுப்புரை 11, 13(1), 13(2) மீறல் தொடர்பான வழக்குகளின் பகுப்பாய்வு

இவ்வுறுப்புரையின் கீழ் வழங்கப்பட்டுள்ள தீர்மானங்களை அறிவதற்காக 100 வழக்குகள் மதிப்பீடு செய்யப்பட்டுள்ளன. அவை தொடர்பாக கீழ்வருவன இனங்காணப்பட்டுள்ளன.

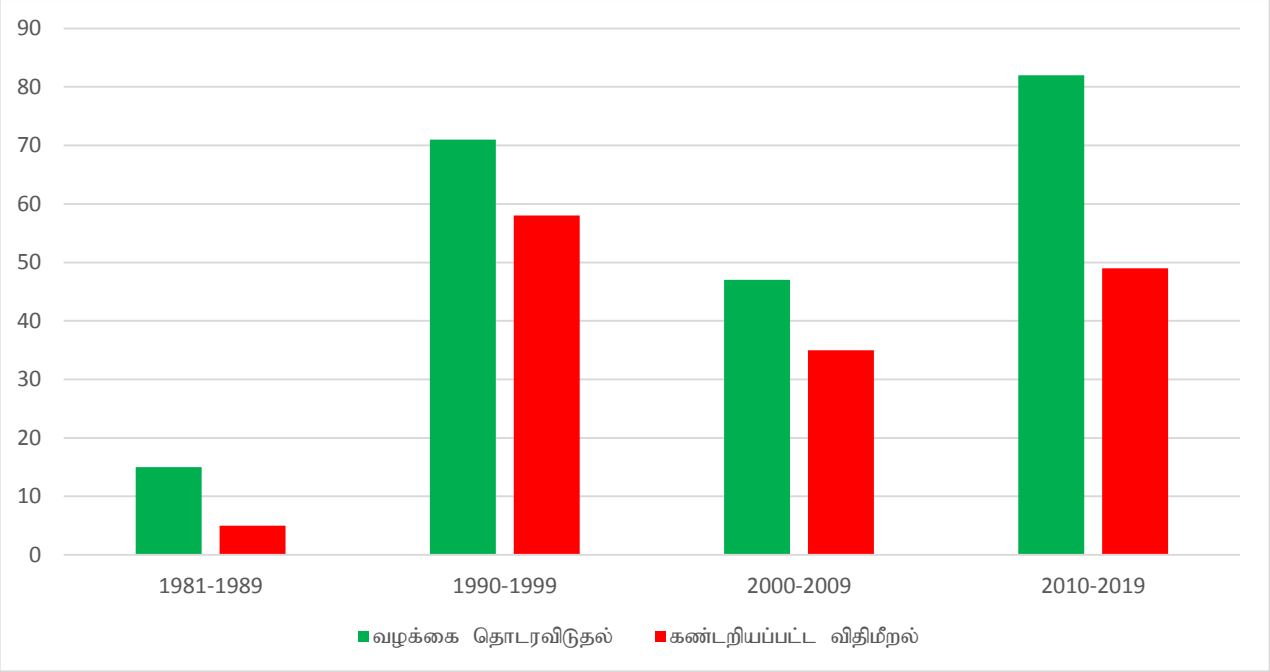
- 1981 முதல் 2019 வரையான காலகட்டத்தில் அடிப்படை உரிமைகளை (11, 13(1), 13(2)) மீறியதற்காக அதிகமான ஆண்கள் உச்ச நீதிமன்றத்தில் விண்ணப்பித்துள்ளனர். ஆனால் பெண்கள் இந்த விடயத்தில் குறைவாகவே விண்ணப்பித்துள்ளனர். பெண்கள் பெரும்பாலும் பாதுகாவலர்களின் ஊடாகவே செயல்படுகிறார்கள். அல்லது இறந்தவரை பிரதிநிதித்துவப்படுத்துகிறார்கள். உச்ச நீதிமன்றத்தில் விண்ணப்பம் செய்த சிலர் பாலியல் வன்கொடுமை அச்சுறுத்தல்களுக்கு ஆளானதாகவோ அல்லது பாலியல் வன்கொடுமைக்கு ஆளானதாகவோ உணர்ந்தனர். சில சந்தர்ப்பங்களில் ஆண்கள் நிர்வாணமாக ஆக்கப்பட்டு மலக்குடலில் குழாய்கள் செறுகப்படுவது போன்ற கொடுமைகள் இடம்பெற்றன. ஆனால் இந்த செயல்கள் எதுவும் பாலியல் வன்கொடுமை என குறிப்பிடப்படவில்லை.

- 1980 களில் அரசியல் அமைப்பின் 126 ஆவது உறுப்புரையில் பரிந்துரைக்கப்பட்ட விடயமான நிர்வாக அல்லது நிறைவேற்று நடவடிக்கைகளால் ஒரு அடிப்படை உரிமை மீறல் ஒன்று நடாத்தப்பட்டது அல்லது நடாத்தப்பட எத்தனிக்கப்பட்டது எனின் மட்டுமே நிவாரணம் கிடைக்குமா என விவாதிக்கப்பட்டது. எவ்வாறாயினும் 1980களில் இந்த விவாதம் அலுவலகத்தின் நிறத்தின் கீழ் செயற்படும் நபர்களுக்கும் விரிவாக்கப்பட்டுள்ளது. அவர் / அவள் அவ்வாறு செய்ய அங்கிகாரம் பெறவில்லையாயினும் இதே நடவடிக்கை பின்பற்றப்பட்டது.

- **வழக்கை தொடர விடுதல்** : பெரும்பாலும் மனுதாரர் அளித்த விண்ணப்பத்தில் பல மீறல்கள் இருந்ததை காண முடிந்தது. ஆனால் பின்னர் "தொடரவிடுங்கள்" (லீவ் டு ப்ரோசிட்) காலகட்டத்தில் அது குறைக்கப்பட்டது. அகவே உறுப்புரைகளின் மீறல்கள் ஏன் குறைக்கப்பட்டன என்பதற்கான காரணங்கள் மற்றும் பூர்வாங்க ஆட்சேபனைகளின் கட்டத்தில் அது எவ்வாறு நியாயப்படுத்தப்பட்டது என்பது குறித்து ஆராய்ச்சி செய்யப்பட்டால் அது பொதுமக்களுக்கு பயனளிக்கும்.

எவ்வாறாயினும் ஒவ்வொரு மீறலுக்கும் வருமானத்திற்கான விடுப்பு எண்ணிக்கை மற்றும் உறுப்புரை 11, 13(1) மற்றும் 13(2) இனை மீறியதாக கண்டறியப்பட்ட விண்ணப்பங்களின் எண்ணிக்கை பற்றிய கண்ணோட்டத்தை கீழே உள்ள அட்டவணை வழங்குகிறது.

வருடம்	வழக்கை தொடரவிடுதல்	கண்டறியப்பட்ட விதிமீறல்
1981-1989		
உறுப்புரை 11	08	02
உறுப்புரை 13(1)	05	02
உறுப்புரை 13(2)	02	01
1990-1999		
உறுப்புரை 11	28	21
உறுப்புரை 13(1)	23	18
உறுப்புரை 13(2)	20	19
2000- 2009		
உறுப்புரை 11	22	18
உறுப்புரை 13(1)	15	09
உறுப்புரை 13(2)	10	08
2010-2019		
உறுப்புரை 11	41	27
உறுப்புரை 13(1)	25	12
உறுப்புரை 13(2)	16	10



- SC FR இலக்கம் 244/2010 இல் பிரதிவாதிகள் சித்திரவதைக்கான எந்த அடையாளங்களையும் விடவில்லை. உண்மையில் மருத்துவ அறிக்கை மணிக்கட்டு மற்றும் கணுக்கால் ஆகியவற்றில் மட்டுமே காயங்களை காட்டியது. குழாய் மூலமாகவே அடிக்கப்பட்டுள்ளது. அது எவ்வித அடையாளங்களையும் விட்டிருக்கவில்லை. மிளகாய்தூள் இன்னொரு ஆயுதமாக பயன்படுத்தப்பட்டது. முதலில் மனுதாரர் அதை சாப்பிடச் செய்வதன் மூலமாகவும் பின்னர் கண்கள் மற்றும் மூக்கில் சாற்றை ஊற்றுவதன் மூலமாகவும் சித்திரவதை செய்யப்பட்டார். விதி 11 இன் கீழான மீறலுக்கான ஆதார சுமை ஒரு மனுதாரர் மீது இருப்பதால் பிரதிவாதிகள் சித்திரவதைக்கு புதுமையான வழிகளை தேடுகிறார்கள். வெறும் கண்களால் பார்க்கும் போது விளங்காத, உடம்பில் அடையாளங்கள் இல்லாத சித்திரவதைகளை செய்ய இனி முயற்சிப்பர். ஆகவே, 11 வது உறுப்புரையை நீதிமன்றங்கள் இனி பொருள்கோடல் செய்யும் போது கண்ணுக்கு அப்பாற்பட்ட சான்றுகளைத் தேட வேண்டியிருக்கும்.

- மொத்தமாக தள்ளுபடி செய்யப்பட்ட விண்ணப்பங்களின் எண்ணிக்கை: 100, வழக்குகளில் மொத்தமாக தள்ளுபடி செய்யப்பட்டவை: 21, சித்திரவதைக்கான ஆதாரங்கள் இல்லை என்ற அடிப்படையில் பெரும்பாலான வழக்குகள் தள்ளுபடி செய்யப்பட்டன. உ-ம் : மனுதாரரின் கதை நீதித்துறை மருத்துவ அதிகாரி வழங்கிய மருத்துவ அறிக்கையுடன் பொருந்தவில்லை. மேலும், மனுதாரரின் சாட்சிகள் அவர் கூறிய நிகழ்வுகளுக்கு பொருந்தியிருக்காததை நீதிபதி கருத்திற் கொண்டார். குறிப்பாக உறுப்புரை 13 இனை மதிப்பீடு செய்யும் போது மனுதாரரின் நடத்தை இங்கு கவனத்திற் கொள்ளப்பட்டது. குடிபோதையில் ஒருவரின் நடத்தை, பொது இடத்தில் அவரது நடத்தை என்பன ஒரு விண்ணப்பத்தை தள்ளுபடி செய்யும் போது கவனத்தில் கொள்ளப்படும் விடயங்களாகும். பிரதிவாதிகள் (சட்ட அமுலாக்க அதிகாரிகள்) நீதிமன்றம் முரண்பாடான சான்றுகளை கருத்திற் கொள்ளப்பட்டுள்ளது என்ற அறிக்கையை வழங்கியுள்ளதனால் அது மனுதாரரின் பக்கத்துக்கு சார்பான விடயங்களை தோற்றுவித்தது.

- SC FR 555/2009 (ஹேரத் முதியன்சலாகே யோஹான் இந்திக ஹேரத் Vs OIC பொலிஸ்நிலையம் மற்றும் ஏனையோர்) வழக்கில் சித்திரவதைக்கு குற்றவியல் தடைகளை வழங்கும் 1994 ஆம் ஆண்டின் 22ஆம் இலக்க சித்திரவதை சட்டத்தின் 13ஆவது பிரிவில் உள்ள அடிப்படை உரிமை விதிகள் கூடுதலாக வழங்கப்பட்டுள்ளன என்று நீதிமன்றங்கள் கருதின. SC வழக்கு எண் 244/2010 இல் சித்திரவதை சட்டத்தின் கீழ் சித்திரவதையின் வரையரை வழக்கின் உண்மைகளை பகுப்பாய்வு செய்ய பயன்படுத்தப்பட்டது.

