

SRI LANKA FOUNDATION

**RELIGION AND CULTURE
IN THE DEVELOPMENT OF
HUMAN RIGHTS IN
SRI LANKA**

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MONOGRAPH SERIES

RELIGION AND CULTURE
IN THE
DEVELOPMENT OF HUMAN RIGHTS
IN SRI LANKA

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INTRODUCTION

The human being is essentially developmental and potential and is social. He/She is not born perfect but has to grow during life towards a series of ends which will eventually give the person self-fulfilment, self-achievement and full growth.

Man is again both personal and social at the same time. He cannot achieve his fullness in isolation but in living environment of the cosmos and in relationship with other persons. While he grows, the society also grows and changes. There is a natural inclination for the man to tend towards his ends. It may be said that there is not only an inclination but an obligation and duty. He is bound to live, to develop his intelligence, will and other powers, to care for his body and life, etc. In other words he has to tend towards the One, the Good, the True and the Beautiful.

As a person has a duty to tend to his goals, there is a corresponding obligation on the part of the other members of society to respect him in his pursuit of values. Others have to respect and encourage the complex of an obligation of a single person. This forms a body of Human Rights.

Rights and duties are reciprocal. The duty of a person to grow means that others have a duty to respect him and he has the right to expect such defences and safeguards to his freedom. Rights and duties are reciprocal both for the individual person and for others in society.

One of the fundamental dimensions of our human world is constituted by the natural world we live in; its climate, topography, location, natural resources and such like. These must be taken into consideration at every level, from the most local to the global. Limitations and possibilities begin here, and this world must be fully explored. Though we are now able to control the world and harness its energy to some extent, it remains a given world, not of our making and so not fully under our control. It lays constraints on us, and has always to be taken into account and the balance maintained.

In every group, community and society, social behaviour is regulated. Embedded in the rules of social behaviour are reciprocal rights and duties, even though they may not be known by these names or by any name. Many of these rights (and duties) are eventually incorporated into the law; this gives them a firmer base. These rights need to be respected, protected and enforced; that this may happen vigilance is necessary. Because rights and duties go beyond law, their practice is conditioned by the environment in which they exist. Even legislation is hardly effective if the environment is hostile or indifferent. A decisive factor in shaping and fostering human rights is the moral and ethical climate prevailing in a given society.

Religions and religious communities have played an important role in determining the moral and ethical climate of society. One of their chief claims is that man is not just 'economic man' or 'political man'; and consequently, that economic prosperity alone does not guarantee that a society will be good. All major religions speak to the mind and heart of man; they call for a change of mind and heart, a movement away from self-centredness and towards self-awareness. They all agree that, for example, a just society cannot be built or maintained by unjust men: or a peaceful society by men who do not know peace. They provide a foundation for human rights and can be expected to foster a healthy environment and to promote and protect human rights. They can be expected to detract from the absolutizing trend and tendencies of Government, because they offer a different vision of man and society as well as a different centre of allegiance. In a plural society, though no one vision is shared by all each religious community keeps alive a vision of man which transcends State, Government, economics and history. Thus the various religions can be expected to form a bulwark against every kind of tyranny and dictatorship.

The importance of the religious aspect has been accepted in Sri Lanka today as protection has been given constitutionally to the religions in Sri Lanka. This protection must necessarily give every person an opportunity for development towards making an impact on each person and the lives of the people. Article 9 of our Constitution, whilst giving to Buddhism the foremost place and imposing on the State, the duty to protect and foster the Buddha Sasana, assures to all religions the rights guaranteed under the Constitution, namely freedom of thought, conscience and religion, including the freedom

to have or to adopt a religion or belief of one's choice 'and the freedom of every citizen by himself or in the association with others, and either in public or in private, to manifest this religion or belief in worship, observance, practice and teaching.'

In this context the following questions would be relevant :

1. What has religion to say and to do to build "a just and equitable community"?
2. How can various religions and communities act together to form this community?
3. What responsibility has a religious community to build a better society?
4. What are the most important issues facing us in building this community?
5. How can religions harness a man of goodwill to act towards forming this society?
6. Our resources are many. Are we aware of them? Do we believe in them? Do we "proclaim" them?

These are some of the questions which we, in our *Seminar on Religious and Cultural Traditions of Human Rights in Sri Lanka*, discussed and tried to answer.

Propaganda is not enough; neither is exhortation to moral goodness. Social, economic and political issues need to be examined carefully, i.e., the theological and moral dimensions of our faith must be brought to bear on them. If this be not done, the way is left clear for economic and political considerations to predominate. Reflecting and reacting to wrongs done is insufficient; we must try to understand what is happening and see where it is leading us.

In order to examine these questions the methodology adopted by us was as follows :

Three major seminars were organised. The first two were discussions in depth by participants of the same faith, viz :

1. The conceptual approach to religion, i.e., philosophical, theological, sociological etc.
2. Historical impact of the conceptual aspects of the religion on any particular area of human rights;

3. The type of society we wish to tend towards from the standpoint of each religion.
4. The role each religion could play in the development of this society.

For this purpose we invited participants of each one of the five major religions in Sri Lanka, namely Buddhism, Hinduism, Islam and Christianity (Christianity was divided into two groups—Catholicism and Christianity.)

These two seminars were for a duration of two days and many of the participants 'lived' in at the Institute. Papers which were circulated earlier were read and discussed and rapporteurs made a final analysis of the findings of each group at the seminar.

Five reports were presented at the final seminar with a further report pin-pointing various issues that had surfaced during the course of the seminar. The final seminar was a combination of all the participants of the previous two seminars. They discussed together the issues raised by the final report of the rapporteurs of each religious group. The final seminar was held over two days.

At the conclusion the five major religious groups held in common that—

- 1.—fundamental human rights are inalienable and that a valid basis for the meaningful consideration of human rights is the universal love of man and animal and the respect for every thing that exists, both animate and inanimate, including the environment. While the different religions have their distinct religious perceptions and philosophical explanations of the universe, of human relationships and of development, of motivations and of ultimate destiny, the religious and cultural traditions of the five major religions uphold in common certain basic moral and ethical values for the promotion of which man must be enabled to exercise his rights and perform his duties in a mutuality of relationships. Among these values held in common are human dignity and worth, quality, freedom, love and compassion, truth, justice, brotherhood and charity.
- 2.—religions can offer the following insights :

- (a) emphasis on the need for purification of the person from evil and the tendency towards evil and a growth of human values in the hearts and minds of people.
- (b) emphasis on the fulfilment of duty and obligations as the best safeguard of rights; that duties and rights are reciprocal.
- (c) emphasis on the interdependence of person and the community including the State and the organic relationship of the person towards society, beginning with the primary unit of the family.
- (d) the Universal Declaration of Human Rights lacks both depth of perception and insights which religion alone can give.

3.—In respect of the contribution which the religions and the cultural traditions of Sri Lanka could make to a further understanding, observance and promotion of human rights, the seminar emphasised the following :

- (a) the need to create a climate of goodwill and understanding by enhancing religious values in society, with a view to the full development of the human personality;
- (b) the fostering of a simple life-style and the growth of a self-reliant society;
- (c) the manifestation of a greater concern for the large numbers who live in abject poverty and to initiate programmes for their benefit;
- (d) promotion of inter-religious understanding, mutual respect for the religions and greater inter-cultural dialogue;
- (e) the promotion of inter-racial harmony, thereby easing tensions which have their origin in prejudice or misunderstanding;
- (f) the setting up of machinery which could be activated specially under emergency situations to prevent excessive use of force by the armed forces and the police;
- (g) the development of the potential of religions to reinforce the ethical and moral values in society in order to promote human rights;

- (h) the development of concern for the spirituality not on of persons but also of institutions.

As regards fundamental human rights issues in Sri Lanka, the seminar considered five broad areas and indicated its concern on specific issues:

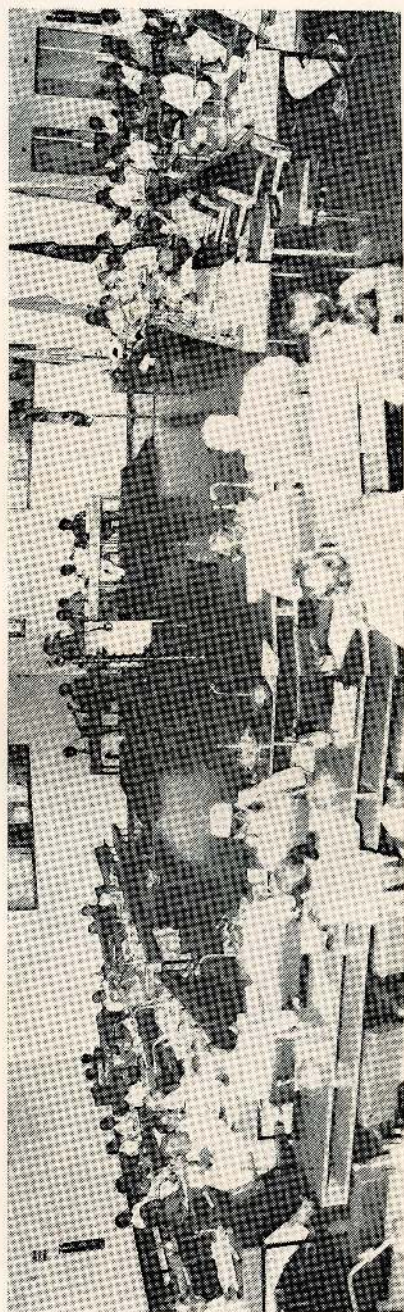
1. Hunger, health and housing
2. Work and employment
3. Education
4. Freedom of speech and information
5. Participatory democracy including the Rule of Law

On the subject of the contribution, which the religions could make on the above-mentioned issues, the following suggestions were made :

1. The setting up of a multi-religious centre for the promotion of human rights and as a centre for worship, reflection and fellowship of all religions.
2. Continuing process of meetings among religious groups in the country to discuss fundamental human rights issues.
3. The setting up of an on-going forum to—
 - (i) carry out indepth studies on moral and ethical dimensions of human rights issues, and
 - (ii) enable a continuing dialogue among major religious groups.
4. The need for the continuous vigilance and public dialogue and conscientization of the people and the importance of inter-religious approach for safeguarding and developing human rights.
5. In the preaching, teaching, ritual actions and other collective manifestations of religions, stress should be placed on the social impact and dimensions of religious beliefs. The personal and social aspects and the liberation and salvation should be harmonized together.

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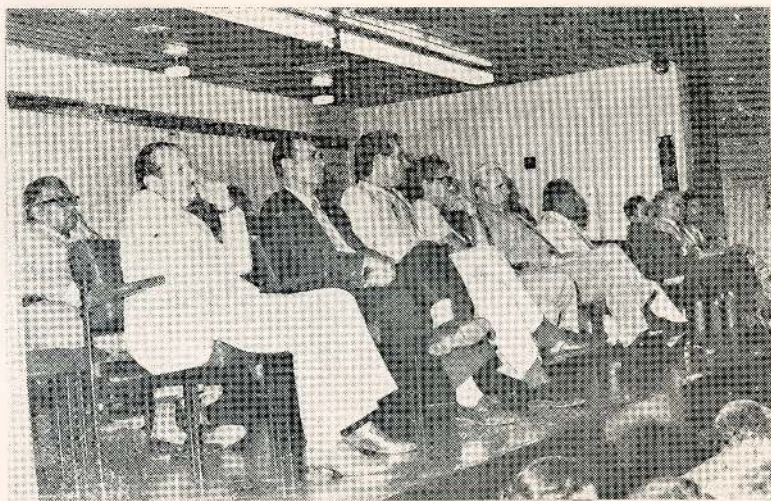
27, Independence Avenue
Colombo 7



A view of the Seminar



His Excellency, J. R. Jayewardene, the President inaugurates the Seminar by lighting the traditional oil lamp. On the right is the Hon. Prime Minister, Mr. R. Premadasa and on the left is Mr. H. W. Jayewardene, Chairman of the Sri Lanka Foundation.



VIPs at the inauguration

BUDDHISM

BUDDHISM

REPORT

BUDDHIST GROUP

PROLOGUE

The idea of ever holding a seminar on a theme like the Universal Declaration of Human Rights in Sri Lanka, with a specific end in view, could hardly have been conceived but for the perseverance of a son of Sri Lanka who is fully sensitive to the value of our own religious and cultural traditions. The credit for the move in this direction goes to Mr H. W. Jayewardene who, as the Chairman of the Human Rights Centre in Sri Lanka, planned this seminar. Preparing the setting as it were for the seminar Mr. Jayewardene wrote on *Human Rights in a Buddhist Perspective*. There he clearly states :

“The time has now come to re-evaluate the Declaration and the Covenants in the light of the separate and individual cultures and traditions of these countries, particularly those of Asia and Africa”. (CDN 29-5-1980).

And he further reports :

“The United Nations is not unmindful of these diverse approaches to the problems concerning human rights. A conference called by UNESCO in Bangkok in December, last year, marked a welcome step towards the re-evaluation of human rights in the cultural and religious traditions of the world”.

The motivation for the convening of this seminar is thus amply clear and is adequately highlighted in the title of the seminar, viz. **RELIGIOUS AND CULTURAL TRADITIONS IN THE DEVELOPMENT OF HUMAN RIGHTS IN SRI LANKA**. Even at world level, it reflects a sense of justice and fair play, in contrast to the eras of colonial domination when all that mattered in the life of

a people were the religion, culture and political thought only of the empire-builders. This new approach stems genuinely from a desire for unity within diversity, a desire to include and accommodate rather than exclude and ostracise, and a willingness to respect and recognise rather than plan for the obliteration of identity. It is here and here alone that the word comradeship stands for a truly meaningful concept. It would be disastrous to let an exclusive sense of self-righteousness disrupt or displace it. A seminar like this cannot but take serious note of disparaging remarks made about the religion and culture of any single group, large or small, which constitute the Sri Lankan community. Such remarks, whether made in public or in private assembly, are not only totally unwarranted but when they find their way out as the printed word reflect a lamentable lack of propriety and decorum.

The subject under discussion presupposes that there is room for the further development of human rights and that our religious and cultural traditions can provide the necessary illumination for this purpose. We propose to consider the subject in three distinct stages, which for convenience may be referred to as descriptive, analytical and prescriptive.

We begin by presenting the basic Buddhist doctrines all of which are contained within the single concept of Dhamma and showing that they are primarily concerned with the problems of man. The point of departure in Buddhism is the analysis and examination of the causes that lead to the unsatisfactoriness of life in the world, whether they be wars or rumours of wars, famine, plague or pestilence or other states of unrest and discomfort which cause pain of mind or body. Man's entire destiny is discovered to be guided by the state of his awareness and his own internal self-adjustment and his relationship to the other men in the world and to his environment. Love and hatred, greed and generosity are all reflections of this self-structuring by man, the responsibility for which lies entirely in his hands.

Next we examine the scheme of Buddhist values as they guide man through history. Weal or woe in the human community is regarded as being relative to the prevalence or absence of these values among men. The ideal has always led the way. At times, when the

state or rulers, with a sense of self-awareness, looked up to the religion for guidance, it provided the real leadership for complete implementation of the way of life recommended, both for the individual and the community. At other times, these values as enunciated in Buddhism have proved themselves to be a reliable yardstick to determine the decadence of social norms. In the history of our own country, rulers and subjects have come to be severely chastised under such scrutiny. It is re-assuring to discover how Buddhism has acted as a stabiliser, socio-moral stabiliser, through the stormy voyages in Sri Lankan history.

