

## THE RELEVANCE OF NATURAL RIGHTS IN SITUATIONS OF ECONOMIC CRISIS AND THE APPLICATION OF SOCIAL CONTRACT THEORY- A CASE STUDY OF SRI LANKA

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### ABSTRACT

*The idea of natural rights developed by the philosophers of social contract theory is known as the pedestal on which the edifice of the modern human rights regime is built. The inviolable nature of these rights has been a central plank in all political movements since their inception and their universal nature has highlighted the importance of promoting such rights at any cost. Nevertheless, the application of natural rights to the full extent has become implausible in certain dire circumstances and hence, the meaningfulness of these rights in such situations has been at the center of the debates for many years. Jurists who belong to different schools of thought have enunciated conflicting views in this regard while pioneers of social contract theory which belongs to the natural law school have always advocated for the promotion of natural rights at all times.*

*The arguments of these philosophers are aimed at maximizing individual freedoms through notions of 'rights' and 'justice' while giving prominence to the rational will of people. Hence, these approaches elucidate that although natural rights are inviolable, such rights can be restricted in certain dire circumstances such as economic crises, on the basis of 'reasonableness' and 'proportionality'. Nevertheless, this will not justify any arbitrary deprivation of people's natural rights by the governments under the guise of chaotic situations as such unwarranted actions may forfeit the legitimacy of the government and its rights to govern and hence, can be legitimately rebelled against in the interest of justice, peace and freedom (Morris, 2005, p.314)*

**Key words:** *Natural Rights, Natural Law, Social Contract Theory, Economic Crisis, Sri Lanka*

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## INTRODUCTION

A crisis has been defined as a time of “intense difficulty or danger” (Oxford Dictionaries, n.d). An economic crisis represents a situation where the economy of a country passes through a sudden decrease in its force which is usually brought about by a financial crisis (Doinita&Forentina, 2013, p.21). The chaotic circumstances created by the crisis are often used to justify failures to realize the rights of the people. As a result, the meaningfulness of natural rights in a situation of economic crisis has been a dominant discourse in jurisprudential debates over the centuries.

Hence, this paper is aimed at analyzing the above discourse in light of social contract theory based on natural law jurisprudence by making reference to the Sri Lankan context. Accordingly, the first part of this paper will discuss the idea of natural rights through the lense of social contract theory articulated by prominent natural law jurists. In the next part, this paper will focus on how an economic crisis affects the natural rights of people as exemplified in the current situation created by the economic crisis in Sri Lanka. In the third section, the paper will discuss the legitimacy of the austerity measures proposed by the government in facing the crisis through an in-depth analysis of the notions of ‘rights’ and ‘justice’ by comparing the approach adopted by Sri Lanka with that of Lithuania. In conclusion, the paper will

substantiate the position that natural rights do not lose their application during crisis situations but rather become more important as violation of them may cripple the whole system of governance in a democracy..

## RELATED LITERATURE REVIEW

The notion of natural rights stems from the theory of natural law which demands quality for determining the validity of any law. Social contract theory is one of the major channels through which attempts are made to understand natural rights. As such, this paper has drawn from Suri Ratnapala’s (2013) expositions of the notion of natural law and its influence on social contract theory. Further, the evolution of natural rights under this theory has been analyzed through the work of Windelband (1958), Riha (1998), Bertram (2020), Haakonssen (2017), and Rommen (1947) while, analyzing the original work of Thomas Hobbes (1651), John Locke (1690) and Jean Jacques Rousseau (1762). The effect of an economic crisis on the natural rights of people has been analyzed through practical examples taken from Sri Lanka as well as from other countries in general. The legitimacy of austerity measures taken during an economic crisis has been analyzed through the ideas of the social contract theorists. Tuckness’s (2020) remarks on Locke’s philosophy have been used

in this paper to elucidate that natural rights are still meaningful in a crisis situation but must be balanced against the duty of individuals to contribute to the 'common good'. However, it must be noted that there is a lack of scholarly literature focusing on the atrocities committed by governments in crisis situations under the guise of 'common good'. In the absence of such paucity of materials, Rawl's idea on social contract theory (1971) has been utilized to explain that such actions cannot be justified even in crisis situations as it contradicts the foundation of the social contract that provides for equal liberty of people. This argument has been further explained through the work of Follesdal (2014). In conclusion, the reference has been made to Locke's version of social contract theory (1960) to suggest that the lack of legitimacy poses a central challenge to the actions of the Sri Lankan government as such must be derived from the trust of people.