- வடக்கின் தனிநாட்டு கோரிக்கை யுத்தத்தின் போது மனித உரிமை மீறல் குற்றச்சாட்டுகள் மற்றும் 100க்கு குறைவான JVP விண்ணப்பங்களும் இடம்பெற்றன. ஆனால் அவை நாடு முழுவதிலும் இருந்து வந்தவை அல்ல என்பது குறிப்பிடத்தக்கது. சில மாவட்டங்களில் எந்தவித விண்ணப்பங்களும் கொடுக்கப்படவில்லை. மேலும் தமிழ் ஈழ விடுதலைபுலிகள் (LTTE) தொடர்பான விடயங்களுடன் 3 வழக்குகள் மட்டுமே இணைக்கப்பட்டுள்ளன. SC FR 326/2008 (எட்வர்ட் சிவலிங்கம் Vs ஜயசேகர உப பொலிஸ் அதிகாரி CID) என்ற வழக்கு சான்று போதாமையினால் நிராகரிக்கப்பட்டது. நீதிமன்றங்கள் ஏனைய காரணங்களுக்கு மேலதிகமாக சர்வதேச செஞ்சிலுவை சங்கத்தின் (ICRC) அதிகாரிகள் மேற்கொண்ட இரண்டு ஆய்வுகளை மதிப்பீடு செய்தன. இந்த ஆய்வுகளின் புதுப்பிப்புகள் சி.ஐ.டி யால் பராமரிக்கப்படும் வழக்கமான தகவல்புத்தக பதிவுகளில்

சேர்க்கப்பட்டுள்ளன. எந்தவொரு முறைகேடான நடாத்துகையையும் சித்திரவதையையும் இது குறிக்கவில்லை என அதில் கூறப்பட்டுள்ளது. இரண்டாவது வழக்கான SC 860/99 (பிரியந்த டயஸ் ஏள ஏக்கநாயக்க, பொலிஸ் கான்ஸ்டபிள், பொலிஸ் நிலையம் பொல்பித்திகம மற்றும ஏனையோர்) மனுதாரரிடம் பிரதிவாதி பிறந்த இடம் தொடர்பாக விசாரித்த போது அவர் ஒரு பாடசாலை ஆசிரியராக வேலை செய்து கொண்டிருந்தார். மனுதாரர் சிங்களவராக இருந்த போதிலும் அவர் பிறந்த இடம் மட்டக்களப்பு ஆகும். அவரை விசாரித்த பின்னர் பிரதிவாதிகள் அவரை விடுதலை புலிகளுடன் தொடர்பு கொண்ட ஒரு நபர் என்று கருதியதால் அவரை தாக்கினர். எவ்வாறாயினும் பிரதிவாதிகள் 11 வது பிரிவு மற்றும் (SC 555/2001 கோணேஷலிங்கம் Vs மேஜர் முத்தலி.ப்) என்ற இறுதி தீர்ப்பினையும் மீறியதாக நீதிபதிகள் கண்டறிந்தனர். மனுதாரர் அவர் காவலில் வைக்கப்பட்டதாகவும், தாக்கப்பட்டு அவர் விடுதலைப் புலிகளின் உறுப்பினரென ஒப்புக்கொள்ளும்படி கட்டாயப்படுத்தப்பட்டதாகவும் புகார் அளித்தார். இது தொடர்பாக மனுதாரரை தனது கட்டுப்பாட்டுக்குள் எடுத்து விசாரித்த நீதிமன்றம் பிரதிவாதி உறுப்புரைகள் 11, 13(1) மற்றும் 13(2) ஆகியவற்றை மீறியுள்ளதாக தீர்மானித்தது.

- மஜிஸ்டரேட் உத்தரவுகள் தொடர்பாக 2 வழக்குகள் மட்டுமே நீதித்துறை சேவை ணையத்திற்கு அனுப்பப்பட்டன. SC FR எண் 126/94 இல் ஒரு மஜிஸ்ட்ரேட்க்கு அனுமதி வழங்கும் சட்டத்தை உச்ச நீதிமன்றத்தால் கண்டுபிடிக்க முடியவில்லை. இதனை நீதித்துறை சேவை ஆணையத்தின் தலைவருக்கு அறிவிக்குமாறு பதிவாளருக்கு உத்தரவிடப்பட்டது. SC 136/2014 இல் கற்றறிந்த மஜிஸ்ட்ரேட்க்கு உத்தரவு பிறப்பிக்க நியாயாதிக்கம் இல்லை என்ற சமர்ப்பிப்புகளை நிதிமன்றம் ஏற்றுக்கொண்டது. இந்த தீர்மானத்தின் நிழற்பிரதி நீதித்துறை சேவை ஆணைக்குழுவிற்கு அனுப்பி வைக்கப்பட்டது.

- SC 136/2014 (கோல்மன் ஏள சட்டமாஅதிபர் மற்றும் ஏனையோர் இந்த வழக்கு மட்டுமே உறுப்புரை 11, 12(1), 13(1) இன் கீழ் தொடரவிடும் வழக்கிற்காக (லீவ் டு ப்ரொசிட்) கண்டெடுக்கப்பட்டது. இவ்வழக்கில் உறுப்புரை 12(1), 13(1) மீறப்பட்டுள்ளதாக நீதிமன்றம் தீர்மானித்துள்ளது.

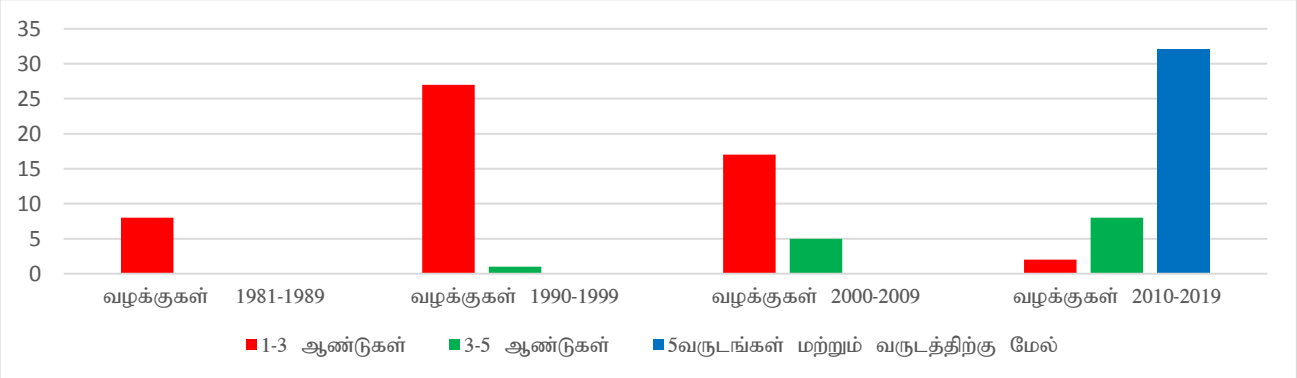
7. நேரடி பிரச்சனைகள்

7.1 காலவரையறை

பல ஆண்டுகளாக மனுக்களின் எண்ணிக்கை குறிப்பாக 2000 ஆம் ஆண்டிற்கு பிறகு வழக்குகளின் பின்னனியை உருவாக்கியது என்பது தெளிவாகிறது. 1980-2000 ஆண்டுகளில் அனைத்து விண்ணப்பங்களும் எடுக்கப்பட்டன. மேலும் தீர்ப்புக்கள் 1 வருடத்திற்குள் கொடுக்கப்பட்டன. இருப்பினும் வழக்குகளின் எண்ணிக்கை அதிகரித்ததன் காரணமாக வழக்குகள் முடிவுறுவதற்கு 5 ஆண்டுகளுக்கும் மேலான காலம் சென்றது. இந்த தாமதம் பல விளைவுகளை ஏற்படுத்தக் கூடும். மனுதாரர் ஒரு தாமதமான தீர்ப்பை பெறுகையில் ஒருவருட காலத்திற்குள் விசாரிக்கப்பட்ட வழக்கை விட இவ்வாறான வழக்குகள் அதிக செலவை ஏற்படுத்தும். இந்த விடயத்தில் ஒரு முடிவு எடுக்கப்படும் வரை பிரதி வாதிகள் தண்டனையை அனுபவித்து வருவார்கள்.

பல ஆண்டுகளாக ஒரு வழக்கின் காலத்தை சித்தரிக்கும் அட்டவணை கீழே கொடுக்கப்பட்டுள்ளது.

1981-1989		
வழக்குகளின் எண்ணிக்கை	**08**	
1-3 வருடத்திற்குற்பட்ட வழக்குகள் - 08	**3-5 வருடத்திற்குற்பட்ட வழக்குகள் - 00**	**5 வருடத்திற்கும் மேற்பட்ட வழக்குகள் - 0**
1990-1999		
வழக்குகளின் எண்ணிக்கை	**28**	
1-3 வருடத்திற்குற்பட்ட வழக்குகள் - 27	**3-5 வருடத்திற்குற்பட்ட வழக்குகள் - 01**	**5 வருடத்திற்கும் மேற்பட்ட வழக்குகள் - 0**
2000-2009		
வழக்குகளின் எண்ணிக்கை	**22**	
1-3 வருடத்திற்குற்பட்ட வழக்குகள் - 17	**3-5 வருடத்திற்குற்பட்ட வழக்குகள் - 05**	**5 வருடத்திற்கும் மேற்பட்ட வழக்குகள் - 0**
2010-2019		
வழக்குகளின் எண்ணிக்கை	**42**	
1-3 வருடத்திற்குற்பட்ட வழக்குகள் - 02	**3-5 வருடத்திற்குற்பட்ட வழக்குகள் - 08**	**5 வருடத்திற்கும் மேற்பட்ட வழக்குகள் - 32**



7.2 இழப்பீடு

ஒவ்வொரு வழக்கின் சூழ்நிலையையும் பொருத்து இழப்பீடு மாறுபடும். இருப்பினும் 2000 தொடக்கம் 2019 க்கு இடையிலான காலக்கெடுவிற்குள் அரச இழப்பீடு அதிகரித்துள்ளது. அரச இழப்பீட்டின் சராசரி அளவு 50000/= முதல் 100000/= வரை இருந்த நிலையில் 4 வழக்குகளின் மனுதாரர்களுக்கு தலா 500000/= வழங்கப்பட்டது. மேலும் SC FR 471/2000 இல் அரசு ரூ.700000 இழப்பீடாகவும், SC FR 328/2002 இல் (சஞ்சீவ ஜெரால்ட் மேர்வின் பெரேரா Vs சுரவீர OIC காவல் நிலையம் வத்தளை மற்றும் ஏனையோர்) அரசு ரூ650000 அரச இழப்பீடாக (செலவீனங்களும் பிரத்தியேகமாக கொடுக்கப்பட்டது) மற்றும் தனியார் மருத்துவமனையின் விலைப்பட்டியலான ரூ 704,708 உம் கொடுக்கப்பட்டது.

SC FR 136/2014 இல் (கோல்மன் ஏள சட்டமா அதிபர் மற்றும் ஏனையோர்) வழக்கில் அரச இழப்பீடாக ரூ 500000 துஸ்பிரயோகம் மற்றும் துன்புறுத்தல்களக்காக வழங்கப்பட்டது. இங்கு மனுதாரர் கட்டுநாயக்க காவல் துரையினரால் தன்னிச்சையாக கைதுசெய்யப்பட்டமை, நீர்கொழும்பு மஜிட்ரேட் நீதிமன்றத்தில் நடந்த சம்பவங்கள், நீர்கொழும்பு சிறைச்சாலையில் நடந்த சம்பவங்கள் மற்றும் மிரிஹானா குடிவரவு தடுப்பு முகாமில் நடந்த சம்பவங்கள் ஆகியவற்றுக்கு ரூ 500000 மனுதாரருக்கு வழங்கப்பட்டுள்ளது. இவ்வாறு கோல்மனை பொருத்தவரை ஒவ்வொரு கட்டத்திலும் அவர் எதிர்கொண்ட இழிவான நடாத்துகையின் காரணமாக ஒரு பெரிய தொகை இழப்பீடாக வழங்கப்பட்டது. பெரும்பாலான மனுதாரர்கள் நிரந்தர இயலாமைக்கு ஆளானார்கள். அந்தளவுக்கு கொடுமையான சித்திரவதைகள் இடம்பெற்றுள்ளன. இதனால், மற்றைய எல்லா வழக்குகளையும் விட சித்திரவதை வழக்குகள் அதிக கவனத்துடன் பார்க்கப்படுகின்றன.