Finally, as we take a look at the world of yesterday and to-day, not losing sight of the graphs of human behaviour plotted out for us in the Buddhist teachings, we are led more and more to the firm conviction that the sum total of man's happiness on earth is generated by man's actions and their reactions, all of which are ultimately traceable to the promptings of the human mind. There is no gainsaying the fact that it is man who expresses himself in history through his deeds and misdeeds. World events of recent times have proved this to the hilt. Therefore, as we think in terms of tomorrow and in our prescriptive approach we feel that we cannot equate these human rights with similar concepts and ideas as formulated in the Dhamma. When compared with the text of the Dhamma and gauged in terms of its own aspirations, these rights must mean something much more. In accordance with our way of thinking and our value-systems, both terms and concepts in the Human Rights Charter, therefore, have to face multi-dimensional expansion. This is not to underestimate, even for a moment, the great value of these rights. It is our duty to protect them at all costs, for without them there could be further erosion of those attributes that go to dignify human life and leave us at the mercy of the State apparatus.

It is our view that the modern concepts of these are only an imperfect reflection of ideas and concepts which in their pristine form as expressed in the Dhamma were more humane, more philosophical and more just than anything which we, the moderns, can show. Of course, they operated in a particular social context, but a context which, particularly in this age of science and technology, is worth retrieving and restabilising. In that context, man's view of the universe and his place therein, the assessment and appraisal of human life, now and hereafter, all of these contributed to give the

concept of human rights an entirely different emphasis, a totally different sense of direction. In the process of time, in a retrograde movement, there has occurred a distinct shift of emphasis from those features that were grounded on selflessness and the belief in the perfectability of the human being to the present vociferous demand for individual rights of a legalistic nature, enforceable both against the State and our fellow-men. Such is not the concept in the Dhamma as we shall presently reveal. While appreciating the value of human rights in their present form, this difference has to be stressed, because it is a distinction of the utmost importance from the point of view of the Dhamma and it is the distinction that needs the greatest emphasis.

Long before man in the western world was stunned by atrocities of war and was at a loss to know whether the responsibility for this lay with man or elsewhere, a wise man of the east sat relaxed beneath the shade of an *Asvattha* tree and pondered over the plight of man and the possible vicious turns of his mind, the possible abuse of man by man. To him it became clear that at the root of all this evil lay man's greed (Pali *taṇhā*, Skt. *trṣṇā*) which devastatingly speeds ahead of his needs. His greed continuously turns out to be unjustifiably out of proportion to his needs. This not only puts him out of gear but puts out of gear everything around him, society and the environment including land, sea and air and the produce thereof. This foresight led him to his enlightenment and to his renown thereafter as the Fully Enlightened One. Thus was found the long term solution to the problem of life and consequent ills which are a sequel to it. From the vast store of his wisdom which thereafter found expression under the term Dhamma and which the world has hitherto held in high esteem, with no need for revision and re-interpretation in the hands of subsequent commentators in order to accommodate the allegedly new situation into which the world is plunging itself generation after generation. We pick up for the purpose of this seminar a few items of teaching which not only meaningfully spell out what we are now labouring to formulate as Human Rights but has also in effect set up the vast machinery through which they can be implemented with ease.

The consideration of Human Rights, in our opinion, must commence with the recognition of a broader basis of rights—of human

and animal, of animate and inanimate. Their integration and inter-relationship, from the Buddhist point of view, is indicated to be most vital. It is such a world view, the Buddhists would argue, that arrests the disastrous inflation of the ego and makes it possible to evolve a social philosophy which is universally applicable without petty differences of colour, race and political ideologies, and without arrogant assertions and unscrupulous exploitations, between nations and within nations. It is also our considered opinion that Human Rights, universal as they are, in the process of being studied in relation to religious alignments should not acquire a partisan or parochial character. We hasten to add that any attempt at narrowing down or being exclusive in terms of religious identity of any particular creed would be seriously damaging to the concept of Universal Human Rights. Human Rights are human rights and to be true to its very concept of serving humanity; they must rise above difference of caste or creed and be freely applicable to all mankind, despite the difference in their religious beliefs. As far as Human Rights are concerned, it would make very little sense for any religion to claim an *imperium in imperio*.

In view of the vast preponderance of people who claim to make judgements on Buddhism, even though not so qualified to do so, it would be well to indicate at the outset the Buddhist attitude to rights, duties and obligations in the context of Human Rights. Both in the Buddhist Vinaya which specifically deals with monastic discipline and in the Dhamma which contains the general corpus of Buddhist teachings, social consciousness engages the attention of the Buddha at all times, as the instructor of moral values, promulgator of rules and regulations for the monastic community or prosecutor against irreligious and anti-social behaviour among his followers.

The man in society, i.e., the one whom we have in mind when we speak of Human Rights, is viewed in Buddhism like the coin with its two sides. On the one side, each man by virtue of his being a part of the vast cosmic organization has, like any other, an inalienable right to the benefits that accrue to him on account of this membership. Viewed from the other side, no man shall deprive him of these rights. Every time when one man is singled out in terms of his rights, it brings into relief the rest of the society which owe him the duty of respecting that right. With the recognition of a right there comes in its wake the responsibility of the others of helping towards its ful-

filment. This reciprocity of relationships is viewed in Buddhism as essential ingredients of social well being. Hence no one can fail to contribute his share, not only in kind but also in action and attitudes, however small that might turn out to be. The failure to do so leads to serious imbalances, resulting in irreparable damage.

Buddhist thought, both in the realm of religion as well as philosophy, begins with an insight into a fundamental consideration that all life has a desire to safeguard itself and to make itself comfortable and happy. In Buddhist religious life, the philosophy of *maitri* and *avihimsa*, universal love and non-destruction of life, derives its validity from this position. Therefore, at the social level too, it is the responsibility of every member of society from the head of state downwards to contribute to the unimpaired operation of this principle.

Thus, when it comes to a consideration of rights and their safeguarding, with the Buddhist, it extends to all life, human as well as animal. Nay to the whole environment, including rivers, lakes and mountains with all life therein, the birds and the beasts and the trees and the plants. We are not unaware that in the much larger countries of the civilized world the results of science and technology, masquerading under the name of development have been both polluting and devastating. Recent studies on the desolation of the Baltic and Mediterranean seas in Europe and the Great Lakes in North America are a grim reminder for the adoption and use of such a philosophy. Let us not be led to grief like the natural scientists of the western world, through the misdeeds of the industrialists and the economic planners. This extension of religious awareness, in what might appear to many as a strangely new direction, is not to be dismissed as an expression of oriental humanism as was the fashion unfortunately in the western world, thirty or forty years ago. Its real worth can only be assessed on a spirit of genuine detachment, free from arrogance and free from sectarian and partisan loyalties. Men of honest motivation and magnanimous character have chosen to espouse this philosophy of Buddhism, in their unquestionable love for mankind. Here is Dr. Rafael M. Sales, Executive Director, United Nations Fund for Population Activities, addressing the Special Convocation of the University of Colombo, on 29th August, 1979.

"But I believe that what is more important than all these is that the people of this country are blessed by one other resource that

stands above all others—the ethic of restraint. Development in its broadest integration demands the consciousness of limits to enable individuals to act without degrading themselves and their environment and so prevent further individual or national growth. This ethic of restraint is linked to a respect for the value of life, especially human life, its authentic fulfilment and the true meaning of happiness. Material goods alone, however necessary, cannot achieve this, nor can they be sought unless people themselves adopt attitudes which enable them to restrain excessive desires that ultimately lead to degradation. A man of radiant Enlightenment two thousand five hundred years ago taught us that :

‘Whoso in the world overcomes this base, unruly craving, from him sorrows fall away, like water-drops from a lotus-leaf’.

Is not this inner discipline the essentially appropriate ethic of the twenty-first century? And has not Sri Lanka a part to play in helping to impart this to all the nations as mankind approaches the next Millennium?”

In Buddhism, it must be stated at the very outset, religion and society are closely integrated concepts, despite the views expressed to the contrary, quite often by defenders and exponents of competing faiths. We are constrained to reproduce in this context a glaring example of such a distortion :

“The development of mankind in our present time urges the Buddhists also to reconsider their way and to take history seriously. They can no longer exclude the social dimension from their system”. —Dr. Theobald Diederich, D.D. in Sri Lanka Foundation Institute Pocket Book 2, *Religious Dialogus and Human Development in Sri Lanka*, p. 44.

Let it be recorded here in no uncertain terms that in Buddhism, all social norms are determined by and in terms of the Dhamma or the total philosophy of Buddhism, and not independent of it. It is within this social context that man has to develop his full stature by means of which he is to attain his transcendental goals. Buddhism being a philosophy of life in every sense of the word, a philosophy for the elevation and enrichment of life, provides the necessary basic ingredients for this. Therefore any pledge by state or society to safe-

guard Buddhism does and must, in effect, amount to the preservation and maintenance of a social order conducive to the attainment of its goals.

Speaking with reference to Human Rights, the need and the right to be protected, free from assault and free from threats of destruction, ranks foremost among Buddhist values. Humanity today, on account of the dizzy heights and the staggering girth which it has attained, seems to pay scant respect to this. The precept which comes first in the listing under Buddhist morality safeguards life of man and beast. Compared with Art. 3 of the UDHR this precept in Buddhism is greater in depth and richer in tone and serves as the basic foundation to the entire system of human values. That alone reflects the necessary magnanimity and philanthropy with which we must be adequately endowed if we are to speak in terms of a meaningful Universal Declaration.

The ideal ruler in Buddhism provides protection to all grades of men in society and extends this benefit even to the animals. If people are to tread the path of virtue the State must uphold these ideals. It causes the Universal Monarch in Buddhism or *Rājā Cakkavatti* no embarrassment to lay them down firmly in his admonitions to his subjects. Anything to the contrary, practised or tolerated by the ruler would be contradictory not only to what he professes but to the very position he holds. That is why it is said of the *Cakkavatti*, in no uncertain terms, that when he fails in virtue his kingdom shall collapse. Thus his persistent admonition is :

“Ye shall slay no living thing.

Ye shall not take that which has not been given. Ye shall not act wrongly touching the bodily desires. Ye shall speak no lie. Ye shall drink no maddening drink”.....

(*Dialogues of the Buddha*, II, p. 203).

These are instances, in the context of Buddhism, of peaceful integration of State and religion, or in other words or permeation of religious values into the realm of state craft. This had contributed in many instances, as history bears witness, to lubricate and streamline State processes rather than throttle their magnanimity and philanthropy. In Buddhism where the only road to liberation is the Noble

Eightfold Path in which every single stage of the path from correct views to correct concentration or tranquility of mind is marked by the insistence on correctness, propriety, justice and integrity, the State makes no compromises with ideals. It is this unquestionable honesty which the State was expected to possess with regard to its religious ideals which made the people of Sri Lanka declare at times that none other than a bodhisattva shall rule over this island. King Mahinda IV (956-972 A.C.), in the Jetavanarama slab inscription, proclaims "that none but the Bodhisattvas would become kings of Sri Lanka."

This epitomises the unswerving adherence of the State to the Dhamma. Thus with the Buddhists, a righteous society is necessarily a *dharmistha* society or society established on the Dhamma or Buddhist religious norms. This is both practical and meaningful for nothing in the Buddhist Dhamma runs contrary to the sane and healthy development of society. Far from stifling a healthy growth of society, the presence and the utilization of the Dhamma, with an adequately thorough grasp of the concept and its contents would reduce to a minimum the corrosion which the social and economic growth of today brings upon both the individual and the community. We have here in mind, for instance, the introduction of consumerism, into the scene as an incentive, of course, to competitive work and earning of money. Measured with a reliable yardstick, not necessarily of the east, this trend could very correctly be labelled as vulgar and ill conceived, for it would ultimately lead to results which are socially and economically catastrophic. It must necessarily wreck our value-systems. It will not only widen the gulf between the haves and the have-nots but tear asunder the network of basic family relationships which are now being considered more and more dear and desirable. Some would be painted, no doubt, to discover that in Sri Lanka the Dhamma could be used as a deterrent in situations like these and an endless chain of murmuring or even a shower of cheap jibes at religion could ensue from many quarters. Nevertheless, the dictates of the Dhamma do not contradict the legitimate aspirations of its adherents, legitimate to the extent that it precludes one from entering into suicidal pacts with man or nature for the fulfilment of his social, economic or political needs. In determining a wholesome and desirable pattern of life for man which does not impair his complete and dignified growth, Buddhism would also call in question the worth

of many political ideologies and expressions of religious fanaticism which leads to self-denudation. Judged in terms of long range values of *samsāra* and *nirvāna*, the worth of man should necessarily transcend these.

Buddhism accepts, in addition to the personal security of the individual, his right to life in comfort and happiness as a *sine qua non* of the healthy and sane human society. For the fulfilment of this end Buddhist teachings have indicated in great detail the need and the means whereby to acquire material wherewithal, not only in terms of the basic needs like food and clothing but also in terms of items which give a healthy sense of relaxation and well being. A mere hand to mouth existence is never reflected as a social norm in Buddhism. To believe it to be so and to make it an issue for comment and criticism is no more than hallucination based upon a misconception of Buddhist doctrine.

For the achievement of this goal in society, even at a level well below the optimum, the Buddhists consider that it is necessary to have all members of the human community integrated in healthy and harmonious relationship. Economic growth of a people, in a way that they can be proud of, must essentially spring from this. Functional separation which is a professional requiement is not to stand in the way of social integration. The Buddha also emphatically stated that no man shall claim, on account of his birth, to have a premium put on himself. It is with these ideas of social organization in the forefront that the teachings of the *Sigalovada sutta* have been propounded (*Dialogues of the Buddha*, III, 168-185). While it details out the duties of various groups in society in their dual reciprocal relationships, it also indicates many considerations which contribute to social and economic well being. This, in fact, is a recurring theme in Buddhism. Buddhist texts instruct in vivid detail the diverse social relationships that must be established and maintained in the human community, to work reciprocally with efficiency, and without a disastrous breakdown through undue stress and strain. This is the very basis on which human rights in the Buddhist community is attempted to be established. It is via the regulative process of the Dhamma.

In our opinion, an area on which Human Rights attention should be focused in Sri Lanka to-day, more than any other, is that relating to work and workmen. With a socio-religious background as rich

as ours regarding work and workmen, it is incredible that we in Sri Lanka should have degenerated to such low levels as to require battling for worker's rights. The reason for this may be manifold : the breakdown of an earlier value system under pressure or through neglect, or the importation of something completely alien which does not accord with our genius. But the charter that we inherit as Buddhists in terms of which those rights are to be restored is far ahead of any that the world has hitherto witnessed anywhere. A brief, but surprisingly rich and fair manual on this is contained in the *Sigalovada sutta* referred to earlier. It is unfortunate that this has been neither adequately nor correctly studied so far.