## **RESEARCH PROBLEM AND OBJECTIVES**

Some rights enjoyed by individuals are considered absolute ones while another set of rights seems to be non-absolute ones. However, in situations like a serious economic crisis, governments, generally, attempt to place severe restrictions on the enjoyment of individual rights of the people. Justification for such restrictions relies on the argument that individual rights need

to be sacrificed in the altar of 'common good' for the public. The question remains as to whether such sacrifice amounts to terminating the social contract and thereby raising the issue of the legitimacy of the government.

In finding the answer to that question, the first objective of this paper is to assess the notion of natural rights in light of the social contract theory to elaborate how this idea came into being as a result of empiricism and how it evolved through distinctive theories propounded by advocates of social contract theorists. Secondly, the paper intends to discuss, albeit briefly, the impact of economic crises on the natural rights of people by drawing examples from the current situation prevailing in Sri Lanka. Finally, this paper seeks to analyze the legitimacy of the measures taken by governments facing such economic crises by resorting to placing substantial restrictions on the natural rights of the people.

## **METHODOLOGY**

Since the primary focus of the research is on the jurisprudential underpinnings of natural rights and their application in crisis times, it, inevitably, requires legal analysis, and hence the research methodology followed is a qualitative approach based on doctrinal research. The main aim of this method is to organize and describe jurisprudential arguments pertaining to the issue

and to engage in a comprehensive analysis by grappling with the theoretical underpinnings of social contract theory. Hence, the arguments in this research are made and conclusions are reached by referring to the existing case law, local and foreign, and scholarly literature.

### **NATURAL RIGHTS THROUGH THE LENSE OF SOCIAL CONTRACT THEORY**

Natural law is the name given to the school of thought that seeks to emphasize the importance of quality for determining the validity of any piece of legislation. A key feature of such quality stressed by natural law jurists is the moral component of law. While not denying the need for positive human law, the natural law jurists like to extend the criterion of morality for measuring its legitimacy as well. (Ratnapala, 2013, p.133). Although the core idea of such contention is the supremacy of higher moral law over positive human law, these two theories inherently vary in their aims and contents.

The social contract theory is one of the theories that buttresses the quality approach to natural law and became influential with the growth of empiricism during the Age of Enlightenment (1685-1815) . This era is also known as the Age of Reason as it witnessed the liberation of philosophy from the shackles of superstition. The natural law theory

influenced by empiricism in this era upheld the view that humans have natural needs as they are social animals that survive and prosper in social groups (Haakonssen, 2017, p.83). This notion ultimately led to the creation of natural rights based on the idea that each individual in social groups must respect the natural needs of others and must pursue their goals without harming the fellow individuals. This theory of natural rights was distinct from the previous understanding of natural law as it projected the view that the subjective natural rights determine what just law is, while the former upheld its opposite.

Among the jurists who enunciated the theory of natural law, Hugo Grotius is the first person who completely separated divine will and human rights, arguing that divine right was based on revelation and human right on reason, while at the same time demanding a separation of the spheres of life to which they respectively apply (Windelband, 1958, p.427). According to Grotius, there is a law natural to humankind irrespective of faith and that law confers upon rights on individuals for self-preservation compatible with similar rights of others (Ratnapala, 2013, p.162).