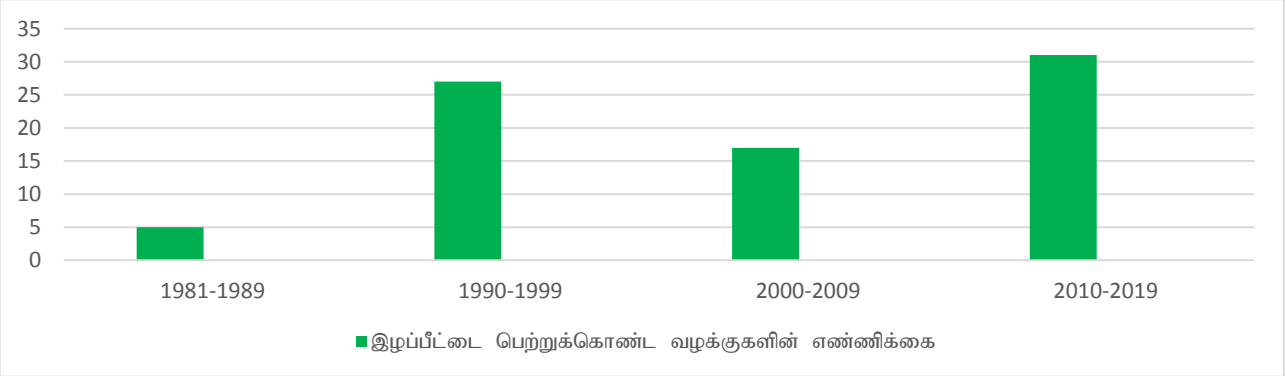
நீதிமன்றத்தின் திருப்திக்கு இவ்வழக்குகள் நிறுவப்பட்டால் அரசின் மீது பொறுப்பு சுமத்தப்படும் என நீதிமன்றங்கள் கருதின. கேள்விக்குரிய செயல் ஒன்று அரச அதிகாரியால் செய்யப்பட்டது. இத்தகைய மீறல்களுக்கு அரசு அங்கிகாரம் வழங்காவிட்டாலும் உரிமை மீறப்பட்ட மனுதாரர்களுக்கு அரச இழப்பீடு வழங்கப்பட்டது. அரச இழப்பீட்டின் சிக்கல் என்னவென்றால் பிரதிவாதிகள் (அரச உத்தியோகத்தர்கள்) அவர்களின் செயல்களின் பாரதூரத்தன்மையை உணர்வதில்லை என்பதேயாகும். அதேநேரம் அடிப்படை உரிமை மீறல்களுக்கான நட்டயீட்டை செலுத்துவதற்கு தொடர்ந்தும் பொதுமக்களாகிய எங்களின் வரிப்பணம் பயன்படுத்தப்படுகிறது எனின் நாமும் மறைமுகமாக வன்முறைச்செயல்களை அனுமதிக்கிறோம் என பொருள்படுகிறது. மேலும், ஓர் மனுதாரருக்கு வழங்கப்படும் அரச இழப்பீடு அவர் அரசுக்கு செலுத்திய வரிப்பணம் மூலமாகவே வழங்கப்படுகிறது என கருதப்பட்டால் அவரின் இழப்பீட்டிற்கு அவரே பங்களித்துள்ளார் என்பதையும் அது குறிக்கும்.

இறுதியாக தனியார் மற்றும் பொது இழப்பீடுகளுக்கு இடையிலான விகிதத்தை நீதிமன்றங்கள் எவ்வாறு தீர்மானிக்கின்றன என்பது தெளிவற்றது மற்றும் இது ஏன் அல்லது எப்படி தீர்மானிக்கப்பட்டது என்பதற்கான காரணங்கள் எதுவும் இல்லை.

கீழ்வரும் அட்டவணை அதனை முழுதாக விளங்கப்படுத்தும்.

இழப்பீட்டை பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை : (1981-1989)	**05**	
# தனிப்பட்ட ரீதியில் நட்டயீட்டை பெற்றுக்கொண்ட வழக்குகள்? 01	# அரச நட்டயீட்டினை மட்டும் பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை? 04	# தனியார் மற்றும் அரச நட்டயீட்டினை கலந்து பெற்றுக்கொண்ட வழக்குகள்? 0
மிகக்குறைந்தளவு நட்டயீடு	ரூ. 2,500/= (state)	
மிகக்கூடியளவிலான நட்டயீடு	ரூ. 50,000/= மற்றும் ரூ. 1500/= (அரசு)	
இழப்பீட்டை பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை: (1990-1999)	**27**	
# தனிப்பட்ட ரீதியில் நட்டயீட்டை பெற்றுக்கொண்ட வழக்குகள்? 02	# அரச நட்டயீட்டினை மட்டும் பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை? 10	# தனியார் மற்றும் அரச நட்டயீட்டினை கலந்து பெற்றுக்கொண்ட வழக்குகள்? 15
மிகக்குறைந்தளவு நட்டயீடு	ரூ. 2,500/= மற்றும் ரூ. 2,500/= செலவு	
மிகக்கூடியளவிலான நட்டயீடு	ரூ. 200,000 /= மற்றும் ரூ. 5,000/= செலவு	
இழப்பீட்டை பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை: (2000-2009)	**17**	
# தனிப்பட்ட ரீதியில் நட்டயீட்டை பெற்றுக்கொண்ட வழக்குகள்? 2	# அரச நட்டயீட்டினை மட்டும் பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை? 05	# தனியார் மற்றும் அரச

மிகக்குறைந்தளவு நட்டயீடு	ரூ. 15,000/=	நட்டயீட்டினை கலந்து பெற்றுக்கொண்ட வழக்குகள்? 10
மிகக்கூடியளவிலான நட்டயீடு	ரூ. 1,504,788/=	
இழப்பீட்டை பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை: (2010-2019)	**31**	
# தனிப்பட்ட ரீதியில் நட்டயீட்டை பெற்றுக்கொண்ட வழக்குகள்? 07	# அரச நட்டயீட்டினை மட்டும் பெற்றுக்கொண்ட வழக்குகளின் எண்ணிக்கை? 07	# தனியார் மற்றும் அரச நட்டயீட்டினை கலந்து பெற்றுக்கொண்ட வழக்குகள் பெற்றுக்கொண்ட வழக்குகள்? 17
மிகக்குறைந்தளவு நட்டயீடு	ரூ. 50,000/=	
மிகக்கூடியளவிலான நட்டயீடு	ரூ. 1,075,000/= மற்றும் ரூ. 50,000/=	



இழப்பீடு எவ்வாறு நிர்ணயிக்கப்பட்டது என்பதில் பல முரண்பாடுகள் இருந்தன. இழப்பீட்டினை தீர்மானிக்கும் விடயம் நீதிமன்றங்களின் கைகளில் இருப்பதால் ஒரு நபர் எவ்வளவு இழப்பீடு பெற வேண்டும் என்பதை தீர்மானிப்பதில் எந்த சூத்திரமும், நடைமுறையும் பின்பற்றுவதில்லை. நபருக்கு நபர் இந்த இழப்பீடு வேறுபடுவதால் இது ஒரு வகையான கவலையை ஏற்படுத்துகிறது. சித்திரவதைக்கு ஒரு தொகையை தீர்மானிப்பதென்பது ஒரு இலகுவான காரியமல்ல. இருப்பினும் அநீதியை தடுப்பதற்கு இது ஒரு வெளிப்படையான முறையாக அமைந்துள்ளது.

7.3 சிறார்கள்

1981-2019 க்கு இடையில் 6 தீர்ப்புக்கள் மட்டுமே காணப்பட்டன. 13 வயது முதல் 15 வயது வரை இருந்தவர்களில் இரண்டு பெண்கள் மற்றும் 4 ஆண்கள் உள்ளடங்கியிருந்தனர். எல்லா சந்தர்ப்பங்களிலும் சிறுபான்மையினர் தாக்கப்படுவதாக புகார் கூறினர். எவ்வாறாயினும் ஒரு சிறுவர் மனுதாரராக இருக்கும் போது நீதிமன்றங்கள் எவ்வாறு நிகழ்வுகளை கையாள்கின்றன என்பது தெரியவில்லை. குறிப்பாக சிறார்களிடமிருந்து ஆதாரங்களை பிரித்தெடுக்கும் போது மற்றும் இழப்பீட்டை தீர்மானிக்கும் போது தாக்குதல்களின் நீண்டகால பாதிப்புகளும் கவனத்தில் கொள்ளப்படுகின்றன.

சிறார்கள் தொடர்பான வழக்குகள்

அ. SC 191/88, போதுமான ஆதாரங்கள் இல்லாததால் தள்ளுபடி செய்யப்பட்டது.

ஆ. SC 190/94, 17 வயது சிறுவன் அவனது துணை அதிபர் மற்றும் ஆசிரியர்களால் தாக்கப்பட்டார். குற்றம் சாட்டப்பட்டவர் குற்றவாளி என கண்டறியப்பட்டது.

இ. SC 615/95, 14 வயது பெண் திருட்டு குற்றச்சாட்டில் தாக்கப்பட்டார். அவர் ஒரு குழாய் மூலம் தாக்கப்பட்டார். பிரிவு 11, 13(1) மற்றும் 13(2) மீறல் கண்டறியப்பட்டது.

ஈ. SC 126/2008, 14 வயது சிறுவன் திருட்டுக்குற்றச்சாட்டில் தாக்கப்பட்டார். பிரிவு 12(1) மீறல் அனுமதிக்கப்பட்டது.

உ. SC 578/2011, 13 வயது சிறுவன் திருட்டு குற்றச்சாட்டில் தாக்கப்பட்டார். இங்கு 11 வது உறுப்புரை மீறல் எடுத்துக்காட்டப்பட்டது.

2018 ஆம் ஆண்டின் மைல்கல் தீர்ப்புக்களான லண்டகே இசாரா அஞ்சலி(சிறுவர்) மற்றும் விஜயசிங்க சுலங்கனி ஏள பொறுப்பதிகாரி, மாத்தறை பொலிஸ் நிலையம் மற்றும் ஏனையோர் (SC FR 677/2012) ஆகியவற்றில் பொதுமக்கள் பாதுகாக்கப்படுவதை உறுதி செய்வதற்காக சட்ட அமுலாக்க அதிகாரிகளுக்கு பின்வரும் வழிகாட்டிகளை வழங்க நீதிமன்றங்கள் வாய்ப்பை பெற்றதாக கூறப்பட்டது.