A special area with which we wish to deal at this stage is the utilisation of man power resources of this country, especially in the area of production, in agriculture or industry, production for consumption and production for economic development. Admitting as Buddhism does that efficient work is the basis of quality goods and higher production rates which in turn provides the basis for secure and comfortable living, a theme about which the Human Rights Charter is eloquent, one has to look for adequate motivation and incentives in our society to promote such honest and efficient work. In this wise too, the Buddhist cultural background is both rich and healthy. Work promises rewards which are satisfying in diverse ways. Adequate wages or income which comes in the wake of work improves the quality of life of the worker and those who are dependent on him. The question of dependents is a recurrent theme of the Buddhist texts dealing with the subject of work as well as wages and income, not only to be reckoned by the employer who shall pay the workmen adequately but also by the employee so that he spends his earning with a sense of responsibility, fulfilling his social obligations. Further to this, care and consideration of physical fitness of a worker by the employer together with adequate attention in times of sickness, welds the worker in bonds of affection with the employer. Leave and leisure of a workman which are part of a workman's rights must come to him, not through his demand but because they are provided for in the culture of our Dhamma which we look upon to regulate our life and society as a whole.

On the question of workmen and his leave, it is important that we highlight a few observations of the Buddhist tradition from the *Sigalovada sutta*. It says that the employee must be released from

work on time. Insisting on reasonable work hours it says : 'Men cannot work through the whole day. They grow weary. Therefore release them from work at the correct time'. Speaking of the public holidays leave (i.e. of festival days), the Buddhist tradition connected with this text says, in the Commentary to the *sutta*, that the workman, while being granted festival holidays, should get gifts of food, clothing and ornaments on those occasions.

The *sutta* itself, safeguarding a workman's rights against exploitation by his employer, details out as follows :

1. that work should be assigned according to a workman's strength;
2. that wages shall be paid for work done;
3. that medical care and attention should be provided in times of sickness;
4. that workman should be released from work at the correct time (inaccurately translated as "by granting leave at times").

—*Dialogues*, II, p 182).

In fact, there are a few more items in the list and a careful analysis of these conditions reveals that what has been laid down as guidelines here leaves very little out from the angle of Human Rights.

It is of interest to note that along with wages referred to above, provision is also made for the supply of daily food. Pushing the spirit of comradeship in the human community to its peak, as it were, it is even suggested that employers should share with their employees unusual delicacies. This inclusion of basic food and unusual delicacies, together with the provision of medical aid in the organization of labour administration shows that the Buddha, at an appreciably early date in human history, viewed the question of Human Rights and the question of basic human needs with equal concern, and considered them legitimately inalienable.

These injunctions relating to organization of labour in order to maximise efficiency and guarantee cordiality of relations between employer and employee appear to have been well received and effectively implemented. At the time King Dutthagamani of Sri Lanka, a couple of centuries after the introduction of Buddhism to the island, was planning the construction of the Mahathupa, i.e. Ruwanvelisaya, at Anuradhapura, he was laying down a plan of action

which truly reflects the spirit and the letter of these injunctions. He was the head of the State and what he was embarking on would unquestionably have been deemed a national project. Nevertheless, the needs of the men involved and their general welfare which was related to these needs were not altered by these considerations. Hence we see King Dutthagamani insisting that the pattern of labour organization and consequently the welfare of the workmen be not tampered with under any circumstances. Thus records the *Mahavamsa* :

‘When the king heard this, glad at heart, he began work on the thupa. And he made it known : “Work shall not be done here without wage”. At every gate he commanded to place sixteen hundred thousand kahapanas, very many garments, different ornaments, solid and liquid foods and drink withal, fragrant flowers, sugar and so forth, as well as the five perfumes for the mouth.

‘Let them take of these as they will when they have laboured as they will’; Observing this command the king’s work-people allotted (the wages). *Mhv. XXX. 17-20.*

Another area of Human Rights which has been, as it were anticipated in the cultural development of the Buddhists and has been thoroughly and systematically developed is that of employment. The *Kutadanta sutta* (*Digha Nikaya*, I. p. 135 f.) discusses with remarkable precision the importance of employment as a means of socio-economic stability. That people should have opportunities for productive endeavour or adequately remunerated work is looked upon as a prerequisite for social harmony and personal well-being. At a time when the country was harassed and harried and dacoits were pillaging the villages and townships, it was suggested to the ruler that the best method to put an end to the disorder was to provide fruitful employment to the people. The text runs on to say :

“Now there is one method to adopt to put a thorough end to this disorder. Whosoever there be in the king’s realm who devote themselves to keep cattle and the farm, to them let his majesty the king give food and seed-corn. Whosoever there be in the king’s realm who devote themselves to trade, to them let his majesty the king give capital. Whosoever there be in the king’s realm who devote themselves to government service, to them let his majesty the king give wages and food. Then those men, following each his own business, will no longer harass

the realm; the king's revenue will go up; the country will be quiet and at peace; and the populace pleased one with another and happy, dancing their children in their arms, will dwell with open doors". (*Dial.* I. p. 176).

Even here, where the major concern is the organization of employment for the general corpus of the population, it is to be observed that adequate provision of food for the people who are engaged in work had to be maintained. The State appears to have taken measures to bring food, which is the most vital of the basic human needs, both within their reach and their means. This would have undoubtedly contributed to the most successful harnessing of man-power resources of the land. Thus it becomes clear that those who work and those who initiate work, in this atmosphere, will do so with a sense of justice and fair play and a sense of satisfaction and contentment. Honesty and consequent maximisation of effort and elimination of waste as necessary lubricants in a society productively engaged in work will freely find their way into a healthy community. **Employer and employee will not be at cross-purposes.** Neither is determined to exploit or undercut the other. The rights of the employee being so adequately safeguarded as indicated above (*Dial.* III. p. 182 f.), the *sutta* says about the employer-employee relationship that 'they do their work well and they carry about his praise and good fame'.

As one scans the horizon here one sees a manifestation of the concept of social justice and equity. On the one hand, the State provided for the successful harnessing of man-power resources within the country with adequate safeguards to keep the employee happy, content and satisfied and this led to the generation of a congenial atmosphere among the people as was pointed out earlier while quoting the *Kutadanta Sutta*. There is evidence to show that the private sector too provided work for a considerable section of the population. Here too, gross inequalities were not allowed to show themselves up, separating the employer and employee, particularly in the enjoyment of amenities and facilities which result from the production and increase of wealth. These differences were not allowed to reach a level of offending human dignity. The workmen, referred to in the Buddhist texts as *dasakammakaraporisa* stand side by side with parents, wife and children of a private employer in deserving to be 'made happy, glad and kept well in happiness' for their contribution to his economic well-being (*Gradual Sayings*, III. p. 37).

It is the opinion of Buddhists that no fair discussion of Human Rights could be complete without an adequate discussion of the social position of woman to-day. It was revealed in our discussions that the woman, young or old, married or unmarried, played a vital role in the life of the family as well as in society. According to Buddhism, it was an irreplaceable complement to the role played by man. This, however, did not preclude the woman from achieving distinct heights in the intellectual, moral and social spheres and even rivalling man, at times. Precautionary safeguards introduced from time to time in response to local exigencies never amounted to taboos or stigmas. In Buddhism, the woman is not denied the right to work and be a wage-earner. Her role as a daughter, sister, wife and mother are highly esteemed at the same time. It was pointed out that labour laws relating to women should be so formulated as to give due recognition to this and the woman should always be at the receiving end, with the benefits in her favour. It should be the primary concern of the community to find employment for women, as far as possible, in close proximity to their homes. This should be a MUST as far as mothers are concerned. Humanitarian consideration should be shown to working mothers, out of respect for the born and the unborn child, to whom it was unanimously pointed out, the society owes an obligation.

It was also felt that the fact that girls take to work should not be allowed to obliterate their femininity. In our cultural *milieu*, employers, both the State and the private sector, would do well to pay due heed to their transport to and back from work places. This is particularly imperative when the concession of night work to women is legally sanctioned. Extra attention should be paid to the question of residences for working girls and their living conditions. Slums and shanties should not be their ultimate resort, sandwiched between urbanised industrialization and economic development. There should be no room left to lament over the change in their life style which derives from this. Labour organization and legislation should be so planned as to encourage healthy and wholesome life styles like breast-feeding of children and adequate child care. Growth of love at family level and reduction of juvenile delinquency in society would be the direct and desirable results of such sensible planning, undertaken well ahead.

At the end of this seminar every one of us would have gained the conviction that the Human Rights Charter is, when viewed from one angle, a stricture on the bad human behaviour, of man towards man and of the State towards its subjects. Most remedial measures recommended therein are in terms of maladies, observed and observable in specific areas of the world with less relevance and applicability elsewhere. The restricted nature of the impact of religious and philosophical thinking on the present charter is clearly evident when viewed from a more universal angle. The universality of the present charter is more in the desire to apply it universally rather than in any universal applicability inherent in it.

The Buddhists, when viewed from the philosophical basis, occupy a remarkably unfiltered position : the problem of the convert and the non-convert never arises with them. Human problems, near or far, are analysable to the Buddhist, quite independent of the question of fact or belief. It is genuinely in this spirit that we engaged ourselves in this seminar and what is reported here is the outcome of it. While the Buddhists, on the one hand, penetrate deep into human problems in their psycho-ethical approach, they offer a wide range of applicability in their solutions. Solutions which, whether one likes it or not, operate essentially at the human level, here and now. Change the heart of man, says Buddhism, and thereby change the destiny of the world.



The Buddhist Group



The Hindu Group

HINDUISM

BUDDHISM

DEVELOPMENT OF HUMAN RIGHTS IN SRI LANKA IN THE HINDU RELIGIOUS AND CULTURAL BACKGROUND

by

C. Balasingham

This world entire is my home,
All mankind my kin;
Nor good nor ill can others do to me,
Sickness and death are nothing new
Elated we are not by success
We fret not in defeat, for
Life is a frail boat in a perilous stream
Following its destined course
Seers divine taught us thus—and so
We marvel not at the great
Much less do we despise the low.

KANIYAN POONKUNRUN
(Verse 192 *Purananuru*)

1. The above verse sums up effectively the important aspects of the social, cultural and religious traditions of the Hindus in Sri Lanka. The entire universe and the animate and inanimate is the creation of God and is infused by Him.¹ Everything in creation serves a purpose and all are instruments in His Divine Plan. Acting in accordance with this purpose is conforming to Dharma.*

1.1 Evolution proceeds from the inanimate world and the manifestation of consciousness becomes more and more prominent till we come to man. He is endowed not only with the five senses of knowledge but also with the faculty of reasoning and is able to discriminate between right and wrong. In this integrated Divine Plan

1. *Isavasiya Upanisad*.

* Dharma has various meanings in different contexts. Here it is used in the general sense of duty.

man has a special place and his duty—Dharma is determined not only by the nature and capacity of the individual but also by his station in life. Dharma is not imported from somewhere outside nor can it be removed; it is one's own genuine nature, his uniqueness. Therefore, one's own Dharma (*sva dharma*) also comes naturally to him (*sahaja dharma*).

1.2 Hinduism has an integrated view of God, Man and Society.

Man and Society function as His instruments and have mutual rights and duties. Each man must perform his allotted work for society to function efficiently. The *sva dharma* of an individual is determined by his position in society and his intellectual and cultural make up. Thus the Dharma of a school master will be different from that of a labourer. The status of a school master requires him to constantly improve his knowledge, look for better ways of teaching, watch his conduct regularly to be an example to his students, and to be a guide, philosopher and friend to his students. Equally the Dharma of the labourer requires him to carry out dutifully the tasks assigned to him, and at the completion to report the performance of his tasks to his superiors. He too, should be on the lookout for ways of improving his skill and the quality of his work. Excellence in works is verily part of his spiritual duty (*yoga*).²

1. In society each man has to perform his task and this contributes to the efficient functioning of the whole. The farmer must produce food, the dhoby should wash the clothes, the trader should buy and sell, the transporter should take goods and people here and there. All these functions are equally essential for the well-being of the community. Viewed in this light society may be likened to a workshop in which each part dovetails into others, to make up a cohesive whole. Each one must play his part if society is to function effectively. Failure to perform one's role results in sin. "He who does not follow on earth the wheel thus revolving, sinful of life and rejoicing in the senses, he lives in vain."³ Only when a man performs his duty to society is he entitled to claim the benefits that society has to offer him. If, for example, the dhoby fails to wash his clothes he cannot claim from society food, clothing and other essentials. "A thief verily is he who enjoys what is given by them without returning anything."⁴

2. *Bhagavadgita*, 2. 50

3. *Bhagavadgita*, 3. 16

4. *Bhagavadgita*, 3. 12

EQUAL VALIDITY OF RELIGIONS

2. Saint Thirumoolar declared that God is love, and he who realises the truth will abide in God as love.⁵ He also stated that God is one and mankind is one family.⁶ Various religions give the one God different names and forms.

2.1 God can be worshipped in any form or name. "Whatever form devotee with faith wishes to worship, I make that faith of his steady." "Endowed with that faith he engages in the worship of that form and from it he obtains his desires which are actually ordained by me".⁷ Sivagnana Siddhiyar echoes the same idea, when it says that Siva appears before everyone who worships any other God.⁸ There can be only one God though the names and forms attributed to that God differ from religion to religion. Men of all faiths are united in the Fatherhood of God and Brotherhood of man.

2.2 All religions are various paths leading to the same God. Therefore, in the Hindu view all religions are equally valid—it is not merely tolerance or absence of antagonism, but the positive acceptance of the equality of all religions. This is clearly illustrated by Thirumoolar when he says "the followers of all religions should conduct themselves according to their faith". Transgressors, says Siva in his *Agama*, will be punished after death. However, in this world it is the duty of the king to punish them.⁹ Like the ocean the Supreme envelopes all. In the *Bhagavadgita* Krishna says that He takes birth from time to time whenever *adharma* predominates and *dharma* declines.¹⁰ Therefore, Hindus have no difficulty in accepting the Divinity of prophets of other religions as all religions, as we have shown above, are approved by God Siva Himself. Gaudapada in his *Mandukiya Karika* says that he venerates the Buddha.¹¹ Modern Hindus inspired by the teaching of Swami Vivekananda and Mahatma Gandhi respect and revere Christ, Buddha, Zoraster, Mohammad and saints and savants of all religions.

3. We give below the text of a few selected articles of the Declaration of Human Rights and the relevant Hindu background containing these ideas in an elementary form :

5. Thirumoolar *Thirumanthiram*, 270

6. Thirumoolar *Thirumanthiram*

7. *Bhagavadgita*, 7, 21 and 22.

8. Sivagnana Siddhiyar

9. *Thirumanthiram*, 104

10. *Bhagavadgita*, 4, 7.

11. *Upanishad*

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

3.1 According to Hinduism God is present in every one, inspiring and informing him, and giving him the power to will and act. Human beings are helpless without this power. "God manifests Himself through men" says Saint Meikanda Thevar.¹² Similarly Lord Krishna says "an eternal portion of myself having become the *jeeva* in the world of *jeeva*'s attracts the senses with mind as the sixth abiding in *prakriti*."¹³ We have to respect all as human beings because of the spark of divinity in them. Man as man is given rights not because of his dignity as a human being, but because of the divinity in him. It inspires him to play his role in the world.