The separation of divine norm from that of natural rights as the basis was consequently asserted by Thomas Hobbes, who is known as the first modern philosopher to affirm the priority of right over law. According to his view, the law does not create

right, but right dictates what the law ought to be (Ratnapala, 2013, p.162). Hobbes's contribution as described in *Leviathan* was a fictitious social contract needed to overcome the pre-political condition of the state of nature where life was 'solitary, poor, nasty, brutish and short' and where every person was at war with every other person, i.e., *bellum omnium contra omnes* (Hobbes, 1651, p.82). The reason for this was the total freedom people had to do everything. Hence, people delegated all their autonomy to a sovereign power that can protect their rights through a covenant among themselves. The sacrifice of natural rights is the basis of Hobbes' social contract, and it is this contract which made a man *homo socialis* who was previously a *corpus naturale* in the state of nature (Riha, 1998, p.1535). In Hobbes' view, only the sovereign authority with absolute power is capable of protecting the rights of people and hence, the command of that body becomes natural law (p.1536).

Later, philosopher John Locke's theory on social contract also begins with humans in the state of nature and yet, his version was different from that of Hobbes. Unlike a state of war in Hobbes' version, life in the state of nature in Locke's version was total bliss and the only defect was the inadequate protection for the property. In order to rectify this flaw, people entered into a contract between themselves and the sovereign and conceded the power to protect life, liberty, and estate to

that sovereign authority (Ratnapala, 2013, p.167). For Hobbes, natural rights were logically prior and natural law was derived from them. By contrast, Locke derives natural rights from natural law. While Hobbes rejected the need for precautionary limits on power, Locke espoused a limited form of government. The checks and balances among branches of government would, in his view, minimize the government and maximize individual liberties. For Locke, the State exists to preserve the rights of citizens and when it fails in this task, people have the right and duty to resist and withdraw from the contract. . Hence, when a government is unjust and it violates the trust of the people, people have a right to overthrow the government, and 'power delves back into the hands of those that gave it'(Locke, 1960, p.385).

Jean Jacques Rousseau's theory of social contract is distinct from that of both Hobbes and Locke as his social contract is an agreement between the individual and the community by which his will becomes a part of the 'general will'(Bertram, 2020). According to him, natural rights cannot be removed but the law may legitimately infringe upon these rights by investing the 'general will' with total legislative authority. This understanding of social contract is in line with the view of Immanuel Kant who argued that the original contract is not a product of agreement between citizens but

rather a theoretical construction of the general will of the people (Riha, 1998, p.1538). His social contract is considered a practical manifestation of reason itself as the idea to “concede people’s personal will in matters external to them to a collectively universal will, which is, of course, the will of reason” (Rommen, 1947, p.25).

All these versions of social contract theory are aimed at upholding the freedom of individuals and are based on the notion of people conceding that freedom wholly or partially to the sovereign body in return for the State-granted security and mainly for the reservation of natural rights.

### **IMPACT OF ECONOMIC CRISIS ON THE NATURAL RIGHTS OF PEOPLE**

The idea of natural rights enunciated by the philosophers of social contract theory served as the foundation of the doctrine of universal human rights (Potter, 2000, p.77) and it influenced the creation of the international treaty law on human rights as well. The human rights regime has been developing over the years with the enactment of several international legal instruments addressing different categories of human rights. Although these rights are meant to be inviolable at all times, in certain extreme situations they have been made subject to severe restrictions.

There is no doubt that an economic crisis is one of such situations.

During an economic crisis, governments may enforce austerity measures to save the country from bankruptcy, and these measures, including cuts on public expenditure, reactionary tax hikes, pension reforms, reduced labour protection, and withdrawal of social welfare, often aggravate the hardships caused by the economic crisis, such as increased unemployment, vulnerability, and loss of income (Safeguarding human rights in times of economic crisis, 2013, p.7). The whole spectrum of human rights flowing from civil and political rights to socio-economic rights gets affected as the protection and promotion of the most important rights such as the rights to decent work, an adequate standard of living and social security, access to justice, and accountability, become problematic in such situations. Moreover, economic crises erode the capacity of the governments to ensure human rights protection for all and this undermines the foremost duty vested upon them through the social contract theory.