- சட்ட அமுலாக்க அதிகாரிகள் மனித கௌரவத்தை மதித்து பாதுகாப்பார்கள் மற்றும் அனைத்து நபர்களின் மனித உரிமைகளையும் பராமரித்து நிலைநிறுத்துவார்கள்.
- சட்ட அமுலாக்க அதிகாரிகள் சட்டபூர்வமான தன்மை, தேவை, பாகுபாடின்மை, விகிதாசாரத்துவத்தன்மை மற்றும் மனித நேயம் ஆகிய கொள்கைகளை மதிக்க வேண்டும்.
- சட்ட அமுலாக்க அதிகாரிகள் எல்லா நேரங்களிலும் பாகுபாடின்றி சட்டத்தின் சமமான பாதுகாப்பை பாதுகாத்து ஊக்குவிப்பார்கள்.
- அவர்கள் இனம், பாலினம், மதம், மொழி, நிறம், அரசியல் கருத்து, தேசிய தோற்றம், சொத்து, பிறப்பு அல்லது பிற அந்தஸ்தின் அடிப்படையில் சட்டவிரோதமாக பாகுபாடு காட்டக்கூடாது.
- சிறப்பு சிகிச்சை தேவைப்படும் நபர்களின் சிறப்பு நிலை மற்றும் தேவைகளை நிவர்த்தி செய்வதற்காக வடிவமைக்கப்பட்ட சில நடவடிக்கைகளை மேற்கொள்வது அல்லது அமுல்படுத்துவது சட்டவிரோதமானதாக அல்லது பாகுபாடாக செயற்படுவதாக கருதப்படமாட்டாது. (கர்ப்பிணிப் பெண்கள், மிக அண்மையில் குழந்தையொன்றை பிரசவித்த தாய், சிறுவர்கள், நோயாளிகள், முதியவர்கள், ஊனமுற்றோர் ஆகியோர் இக்கூட்டத்தில் அடங்குவர்.)
- வயதுவந்தவர்களுக்கு கிடைக்கும் அனைத்து மனித உரிமை உத்தரவாதங்களிலிருந்தும் குழந்தைகள் பயனடைய வேண்டும். சிறார்கள் கன்னியம் மற்றும் மதிப்பின் உணர்வை ஊக்குவிக்கும் வகையில் நடத்தப்பட வேண்டும். இது சமூகத்தில் அவர்கள் மீண்டும் ஒன்றிணைய உதவுகிறது. இது சிறார்களின் தனிப்பட்ட அக்கறையை பிரதிபலிக்கிறது. இது மேலும் அந்த வயதினரின் தேவைகளை கணக்கிலெடுத்துக்கொள்கிறது.
- சிறார்களை தடுத்து வைப்பது அல்லது சிறையில் அடைப்பது என்பது கடைசி முயற்சியின் இறுதியான தீவிர நடவடிக்கையாக இருக்க வேண்டும். தடுப்பு காவல் என்பது மிக குறுகிய காலமாக இருக்க வேண்டும்.
- வயது வந்த கைதிகளிடமிருந்து சிறார்கள் வேறாக தடுத்து வைக்கப்பட வேண்டும்.
- தடுத்து வைக்கப்பட்ட சிறார்கள் குடும்ப உறுப்பினர்களிடமிருந்து வருகைகள் மற்றும் கடிதங்களை பெற முடியும்
- பெண்கள் மற்றும் சிறார்களுக்கு எதிரான அனைத்து வன்முறை செயல்களையும் (தனியார் நபர்களால் வீட்டில் உத்தியோகத்தர்களால்) பொது அதிகாரிகள் / மற்றும் சட்ட அமுலாக்க அதிகாரிகள் உரிய முனைப்புடன் செயற்பட வேண்டும்.
- சட்ட அமுராக்க அதிகாரிகள் பெண்கள் பாதிக்கப்படுவதை தடுக்க கடுமையான உத்தியோக பூர்வ நடவடிக்கைகளை எடுக்க வேண்டும் மேலும் பொலிஸ் அல்லது பாலின உணர்வற்ற அமுலாக்க நடைமுறைகளின் குறைபாடுகளின் விளைவாக மறுசீரமைப்பு ஏற்படாது என்பதை உறுதி செய்ய வேண்டும்.
- கைது செய்யப்பட்ட அல்லது தடுத்து வைக்கப்பட்ட பெண்கள் பாகுபாட்டை அனுபவிக்க மாட்டார்கள் மற்றும் அனைத்து வகையான வன்முறை மற்றும் சுரண்டலிலிருந்தும் பாதுகாக்கப்பட வேண்டும்.
- சட்ட அமுலாக்க அதிகாரிகள் எந்த சூழ்நிலையிலும் சித்திரவதை மற்றும் பிற கொடூரமான மனிதாபிமானமற்ற இழிவான நடத்துகைக்கு எவரையும் உட்படுத்த மாட்டார்கள்
- எவரையும் மரியாதை அல்லது நற்பெயருக்கு எதிரான சட்டவிரோதரான தாக்குதலுக்கு உட்படுத்த மாட்டார்கள்.
- சட்ட அமுலாக்க அதிகாரிகள் எல்லா நேரங்களிலும் பாதிக்கப்பட்டவர்களுக்கும் சாட்சிகளுக்கும் நடந்து கொள்ள வேண்டும்.
- சட்ட அமுலாக்க அதிகாரிகள் எப்போதுமே கைது செய்வதற்கான காரணத்தை கைது செய்யப்படுபவருக்கு முற்கூட்டியே உடனடியாக தெரிவிக்க வேண்டும்.
- ஒவ்வொரு கைதிக்கும் சட்ட அமுலாக்க அதிகாரிகள் முறையான பதிவை பராமரிப்பார்கள் இந்த பதிவில் பின்வருவன அடங்க வேண்டும் கைது செய்யப்படுவதற்கான காரணம், கைது செய்யப்பட்ட நேரம், கைது செய்யப்பட்ட காவலில் வைக்கப்பட்ட நேரம், நீதித்துறை அதிகாத்தின் முன் ஆஜரான நேரம். தொடர்புடைய அதிகாரிகளின் அடையாள ஆவணங்கள், கட்டுக்காவலுக்கு கொண்டு வரப்பட்ட இடத்தின் சரியான தகவல் மற்றும் விசாரணை தொடர்பான தகவல்கள்.
- கைது செய்யப்பட்ட எவருக்கும் கைது செய்யப்படுதல் அல்லது தடுத்து வைக்கப்படுதல் ஆகியவற்றின் சட்டபூர்வமான தன்மையை தாமதமின்றி மதிப்பாய்வு செய்யும் நோக்கததுக்காக நீதித்துறையின் முன் ஆஜராவதற்கான அதிகாரம் உண்டு.
- சட்ட அமுலாக்க அதிகார்கள் முடிந்த வரை சிறார்களை வயது வந்தவர்களிடமிருந்தும் பெண்களை ஆண்களிடமிருந்தும் தண்டனை பெறாத நபர்களை தண்டனை பெற்ற நபர்களிடமிருந்தும் பிரித்து வைக்க நடவடிக்கை எடுக்க வேண்டும்.
- இந்த மாதிரியான விதிகளை அவர்கள் பின்பற்றுவதை உறுதிப்படுத்த வேண்டும்.

8. சட்ட மீறல் தொடர்பாக ஆராயும்போது நீதிமன்றம் கருத்தில் கொள்ளும் விடயங்கள்

8.1 மருத்துவ ஆதாரங்கள்

மீறல் அல்லது மீறல் நடந்ததா என்பதை மதிப்பிடும் மருத்துவ சான்றுகள் ஒரு ஒருங்கிணைந்த அங்கமாகும். குறிப்பாக 11வது உறுப்புரை தொடர்பில் சித்திரவதை தொடர்பான உடல் சான்றுகள் ஒரு மனுவை ஆதரிக்கும். இவ்வாறான வழக்குகளில் பொது மருத்துவ சான்றுகள் மற்றும் தனியார் மருத்துவ சான்றுகளை நீதிமன்றங்கள் அங்கீகரித்துள்ளன.

- JMO களின் அறிக்கை ஒரு மனுதாரரனின் அறிக்கைக்கு பொருந்தாத நிகழ்வுளில் அல்லது ஒரு மனுரர் மருத்துவ அறிக்கையை வழங்க தவறினால் அது அந்த மனுவை பலவீனப்படுத்தியதாக காணப்பட்டது அதேநேரம் அரசாங்க மருத்துவ அறிக்கை மற்றும் தனியார் மருத்துவ அறிக்கையிலும் வேறுபாடு இருந்தமை கருத்திற்கொள்ளப்பட்டது.எவ்வாறாயினும் ஒரு அரச மருத்துவ அதிகாரியின் அறிக்கையில் சான்றில்லாது தனியார் மருத்துவ அறிக்கையில் சான்று காணப்படும் போது அதனை நீதிமன்றம் ஏற்றுக்கொண்டது.

- எவ்வாறாயினும் பொலிஸ் அதிகாரிகள் மனுதாரர்களை பொய் சொல்லவும் துஆழு களுக்கு தவறான விளக்கத்தை வழங்கவும் அச்சுறுத்தி உள்ளதாகவும் சில சந்தர்ப்பங்களில் மனுதாரர்கள் அச்சத்துடன் இத்தகைய விதிமுறைகளை பின்பற்றி வருவதாகவும் அறியப்பட்டது.

- மேலும் சில சந்தர்ப்பங்களில் JMO மனுதாரர்களின் நீதிக்கான உரிமையை தடுக்கும் தவறான அறிக்கைகளை மனுதாரரின் விரிவான விபரிப்புடன் பொருந்தாது என்று கூற முயற்சித்ததன் மூலம் அது ஆச்சரியத்தை ஏற்படுத்தியது.

- உதாரணம் : SC FR 387/2013 (ஹேவாமுனுமுல்லகே அஜித் மற்றும் ஏனையோர் ஏளு காலிங்க ட் சில்வா வெலிகம பொலிஸ் நிலையம் மற்றும் ஏனையோர் வழக்கில் மாத்தறை நீதித்துறை மருத்துவ அதிகாரிகளால் வழங்கப்பட்ட சான்றுகளை முழுமையாக நம்பமுடியாதென நீதிமன்றம் தீர்மானித்தது. மாத்தறை நீதித்துறை மருத்துவ அதிகாரிகள் தொடர்புடைய ஏனைய அதிகாரிகளால் விசாரிக்கப்பட்டனர்.

8.2 நேர அட்டவணை

இங்கு மதிப்பிடப்பட்ட அனைத்து வழக்குகளிலும் நீதிமன்றங்களிலும் சர்ச்சைக்கு உட்பட்டமையினால் காலக்கெடுவுக்கு உட்படுத்தப்படவில்லை.

அரசியல் உறுப்புரை 126(2) கீழ்வருமாறு ஏற்பாடு செய்கிறது.

"*நபரொருவரின் அடிப்படை உரிமை அல்லது மொழி உரிமை நிர்வாக அல்லது நிறைவேற்று துறையால் மீறப்பட்டதாக அல்லது மீறப்பட்ட எத்தணித்ததாக அந்நபர் குற்றம் சாட்டினால் அவர் ஒரு மாதத்திற்குள் அவராகவோ அல்லது அவரது சட்டத்தரணி மூலமாகவோ உச்ச நீதிமன்றத்துக்கு விண்ணப்பிக்க முடியும். இத்தகைய விண்ணப்பங்கள் முதலில் உச்ச நீதிமன்றத்திலிலிருந்து விடுவிக்கப்பட அல்லது தீர்ப்புவழங்க இரண்டு அல்லது இரண்டுக்கு குறையாத நீதிபதிகள் காணப்பட வேண்டும்*"

SC FR 555/2009 (கோணேசலிங்கம் VS மேஜர் முத்தலிங்கம்) வழக்கில் நீதிபதி திலகவர்தன வழக்கில் 21ம் இலக்க 1996 ம் ஆண்டு மனித உரிமைகள் ஆணைக்குழுவுக்கு சட்டத்தில் கூறப்பட்ட விதிகளுக்கு விதிவிலக்குகளை கொடுத்திருந்தார்.

பிரிவு 13 பின்வருமாறு ஏற்பாடு செய்கிறது: "*நிறைவேற்று அல்லது நிர்வாக நடவடிக்கைகளால் அடிப்படை உரிமை மீறப்பட்டிருக்கும் போது பாதிக்கப்பட்ட தரப்பு பிரிவு 14 ன் படி ஒரு மாதத்திற்குள் ஆணைக்குழுவுக்கு புகாரளிப்பாராயின் அது நிலுவையில் இருந்தால் அக்காலப்பிரிவு ஒரு மாத கால கணிப்பெடுப்பின் கீழ் வராது. எனவே அரசியலமைப்பு 126(2)ன் படி உச்ச நீதிமன்றத்துக்கு விண்ணப்பத்தை செய்ய முடியும்*"

இவ்வாறு மனித உரிமை ஆணைக்குழுவுக்கு அளிக்கப்பட்ட விண்ணப்பம் ஒரு மாதத்திற்குள் இருந்தால் மனுதாரர் கால அவகாசத்தை தடுக்கலாம். காலக்கெடுவை கருத்திற்கொண்ட பெரும்பாலான வழக்குகள் ஏறகனவே மனித உரிமை ஆணைக்குழுவுக்கு விண்ணப்பம் செய்திருந்திருந்தனர். இது மனித வள ஆணையகத்தின் சிறப்பான செயற்பாடுகளை பொதுமக்களுக்கு அறியப்படுத்துவதாக அமைகிறது.

நேர வரையறை என்பது ஒவ்வொரு வழக்கின் செயற்பாட்டை பொருத்தும் வேறுபடலாம். SC FR 859/ 2009 (டபிள்யு. என். குணசேகர ஏள பொலிஸ் கான்ஸ்டபிள் சந்தன கிரான்பாஸ் பொலிஸ் நிலையம் மற்றும் ஏனையோர்) வழக்கில்

பிரியசத் டெப். பிசி. சி. ஜே கூறும் போது நேர வரையறை என்பது மாறுப்பாட்டை கொண்டது, வழக்குக்கு வழக்கு அதன் தன்மை வேறுபாடலாம்.