3.2 Man's special place as a rational being distinct from other forms of creation is brought out forcibly in the Tamil tradition. Grammar reflects and regulates the thinking of the people who speak that language. The rules of inflexion for verbs and nouns in the Tamil language provide for the division of all beings into two classes—the higher class and lower class. *Tholkapiam* says "the Higher Class, according to tradition denotes human beings. All others according to tradition belong to the lower class. Words should be formed in accordance with this two-fold classification".¹⁴ The reason for this division between human beings and others is found later in the section on tradition. "Human beings are the only ones endowed with six senses".¹⁵ In the formation of words, inflectional endings denoting gender are used only for human beings. Words relating to animals do not have such endings—the distinction between male and female animals will not be indicated by the endings. The only distinction in the lower class which includes both animate and inanimate objects is between one and many. This unique position assigned to man is based on the philosophical acceptance of the worth of the human being, as a being endowed with reason and conscience, and his ability to look back and forward and plan his actions according to his ideas

12. *Sivagnana Bodham Aphorism*, 2.

13. *Bhagavatgita*, 15, 7.

14. *Aphorism*, 1 of Chapter II, Words Section 1, Word formation.

15. *Aphorism*, 588 of Chapter III, Poetics Section 9 Tradition.

and ideals. In other words, the distinctiveness of man as man is basic to all the speech and thought processes of the Tamils.

3.3 A deformed person by name Asta Vakra (eight bends) walked into the court of king Janaka and offered to explain some philosophical intricacies. The other scholars on seeing him burst into laughter. Asta Vakra too burst into laughter and when questioned by them replied "you all are cobblers interested only in the skin and not what is inside. You are unable to appreciate the worth of man and therefore you are not scholars".¹⁶

3.4 Adi Sankara, the great philosopher who propounded the Vedanta philosophy himself committed the mistake of attaching importance to the outer form, and not giving due worth to the soul within. When he returned after a bath in the Ganges a *chandala* appeared holding four dogs in a leash in his hands. Sankara asked him to keep out of his way. Upon this the *chandala* asked him what he referred to, whether he desired to be kept out of his way the body or the soul. This brought back to Sankara's consciousness the reality that the soul is common to all and all men are therefore equal. Immediately, he broke out in verse praising the *chandala* in the five songs of his *Manisha Panchaka*. These show very clearly that the Hindu tradition accepts and respects all human beings as being equal sparks of the divine and therefore, entitled to equal respect and treatment.

4. Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust or non-self governing or under any other limitation of sovereignty.

4.1 In the context of what has been stated above, the question may be asked how this position is reconciled with the caste system obtaining in Hinduism. Caste originated from the corruption and

16. *The Ramayana*.

degeneration of the *Varnasrama Dharma*. Originally this was purely a division of labour based on aptitudes and tendencies.

4.2 That this was only a functional classification intended to be complementary and based on aptitudes is evident from the explanation given in the *Bhagavadgita*. The duties of Brahmins, Kshatriyas and Vaisyas as also Sudras are distributed according to the characteristics (*gunas*) born of their own nature".¹⁷ Krishna proceeds to elucidate this further by reference to each *Varna*. "Serenity, self-restraint, austerity, purity, forgiveness, and also uprightness, knowledge, realisation and belief in a hereafter, these are the duties of the Brahmanas born of their own nature".¹⁸ "Heroism, vigour, firmness, resourcefulness, not flying from battle, generosity, and lordliness are the duties of the Kshatriyas born of their own nature".¹⁹ Agriculture, cattle rearing and trade are the duties of the Vaisyas born of their own nature and action consisting of service is the duty of the Sudras born of their own nature.²⁰ All these are equal in importance and they equally take men to perfection without any distinction or difference. "Devoted each to his own duty, man attains the highest perfection".²¹ "He from whom is the evolution of all beings by whom all this is pervaded **worshipping him with his own duty**, Man attains perfection".²²

5. The reference to different mental tendencies in the preceding paragraph may not be easily understood by non-Hindus without the understanding of the doctrine of Karma and re-birth. Man endowed with three organs of expression—mind, speech, and body, performs actions by thought, word and deed. Action by word and deed necessarily involves mental volition, which is common to all three forms of action. Every thought leaves on the mind an impression, some scar (*samskara*). These subliminal impressions *samskara* are produced by nothing other than mental activity (*vriti*) and mental activities are caused by subliminal impressions. In this way the whole of mental activity and subliminal impressions rolls on ceaselessly.²³ These impressions are carried forward in the mind from birth to

17. *Bhagavadgita*, 18. 41.

18. *Bhagavadgita*, 18. 42.

19. *Bhagavadgita*, 18. 43.

20. *Bhagavadgita*, 18. 44.

21. *Ibid*, 18. 45.

22. *Ibid* 19. 46.

23. *Vyasa's Commentary on Patanjali's Yoga Sutra* 1,5

birth, and are referred to as the karmic deposit (*karmksaya*). These karmic deposits produce "their experience in this visible life or in an unseen life".²⁴ "The root being there, the fruition comes in the form of birth, life and the experience of pleasure and pain."²⁵ The rebirth which a person takes will be according to his karmic deposit. Some souls enter the womb to have a body, others go to the plants just according to their work and according to their knowledge".²⁶ Sankarachariya says that the birth taken by an individual to experience the fruits of his past actions, contains the subliminal impressions (*samskara*) of those past actions.²⁷

5.1 Thus in the Hindu view because of what we have done in the past, we are born with certain mental tendencies (*vasana*) which determine the way we think and act. These have been classified broadly as a permutation and combination of three basic characteristics (*gunas*) present in all creation calmness (*satva*), activity (*rajas*), inertia (*thamas*). It is the combination in various proportions of these three *gunas* that shape the *vasanas* in a man and the *samskara* brought forward in his mind, which determine the tendencies, capacity and outlook of man. Based on this variation the *Varnasrama Dharma* was designed as a complementary system of division of labour. Though it may not have been complete it provided for all essential functions. All activities were equally necessary and those who performed these were completely equal. Degeneration set in and by the time of Manu, we have a hierarchical system where the Brahmin occupied the highest place, then the Kshatriyas, the Vaisyas and the Sudras. Manu also provided for a group of sub-castes which originated from cross-marriages among the four *varnas*. The various permutations and combinations of cross-marriages were worked out and each group was given a separate name. All these were collectively called the fifth *varna* (*panchama*). About this time also arose the idea of untouchability (*asusa*). These are reflected in *Manusmrti*.

TAMIL TRADITION

6. Tamil literature classifies men according to geographical areas—Hill country (*Kurinji*), Forests (*Mullai*), Agricultural area (*Marutham*), Coastal area (*Neithal*) and Desert area (*Palai*). This is different

24. *Patanjali Yoga Sutra*, 2. 12.

25. *Patanjali Yoga Sutra*, 2. 13.

26. *Kathopanisad*, 5. 7.

27. *Viveka Chundamani*, 97.

from the four-fold classification of the Sanskrit tradition. In this geographical classification there is no hierarchy, no high or low. Each group was supreme in its area.

6.1 There is evidence in Sangam literature that the four-fold classification had already come to South India but was not quite acceptable. As an illustration we may take the following: Pandia King Neduncheliyan states that education is very important. "Even in a Royal Family the throne is offered not to the eldest but to the educated. Of the four-fold class an educated man belonging to the lower class will supersede an uneducated man of a higher class".²⁸

6.1.1 Poetess Avvaiyar says "there are only two castes—those who give belong to the higher caste, and misers to the lower caste."

6.1.2 Poet Kapila says that a "Brahmin from the North going South loses his character and becomes a Pulaya while a Pulaya from the South going North becomes a Brahmin by learning and maintaining a good character."

6.1.3 Poet Mankudi Kilar enumerates the best among food grains and then states—"There is no subject superior to Thudiyar, Panan, Parayan and Kadampan"²⁹ All these four castes have been treated as low and untouchable. But this poet belongs to Vellala caste as his name indicates, and he still affirms that there are no citizens superior to these four castes. The word 'Kudi' has to be taken in the same sense as it is used in '*Thirukkural*'. Thus untouchability was not taken seriously even in Sangam times.

7. In later days saint Nandan, an untouchable was conducted by the Brahmins of Chithambaram into the *sanctum sanctorum* on divine orders. A Brahmin saint Thirugnanasambandar took along with him into all the Hindu temples in South India an untouchable saint Thiruneelakanta Yalpanar to play the *Yal* instrument for his devotional songs. But once saint Thirugnanasambandar had to stay for the night in the house of saint Thiruneelanakka Brahmin. They had to find accommodation for Thiruneelakanta Yalpanar. He was asked to sleep by the sacred fire burning on the platform but being of a low caste Thiruneelakanta Yalpanar was reluctant to get on to the platform. Eventually when he did go near the fire it burnt brighter

28. *Purananuru*, Verse 183.

29. *Purananuru*, Verse, 335.

than before indicating that he was welcome. Saint Ramanuja initiated untouchables as Brahmins after instructing them. Thus it will be seen that untouchability did not receive so much prominence in South India as in the North.

8. The *Varna* System which was originally conceived as a scheme of division of labour was intended for the progress of society by each *Varna* specializing in its functions. There was no inequality, no higher or lower. As explained these corruptions of higher and lower and untouchability were later introductions. However, many castes were content to specialize in their traditional occupations and took pride in it. Even today musicians and temple architects (*stha-pathi*), are proud of their caste and vocations. Carnatic Music and *Bharata Natya* are extremely intricate forms requiring a high degree of theoretical knowledge and constant practice to achieve high standards of performance. It is, therefore, no wonder that first-class teachers of these two arts learned from their parents and handed down the tradition to their children. Similarly, temple architecture and the making of images require a substantial degree of theoretical knowledge from the *Agamas* and a high degree of artistry and an eye for balance and beauty. This fine art too has been handed over from father to son and the highest exponents of this skill are people who have grown up in these families. It will thus be seen that the original intention of specializations in the requirements of society were fulfilled to a large extent by the *Varna* system of classification.

8.1 However, with the diversification of occupations in society, the impact of other cultures on Hindu Society, this system could not adapt itself because of three inherent weaknesses :

- (a) hierarchical arrangement of high and low;
- (b) the concept of untouchability attached to certain low castes;
- (c) the concept of hereditary jobs and that man should perform only functions of the caste in which he is born.

These three defects made *Varna* system an obstacle to progress rather than an aid. Today, if these three defects can be removed there is still scope for specialization in families and achieving high degrees of technical perfection. However, no social structure can survive today with these defects.

9. EQUALITY BEFORE THE LAW

Article 7

All equal before the law are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

9.1 JUSTICE—THE ESSENCE OF MONARCHY

Hindu culture has always recognised the administration of Justice as the most important function of a monarch. "Even as rain provides sustenance for all beings, the king's justice provides sustenance for his subjects".³⁰ By ensuring protection for his subjects he ensures the smooth functioning of the economy of his country. The king must realise that this world is sustained by him and not by food and water.³¹ Unless law and order are maintained orderly progress or living is impossible. The elimination of the wicked is compared to the weeding of paddy fields.³²

10. KING IS NOT ABOVE THE LAW

In English common law the king can do no wrong and is not amenable to the normal processes of law. But Hindu tradition makes no exception in the case of the king. The king must remove his faults first and then correct others.³³ This is confirmed by several instances from history. King Kulasekera Pandya was in the habit of going round the city by night to check on thieves and other unlawful elements. One night he had by mistake knocked on the door of a Brahmin by name Keerantai. The next day in open court Keerantai lodged a complaint that a stranger had knocked on his door late at night, probably with evil intent towards his wife. The king promptly owned that he was the one who knocked and severed the hand that knocked on the door. By Divine Grace a golden hand was substituted for the severed one and he was known to posterity as Pandiya with the Golden Hand (*Potkai Pandiyan*).³⁴

10.1 King Elara (145–101 B.C.) of Chola origin was available to all his subjects who complained of wrongs and sought justice. "At the

30. *Thirukkural*, 542

31. *Purananuru*, 186.

32. *Thirukkural*, 550.

33. *Thirukkural*, 436.

34. *Silappadikaram*, Kaddurai Kaathai, 42-53.

head of his bed he had a bell hung up with a long rope so that those who desired a judgement at law might ring it. The king had only one son and one daughter. When once the son of the ruler was going in a car to the Tissa-tank, he killed unintentionally a young calf lying on the road with the mother cow, by driving the wheel over its neck. The cow came and dragged at the bell in bitterness of heart; and the King caused his son's head to be severed (from his body) with that same wheel".³⁵

10.1.1 On a later occasion "When the King, who was a protector of tradition, albeit he knew not the peerless virtues of the most precious of the three gems, was going (once) to the cetiya-mountain to invite the brotherhood of bhikkus, he caused, as he arrived upon a car, with the point of the yoke on the waggon, an injury to the thupa of the Conqueror at a (certain) spot. The ministers said to him : 'King, the thupa has been injured by thee.' Though this had come to pass without his intending it, yet the king leaped from his car and flung himself down upon the road with the words : 'sever my head also (from the trunk) with the wheel'. They answered him : 'Injury to another does our Master in no wise allow; make thy peace (with the bhikkhus) by restoring the thupa'; and in order to place (anew) the fifteen stones that had been broken off he spent just fifteen thousand Kahapanas".³⁶

10.2 Kovalan, a merchant prince had fallen into bad times and came to Madura to sell one of the anklets of his wife Kannaki (popularly known as Patthini Devi in Sri Lanka). Unfortunately the Queen's anklets which were similar had been stolen. The royal guards suspecting Kovalan produced him before the king with the anklet. The king got him executed. Kannaki appeared before the king with the other anklet and pleaded that her husband was not a thief and asserted that her anklets had emeralds inside. The king said the Queen's anklets had pearls and the anklet snatched from Kovalan was broken. It had emeralds proving Kovalan's innocence; Kannaki in her plea before the king cited the preceding story when a king killed his son to uphold justice.³⁷ The king realised his fault and shouting 'I am the thief' died instantly of a broken heart.

35. *Mahawamsa*, Chapter XXI: 15-19.

36. *Mahawamsa*, Chapter XXI: 21-26.

37. *Silappadikaram*, Valakkurai Kaathai, 53-55

10.3 During King Rama's reign a dhoby quarrelled with his wife about her staying in another house overnight. In the course of his argument he said, "I am not Rama to keep with me as my wife a woman who stayed overnight in another house". This was an uncharitable reference to Sita's remaining in Ravana's captivity for many years and her return to Rama. She went through an ordeal of fire and proved her chastity before she was taken back by Rama. Yet when Rama heard this story he said that the king should set an example to his subjects on how to run their families according to high ethical standards and sent Sita and the children to the forest.

10.3.1 These examples are enough to show that the king was equally with his subjects bound by the law.

11. IMPARTIALITY

The essence of justice as understood in ancient times was impartiality. "Study each case fully, be impartial and give their deserts to all".³⁸ The same idea is elaborated by poet Maruthan Illanagan thus:³⁹

"Justice is the base of Government
Swerve not to favour 'our men'
Injure not virtuous 'others'
Be even handed like the sun
Gracious like the cooling moon
Generous like the rain clouds
And abolish poverty".