Sri Lanka is, with no exception, experiencing an economic crisis which is considered to be the worst crisis since the country’s independence (UN rights office concerned over Sri Lanka’s deepening economic crisis, 2022). This unfortunate situation was caused mainly by the shortage of foreign currency resulting from the restriction of tourist flow due to the Covid-19 pandemic as well as the

unsustainable and wrong economic policies adopted by then governments and its failure to control the gangrene of corruption at all levels. In consequence, Sri Lanka was severely hit by prolonged power cuts and acute shortages of essential supplies such as fuel, food, gas, and medicine. This situation created a deepening debt emergency in the country and the government's decision to devalue the rupee while imposing strict limits on imports pushed up the prices of many key commodities. This has resulted in a chain of restrictions on several basic socio-economic rights, including the right to work, education, social services, and adequate living standards.

Moreover, the country's mismanagement of the crisis has increased concerns over violations of civil and political rights of the people as well. The country-wide curfews, declaration of a State of Emergency and social media blackouts created tension over the restrictions on people's rights to freedom of expression and peaceful assembly. (OHCHR, 2022) These restrictions, together with the lack of transparency and accountability on the part of the government in its decision-making process caused space for serious violations of civil and political rights of the people..

### **LEGITIMACY OF AUSTERITY**

Adopting austerity policies as emergency measures and implementing them play a central

role in responding to economic crises and the legitimacy of such measures has been debated by many scholars who have presented different jurisprudential espousals. Nevertheless, austerity measures are considered inevitable government responses to economic crises aimed at guaranteeing social protection while saving the economies from the brink of bankruptcy. Although imposing austerity measures may restrict the natural rights of people, since the purpose of such measures is to ensure the collective betterment of the people as a whole, it can be justified as per Rousseau's and Kant's versions of social contract theory which accepts the predominance of the 'general will', which denotes that it is more than and different from a mere aggregation of individual interests and wills (Tuckness, 2020). According to them, natural rights cannot be done away with yet, and can only be restricted for upholding the common good.

Hence, many governments have taken such measures to save the economies and what the Lithuanian government adopted during its third economic crisis in 2009 presents such a classic example. Although such measures infringed on the rights of the people in Lithuania, these measures were justified by national as well as supranational courts based on the 'common good' criterion. For instance, 'the overnight reform' amendments to the tax laws and the cuts of some social benefits were not found to be

contrary to the fundamental rights, ruled by the Lithuanian Constitutional Court by considering the extreme circumstances created by the economic crisis (Constitutional Court ruling of 1 July 2013. Official gazette, 2013, No. 103–5079). Thus, this position has been confirmed by the European Court of Human Rights in *Mockiene v Lithuania* (The European Court of Human Rights, application No.75916/13), where it was held that, “there are no grounds to find that the Lithuanian authorities had failed to strike a fair balance between the applicant’s fundamental rights and the general interest of the community”. On this basis, one could argue that the austerity measures imposed by the Sri Lankan government too, including higher interest rates, increased goods and services taxes, restrictions on imports, and the devaluation of the rupee can be justified by considering the dire circumstances faced by the people of the country, although such measures have directly affected the socio-economic rights of the people.

Nevertheless, it is hard to justify the Sri Lankan government’s response to the current situation and its impact on the rights of the people as per the above reasoning since it is contradictory with the true essence of social contract theory which is to ensure equal liberty of individuals (Laskar, 2013). Measures taken by the Sri Lankan government did not ensure equal liberty for all citizens but rather restrict the rights of

commoners while facilitating the continuous enjoyment of the privileges of the aristocrats. For example, instead of increasing direct taxes, Value Added Taxes were increased amidst the economic crisis, with little concern about the severe burden it imposed on the poorest households. (Tegal & Kadirgamar, 2022)

Thus, the above position can be further substantiated through John Rawl’s theory of justice as fairness which is also based on the notion of the social contract (1971). According to him, rational people in a hypothetical ‘original position’ would agree to certain general principles of justice by suppressing their individual interests under a ‘veil of ignorance’, i.e. disregarding the actual circumstances of their existence, to achieve social cooperation (Follesdal, 2014, p.2). This Rawl’s argument is based on the idea of distributive justice that seeks to maximize equal liberty of individuals and balance the benefits with the least endowed groups of society (Ratnapala, 2013, p.373). According to him, a just government must create conditions to enable the worse-off to improve their situation and ensure everyone enjoys the same rights and liberties. Nevertheless, the just and fairness of the actions of then Sri Lankan government became problematic in instances such as the overnight ban of agrochemicals in April 2021 and their consequent actions of importing alternative natural fertilizers from India and China that



have been mired in corruption allegations. As a result, the agricultural sector collapsed, abrogating the socio-economic rights of hundreds of people and this became a major reason for the current economic crisis and country-wide protests.