லெவ்லா திதபஜலேஜ் இலங்கரத்ன VS கண்டி மாநகராட்சி மன்றம் மற்றும் பிறர் வழக்கில் உச்ச நீதிமன்றம் கால அவகாசம் பற்றிய கேள்வி தொடர்பில் தொடர் விடுப்பு வழங்கும் போது கருத்திற் கொள்ள வேண்டிய முக்கிய விடயமென்றும் ஒரு விண்ணப்பம் காலாவதியாகி விட்டால் நீதிமன்றத்துக்கு அதனை ஏற்றுக்கொள்ள எந்த உரிமையும் இல்லை என ஏற்றுக்கொண்டது.

ரோமேஷ் குரே Vs ஜெயலத் உப பொலிஸ் அதிகாரி மற்றும் ஏனையோர் 2008 (வழக்கின் வாதத்தின் கட்டத்தின் முதன்முறையாக நேர வரையறை பற்றிய கேள்வி எழுப்பப்பட்டது. ஆட்சேபனை அறிக்கைளியில் குறித்த ஆட்சேபனை முற்றிலும் அமைதியாக இருந்தது.

ஆகையால் ஒரு பயன்பாட்டின் தொடக்கத்தில் நேர வரையரையின வாதம் எவ்வாறு மதிக்கப்படுகின்றது என்பதை கவனிப்பது சிறந்ததாக இருக்கும். இங்குள்ள பெரும்பாலான பயன்பாடுகளின் நேரவரையறை முதன்முதலில் ஒரு பூர்வாங்க ஆட்சேபனையாக எழுப்பப்படவில்லை. எனவே இந்த விடயத்தில் மேலும் ஆராய்ச்சி தேவை.

8.3 அதிகாரபூர்வமான நபருக்கு அறிவித்தல்

மனுதாரரின் கதையை நீதிமன்றங்கள் மதிப்பீடு செய்த போது சித்திரதை பற்றி எந்த மனுதாரர் அறிவித்தார் அல்ல எந் சூழ்நிலைகள் கருத்திற கொள்ளப்பட்டன உ-ம் மெஜிஸ்ரேட்டுக்கு சித்திரவதை தொடர்பான அவதானிப்புக்களை அறிவித்தல், JMO வின் அறிக்கை மனித உரிமை ஆணைக்குழுவுக்கான விண்ணப்பம். மனுதாரர் பல சூழ்நிலைகளில் சித்திரவதையை வெளிப்படுத்தால் இருக்க அச்சுறுத்தப்பட்டமையும் இங்கு கவனத்தில் எடுக்கப்பட்டது.

9. மறைமுகமான பிரச்சினைகள்

9.1 பொலிஸின் அறிக்கை

இந்த அறிக்கையில் ஆராயப்பட்ட பெரும்பாலான முறைக்கேடுகளுக்கு காவல் துறையே பொறுப்பு. ஒரு பொலிஸ் படையினர் பொது மக்களை நடத்தும் விதம் பார்ப்பதற்கு திகைப்பூட்டுகிறது. இது குடிமக்களுக்கு பாதுகாப்பை வழங்கும் ஒரு சேவையாக கருதப்படலாம்.

ஆய்வாளர் பின்வருவனவற்றை அவதானித்துள்ளார்

-வெடிகுண்டு, கையெறி குண்டு அல்லது கஞ்சா வைத்திருந்ததாக பல பொய்யான குற்றச்சாட்டுக்கள் வைக்கப்பட்டன. போலியான குற்றச்சாட்டுக்கள் பொலிசாரால் உருவாக்கப்பட்டு மனுதாரர்கள் அச்சுறுத்தப்பட்டிருநடதனர். கையெறி குண்டுகளில் பலாத்காரமாக கட்டை விரல் அச்சிடப்பட்டு மற்றும் ஆவணங்களில் பலாத்காரமாக கையொப்பமிட அச்சுறுத்தப்பட்ட நிகழ்வுகளும் காணப்படுகின்றன. இவ்வாறான பொய் குற்றச்சாட்டுக்கறிளிலிருந்து மெஜிஸ்ரேட் மனுதாரர்களை விடுவித்திருந்தாலும் இதுபோன்ற இழிவான செயற்பாடுகளுக்கு காவல் நிலையங்கள் தண்டிக்கப்பட்டனவா என்பது கேள்விக்குறியாகும்.

-காவல் துறையினர் தனிப்பட்ட நபர்களை சித்திரவதை செய்ததோடு அவர்களின் நல்வாழ்வை ஈடு செய்ய முடியாத அளவு சேதத்தை ஏற்படுத்தி உள்ளன. SC FR 2000ல் மனுதாரர் காயங்களால் இறந்திருந்தார் பிரேத பரிசோதனை இறந்தவர் மீது இருபது காயங்கள் ஏற்பட்டிருப்பதை காட்டியது. SC FR 2001 (சிரிபால Vs விஜேசிங்க மற்றும் ஏனையோர்) வழக்கில் மனுதாரர் தன் வாழ்முழுவதும் ஒரு ஊன்றுகோலை பயன்படுத்த வேண்டி இருந்தது. மேலும் அவர் அனுபவித்த சித்திரவதை காரணமாக அவர் வாழ நாள் முழுவதும் பலமற்றவராக மாறினார.

- SC FR 430/ 2005 எச்.ஏ.மனோஜ் தாலிஸ் OIC காவல் நிலையம் கோரகரல்ல மற்றும் ஏனையோர் போன்ற வழக்குகளில் மனதாரர் காவல் நிலையத்திற்கு அழைத்து செல்லப்பட்டடு தனி ணறையில் தாக்கப்பட்டனர் மேலும் மனுதாரரின் மலக்குடல் வழியாக ஒரு எஸ்லோன் செருகப்பட்டது. SC FR 6697 (ஜெயசிங்கம் Vs சப் இன்ஸ்பெக்டர் மற்றும் ஏனையோர்) இங்கு மனுதாரர் கைவிலங்கிடப்பட்டு மிளகாய்தூள் அவரது மூக்கு மற்றும் தனியார் பாகங்களின் மீது போடப்பட்டு ஒரு கற்றை மீது தூக்கிலிடப்பட்டார். - SC FR 244/ 2010 ல் கொச்சி மிரிஸ் அவரது கண்கள் மற்றும் மூக்கில் போடப்பட்டது. அவர் ஒரு போதும் செய்யாத திருட்டுக் குற்றத்துக்காக உடல் மறறும் மன ரீதியாக பாதிப்புக்கு உள்ளாகி இருந்தார். மெஜிஸ்ரேட் இவரை இக்குற்றச்சாட்டிலிருந்து விடுவித்தார். சித்திரவதை நோக்கத்திற்காகவே காவல் துறையினர் வழக்கமாக ஆயுதங்களை பயன்படுத்துவதாக நீதிமன்றம் சுட்டிக்காட்டியது. மனுதாரரால் வழங்கப்பட்ட வழக்குகளில் எலும்பு முறிவுகள் ஏற்பட்டதாகவும் வாந்தி எடுத்ததாகவும் மயக்கம் அடைந்ததாகவும் குறிப்பிடுகின்றார்.

-- SC FR எண் 1006/ 2009 ல் (ஹபுகேகொட ஜகத் பெரேரா ஏள மீறிகம பொலிஸ் நிலையம் மற்றும் ஏனையோர்) மனுதாரர் தனது ஊழியர்களுக்கு உதவ மட்டுமே காவல் நிலையம் சென்றிருந்தார். இரண்டாவது பிரதிவாதி "நீ ஏன் காவல் நிலையத்தில் இருக்கிறாய்?" என வினவி அவரை அடித்து பற்களை உண்டத்து சிறையில் வைத்தார். SC FR எண் 9/2011 ல் (சூரியராச்சிகே லட்சுமன் டி சில்வா, பி.எம் அஜந்த வீரசிங்க ஓ.ஐ.சி காவல் நிலையம் மற்றும் கிரிபத்கொட மற்றும் பலர் வழக்கில் மிளகாய்த்தூள் பயன்படுத்துவதன் மூலமும் எரிப்பதன் மூலமும் சித்திரவதை செய்யப்பட்டனர். சில சந்தர்ப்பங்களில் தனிநபர்கள் கண்களை கட்டி பயன்படுத்தாத வீடுகளுக்கு கொண்டு செல்லப்படுவதும் சிலசமயங்களில் தனியார் வாகனங்களில் கைது செய்யப்படுவதும் காணப்பட்டது. கைது செய்யப்படும் நேரத்தில் அவர்கள் சிவில் உடையில் இருந்ததால் அவர்களை அடையாளம் காண்பது கடினமாக இருந்தது. இது கவலைக்கிடமான விடயமாகும்.

- SC FR 260/ 2011 (ஏ. ஏ. தினேஷ் பிரியங்கர பெரேரா Vs OIC பாணந்துறை வடக்கு மற்றும் ஏனையோர்) SCFR 9/2011ல் (சூரியராச்சிகே லட்சுமன் டி சில்வா, பி.எம் அஜந்த வீரசிங்க OIC காவல் நிலையம் மற்றும் கிரிபத்கொட மற்றும் பலர் வழக்குகள் பொலிஸ் கட்டுப்பாட்டில் இருக்கும் போது தனியாரால் தாக்கப்பட்டமைக்கு உதாரணங்களாகும்.

-காவல் துறையினர் தனிநபர்களுக்கான வாய்ப்பு, வழக்கறிஞர்களை சந்திப்பதற்கான உரிமை, குடும்ப உறுப்பினர்களை பார்ப்பதற்கான உரிமை மறுக்கப்பட்டிருந்தது.

-பொது அவமானம்: SC FR 514/ 2010 ஹேவாவாசம் சாருகலிகே ரத்னசிரி ஏள வெலிபன மற்றும் ஏனையோர் வழக்கில் மனுதாரர் பகிரங்கமாக அவமானப்படுத்தப்பட்டார். மேற்கண்ட வழக்கில் சுமார் 8KM தூரம் ஒரு கோவில் வரை இழுத்து செல்லப்பட்டார் மேலும் தான் கலகக்காரரில் ஒருவரை பிடித்ததாக பகிரங்கமாக கூறினார். SC 235/ 96 சுபசிங்ஹ ஏள பொலிஸ் கான்ஸ்டபிள் சதுன் மற்றும் பலர் வழக்கில் அதே சூழ்நிலை ஏற்படுத்தப்பட்டு இருந்தது. SC FR 527/ 2011, 689/2012 ஆகிய வழக்குகளிலும் பொது மக்கள் முன் மனுதாரர் அவமானப்படுத்தப்பட்டு இருந்தார். ஒரு நபரை கைது செய்வது தொடர்பாக அவரது குடும்ப நபர்களை தடுத்து வைப்பர். SC FR 9/ 2011 பிரிவு 32(1) ஆ குற்றவியல் நடைமுறைக்கோவையின் படி இவ்வாறு குடும்ப உறுப்பினர்களையோ கணவன் மனைவியையோ தடுத்து வைப்பது நியாயம் இல்லை என கூறப்பட்டது. ஒரு வாழ்க்கை துணை அல்லது குடும்ப உறுப்பினர் அல்லது சந்தேக நபரின் வேறு எந்த உறவினரையும் சமாதான அதிகாரி தடுத்து வைக்கப்படுதல் நிராகரிக்கப்பட வேண்டும். SC FR 387/ 2013 வழக்கில்

மனுதாரலை பொலிஸ் நிலையத்திற்கு கொண்டு வரப்படுதற்காக அவரின் சகோதரர் அழைத்து வரப்பட்டு சித்திரவதை செய்யப்பட்டார்.

-அணுகுமுறைகள்: ஒரு நபரை கைது செய்யும் போது அவர் குடி போதையில் இருந்ததாக கூறப்படும் பிரதிவாதிகளின் வாதங்களை ஆய்வு கவனித்தது. இந்த குறிப்பிட்ட பிரச்சினைகளை தீர்ப்பதற்கான ஒரு கண்ணோட்டத்தில் மதிப்பீடு செய்வது கடினம் என்றாலும் 2000-2019 கு இடைப்பட்ட காலப்பகுதியில் பிரதிவாதிகள் குடிபோதை செல்வாக்கு மிகுந்த வழக்குகளையே மனுதாரர் மீது பதிவு செய்திருந்தனர். SC FR 26/ 2009 தோடங்கே கமகே அசங்க Vs OIC காவல் நிலையம் பிடபெத்தர மற்றும் ஏனையோர் வழக்கில் காவல் நிலையத்தில் ஏனையோரும் மது அருந்தி இருந்ததாக குற்றம் சாட்டப்பட்டிருந்தது.