Manu says : If Justice is administered impartially subjects will be happy. If the rod of Justice swerves everything will be destroyed.⁴⁰ "Unswerving justice shows the excellence of a king" says saint Thirunavukkarasu. These ideas have been elaborated and given precision in Article 7 of the Universal Declaration of Human Rights.

12. PUNISHMENT

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

38. Thirukkural, 541

39. Verse 55 of Purananuru in lines 10-16.

40. Smriti, VII — 18.

12.1 Parimelalahar refers to three kinds of punishments for crimes : corporal punishment, fines and confiscations and capital punishment.⁴¹ In deciding the punishment the king must consider all circumstances and give some punishment that is 'deserved' as indicated in *Thirukkural* verse 541 quoted above. Manu says that all circumstances should be carefully considered in deciding on the appropriate punishment.⁴² Punishment should have a deterrent effect, but must not be severe.⁴³ "Threaten severely but hit softly".⁴⁴ The preceding verse says that the king should "analyse impartially each case and punish so that the offender may not repeat the crime again."⁴⁵ In imposing punishment the king should not act excessively. "Harsh words and excessive punishment will ruin the security of a king".!! "Harsh words, punishment without cause and seizing property of others will ruin a king".⁴⁶ The reputation of being a cruel king will shorten his life and destroy his wealth.⁴⁷ These ideas contain the germs of this Article 5.

13. RIGHT OF AUDIENCE

Article 8

Every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

13.1 Manu in describing the daily routine of a king says he must listen to the complaints of his subjects.⁴⁸ Later on he states that the king and judges appointed by him must inquire into all complaints brought before them.⁴⁹ Kautilya in his *Arthashastra* elaborates this duty of the king pointing out the need for promptness and personal attention. If the hearing is left to others there might be dissatisfaction and confusion among the subjects. This may eventually lead to the king becoming a prey to his enemies. Manu who approved appointment of judges provides for their supervision by the king.⁵⁰

41. Commentary on verse 549 of the *Thirukkural*.

42. *Smṛiti*, VII — 16.

43. *Thirukkural*, 562.

44. *Thirukkural*, 561.

45. *Thirukkural*, 567.

46. *Manusmṛiti*, VII — 51.

47. Verse 564 *Thirukkural*.

48. *Smṛiti*, VII — 146.

49. *Smṛiti*, VIII — 43.

50. *Smṛiti*, VII — 114.

These ideas of the right of petition and audience have been given point precision in Article 8. Modern problems in enforcing Human Rights by law are dealt with later.

14. MARRIAGE

Article 16

1. *Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
2. *Marriage shall be entered into only with free and full consent of the intending spouses.*
3. *The family is the natural and fundamental group unit of society and entitled to protection by society and the State.*

14.1 Sanskrit literature recognised eight types of marriage—*Raksasa* (abduction), *Paisaca* (seduction), *Asura* (sale), *Arsa* (exchange for bull and cow), *Brahma* (*Kannika Dana*), *Daiva* (*Dana* to a Purohit performing sacrifice), *Prajapatya* (solicitation by the groom) and *Gandharva* (free love). In the first four *raksasa*, *paisaca*, *asura* and *arsa* there is some degree of coercion or compulsion on the bride. In *brahma*, *daiva* and *prajapatya* the consent of the bride is not obtained, but the element of compulsion is not so prominent. In *gandharva* the consent of the bride is well recognised. The *Dharma Sastras* (Manu and others) condemn the first four *raksasa*, *paisaca*, *asura* and *arsa* as being unethical and sinful, but approve the other four. The tendency towards getting the bride's consent went one step further in the concept of *svayamvara* (chosen husband) but the practice was not widespread and even the instances listed in literature as *svayamvara* do not give free choice to the brides—Sita, Draupadi, Chandramathy. On the other hand, Savitri and Damayanthi were given the right to choose. The bridegroom is an active participant in the procuring of the bride in all the above except in *brahma* and *daiva*. In both *panigrahana*—holding the bride's hand is an essential part of the ceremony and his consent may be inferred from this.

14.2 In Tamil literature the division of marriages is into two classes—*karpu* and *kalavu*. Irayanar Ahaporul states that *gandharva* marriage in Sanskrit literature is similar to *kalavu*. In *kalavu* after the

initial union of the two lovers the consent of the elders is obtained. *Karpū* is an arranged marriage after following the methods of *brahma* in the Sanskrit tradition. In both we find approval by parents and the difference is only the free union of lovers in *kalavū*. So much so that Aphorism (*Sūtra*) 15 of Irayanar Ahaporul states "What is called *Karpū* follows *Kalavū*". This is a round-about way of saying instead of saying directly "*Karpū* follows *Kalavū*". The commentator Nak-kirar explains this round-about way of saying as indication of the superiority of free love at first over other forms of arranged marriages signified by *karpū*. This is indicative of a popular school of thought which attached importance to the bride's consent. After Iraiyanar there is a vast genre of literature extolling *kalavū* and one may conclude that this form of marriage was more popular in South India than in the North.

14.3 In the North and the South recognition of the need for consent of both parties to the marriage was of slow growth, though it was faster in the South than in the North. But even today among orthodox families consent of the bride, unfortunately is taken for granted if the parents consent. But this too is changing gradually with greater educational opportunities for women.

15. THE FAMILY

Men were classified into three categories—Bachelors or students, house-holders living with their family, and *sanyasis* or monks who renounced the world and led an ascetic life. The house-holder was the stable support of the other two categories as well as of the poor, because he was required to provide food for all of them.⁵¹ The respect of a family depends on the character of the wife⁵² and she brings all that is good to the family but the real acquisition for the family is good children.⁵³ This is emphasised again in verse 63. "Children are the wealth of a family as by their effort they earn for them".⁵⁴ Thus and in other ways *Thirukkural* emphasises the family as the fundamental unit as contemplated in Article 16 of the Human Rights. Protection of property has already been dealt with under the section dealing with justice.

51. *Thirukkural*, 41 to 43.

52. *Thirukkural*, 51.

53. *Thirukkural*, 60.

54. *Thirukkural*, verse 63.

16. The customary laws of the Tamils of Jaffna are codified in the *Thesawalamai*. This is based on the concept that the family is one unit and the husband is the head and the manager of the unit. All income accruing to any member of the family has to go to the common pool and their requirements are met by the husband. The ownership of the property brought in by the husband and by the wife remains separate but both are inherited by the children. If there are no children the next of kin of each will inherit those properties. The property acquired during the subsistence of the marriage called *thediya thetam* (acquired property) is divided equally between the husband and wife. Since unmarried children bring their earnings into the common pool it becomes the obligation of the father to provide an adequate dowry for the daughter to commence her family life. This was thus an obligation on the part of the father to provide for the new family and not a right of the bridegroom to demand a dowry. However, with the industrialization of society the cohesiveness of the family unit has broken up and children do not bring their earnings into the common pool. In this context the demand of dowry may well be looked upon as *asura* system of marriage in reverse—purchase of a husband. We shall deal with the current problems of this inheritance system later.

17. PROPERTY

Article 17

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

17.1 Not only should the king protect the subjects' property from attack by others, he should himself respect their rights.⁵⁵ Possessing wealth is worse than poverty, if you live under an exacting king.⁵⁶ The king should be satisfied with the revenues permitted to him by customs and law. He should not exact from his subjects anything more. "A demand for more than his dues by a king is as bad as highway robbery".⁵⁷ In explaining verse 578 of *Thirukkural*, Parimelalahar states in his commentary that the king should protect his subjects from wrong doing by his officers. Also Manu says that the

55. *Thirukkural*, 549.

56. *Thirukkural*, 558.

57. *Thirukkural*, 552.

king should protect his subjects from officials who through avarice, bribery or ignorance harass the subjects.⁵⁸ If the king does not give due protection the rains will fail and virtuous practices will fail.⁵⁹ Similarly *Manimekalai* states that if the king fails to uphold justice the planets will deviate from their course, rains will fail and death will be widespread.⁶⁰

17.2 The concepts of earning wealth and using it are also clearly set forth in ancient literature in many places. "Fields and jungle, highland and lowland yield, in proportion to the efforts of man."⁶¹ To emphasise the importance of efforts by man *Thirukkural* states: "The greatness of a country depends on farmers who produce all the food needed, virtuous men, and merchant princes who import by land and sea".⁶² Man's efforts should no doubt meet the basic requirements of life. But wealth acquired in excess of that should be well used. "To kings who rule this wide world and to hunters chasing animals by day and night, the basic requirements are alike—food and two pieces of cloth. Other needs too are alike. The purpose of wealth is to give the needy. One who seeks to enjoy it alone misses a lot in life".⁶³ *Thirukkural* puts the same idea in a different way "Accumulating wealth to reach a desired target by refusing to give the needy is worse than begging".⁶⁴ Thus and in many other ways the necessity of recognising the needs of others and sharing wealth is emphasised.

18. Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

18.1 One of the cardinal beliefs of Hinduism is that there is "Only one family (of mankind) and one God".⁶⁵ Names and forms

58. *Smṛiti*, VII — 123.

59. *Thirukkural*, 559, 560.

60. Chapter VII, lines 8 to 11.

61. *Purananuru* — Verse 187 by Avvaiyar.

62. Verse 731.

63. *Purananuru* — Verse 189 by Nakkirar.

64. *Thirukkural* — Verse 229.

65. *Thirumular* — *Thirumanthiram*.

* Quotation from *Thirumular* in Para 2.2 ante.

adopted by various religions relate to the one God. Despite differences of religion the Brotherhood of Man under the Fatherhood of God is an ideal not noticed by man. In the preliminary remarks we have indicated that Hindus believe not merely in passive tolerance, but positively respect all religions recognising their Prophets as manifestations of God and actively encourage the practice of religions. Indeed modern agnostic and atheistic *laissez-faire* thinkers may feel that Hinduism goes too far in urging the king to punish those who transgress *their* religious code, or Indeed Church-going Christians, Mosque-going Muslims, and Temple-going Hindus and Buddhists who do not put their religions into their daily lives have no place in our scheme of things. Religion is for here and now, a way of living, that discharges man's duty to his family, society and country, consciously thankful to God for opportunities of serving Him in manifold ways, which naturally and necessarily results in ultimate deliverance from re-birth. Hindu philosophy is in complete consonance with this article.

18.2 A corollary from this is the grant of royal assistance to the followers of all religions. Inscriptional evidence shows that the Chola kings gave liberal support to Rajaraja Perumpalli (Velgam Vihara). The Buddhist kings of Sri Lanka were equally liberal in their outlook and they built and maintained many Hindu Temples and in addition had Hindu *purohits* (Brahmin pandits) in their courts to advise them on affairs of State.

19. GOVERNMENT

Article 21

1. *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
2. *Everyone has the right of equal access to public service in his country.*
3. *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

19.1 In ancient times our countries were governed by hereditary kings who on accession had symbols to show acceptance by people in general. But there were no continuing central legislatures as at present. On the other hand, local administration was in the hands of the people with whom the king's officers were associated. We have occasional references to them in literature, but details of how they functioned are found in many inscriptions particularly during the Chola period. These *sabas* met in a public place called Manram. They dispensed justice, administered crown lands and sold them and attended to public works—especially water supply for drinking and irrigation. They recovered rates in cash or kind and brought to the notice of the king the misdeeds of his officers or temple managers. These *sabas* served not only as bodies in charge of convenient economic units, but also organised the religious and cultural festivals of the village. They had wide autonomy including power over their constitution which the king recognized. A case in point may be cited from Uttaramerur. In 919 A.D. Parantaka I, sent a specially commissioned officer and in his presence the *saba* of that village passed some resolutions about its constitution. The area was divided into *Kudumbus* and each *Kudumbu* was sub-divided into *Cheris*. Each *Cheri* elected its representative to the *Kudumbu* and the latter elected from its members the executive committee called *Vaariyam* which administered tax and other local affairs. In later years when there were successive invasions these independent *sabas* provided for continuity in government.

20. EMPLOYMENT

Article 23

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

20.1 Though almsgiving was recognized as one of the most meritorious acts, the demeaning nature of begging was recognized. *Thirukkural* verse 42 referred to in the paragraph recognizes feeding the poor as a house-holder's duty and many verses in Tamil literature praise the generosity of kings who fed all who went to them without turning them away. Yet many verses contain unmistakable reference to the fact that begging is demeaning. *Thirukkural* says 'If begging was intended to be an occupation similar to various forms of work, the one who ordained so, should himself suffer like the beggars and die.'⁶⁶ By emphasising that it could not have been a divine fiat to have beggars in this world, the poet rubs in the point that everyone has the right to work and earn his living in an honest and respectable way. *Manu* says that it is the duty of the king to provide employment to everyone according to his learning and worth.⁶⁷ This idea is emphasized and elaborated in article 23(i).

20.2 *Ulaganeethi* in verse 11, says that one should not withhold the wages of five classes of people—dhobies, barbers, teachers, midwives and physicians. It was not the intention of the author to suggest that the wages of others need not be paid. These were the chief persons who worked for wages and performed personal services as distinct from those who participated in productive work like agriculture or cottage industry and probably received a share of the product. He merely took as illustration these persons who perform essential services to rub in the general rule that we should not obtain the services of anybody without payment. Modern thinking looks at this from the workers' point of view and emphasises the right to receive adequate wages for services rendered in Article 23 (3).

21. THE INDIGENT

Article 25

1. *Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other, lack of livelihood in circumstances beyond his control.*

66. *Thirukkural*, 1062.

67. *Manusmriti*, VII. 135.

2. *Motherhood and childhood are entitled of special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

21.1 As indicated earlier, almsgiving to the poor and the needy was recognised as a meritorious act. But with regard to the indigent who cannot look after themselves, there is a special responsibility on the king to provide for their maintenance. Kautilya states in his *Arthasastra*⁶⁸ that infants (*bala*), old persons (*vrddhas*), sick persons (*vyadhity*), distressed persons (*vyasanin*) and helpless (*anatha*) persons should be maintained by the king. This is an early and rather elementary recognition—of the right to a decent living described very precisely in Article 23 of the Human Rights Convention, as applicable to all in general.

22. EDUCATION

Article 26

1. *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
2. *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
3. *Parents have a prior right to choose the kind of education that shall be given to their children.*

22.1 Great importance was attached to education and scholars were given the highest respect by kings and the general public. The king was respected only in his land; but the scholars received respect throughout the world. So much importance was attached to education that the two ancient books on linguistics—*Tholkapiam* and *Nannool*—set out at length the qualities expected for a worthwhile original

68. *Arthasastra*, 47, 19.

treatise. The qualities of an author of repute, of books which follow his line of thought, of the skills and flaws in presentation of a thesis, and the merits and demerits of commentaries on the treatise, are given in detail. Then follows a detailed statement of the excellences of a good teacher (and the faults of a bad one) the qualities expected of a student and the methods of teaching and how the student should conduct himself. Similar rules are laid down regarding qualities of a good student and good teacher in *Manusmriti* Chapter II. It will be remembered that the student was expected to live in his teacher's house (*gurukula*) and learn his lessons while contributing his mite as a member of the household. There was no requirement of fees but at the end of his studies he gave *daksina*—a gift as a token of his gratitude to the Guru. Manu says the king should make good this *guru daksina* to the students.⁶⁹ Unless this was given the student could not derive any benefit from his education. Mathematics and language were considered key subjects and these are likened to the two eyes of a man.⁷⁰ It follows from this that an uneducated man cannot be said to have eyes; he has only two sores on his face.⁷¹ Education develops highest qualities of a man and makes him a real MAN. The difference between an educated man and an uneducated man is similar to the difference between a man and an animal.⁷² Though such importance was attached to education and much respect was given to the learned, education was not universal mainly because of the shortage of books. Non-formal education known as *sravana* or *kelyi* consisted of speeches by the learned or discussion among them on specific topics or narration of religious stories. These supplemented formal education and in some respects served as a substitute for formal education. These were attended by large numbers unlike a formal school, but only competent scholars were expected to talk or take part in the discussions. Such non-formal education kept the common people *au fait* with basic religious principles and practices, standards of good social conduct, historical traditions and the ideals of the people.