Moreover, as per the example of the Lithuanian approach, the principles of reasonableness and proportionality must have been used as yardsticks in determining the legitimacy of austerity measures (Constitutional Court ruling of May 31 2006. Official gazette, 2006, no. 62–2283 ) as this approach goes along with the social contract theory which gives a prominent place to the notion of rationality (Hill, 1995, p.109). Hence, when analyzing the Sri Lankan situation in light of these principles, it is evident that the actions of the government that are taken under the guise of austerity measures cannot be considered as reasonable and proportionate. For example, although Sri Lanka stopped importing essential food items and medicine, the government spent millions of public funds to import steel from India (Sirimanna, n.d). Further, it is noted that introducing a wealth tax on the richest in the country continues to be fiercely resisted. (Tegal & Kadirgamar, 2022) As a result, these measures have fuelled the pre-existing patterns of discrimination in the political, economic, and social spheres and thus have created room for further corruption and resentment.

Furthermore, Rawls, in his theory, gives priority to the basic liberties including freedom of thought, association, rule of law, and civil rights, over the regulation of inequalities (Ratnapala, 2013, p.380) and thereby, highlights the importance of democratic values as the foundation of governance. However, the Sri Lankan government has made use of the economic crisis as an excuse for their non-democratic practices such as ignoring the basic civil and political rights of the people. The unwarranted Police brutality on peaceful protestors and the imposition of unnecessary curfews remain observed in breach of what was proposed by Rawls.

As Locke's version of social contract theory emphasizes, the legitimacy of the government derives from the trust of the people. Thus, as pointed out by the Lithuanian Constitutional Court, transparency in the decision-making process and accountability for government actions are the two main prerequisites of this trust and these cannot be compromised, especially, in a crisis situation as described above. (Constitutional Court conclusions of 7 November 2008 and 26 October 2012. Official gazette, 2008, no. 130–4992; 2012, no. 125–6285). Nevertheless, the Sri Lankan government repeatedly derogated from these principles by weakening independent institutions and by obstructing investigations and prosecutions in high-profile excess and corruption cases. (Sri Lanka: Technical Assistance Report-

IMF, 2023) As a result of this , public frustration rose with large-scale peaceful protests taking place island-wide and this situation clearly conforms to the latter part of Locke's social contract theory. According to him, people retain the right of resistance when the sovereign violates the trust by undermining the natural rights of the people and the supreme power to remove or alter the legislative authorities certainly lies with the people (Ratnapala, 2013, p.167). This position was amply mirrored during the Lithuanian economic crisis where its national courts upheld the rights of the people who demonstrated their frustration and resistance toward the government (Supreme Administrative Court ruling of 7 May 2010 in the administrative proceedings no. AS822–339/2010). Hence, this elucidates that the people of Sri Lanka do not lose their natural rights during crisis situations but rather these rights become more important as violations of them may cripple the whole system of governance in a democracy.

## CONCLUSION

From the above analysis that discussed the relevance of natural rights and their application in a situation of economic crisis through the lense of social contract theory, it is evident that natural rights are inviolable at all times although they could be subjected to reasonable limitations in certain dire circumstances. Nevertheless, such

limitations must be justified by the principles of reasonableness and proportionality and deviation from these obligations would destroy the fabric of legitimate authority governments. Hence, this study substantiates that natural rights do not lose their application in times of economic crises but rather become pivotally important as failure to protect them would cripple the functioning of the whole system of legitimate governance..

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