தடுப்புக்காவல்:

ஒரு வழக்கை பொய்யாக இட்டுக்கட்டியதன் அடிப்படையில் ஒரு நபர் வெறுமனே காவல் நிலையத்துக்கு அழைத்து செல்லப்பட்ட பல சம்பவங்கள் காணப்பட்டன. SC FR 608/ 2008 (சரத் குமார நைடோஸ் Vs OIC பொலிஸ் நிலையம் மற்றும் ஏனையோர் வழக்கில் இரு பொய்யான குற்றச்சாட்டுக்களுக்காக 8 நாள் சிறைவைக்கப்பட்டு பின்னர் விடுவிக்கப்பட்டது. SC FR 01/ 2001 ரோஹன மைக்கல Vs OIC நாரெஹன்பிட்ட மற்றம் ஏனையோர் இந்த வழக்கில் அதிகமான காலப்பகுதிக்கு மனுதாரர் தடுத்து வைக்கப்பட்டார். SC FR 198/ 2011 துட்டுகே அச்சலங்க ஸ்ரீலால் பெரோ Vs OIC பொலிஸ் நிலையம் மற்றும் ஏனையோர் வழக்கில் மனுதாரர் கைது செய்யப்பட்டதிலிருந்து விடுவிக்கும் வரை மெஜிஸ்ரேட்டின் முன் ஆஜர்படுத்தப்படவில்லை. SC FR 241/ 14 ல் காவல் துறை மனுதாரரிடம் பொய் கூறியிருந்தது. வழக்கு ஏதும் பதிவு செய்யப்படாததால் மெஜிஸ்ரேட்டில் வழக்கு பதிவு செய்யப்பட்டது. சட்டத்தை மறும் வகையில் உண்மையை திசை திருப்பவும் ஆவணங்களல் பொய் உரைக்கவும் சட்டத்தை அமுல்படுத்தும் அதிகாரிகள் முயற்சி செய்துள்ளார்கள் என்பது கைது செய்யப்பட்ட நேரத்தை ஆவணப்படுத்தும் போது கண்டறியப்பட்டது.

அபசின் பண்டா எள குணரத்ன மற்றும் ஏனையோர் SC 109/ 95 இவ்வழக்கில் குலத்துங்க நீதிபதி பின்வருமாறு கூறுகிறார். "அடிப்படை உரிமை மீறல்களை கண்டித்துள்ள பல தீர்ப்புக்கள் இருந்த போதிலும் 1978 அரசியலமைப்பு பிரகடனத்திலிருந்து கிட்டத்தட்ட 18 ஆண்டுகளுக்கு பிறகும் காவல் துறையினரின் அடிப்படை உரிமை மீறல்கள் தடையின்றி தொடர்வதை நான் இங்கு சுட்டிக்காட்டுகிறேன்.

"முன்னைய தீர்ப்புக்களில் நீதிமன்றம் கவனித்ததன் படி தொடர்ச்சியாக இந்நிலைமை நிலவுகிறது.பொலிஸ் அதிகாரிகள் தடைகளிலிலிருந்து விடுபடுவதற்கு பல நடவடிக்கைகளை மேற்கொள்கின்றனர். இந்த நிலையை முடிவுக்கு கொண்டு வர அதிகாரிகள் தீர்வு நடவடிக்கைகளை எடுப்பார்கள் என நம்பப்படுகிறது".

-மேற்கூறியவை அனைத்தும் பொலிஸ் நிலையத்தில் துஷ்பிரயோகம் பரவலாக இருப்பதை காட்டுகிறது. மேலும் தனிநபர்களை கவனத்துடனும் மரியாதையுடனும் நடத்துமாறு நீதிமன்றங்கள் காவல் துறையை கோறிய போதிலும் பல ஆண்டுகளாக எதுவுமே நடக்கவில்லை.

-உ-ம்

SC 65/88 வழக்கில் தடுப்பு காவலில் எடுப்பவர்களை எவ்வாறு நடாத்த வேண்டும் என்பதை IGP ஏனைய பொலிஸ் நிலையங்களுக்கு அறிவுறுத்த வேண்டும்.

SC 65/88 (பயிஸ் Vs சட்டமா அதிபர மற்றும் ஏனையோர்) வழக்கில் தனிமனித கௌரவம் மற்றும் கவனம் தொடர்பாக ஐ.ஜி.பி அனைத்து OIC களுக்கும் அறிவுறுத்த வேண்டும்.

SC 71/ 96 (ரிபய்டின் Vs பொலிஸ் அதிகாரி ஜயலத் மற்றும் வெள்ளவத்த பொலிஸ் நிலையம் மற்றும் ஏனையோர்) வழக்கில் தனிமனித கௌரவம் மற்றும் கவனம் தொடர்பாக IGP அனைத்து பொலிஸ் நிலையங்களுக்கும் அறிவுறுத்த வேண்டும்.

SC 559/ 3 (சர்ஜீன் Vs கமால்தீன் மற்றும் ஏனைய இருவர்) அதிகார துஷ்பிரயோகம் தொடர்பாக கூறப்பட்டது.

SC FR 107/ 2007 (பந்துல சமரசேகர Vs OIC பொலிஸ் நிலையம் கினிகத்தென்ன மற்றும் ஏனையோர்) இந்த பொலிஸ் அதிகாரிகள் சாதாரண மனிதனை விட ஒழுக்க ரீதியாகவும் தொழில் ரீதியாகவும் உயர்ந்த தராதரத்தை உடையவராக இருக்க வேண்டும்.

SC FR 689/ 2012 முதல் பிரதிவாதிக்கு எதிராக IGP யினை வழக்கு நடத்தும் படி நீதிமன்றம் கூறுகின்றது.

SC 607/ 2012 லண்டகே இஷாச அஞ்சலி விஜயசிங்க சுலாங்கனி Vs OIC பொலிஸ் நிலையம மாத்தறை மற்றும் ஏனையோர் சட்டத்தை அமுல்படுத்தும் அதிகாரிகள் மனித கௌரவத்தையும் மனித உரிமையையும் பராமரிக்கவும் பாதுகாக்கவும் வேண்டும்.

மேலே சித்தரிக்கப்பட்ட பல ஆண்டுகளில் நீதிமன்றங்கள் ஒழுக்க நடவடிக்கைக்கு அழைப்பு விடுத்துள்ளன. காவலில் இருக்கும் போது ஒரு நபர் எவ்வாறு நடத்தப்பட வேண்டுமென்பதை பொலிஸ் இன்ஸ்பெக்டர் ஜெனரல் பல முறை காவல் நிலையங்களுக்கு அறிவித்திருந்தார். ஆயினும் சித்திரவதை என்பது சட்ட அமுலாக்க அதிகாரிகளால் நடாத்தப்பட்ட வண்ணமே இருக்கின்றது. அடிப்படை உரிமை என்பது புனிதமான அரசியலமைப்பு உரிமையாக கருதப்பட வேண்டும். அதை பாதுகாப்பவர்களே அதை மீற கூடாது.

22ம் இலக்க 1994ம் ஆண்டு சித்திரவதை தடுப்பு சட்டம்

1994 ஆம் ஆண்டின் சித்திரவதைக்கு எதிரான மற்றும் பிற கொடூரமான மனிதாபிமானமற்ற அல்லது இழிவான நடாத்துகைக்கு எதிராக அரசு இச்சட்டத்தை உருவாக்கியது. ஆனாலும், போர் அச்சுறுத்தல், பொது அவசர நிலைகள் அல்லது ஒரு மேலதிகாரியின் உத்தரவில் சித்திரவதைக்கு உள்ளான நபருக்கு இது ஒரு பாதுகாப்பாக கருதப்படாது.

எவ்வாறாயினும் இந்த சட்டம் பொதுவாக அரசின் சித்திரவதைக்கான வரையறையுடன் ஒத்துப்போகும் அதேவேளையில் துன்பம் இல்லை எனினும் கடுமையான வலி அல்லது உடல் அல்லது மன ரீதியான வலி அடங்கியிருந்தாலும் அது சட்டத்தின் தாக்கத்தை குறைக்காது.

சட்டத்தின் படி சித்திரதைக்கான வரைவிலக்கணம்

இலக்கண மாறுபாடுகள் மற்றும் அறிவாற்றல் வெளிப்பாடுகளுடன் உடல் அல்லது மன ரீயாக ஒருவருக்கு கடுமையாக ஏற்படுத்தப்படும் செயல் அல்லது வலி சித்திரவதை எனப்படும்.

அ. பின்வரும் நோக்கங்களுக்காக அது செய்யப்படலாம்.

I. பிற நபரிடமிருந்தோ மூன்றாவது நபரிடமிருந்தோ ஏதேனும் தகவல் அல்லது ஒப்புதல் வாக்குமூலம் பெறுதல்.

II. அத்தகைய நபர அல்லது அவருடைய குழு செய்யும் எத்தகையதொரு செயலுக்கும் தண்டனை வழங்குதல்

III. அத்தகைய நபரை அல்லது மூன்றாம் நபரை மிரட்டுவது அல்லது கட்டுப்படுத்துவது

ஆ. எந்தவொரு காரணத்துக்காகவும் பாகுபாட்டின அடிப்படையில் செய்யப்படுகின்றது மற்றும் பொ/த அதிகாரி அல்லது உத்தியோக பூர்வ திறனில் செய்யப்படும் பிற நபரின் ஒப்புதல் அல்லது ஒப்புதலின் துவக்கத்தில் செய்யப்படும் ஒரு செயல்

சட்டம் இருந்த போதிலும் நிவாரணங்கள் இருந்த போதிலும் சட்டத்தின் கீழ் முதல் வழக்கு 2000ம் ஆண்டிலே தாக்கல் செய்யப்பட்டது. இது தனிப்பட்ட நபர்கள் அனைவரையும் உள்ளடக்கியது. குற்றம் நிரூபிக்கப்பட்டால் 7-10 ஆண்டுகள் சிறை தண்டனையும் 10000- 50000 ரூபாய் இழப்பீடும் வழங்கப்படும்.

இந்த சட்டத்தின் பிரி 2 கூறுவதாவது

1. ஒரு நபரை சித்திரவதைக்கு உட்படுத்தும் நபர் குற்றவாளியாக கருதகப்படுவார்.
2. எவரேனும் ஒரு ஆள்
   ய. குற்றத்தை செய்ய முற்படுபவர்
   டி. உடந்தையாக இருப்பவர்
   உ.அதனை வடிவமைப்பவர் ஆகிய அனைவரும் உபபிரிவு 1ன் கீழ் குற்றவாளியாக கருதப்படுவர்.

3. எந்த ஒரு நபருக்கும் தகுதி வாய்ந்த நீதிமன்றத்தின் உத்தரவின் பேரில் எழுதப்பட்ட சட்டத்தால் அங்கீகரிக்கப்பட்ட தண்டனை ஒத்ததாக இல்லை என்று கருதப்படுவதுடன் அது உட்பிரிவு 1 ன் கீழ் குற்றமாகும்.

4. சட்டத்தின் கீழ் சந்தேக நபர் குற்றவாளியாக நிரூபிக்கப்பட்டால் 7-10 வருடங்கள் சிறை தண்டனையும் 10000-50000 ரூபாய் இழப்பீடும் வழங்கப்படும்.

ஆகவே இந்த அறிக்கை 1994ம் ஆண்டின் 22ம் இலக்க சித்திரதை சட்டத்தின் கீழ் 10 வழக்குகள் கருத்திற் கொள்ளப்பட்டது. அதை விளக்க விளக்கப்படமொன்று வரைய முயற்சிக்கப்பட்டது.