22.2 Though access to non-formal education was easy to all, formal education was limited to a few as mentioned earlier on account of the shortage of books and the teacher being required to choose his pupils according to the canons laid down. *Nannool* says the following

69. *Manusmriti*, VII. 82.

70. *Thirukkural*, 302.

71. *Thirukkural*, 393.

72. *Thirukkural*, 410.

are qualified to be students of a teacher: "His son, his teacher's son, the king's son, one who serves him, and one who grasps quickly".⁷³ It is worth noting that the exceptionally intelligent boy was entitled to education even if he did not pay or serve the teacher. On the other hand the following are not eligible to be students even if they fall within the above categories: "A drunkard, a lazy boy, a haughty one, a debaucher, a sick boy, a thief, an unintelligent boy, a quarrelsome one, an irritable person, one who sleeps too much, a dull boy, one afraid of mastering the intricacies of ancient works, a reckless person, a liar and a sinner."⁷⁴ In short, great importance was attached to intelligence and good conduct as it was recognized that the end of education is character. Therefore, great importance was attached to discipline. The process of learning is described thus in detail: "The student should go early in the morning and worship the teacher, observe his inclination and act accordingly. He should sit only when ordered to sit and read when ordered. Like a motionless doll he should listen to the teacher's words and take in avidly his teaching, impress these on his mind and reflect on them. He should leave only when ordered to go."⁷⁵ Thus it will be noticed that formal education was not indiscriminately available to everyone because of the high standards of selection and paucity of books. However, the really keen and intelligent student was not deterred by these restrictions and obtained education by his efforts as the following examples show:

22.2.1 In *Mahabharatha* Karna was the adopted son of the royal charioteer, and did not know his real origin or caste. But because of his excellence Parasurama accepted him as a student along with sons of royalty. Only after he completed his education did Parasurama infer that he must belong to a royal family from his unflinching courage when a wasp bored through his thigh.

22.2.2 Again in *Mahabharatha*, the son of a hunter—Ekalaiyya approached Drona and wished to learn archery. This was refused by Drona; but he was not disheartened. He set up an image of Drona near his home and went through a self-study course in archery. Because of the faith he had in his Guru and his keenness in learning the craft selected by him, he became a perfect master in archery—equal to Arjuna, the favourite student of Drona to whom

73. *Aphorism*, 37.

74. *Aphorism*, 39.

75. *Aphorism*, 40.

many secrets and difficult lessons were given. His mastery and the method of study were discovered by Drona only when he came across an instance of a masterly performance which Drona had taught to no one other than Arjuna. Faith and persistence brought Ekalaivya to the same high standard as Arjuna.

22.2.3 According to *Manusmriti* the student must introduce himself as belonging to a particular lineage.⁷⁶ So when Satyakama Jabala wished to learn under Gautama, he wanted to know about his ancestry, and he enquired from his mother, who replied thus—"My Child, I do not know of what lineage you are. I, who was engaged in many works and in attending on others, got you in my youth. Having been such I could not know of what lineage you are. However, I am Jabala and you are named Satyakama. So you know of yourself as Satyakama Jabala". Satyakama faithfully repeated this to Gautama who accepted him as his pupil as he had not deviated from the truth.⁷⁷

23. In the above example Karna and Jabala received general education, but Ekalaivya received craft training. We have already noticed in our discussion on the caste system that the fine arts were cultivated in certain families and that theory and practice were handed from father to son or other close relative. Many of these required a large amount of theoretical knowledge which could be mastered only if one had a basic general education. Even this basic general education could be obtained from the elders within the family. Though general academic education was available only to the few who became teachers and poets, basic education and craft knowledge and manual skills were widely distributed to meet the various needs of the community.

24. CONCLUSION

Article 29

1. *Everyone has duties to the community in which alone the free and full development of his personality is possible.*
2. *In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and*

⁷⁶. *Manusmriti*, II 122.

⁷⁷. *Chandogya Upanishad*, IV. 4.1 to 5.

respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. *These rights and freedoms may, in no case, be exercised contrary to the purposes and principles of the United Nations.*

24.1 By and large in all these matters dealt with earlier the Hindu approach has been from the angle of duty—that someone should do something to benefit another. The modern approach is that the beneficiary has the *right* to receive such benefits. Perhaps from the social angle it might have been better to treat these as duties rather than rights. The *Bhagavatgita* looks upon this physical world as a vast workshop where each one has to play his part for the wheel of life to proceed smoothly.⁷⁸ When rights are emphasised we tend to look at problems in a partial or lopsided way—even if we do not play our part, we expect to have our rights by others performing their duties. We are alive to our rights, but we tend to ignore or play down our corresponding duties.

All trade unions emphasise the rights of the worker to his wages and other requisites, but not to the same extent his duties to do a full day's work and to maintain high standards of performance. When both rights and duties are emphasised you get a full view of each problem and the idea of collective effort. That is what the analogy of the workshop in the *Bhagavatgita* emphasises. Economic production and indeed all facets of life require a collective effort. "You must perform your duty having the welfare of the world alone as your purpose".⁷⁹ We gain various benefits from society and we must in turn give our best to society. Therefore we must equip ourselves to ensure excellence in action.⁸⁰ *Taitriya Upanisad* indicates that man's development is possible only in society and enjoins general duties on a student on the completion of his studies—both for the welfare of the family and society in general.

"The practice of what is right and proper as fixed by the scriptural rules and one's own reflection; learning and imparting of the *Vedas*; truthfulness; religious observances that involve self-denial, self-res-

78. *Bhagavatgita*, III. 16.

79. *Bhagavatgita*, III. 20.

80. *Bhagavatgita*, II. 50.

traint, tranquility, hospitality, accomplishing what is favourable to human welfare; and bringing up a family.⁸¹ A householder is enjoined to perform *nr yajna*, i.e. offering hospitality to fellow human beings. For this purpose he should produce abundant food.⁸² His daily prayer should be for the welfare of the entire world. *Loka samastat sukhino bhavantu*—‘Let the entire world be happy.’

25. FUTURE ACTION

The authors of this Convention recognize it as embodying “common standards of achievement for all peoples and all nations”. Thus, from the beginning it was recognized that enforcement was the essence of this Convention and that it was not intended to be a mere pious hope. The provisions embodied in the Convention are so varied and deal with several fields of activity that one method of enforcement may not by itself be sufficient. For convenience of analysis the various methods of enforcement may be categorized into three classes:

- (a) enforcement by courts;
- (b) enforcement by developing a public conscience favourable to Human Rights;
- (c) by administrative action by the organs of State.

25.1 (a) Action in Courts

When one talks of enforcement of rights normally one immediately thinks of enforcement by courts of law. In the enforcement of Human Rights embodied in this Convention there are several limitations in securing legal remedies. In the first place, as Article 8 recognises, only those rights that have been adopted and recognized by the constitution or national laws can be enforced through the courts. Others are outside their jurisdiction. Even in this limited field the claimant has several obstacles to face :

- 1. expense on litigation;
- 2. difficulties of collecting evidence;
- 3. when one is complaining of an action by the Government it may turn out to be an “act of State” that is not justiciable.

Government or independent organisations may, to a large extent, help with regard to the expenditure involved in litigation if they are

81. *Taitriya Upanishad*, I lesson 9.

82. *Taitriya Upanishad*, III Lesson 10.

evidence, while acts done by various parties may be easily proved, the thinking behind those acts and the justification or otherwise may be contained in Government documents which are not published and, therefore, may not be available as evidence. Even after one has been able to establish his case, the Government may take up the position that in the national interest it had to take certain action which resulted in the abridgement of Human Rights of a few individuals and that its action is an act of State and is not justiciable before the Municipal Courts.

25.1.1 In view of this limitation on the courts and the difficulty in some countries of bringing the Governments to court and securing satisfaction for decrees of courts, it has been suggested that an International Court be established for enforcing Human Rights. There are advantages in this suggestion in that the judges will be outside the control of national Governments and they would be able to make independent decisions on Government acts and instructions. Their jurisdiction will not be excluded by the claim that the act complained of was an act of State and, therefore, it is not justiciable. The consent of Member States will have to be obtained before such a court is established. Even after such consent is obtained the decisions of such a court will have to be enforced by national Governments. Here, the national Governments may plead that the decisions are *ultra vires* and so they are not accepted by them and will not be enforced. This happened in the recent case of the American hostages in Tehran. Despite these difficulties such an International Court will serve as a source of clarifying, expanding and adjusting these declarations in the context of later political, social and economic developments and thereafter act as a focus for the consolidation of international conscience representing the highest standards of the natural rights of man.

25.1.2 Even where litigation in the national courts is relatively easy and can be successfully invoked, it may not be practicable to depend entirely on the courts of law where the social conscience of the people does not actively support—as distinct from lip service of concurrence—the social ideal—it will be violated very frequently and it will not be practicable to take hundreds and hundreds of cases to the courts. An illustration is provided by the Juvenile Smoking Ordinance which is violated in the breach every day in hundreds of shops. If the social conscience of the people will actively support the enforcement of this Ordinance it will not remain a dead letter as it is today.

25.2 (b) Development of Social Conscience

From the foregoing it will be seen that without developing a social conscience favourable for the enforcement of Human Rights it will not be possible to enforce some of the social obligations which are not ordinarily considered as crimes. The people must be educated in various ways about the necessity for observing Human Rights and the benefits that accrue to society. If such an awareness of Human Rights is widespread the number of violations will be few and cases taken to courts fewer still. But the passing of legislation and obtaining judgement in favour of a claimant under such legislation may not be all and end all of the enforcement of Human Rights, as we shall see in a later section dealing with temple entry. This seminar and other steps taken and contemplated to be taken by the Sri Lanka Human Rights Commission are part of this effort to popularise and obtain the collective acceptance of our society to these Human Rights.

25.2.1 Advisory Boards

In this connection it may be advisable to form an advisory body with representatives from all the religions to advise the President on the implementation of Human Rights. Such a body may very well provide an information service to popularise Human Rights and to assist in the teaching of Human Rights in schools. It may also bring to the notice of Government all violations of Human Rights so that remedial action may be taken.

25.3 (c) Governmental Action

Some Articles can be given effect to only by administrative action. For example, Article 22 which provides for social security contemplates that its realization will be "through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". Obviously this right cannot be enforced either through Municipal or International Courts. Even developing a social conscience will be only partial fulfilment of this objective. The social conscience must be strong enough to compel Governments to take necessary steps to provide for this security and freedom to develop.

25.3.1 Again Article 23 refers to the right to work and the freedom to choose employment. But this becomes a reality only when Govern-

ment "include technical and vocational guidance and training programmes, policies and techniques to achieve a steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental, political and economic freedoms to the individual".* We shall have occasion to refer to this also in late paragraphs.

26. RIGHTS AND DUTIES

Before proceeding to deal with the enforcement of individual rights we wish to refer to Articles 2 and 29 of this Convention. Article 2 begins— "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind . . .". Article 29 states—"Everyone has duties to the community in which alone the free and full development of his personality is possible". We would have been happy if it were possible to formulate some detailed statement of the duties of man to his society very much similar to the Human Rights though we realize that such a statement will have to be in very general terms. However, that may be, we would have liked to see some connection between Articles 2 and 29 which now stand quite apart from each other. As indicated in our preliminary remarks our view is that society is an integral whole in which man has to play his part and give what is due from him to society before he claims rights. Quite apart from Hindu philosophy, it is common sense that unless a citizen today is prepared to do his duty by society he cannot expect to claim the rights embodied in this declaration. These rights can be enjoyed only in a society where the individual is prepared to do his part for the amelioration of society and keep the social and economic process going. We, therefore, feel that there should be in the text of the Declaration itself some visible connection between Articles 2 and 29.

27. SOCIAL AND POLITICAL CONTEXT

This Declaration of Human Rights is one of the aftermaths of the Second World War. Another important feature of the post-war world has been the end of colonialism and the freeing of so many countries from foreign rule. Along with other developing countries we also face certain common problems. In the struggle for independence the

* Article 6 of the International Covenant on Economic, Social and Cultural Rights.

people were told that our countries were exploited for the benefit of the colonial rulers and that under independence we can develop our resources independently and make ourselves rich. This aroused high hopes of a near Utopia among the masses when independence was achieved. But unfortunately changes in international economics and national production methods have been slow in coming and we are still largely exporters of raw materials and importers of many of our requirements. The gross national product has not jumped up dramatically but has only grown slowly. Men have been educated to an awareness of their rights by contending political parties but none has been able to fulfil all the aspirations of the common man. One need not subscribe to the Hindu philosophy set out at the beginning of this paper to appreciate the large difference in the physical and intellectual capacity of individuals. The dilemma before the statesmen is the marriage of unequal capacities with equal opportunities in the context of scarcities and vain and unrealistic hopes. The desires and aspirations of our people are so far above realization as they are beyond our economic resources, as Gandhi puts it; though there is enough to meet the needs of everybody we do not have enough to meet the greeds of everybody. Aspirations should no doubt be high but should be tempered by the realization of what is practicable and what is within our resources. Scarcities in several fields pose problems in the distribution of what is available—not only in material goods but in opportunities as well. In this context allegations of favouritism, communal prejudice, religious or racial bias, come to the fore and become serious problems. In practice, the distribution of those that are scarcely available does not go on merit or need alone and the observance of Human Rights becomes imperative. Governmental action can make or mar the observance of Human Rights and, therefore it becomes obligatory to examine the machinery of Government.

28. ADEQUACY OF GOVERNMENT MACHINERY

At this stage we consider it pertinent to examine the machinery of Government and its adequacy for the enforcement of Human Rights. That Government and Ministries in particular should consciously try to promote Human Rights needs no emphasis in view of what we have already stated above. But the unfortunate fact is that our machinery of Government places the Ministers in very difficult situations. The Ministers are elected by the people and can hold their positions only so long as they remain elected representatives. Because

of this the electors take unfair advantage and pressurise the Ministers into various acts which involve favouritism, discrimination and unfair action, which they would not ordinarily take. They are obliged to do this because they have to depend on the votes of these electors to come back to the legislature. In theory, many of our citizens pay lip service to justice, equity and Human Rights, but when it comes to their individual petitions, they should be secured, by hook or by crook, whether they are just or unjust. In this context, even a good Minister who wants to act fairly is pressurised into doing unjust things and ends up no better than the others whom he criticised from the opposition. Thus the concepts of fairplay, justice and Human Rights are used merely missiles in a political slanging match, because the circumstances do not allow Ministers to act according to their best standards. The solution would, therefore, appear to be to free Ministers from this obnoxious electoral pressure. Any proposal to appoint unelected Ministers should also ensure their compliance with the will of the majority of the people.