அடிப்படை உரிமைகளை மீறுதை போலன்றி நீதிமன்றங்களால் கூறப்படும் குற்றத்தை இவை ஆழமாக ஆராய்ந்தன. அரசால் செலுத்தப்பட்ட இழப்பீடு போன்று இல்லாது குற்றவாளிக்கு 7-10 ஆண்டுகால சிறை தண்டனை வழங்கப்பட்டது.

1. வழக்குகள் தொடர்பான விமர்சனம்

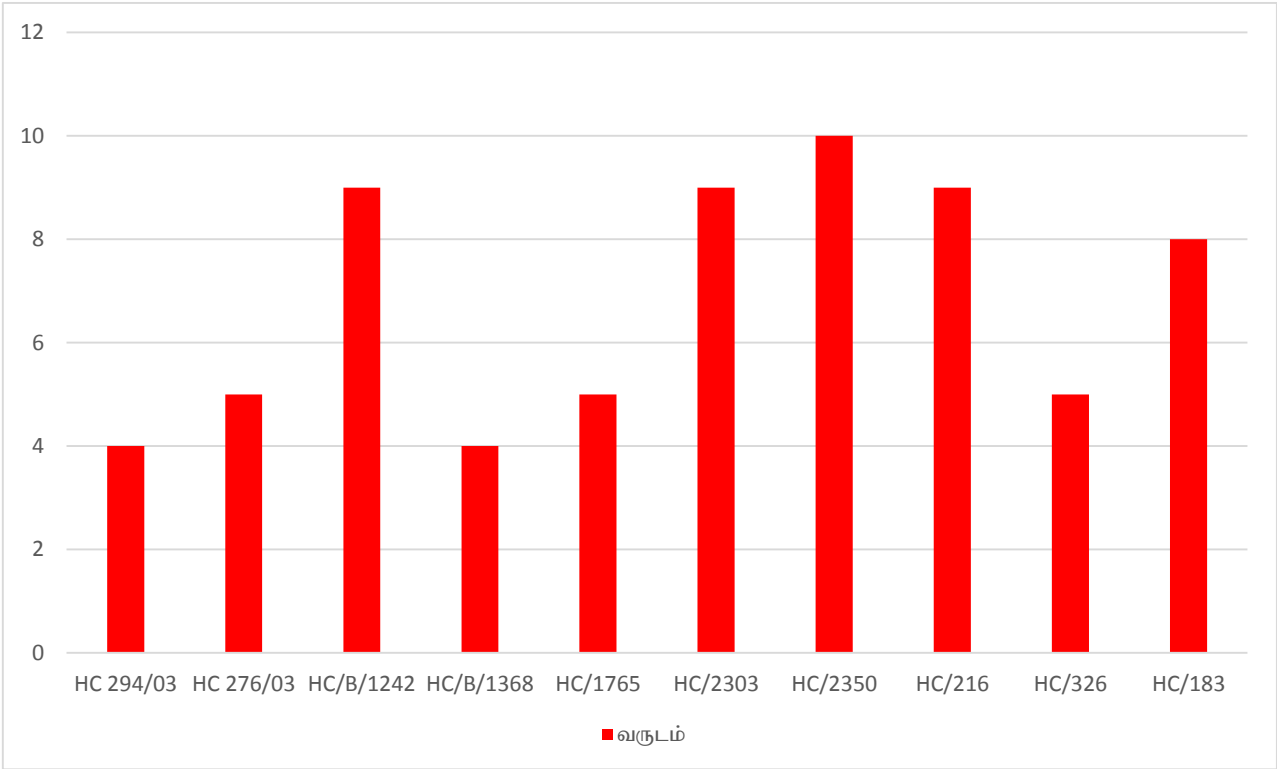
அவதானிப்பு:

இந்த ஆராய்ச்சிக்கு 10 விதமான வழக்குகள் மட்டுமே தெரிவு செய்யப்பட்டன இவை எழுமாறாகவே தெரிவுசெய்யப்பட்டன. பின்னர் மேன்முறையீட்டிலிருந்து வழக்குகள் அதனுடன் சேர்க்கப்பட்டன.

காலவிதிப்பு:

எல்லா நிகழ்வுகளுக்கும் இடையிலான காலம் கீழே சித்தரிக்கப்பட்டுள்ளது. அவை 4- 10 ஆண்டுகள் வரை மாறுபடும்

வழக்கு இலக்கம்	கால விதிப்பு (வருடங்கள்)
HC 294/3	4
HC 276/3	5
HC/b 1242/2009	9
HC/b?1368/11	4
HC/1765/2003	5
HC/2303/2007	9
HC/2350/2007	10
HC/216/16	9
HC/326/2003	5
HC/183/2007	8



சாட்சி அறிக்கைகள் : HC 1765/2003 பாணந்துறை வழக்கில் ஒரு சாட்சிக்கு புகைப்பட நினைவகம் இருக்குமென எதிர்ப்பார்க்க முடியாமென நீதிமன்றம் கருதியது. இதற்கு போக்னிபயின் இர்ஜிபாய் எள குஜராத் 1983 வழக்கை பயன்படுத்தியது. வில்பர்ட் பீரிஸ் ஜீ.ஏ.டபிள்யு 121ன் வழக்கு மேற்கோள் காட்டப்பட்டது. "ஒரு சாட்சியின் அறிக்கை தாமதித்து விட்டால் அத்தையா சாட்சியை மறுக்க நீதிமன்றங்களுக்கு உரிமை இல்லை" தன்னிச்சையான சோதனை, சமகால சோதனை மற்றும் உடனடி சோதனை ஆகியவற்றை பயன்படுத்துவதில் நீதிமன்றம் தாமதித்ததற்கான காரணங்களை செயல்படுத்துவதற்கு தீவிரமான நடவடிக்கை எடுக்க வேண்டும். தாமதித்ததற்கான காரணங்கள் நியாயமானவையாக இருந்தால் தாமதாமான ஒரு சாட்சியை விசாரணை செய்ய நீதிபதிக்கு அதிகாரம் உண்டு. CA 277/217 இல் சிடிரா டி அப்ரூஜே, ததிமுனி இந்திரசேன ததிமுனி விமலசேனா வி ஏஜி (2008) இல் வழங்கிய முடிவு ஏற்றுக்கொள்ளப்பட்டது. ததிமுனியை பொறுத்தவரையில் "பொருள் சாட்சியில் ஒரு சாட்சியளித்த சான்றுகள் குறுக்கு விசாரணையில் கேள்விக்குட்படுத்தப்படாத போதெல்லாம் இத்தகைய சான்றுகள் சர்ச்சைக்குரியவை அல்ல. அது எதிராளியால் ஏற்றுக்கொள்ளப்பட்டதாகவே கருதப்பட வேண்டும். இந்த கொள்கை பிலிப்மாண்டியே நாலக கிருஷாந்த்

குமார திசர Vs சட்டமா அதிபர் 2007 என்ற வழக்கில் இவ்விடயம் பின்பற்றப்பட்டது. CA 207/2017 விடயத்தில் உடனடி மற்றும் நிகழ்தகவு சோதனை பயன்படுத்தப்பட்டது.

மேலும் நீதிமன்றங்கள் மருத்துவ சான்றுகள், சாட்சிகளின் அறிக்கைகள் ர்சுஊ அறிக்கைகள் குற்றம் சாட்டம் பட்டவருக்கு எதிராக ளுஊகுசு வழக்கில் முன்வைக்கப்பட்ட சான்றுகள் ஆகியவற்றை மதிப்பீடு செய்தன. பல காரணிகளை கருத்திற் கொண்டாலும் குற்றம் சாட்டம்பட்டவர்களை எந்த முரண்பாடுகளும் இல்லாமல் அடையாளம் காண வேண்டி இருந்தது. எனவே, உதாரணமாக பாதிக்கப்பட்டவர் கூறியதை மருத்துவ சான்றுகள் உறுதிப்படுத்தி இருந்தாலும் சித்திரவதை செய்தவர் யார் என்பதை அடையாளம் காண்பது மிக முக்கியமானதாக இருக்கும். இதனால் குற்றம் சாட்டப்பட்டவருக்கு எதிரான சான்றுகள் நியாயமான சந்தேகத்துக்கு அப்பாற்பட்டவையாக இருக்க வேண்டும்.

கீழ்வரும் காரணங்களுக்காக வழக்குகள் நிராகரிக்கப்படலாம்.

1-மருத்துவ சான்றிலுள்ள முரண்பாட்டுத்தன்மை
2-சாட்சி அறிக்கையிலுள்ள முரண்பாட்டுத்தன்மை
3-பாதிக்கப்பட்டவருக்கு குற்றவாளியை இனங்காண முடியாமை

எவ்வாறாயினும் குற்றம் சாட்டப்பட்டவரால் சித்திரவதை செய்யப்பட்டது என்பது நிரூபிக்கும் பொறுப்பு பாதிக்கப்பட்டவரின் மீது உள்ளது. இருண்ட இடங்களில் வைத்து சித்திரவதை செய்தல், கண்களை கட்டிக்கொண்டு சித்திரவதை செய்தல், சிவில் உடையில் வந்து சித்திரவதை செய்தல் போன்ற காரணிகளால் குற்றவாளியை இணங்காண முடியாதுள்ளமை குறிப்பிடத்தக்கது. இவ்வாறு ஒரு பொது இடத்தில் சித்திரவதை செய்தால் மட்டுமே குற்றவாளியை இணங்காண முடியும். HC பாணந்துறை 1765/2003 வழக்கில் "குடும்ப உறுப்பினர்களை சாட்சிகளாக கருதப்பட வேண்டும் ஏனெனில் அவர்கள் ஒரு வழக்கோடு இணைக்கப்பட்டுள்ளனர்". அத்தகைய சூழ்நிலையில் குற்றவாளியை அடையாளம் காணவோ தீர்மானிக்கவோ சாத்தியமற்ற தன்மையை அது உருவாக்குகிறது.

கட்டாய தண்டனை:

சித்திரவதை சட்டத்தின் கீழ் சந்தேக நபர் குற்றவாளியாக நிரூபிக்கப்பட்டால் 7-10 வருடங்கள் சிறை தண்டனை வழங்கப்படும். இருப்பினும் HC பாணந்துறை வழக்கு அபகலா முதியன்சலாகே சம்பத் ஏளு சட்டமா அதிபர் வழக்கில் வனசுந்தர நீதிபதி அவர்கள் கட்டாய தண்டனை அவசியம் என கூறியுள்ளார். மேலும் அவர் கூறுகையில் தண்டனை என்பது ஒரு குற்றவியல் வழக்கில் மிக முக்கியமான பகுதியாகும். ஒரு நீதிபதி மிக குறைந்த கட்டாய தண்டனைக்கு செல்வதென்பது நீதித்துறை தற்றுணிபுக்கு எதிராக செல்சதற்கு சமம்.

தண்டனை:

குற்றம் சாட்டப்பட்டவரின் குற்றத்தை மதிக்க பல காரணிகள் சுட்டிக்காட்டப்பட்டாலும் விதிக்கப்பட வேண்டிய தண்டனையை தீர்மானிகும் போது வேறு சில காரணிகள் கவனத்தில் கொள்ளப்படும். HC 1368/2011 ல் நீதிமன்றங்கள் பின்வரும் காரணங்களை மதிப்பீடு செய்தன.

1- வழக்கின் காலவரையறை
2- குற்றவாளி மன்னிப்புக்கேட்டுகொண்ட நிகழ்வுகள்
3- நீதிபதி குற்றவாளியின் குடும்ப வாழ்க்கையை அழிக்க விரும்பாததால் கடுமையான தண்டனை குற்றம் சாட்டப்பட்டவர்களை தங்கி வாழ்பவர்களை பாதிக்கும் என கருதினார்.
4- காவல் துறை அதிகாரியாக எத்தனை ஆண்டுகள் சேவை ஆற்றினார் என்பதையும் இந்த குற்றச்சாட்டு முதன்முறையாக அவர் மீது எழுப்பப்பட்டதா என்பதையும் கவனித்தார்.

எனவே குற்றம் சாட்டப்பட்டவருக்கு எதிரான தண்டனையை மதிப்பிடும் போது மேற்கூறிய காரணங்கள் கவனத்தில் கொள்ளப்பட்டதா என்பதை அறிய TA கீழ் மேலும் வழக்குகள் ஆராயப்பட வேண்டும்.

முடிவுரை

சந்தேகத்துக்கு அப்பாற்பட்ட ஒரு வழக்கை நிரூபிக்க பாதிக்கப்பட்டவருக்கு அதிக முக்கியத்துவம் கொடுப்பதால் பல குற்றவாளிகள் அடிப்படை உரிமை மீறல் வழக்குகளிலிருந்து தப்பித்துக்கொள்கின்றனர். பாதிக்கப்பட்டவருக்கு தன்சார்பான ஆதாரங்களை வழங்க புலனாய்வு திறன்கள் இல்லை நவீன தொழில்நுட்ப வசதிகள் இல்லை அவர் பக்கத்திலிருந்து பார்க்கும் போது இது கடினமான விடயதாக உள்ளது. அத்தகைய சந்தர்ப்பத்தில் சித்திரவதை சட்டத்தின் கீழ் ஒரு குற்றவாளி குற்றவாளியாக காட்டப்படுவது சாத்தியமற்றதாக்ககிறது. ஆகவே இச்சட்டத்தின் கீழ் இது தொடர்பாக ஆராய இன்னும் உறுதியான கோட்பாடுகள் தேவை.

பொதுவான பரிந்துரைகள்

1. சட்டம் மற்றும் கொள்கை தொடர்பான சீர்திருத்தங்கள்
   - இழப்பீட்டுக்கான வெளிப்படையான சூத்திரம் அறிமுகப்படுத்தப்பட வேண்டும். இதனால் இழப்பீடு வழங்கப்படும் போது ஏற்றத்தாழ்வுகள் குறைக்கப்படுகின்றன.
   - உச்ச நீதிமன்றத்தில் அடிப்படை உரிமை மீறல் விண்ணப்பத்தை தாக்கல் செய்வற்கான கால அவகாச வரம்பு நீக்கப்பட வேண்டும்.உடல் மற்றும் உளவியல் துஷ்பிரயோகம், கற்பனை செய்ய முடியாதளவு அதிர்ச்சிமம், மமன அழுத்தத்தையும் உருவாக்கிய சித்திரவதையிலிந்து வெளியே வர 30 நாள் கால அவகாசம் என்பது பற்றாக்குயானது.
   - நீதிமன்ற வழக்குகளின் காலம் கவனிக்கப்பட வேண்டும். நீதியின் தாமதம் பல ஆண்டுகளாக அதிகரிப்பதால் வழக்குகளின் பிண்ணிப்பை குறைக்க அதிக நீதிபதிகள் நியமிக்கப்பட வேண்டும்.
   - நீதிமன்றத்துக்கு முன் ஆஜர் படுத்தப்பட்ட நபர சித்திரவதைக்கு உள்ளானாரா என்பதை மதிப்பீடு செய்ய மெஜிஸ்ரேட்டுக்கு பயிற்சி அளிக்கப்பட வேண்டும். பயத்த ஏற்படுத்தாத வகையிலான மருத்துவ பரிசோதனைகளுக்கு பாதிக்கப்பட்டவரை உட்படுத்த முயற்சிக்க வேண்டும்.
   - குற்றம் சாட்டப்பட்ட அல்லது சட்ட அமுலாக்க அதிகாரிகள், நீதித்துறை மருத்துவ அதிகாரிகள் மற்றும் பிற சாட்சிகளுக்கு எதிராக வழக்கு தொடரப்பட வேண்டும். (பொய் சாட்சிகளுக்காக வழங்கப்படும் அனைத்து ஆவணங்களையும் இது உள்ளடக்கும்)
   - 1994ம் ஆண்டின் 22ம் இலக்க சித்திரவதை சட்டத்தில் கூறப்பட்டுள்ள 7-10 ஆண்டுகள் வரையிலான கட்டாய தண்டனை மறுமதிப்பீடு செய்யப்பட வேண்டும். துஷ்பிரயோகத்திற்கு ஏற்ப ஒரு ஆண்டு தொடக்கம் தண்டனை வழங்கப்பட வேண்டும்.

2. சட்டத்தை அமுல்படுத்தும் அதிகார சபைகள்
   - பொலிஸ் துஷ்பிரயோக குற்றச்சாட்டுக்களை விசாரிக்க ஒரு சயாதீன அதிகார சபை நிருவப்பட வேண்டும். அதே துறையில் இருப்பவர்கள் அக்குற்றச்சாட்டுக்களை விசாரித்தால் எவ்வித மாற்றமும் ஏற்படாது ஆகவே இவ்விடயத்தில் நிபுணத்துவம் கொண்ட முற்றிலும் மாறுபட்ட அமைப்பு நிறுவப்பட வேண்டும்
     -காவல் நிலையங்களில் வழக்கமாக மற்றும் திடீரென்ற பரிசோதனைகளை நடாத்தல்
     -குற்றச்சாட்டுக்களை, புகார்களை விசாரித்தல்
   - ஒரு அடிப்படை உரிமைரய மீறியதற்காக விசாரிக்கப்படும் பொலிஸ் அதிகாரிகள் பகிரங்கமாக பட்டியலிட்டு காட்ட வேண்டும். இதனால் எந்தெந்த அதிகாரிகள் இவ்வாறான மீறல்களில் ஈடுபடுத்தப்பட்டு உள்ளனர் என்பதை பொதுமக்கள் அறிய வேண்டும்.
   - ஒரு பொலிஸ் நிலையத்தில் நடைபெறும் உரிமை மீறலுக்கு அதன் தலைமை அதிகாரியே பொறுப்பு அதற்கு மன்னிப்பு வழங்கப்பட கூடாது.
   - பொலிஸ் அதிகாரிகளுக்கு எதிராக எடுக்கப்பட்ட ஒழுக்காற்று நடவடிக்கைகள் மறுமதிப்பீடு செய்யப்பட வேண்டும் மற்றும் செய்யப்படும் குற்றத்துக்கு விகிதாசார முறையில் தண்டனை தீர்மானிக்கப்பட வேண்டும். அதிகாரத்தை துஷ்பிரயோகம் செய்பவர்கள் தங்கள் செயல்களின் பாரதூர தன்மையை அறிந்திருத்தல் வேண்டும். இடமாற்றம் செய்தல மட்டுமே ஒரு தண்டனையாக அமையாது.
   - தனி நபர் ஒருவரின் அடிப்படை உரிமை தொடர்பாக கட்டாயக்கற்றல் நிகழ்வில் குற்றவாளி பங்கேற்க வேண்டும்.
   - சித்திரவதை நோக்கத்துக்காக தனியார் இடங்களை பயன்படுத்தும் சட்ட அமுலாக்க அதிகாரிகள் மீது கடுமையான நடவடிக்கை எடுக்க வேண்டும்.

3. எதிர்கால ஆய்வு
   - ஆரம்ப கட்டத்தில் தள்ளுபடி செய்யப்பட்ட விண்ணப்பங்கள் மீள நடத்தப்பட வேண்டும் மற்றும் சித்திரவதை தொடர்பான புகார்களின் சராசரியான புகார்களின் எண்ணிக்கையும் மதிப்பிடப்பட வேண்டும்.
   - துஷ்பிரயோகம் செய்யப்படுபவர்களுக்கு ஏறடபடும் உளவியல் தாக்கம் குறித்து ஆராயப்பட வேண்டும். பாதிக்கப்பட்டவர்களுக்கு ஏற்பட்ட உளவியல் அதிர்ச்சியை காட்ட ஏராளமான சான்றுகள் உள்ளன என்பதால் துஷ்பிரயோகம் செய்பவர்களின் செயல்களால் ஏற்படும் எந்தவொரு எதிர்மறையான தாக்கமும் சட்ட அமுலாக்க அதிகாரிகளுக்கு முறையான பயிற்சி திட்டங்களை வடிவமைப்பதற்கான ஒரு தளமாக பயன்படுத்தப்படலாம்.
   - நாடு முழுவதும் சித்திரவதைக்கு சிறை தண்டனை அனுபவிக்கும் சட்ட அமுலாக்க அதிகாரிகளின் எண்ணிக்கை அதிகரிக்கப்பட வேண்டும்.

4. ஏனையவை

- சான்றுகளை சீர்குழைக்க முயற்சிக்கும் அல்லது மனுதாரரை இழிவு படுத்தும் மருத்துவ அதிகாரிகளுக்கு எதிராக கடுமையான நடவடிக்கை எடுக்கப்பட வேண்டும்.
- போதைப்பொருள் மற்றும் குடிபோதையில் துஷ்பிரயோகம் செய்யும் அதிகாரிகளுக்கு எதிராக சுயாதீனமான அமைப்பு நிறுவப்பட வேண்டும்.
- ஆதாரங்களை எடுக்க புதிய தொழில்நுட்பங்களை கொண்டு வர அரசாங்கம் நிதியளிக்க வேண்டும். அமுலாக்க அதிகாரிகளுக்கு வழங்கப்பட்ட பயிற்சிகள் மேற்கூறப்பட்டவற்றை நடைமுறைப்படுத்த போதுமானவையாக இருக்காது.
- மனித உரிமை ஆணைக்குழு மிக முக்கிய அமைப்பாக செயற்படுகிறது. குடிமக்களை பயிற்றுவிப்பதற்காக வடிவமைக்கப்பட்ட விழிப்புணர்வு மற்றும் மேம்பாட்டு திட்டங்கள் மிக முக்கியமானவை. ஆணைக்குழுவிற்கு ஒரு மாதத்திற்கு முன்னர் முறைப்பாடு செய்யப்பட்டிருந்தால் கால விதிப்பு என்பது கருத்திற் கொள்ளப்பட மாட்டாது.

Right to Life Human Rights Centre

Right to Life Human Rights Centre established on 2002 at Kurana, Katunayake, Gampaha District, Western Province Current currently located Koppiyawatta Road, Colombo 09, Western Province. Vision of the organization is "A multi ethnic and multi religious society of citizens of citizens that protect justice, equality, respect for life". Mission of the organization is "To be placed as an active Centre for establishing a society against human rights violations including torture, extra judicial killings, enforced disappearances standing for national harmony and democratic reforms". The main two objectives of the organization are First Human Rights - Torture, Extra judicial Killings and Enforced Disappearances. Second Democracy - Constitutional Reforms, Rule of Law. The main activities follow as; Advocating for Justice for Victims of Torture, Related Extra Judicial Killings, Disappearances and Human Rights Violations. Victim and Community Action against Human Rights Violations Including Torture and Extra-Judicial Killings. Fostering Democracy, Independence of the Judiciary, Human Rights, Rule of Law and Accountability through a New Constitution and Judicial Reform. Building a People's Movement and Civil Society Coalition for Resolving Ethnic Conflict through Constitutional Reform. Research, Training, Advocacy, Public Education/Campaign, Social mobilization and Legal. (Filing and following cases against torture, extra judicial killings, enforced disappearances and other Fundamental Rights Violations, Creating Human Rights Defenders, Training Programs, Workshops, Public Seminars, People's Tribunals, People's Assembly, Campaigns, Street Protests, maintaining 11 Human Rights First Aid Centers).

Apart from it the organization is involved in network activities which is the strength of the organization. Sri Lankan Collective Against Torture (SLCAT) with 30 other member organizations in the field of human rights in Sri Lanka, Human Rights First Aid Centres – There were 12 HRFACs in 12 Districts, People Against Torture (PAT), Platform For Freedom (PFF), Change with Reforms (Veediye Virodaya – Street Protest), National Movement for New Constitution (NMNC), Civil Society Collective for Democracy, Civil Society and Trade Unions Collective (CSTUC). International Relations: Full-fledged member Asian Forum for Human Rights and Development (Forum Asia), South Asian Collective for Strategy Litigation, Asian Alliance Against Torture (AAAT), Freedom From Torture (FFT).

Success Stories: Human Right First Aid Centers, Creating Human Rights Defender Groups, Conducting Education sessions on Human Rights, Training of Trainees, Preparing UN CAT Shadow Report of Sri Lanka, follow up and Monitor recommendation given by UN CAT to Sri Lanka, Maintains Websites related to Human Rights issue (on Torture and Democratic Rights), Social Media campaigns on human rights and democratic rights issues (Facebook).

RIGHT TO LIFE
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