28.1 Here, we would cite the example of smaller democracies in Europe—Belgium, Netherlands, Luxemburg and a few other States. These countries have legislatures with political parties—the majority party being on the Government side and the minority on the opposite side. The Ministers are not selected from the elected Members but from the intellectuals actively associating themselves and working with the majority political party—lawyers, university professors, professionals and businessmen or industrialists. They can assume office only after obtaining a vote of confidence from the legislature. In Parliament itself they sit on cross benches and have the right to speak but not the right to vote. They have to present their programmes, and by persuasion gain acceptance of the majority of the legislature. They have to answer questions, face criticism by Members and are removable individually or collectively by a resolution of the House. Their proposals for carrying on the Government will be embodied as in other democracies in a budget showing expenditure and taxes and approved by the legislature. Thus the Ministers are always answerable and responsible to the legislature. The only difference is that they are not directly elected and are one step removed from the masses of voters. On the one hand, the great advantage of this system is that they are completely free from electoral pressures and can do their duties without worrying about satisfying individual electors. But since they are responsible for carrying out the policies of the majority party and

they are answerable to Parliament, they are also responsive to the needs of the large mass of the people of the country. One possible criticism may be that they are not directly in touch with the masses. In this respect they are different from the bureaucrats in that they actively participate in the political debates and councils of the party to which they belong. Their duties as Ministers will take them to the various parts of the country and they come face to face with the problems first hand, and as politicians they will be more responsive to the needs of the people than bureaucrats. We would, therefore, suggest for serious consideration an amendment to our Constitution to provide for such a system.

29. TEMPLE ENTRY

As far as enforcement of rights enunciated in Article 2 is concerned the most important problem for the Hindus is temple entry by Harijans. This was never a problem with regard to temples outside Jaffna peninsula including three temples, about which Hindu saints have sung devotional songs—Thiruketheeswaram, Thirukkoneswaram, and Kathirgamam. In Jaffna itself several temples were opened in the late fifties and early sixties. But a few resisted change and refused admission to Harijans. Legislation has been passed and courts have ruled that denial of entry to Harijans inside temples is an offence. This has improved the position and all large temples are now open to Harijans. However, in a very few isolated remote villages customs die hard and the Harijans for various reasons do not wish to disturb the peace and assert their rights forcefully. Spread of education and a realisation of the full implications of Human Rights by the managers of these temples will result in changing them as well. The passing of legislation and the ruling of the courts have also been educative factors. By active propaganda and discussions with managers of temples we hope that before long all temples in Jaffna will voluntarily have their doors open to Harijans as well.

30. From early times the progress of society has been advanced by the family which is the basic unit. Love regulated the relationship within the family, and its cohesiveness and co-operation were extended beyond the family limits to the community and ultimately to the country as a whole. The whole family functioned as one unit of production bringing the entire earning into a common pool managed by the head of the family. Within the village there was a functional

division with the responsibility for providing various goods and services being undertaken by separate family units. Within the family the head of the family and able bodied men shares the duties of economic production, while the wife was responsible for the care of the children and the provision of day to day requirements of the family—particularly food, cleanliness of the home, lighting etc. The mother was the king-pin of the home and the natural love between mother and child provided security for the growing child who thrives on love as much as on food. The mother looked after not only the physical requirements of the child but also his moral and mental development. When old parents were no longer able to work, all their requirements were met by the family and their advice on various problems were sought and respected.

30.1 With the spread of industrialisation the members of the family worked separately on different places for cash wages which were converted into the requirements of the family. The housewife found that and more of the daily needs of the family have to be met by cash purchases necessitating her absence from home for periods of varying duration. Individual members working in different places had to spend at least a part of their wages on transport and mid-day meal. The idea of pooling all the resources of the family became progressively harder to implement. In addition the needs of formal education of children had to be met in schools requiring payment. Thus the idea of pooling the resources failed at least in part and the cash requirements of the family to meet the new ways of living and educating the children exceeded the earnings of the head and the savings of other workers. The wife was forced to work and earn enough money at least to meet part of the expanding family budget. With her leaving home the family unit broke down completely—children no longer grow in the loving care of the mother, but were left to the tender mercies of day nurseries. The love between parents and children cooled down somewhat and the respect for elders and their views were devalued. Adult children choose jobs and marriage partners as they like, looking only to their own requirements. Old parents who could no longer work were taken out of the homes and dumped in homes for the aged. The bond of love within the family lost its sanctity—children grow up starved of maternal love, and even the love between husband and wife has taken a second place after the sexual aspect. The disintegration of the family was complete with uncared for children, quarrels between

husband and wife over money and other issues, frequent divorces and discharge of parental obligations by cash payments to those who looked after the children, and finally the neglect of parents in old age.

30.2 These facts, though well known, have been set out in great detail because in our country too economic forces are threatening the disintegration of the family and a timely reminder of what is in store may be of some use in preventing a similar disaster. At this point of time we should clarify our thinking and set down what we want to salvage from the concept of the family as the basic social unit :

- (a) The sanctity of the marriage bond should be maintained.
- (b) The role of the mother in looking after children and the love, regard and respect between parents and children should be maintained.
- (c) The family functioning as a unit of production cannot be maintained in present conditions except in agriculture and fisheries.
- (d) In other fields the housewife has to leave home for work and this keeps her away from the children. Institutional arrangements should be made to enable her to spend adequate time with the children till they reach schooling age. This may be some form of no-pay leave and the right to return to her job after about four or five years.

Reconciliation of a woman's right to work with her duty to the family and children is a complex problem requiring study in depth. The family as an institution can be saved only by such study.

30.3 We have already discussed earlier in discussing the religious and cultural background to this Article the problems of women in *Thesawalamai* Law. The last sentence of Article 1 states "They are entitled to equal rights as to marriage, during marriage and to its dissolution". Under *Thesawalamai*, as we have pointed out, each partner is entitled to half share of the acquired property during marriage. However, there is still the disability faced by the wife in that she cannot in any way deal with her separate property without the consent of her husband. The husband was recognized as the only manager of the entire resources of the family and necessarily had this right to supervise the disposal of the separate property of the wife by her. But in the con-

text of modern economic conditions doubts have been discussed among lawyers and others, but there has been no unanimity even among the women about removing this provision. A special study has to be made of the possible consequences of such a removal and we would, therefore, recommend that such a study be made.

31. RIGHT TO WORK

This provides for the right to work, to free choice of employment and to just and favourable conditions of work. Article 21 provides for equal access to public service. This right to employment necessarily includes "equal.....opportunity for every one to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence".* In this country there have been several complaints of violation of this right and of discrimination on grounds of race, religion or other social origin. As mentioned earlier, in the context of scarcities, competition for the few places in the public service is keen and when the best men are not selected allegations of corruption, favouritism and communal discrimination are bound to arise. This is often not a matter capable of adjudication in courts. Separate machinery for dealing with such complaints will necessarily have to be set up, and the proposal to have a State Commissioner or Ombudsman is welcome in this respect. But the Ombudsman should be given sufficient freedom and power not only to point out irregularities but also to rectify them by giving to the aggrieved party at least an additional post or job with adequate compensation. Much would depend on the courage and independence of the Ombudsman and his flair for investigating suspicious cases and bringing to the surface of irregularities. We, therefore, feel that an independent officer of this kind is indispensable for the enforcement of these rights.

32. Article 26 of the Declaration states "Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit". This has to be read in conjunction with Article 23—"Everyone has the right to work.....". To provide full employ-

* Article 7C of the International Covenant on economic, social and cultural rights.

ment government must take action as contemplated by Clause 2 of Article 6 of the International Covenant on Economic, Social and Cultural Rights. "The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental, political and economic freedoms to the individual".

32.1 Despite our achievement of independence our general education has been of an academic pattern with three major examinations setting out the standards to be achieved by the individual student—G.C.E. Ordinary Level, G.C.E. Advanced Level Examination and the Degree Examination. This academic type of education has not been able to produce self-reliant citizens who can earn a living on their own. The three certificates—Ordinary Level, Advanced Level and the Degree—have become the begging bowls for obtaining employment but the few who have succeeded in paid employment have aroused unrealistic and vain hopes in the minds of the many that they too would be equally well off and can secure comfortable jobs if they had these qualifications. Though education is free there are many aspects which have to be remedied before equality of opportunity can be realized. In many schools especially, in the hill country and in parts of the eastern province the school buildings and equipment are not adequate. The quality and number of teachers provided are not sufficient for the students on the roll. Equal opportunity can be said to be a reality only when schools are staffed and equipped to meet the requirements of the students to be taught there.

33. We should examine the curriculum and the way the subjects are taught to see whether our educational system is geared to produce the manpower requirements of our country. Our land resources and fishing resources absorb 50.1 per cent of our working population (1.828 million).^{*} Manufacturing takes in only 9.3% and almost an equal number is engaged in wholesale and retail trade. Community and personal services taken in 13.9% as against construction including masons, carpenters, etc. absorbing only 2.8%. Transport engages 1.7% and other trades are marginal. Those figures have to

^{*} *Statistical Pocket Book 1977.*

be adjusted taking into account the manpower required for the construction, maintenance and operation of the new projects of government and the private sector. That broadly is the pattern of manpower requirements of our country.

33.1 Our educational system does not appear to be geared to provide the manpower necessary for the development of all our resources. We need more efficient farmers, more efficient agricultural workers and more efficient fishermen, more efficient carpenters, masons, etc. Our system of education should be related to the manpower requirements necessary for the efficient development of our available resources.

33.2 School readers from the primary school to the text books on geography and our village life in the higher classes should all be prepared with the objective of making the student actively alive to his environment and to take a genuine interest in it. Even in the lowest class the student should be taught about the interdependence of man and plants—how the air breathed out by man is absorbed by the plants and how what they breathe out is inhaled by man. The interdependence between farm animals and plants should be similarly brought out not only in the process of breathing but also in the process of eating—the product of plants, leaves, etc. become the food of the animals and the droppings of animals become manure for the plants. This inter-relationship can be easily explained to the growing minds in simple terms without burdening them with principles of ecological balance. Similarly elementary facts about the growth of the paddy plant should be explained—how water and sunlight and manure are combined to form leaves and grains of the paddy plant. Here again, it is not necessary to burden the child's mind with the principle of photosynthesis and the botanical process of plant growth. It will be sufficient if the various sources from which plants derive nourishment are simply explained and illustrated.

33.3 In this way the children will be encouraged to take an active interest and develop an inquisitive approach to the environment around them. But what is happening today is that the children are given an academic study divorced from the rural environment around them. Even the hours of the class beginning at 8.00 a.m. and ending at 2.00 p.m. do not permit the students to help their families in their farms and in animal husbandry. If the schools start at 9.30 a.m. or 10.00 a.m., the students would have sufficient time to join the rest of

the family in working in the farm and going to school for their theoretical studies. In that way efforts must be made to interest the child in his environment and to keep him there rather than divorce him from his surroundings and at the end of his schooling leave him as an academically educated product who cannot fit into village life.

33.4 Since 80 per cent of our children are from rural areas we refer to their experiences in the preceding paragraph. Children from urban areas should, wherever practicable, be taken to nearby farms and fields and made to take an interest in agriculture and livestock breeding. In other cases where this is not practicable the students should be given explanations of how tables and chairs are made, how materials should be selected and how they are cut and shaped and fitted to form useful articles for use in the homes. Here again the explanation given to the child need not specify the P.S.I. shearing force or be given elaborate scientific explanations regarding the process of manufacture. The facts presented should be few and simple but sufficient to arouse his interest in making and knowing how to make articles of daily use.

33.5 These are merely illustrations of the application of the general principle that the education of the child should be related to his environment and develop in him interest and curiosity. In doing this what we are suggesting is that we should have a long-term objective of preparing to meet the manpower requirements of our economy. Experiments in teaching the students to take part in agriculture, livestock breeding, etc., along with their academic study in Auroville and elsewhere have shown that such extra-mural education enhances rather than diminishes the academic performance of students. It would be worthwhile sending teams to study these methods and see how far they are applicable to Sri Lanka.

34. Technical and vocational education should generally start at the post-secondary level and include not merely techniques of doing various jobs but theoretical knowledge sufficient to lead a student to the next higher level and ultimately to graduation at university level. Those who branch off to vocational and technical courses need not be condemned for life to be drawers of water and hewers of wood. Ample provision should be made for workers to join universities and specialise in their fields. The manpower needs of agriculture are so large that there may have to be more than one purely agricultural university. Unless these technical and vocational studies offer possibilities of

rising in one's field they will not be attractive. Not only should they be attractive but there should be a sufficiently large number spread throughout the country well equipped and well staffed.

35. The general theory that education is to give wide general training to the students and not to train them for specific vocations does not hold good in our country where—

- (a) education is a virtual monopoly of the State;
- (b) agricultural, industrial and distributive services do not employ advanced technologies and are unable to generate enough savings to fund their own research and technical development programmes;
- (c) the outlook of more than 99% of the citizens is that education offers a means of obtaining a suitable job, and
- (d) where fundamental and sociological researches are not popular and it is not possible to study the impact of a general education on our society.

Until we have advanced technologies which are self-generating in their progress, the State must in a big way help in improving the technologies and other production methods. Until by research we come to the conclusion that the impact of a general education has improved the general level of thinking and living and is adequate for our needs, we should not relegate technical and vocational education to the background as being secondary accidental by-products.

36. UNIVERSITY EDUCATION

In the context of a system of general education coupled with very few technical colleges and polytechnics, the ambitious student, on completion of schooling, has to seek entry to the universities. Annually about 85,000 students sit the Advanced Level examination in the hope of entering the universities. Less than 10% get selected and it is not entirely on the basis of merit as enunciated in Article 26.

36.1 Admission to higher institutes of learning—to universities in particular has posed several problems in the provision of equal opportunities on the basis of merit. Up to 1970, admissions were based solely on the achievements of candidates in an open competitive examination. Thereafter the fact that candidates answered papers in three different languages was brought to the fore. Legitimate statistical

techniques of standardisation were used to subserve other purposes and to allocate quotas for the various language groups. Equal opportunities for individuals was misunderstood as equal opportunities for linguistic groups and interpreted as proportional groups and interpreted as proportional quotas for linguistic groups. The patent defect in this system was that it denied admission to large numbers, who competed individually and qualified for admission in an examination among individual students rather than among groups. This has now been replaced by another system which is based on distribution by geographical areas and tries to take account of the unequal opportunities for secondary education—especially the underprivileged rural areas. We should recognise this as a useful addition to the concept of equal opportunities, so that the general approach should be that all candidates who reach a minimum standard should be eligible for admission. In addition, candidates from underprivileged areas reaching a slightly lower standard should be admitted. In considering the claims of the former group of candidates who come in by open competition, equality of opportunity should be for individual candidates *and not* for geographical areas or linguistic groups. Candidates sit the examination and join the university as individuals and not as regional or linguistic teams. Equality of opportunity for geographical areas which deprives individual candidates who have attained a high standard in the examination, of their chance for higher education cannot be reconciled with the Human Right granting equal opportunity on the basis of merit.

37. OBJECTIVE OF EDUCATION

In the foregoing paragraphs we have emphasised the importance of relating education to the manpower requirements of the country, but that is not the main objective. We have already stated in para. 22.2 that the end of education is character. It is not sufficient to take the students and fill their heads with knowledge and their hands with skills, but we must give them the moral approach to living in society—that they are parts of society and as such have rights and obligations, that a moral order is essential for the well-being and functioning of society and that a society can exist only on production—produce or perish. Thus the teaching of religion should be a moral instruction relating the religious precepts to the efficient functioning of society. It should not be an academic subject relevant only on occasions when you

have to use that knowledge in our daily lives like geography. Religion on the other hand runs through the whole gamut of life and its validity cannot be compartmentalised as it is basic to all activities. For example, the necessity for speaking the truth. The purpose of speech is to communicate one's ideas to others and not to twist or suppress the ideas and express something else. What would be the position if everyone started lying frequently? Social intercourse would fail and society cannot function. The individual who lies expects the others to express their thoughts correctly but seeks to gain an unfair advantage by that lie. Similarly what would be the position if everyone started stealing, killing, etc. These moral codes are necessary for the survival of society. Such explanations should be supplemented by citations from the scriptures and the teaching of sages and life stories of great men who lived according to these principles. That these principles cover the entirety of life should be made clear and deviations in conduct noticed in school should be promptly pointed out to students.

38. The ultimate rule for any society as pointed out above is—produce or perish. Those who produce wealth are really the first rate citizens and all others are second class citizens. Doctors, lawyers, administrators, etc.—however, essential their services may be, are really parasites sharing in the wealth produced by the first class citizens. Our system of values need re-orientation as we are still governed by colonial values. The colonial masters were superior to all. Among the natives those close to the colonial masters were the first class citizens—the importance varying inversely with the distance from the colonial masters—civil servants, doctors, engineers etc. in the first group, clerks, subordinate technical officers, etc. from the second group, peons, labourers, etc. from the third group and all others are dumped together as the last group. With independence this scale of values must change and we must bring the last indeterminate group of producers as the first class citizens. This is in accordance with our traditional system of values. “The farmers are the only ones who live honourably. All others go begging behind them”.* By analogy, producers of other forms of wealth can be regarded as “living honourably”. What is needed is a re-orientation of values not only in this regard, but generally in our approach to society and those around us is a study of our religious and cultural heritage. This should be an essential component of all the courses—Arts, Science, Commerce or Technical etc.

* *Thirukkural*, 1033

There should be graded text books setting out not merely the doctrines of God, Soul, Liberation, Prayers etc., but also the importance of living a religious life here and now, and how the individual can achieve the highest goals by serving fellow men as an embodiment of God. Equally the students should be made alive to the greatness and universality of our Prayers—for example, the Gayatri Japa invoking the Sun God to sharpen our intellect or the concluding Blessings Invocation after every service in every Hindu Temple—*Loka samasthath sukino bhavantu*—Let the entire world be happy.

REPORT

HINDU GROUP

Five papers were submitted for the seminar on Religious and Cultural Traditions in the Development of Human Rights. They were as follows:—

1. Some underlying Human Rights in Hindu Religious Freedom and Traditions

MR. MANICKA IDAIKKADAR

M.A. (Cant.), M.Sc. (London),

FSS (Lond.), Statistician FAO (UN).

2. Philosophical Presuppositions of Saiva Siddhanta in the Hindu Culture, their Implication and Impact on Human Rights

MR. N. SABARATNAM

Principal Emeritus,

Hindu College, Jaffna.

3. Development of Human Rights in Sri Lanka—The Hindu Religious and Cultural Background

MR. C. BALASINGAM

Ceylon Administrative Service

Retired Permanent Secretary.

4. The Concepts of Human Rights and Duties in the Saiva School of Hinduism

PROF. A. SATHASIVAM

Head of the Department of Language and

Cultural Studies, University of Colombo.

5. Some Basic Concepts and Ideals on Human Rights in Hinduism and the Importance of Religions in the Development of Human Rights

MR. C. RANGANATHAN, Q.C.

Attorney-at-Law.

Mr. Balasingham's paper has identified and discussed comprehensively the Hindu Religious and cultural traditions which are relevant to the development of Human Rights.

Mr. Balasingham's paper and the other papers were discussed and the committee decided to adopt Mr. Balasingham's paper as the basis and embody in it the views expressed and accepted by the group in the other papers.

Mr. Balasingham has kindly submitted a revised paper embodying the views of the group which the group decided to present for the final seminar. This forms Part I of the Rapporteur's Report presented for the final seminar.

In addition, individual members of the group made written contributions on specific aspects which were also discussed and such views about which there was a consensus are given in the Appendix which form Part II of this report as follows :

APPENDIX I : Article 2 of the Universal Declaration of Human Rights—Dr. V. Ramakrishnan, Head of the Department of Philosophy, University of Jaffna.

APPENDIX II : The Role of Women and the Family.

APPENDIX III : Article 18 of the Universal Declaration of Human Rights.

Article 19 of the Universal Declaration of Human Rights.

Article 23 of the Universal Declaration of Human Rights,
and

Article 26 of the Universal Declaration of Human Rights.

APPENDIX IV : Article 5 of the Universal Declaration of Human Rights.

APPENDIX I

Article 2

The Hindus are predominantly Tamils and are sensitive to problems of race, language and the regions where they have fostered their culture for centuries. They see in the preservation and fostering of their culture the only means of safeguarding the totality of national interests. In doing so, they feel that the government, as the organ of State power, is not fully alive to the infinite possibilities of violating rights to the detriment of the minorities that we shall ever be. By Hindus we mean the workers in the plantation districts as well, who had been twice disfranchised in an overwhelming majority (This has implications for other areas referred to in the UN documents).

The problem of rights of the Tamil minority is yet a living sore in the body politic. In the context of hostile propaganda, constitutional guarantees and all professions of justice and fair play become a meaningless exercise. A Tamil citizen, for instance, could be as much a foreigner in the metropolis as a foreigner could be.

The successive erosions of their rights to language, their bare lands, to employment and to education are nowhere on the wave. Political rivalry among groups within the majority community often lend to nullify all statesman-like attempts to solve the problem. The test of Sinhala nationalism appears to be the degree to which Tamils could be subjected to villification.

Oppression of minorities and the suppression of their rights is neither countenanced nor tolerated in the tenets of the Hindu tradition. (The Buddhist faith too shares the same ideal for its adherents and are heirs to the same tradition). Even political enemies are treated with respect and regard.

Any attempt to instil regard and respect for rights must be more than a mere formal declaration. The right to claim and assist them must be as much part of the guarantee.

At a national level, one claims to equal recognition lies in our firm commitment to the ideals of the UN Charter. Our entitlement to it should be based on the high esteem, we as a nation enjoy in the international arena. Towards this end a high degree of national unity becomes a necessary pre-requisite—a unity based on our commitment to our traditional ideals that cannot be bartered away for a mess of pottage.

APPENDIX II

The Role of Women and the Family

The development of Human Rights in relation to the family which is the natural and fundamental group unit of society, its proper establishment, protection and assistance, viewed from the standpoint of Hinduism involves a dual perspective.

- (i) A subjective inclination arising from the Hindu view of ideals of womanhood and her place, rights and duties.
- (ii) An objective necessity.

Taking into consideration the major human values or urges of man towards the attainment of *artha*, *kama*, *dharma* and *moksha*, i.e. economic value, aesthetic value, moral and spiritual values, the first involves both a subjective inclination and an objective necessity. In the context of the family, the head of the family is inclined to work not merely to earn for the bare necessities of providing food, shelter and clothing. In a highly complicated and industrialised society of today, there is found the objective necessity to morally transform individual members of a family towards the right understanding of the human values which are capable of regulating lives which would otherwise be predominantly materialistic in outlook. Mere quantitative success cannot be regarded the criterion of a growing family and consequently of a growing society. Qualitative flavour enhances the family and society. It is this that gives meaning to human life as distinguishable from all other lives that are non-human. Hence a family should consider its right and duties to integrate its economic needs with other human values. Every member of the family, especially the head of the family and the wife, should share the responsibility.

It will be remarkable if religious wisdom is infused into every family through religious organisation either weekly or even monthly, so that mothers are awakened to a consciousness that loveability is the foundation for the success of a family unit and development of healthy, educated children. But, the quantitative importance of supplementing the economic requirements by either the mother working or other members of the family working need not be considered a negligible outlook. In other words, strictly adhering to

traditional Hindu ideals as entirely practicable in a modernised Hindu society leaves many practical problems unsolved.

A purely subjective inclination towards the Hindu view of life, today, has to change with a transfer of rights and obligations of the man equally to the woman. For instance, it has become necessary that care and education of the children are strictly not a "private" affair of the man alone but a "public" one. The need for collective responsibility has become imminent. However, the working mother should be aware of her moral-responsibility. She should strike a balance between economic necessity and moral and religious requirements. If such a balance is not within a woman's reach, the practical value would be to abandon the necessity to earn and compensate her economic needs in other ways (for example, if a mother is trained in fine arts or any other arts, she can, while the children are at school, conduct classes at home as and when she is free). In this way, the Hindu ideals of a womanhood can be reconciled with objective needs of the family. The important thing to note is to reconcile religious ideals with objective necessities *not* as a mere cause but as a corollary without altering the love-relation between husband and wife, on the one hand and the parent-children relation on the other. Love-relation should be a prompting principle in all activities within the family extendable towards the society and State as well.

There is also the viewpoint of the traditional Hindu Dharmic Law, as an Eternal Principle that maintains the Unity and Uniformity (*rta*) of the Cosmos. This can well be maintained within the family unit as well. The *Mahabharata* defines that the term *dharma* is so-called because "it upholds". As *dharma* upholds the Universe, the same ideal in its microcosm aspect should "uphold" the minutest unit of creation (Refer p. 39, *Call of the Vedas*)

From a practical perspective, if economic necessity impels a wife to work, and if she can perform this objective necessity while at the same time being aware of her moral and religious awareness of Hindu womanhood, an admirable family unit can be achieved. A true heart should inspire a true-purpose. This attitude on the part of all working members of the family can avoid chaos and confusion. Much depends on the awareness of the mother "who bends to feed the child". She can stabilize the fundamentals of character and right living more durably than by mere moral preaching. The

Rg Veda (VIII, 31.8) states: "The wife is given equality of status with the husband. She is as much the mistress as he is the master of the house" "Be thou a queen after reaching your husband's home". (says the *Atharva Veda* — This should be interpreted in the context of the present-day society.) What can be advocated as a practical value, meeting the subjective and objective perspective is the recognition of the family with openness and naturalness based on love and mutual understanding. The State can contribute towards such a recognition by a compassionate view towards the working mother in granting concessions in working hours for women and leave especially for expectant mothers.

The purpose of the State as much as that of the family is to establish harmony and concord. In Hindu tradition the prefix "sam" (Com) indicates "Collective actions of people". Similarly "samana" (Common) implies "collective relation". Hindu universalism is addressed not merely to humanity at large, but has its foundation in the family unit. Spiritual power and wisdom are co-existent with living changes; it does not merely survive by force of religious observances. Traditions cannot be practised devoid of their human-values. They should not outgrow but linked meaningfully to meet practical needs of a growing culture and civilization. In fact, the term "family" etymologically derived from the Roman word *familia* conveys a denotation of a new "social organism". Lewis H. Morgan in *The Origins of Family, Private Property and the State* evolves the meaning of the term "family" from its original implication, "slavery" to the present day denotation as "bond of friendship". Morgan accepts the "family" as "representing an active principle". It is not stationary but advances from the lower to a higher form as society advances from the lower to a higher condition. Based on the Article 16 on Human Rights, "Family" has become increasingly acknowledged, first from legality of marriage to a recognition of moral status where both partners are on "common footing of equal rights and duties".

If both demands: viz. qualitative subjective inclination and obligation to moral and religious demands and quantitative objective consequences of the economical demands of the family placed in a contemporary highly industrialised civilized society are reconciled, then it will perhaps be an accepted logical conclusion that the Eternal

Cosmic Law — *rta* or *dharma* can well be preserved and the harmony and concord can be established within the family unit.

Legal equality and religious rights and obligations are not the causes but the effects of the economical conditions and management. Wife's role naturally will be a private service — in the sense she cares for her duties with the goal to fulfil one of the four values of human life — viz. economic value . . . but regulated by moral and spiritual values, her religion prescribes.

APPENDIX III

Article 18

Article 18 says everyone has the right to freedom of thought, conscience and religion; his freedom includes freedom, either alone or in community with others, etc. Thought is indeed vital to human existence and this truth is perhaps best expressed in the famous works of the philosopher Descartes — '*Cogito ergo Sum* — I think, therefore I am'. It is well known that many of our sages and saints and national leaders suffered torture and imprisonment in exercising this right.

Freedom to change one's religion pre-supposes maturity and voluntary decision. It does not allow proselytism of any kind which is foreign to our religion and is not fully dead in our country. One's religion is one's birthright and should not be sold for a mess of pottage. State control of the mass media places constraints on the access to information and the freedom of expression.

The freedom to receive and impart information and ideas through any media and regardless of its frontiers implies some kind of legitimate control by the State. But it does not mean *total* or centralised control of the State which channels information favourable to the governing party and suppresses ideas critical of it. This right is relevant to the fundamentals of any democracy and has been sanctioned by traditions of wise rulers in the Hindu tradition.

Article 19

This right includes the freedom to hold opinions without interference. The Hindus are readily reminded of the fearless Nakkirar of Sangham literature who had the courage to criticise Lord Siva's

poem; he presented in pointing out the flaws in it despite the threats of the Lord who continued to stare at him with His frontal eye.

The recognition of this right is not only a right of each individual, it is also a right of the whole community of men. In order to discover the truth a man must not only be free to think his own thoughts but he must be free to distinguish the true answer to his question from others competing for acceptance.

Not only is the free and responsible expression of ideas a right, but it is also a moral obligation of the citizen. The Hindu *sastras* declare this in clear language. It is heartening to note that a modern political scientist like Harold Laski has said that "a man's citizenship is the duty to contribute his instructed judgment to the public good. He cannot make that contribution if a penalty is attached to the expression of his thought". He has also said that "a Government can always learn more from the criticism of his opponents than from the eulogy of its supporters. To stifle that criticism is — at least ultimately to prepare its own destination". This is a truth we know from our own experience. When a government seeks to suppress contrary opinions, it is simultaneously engaged in the unexecrable task of digging its own grave.

Discussion and debate are the warp and woof of life in a democracy. This right is not something which exists only at the time of a general election but consensus after a government is elected to office.

No one, of course, would suggest that freedom of speech confess a right to speak without responsibility irrespective of any damage to the public interest. It is clear that incitements to crime, disturbances of public peace, speech endangering the security of the State, etc. have to be protected against unwarranted attacks.

The freedom of speech and expression is not simply the freedom to sing, to praise, to eulogise and to applaud. It includes the right to criticise and could otherwise be the very negation of freedom. There are men who have the courage to disagree, are willing to protest and refuse to conform to the prevailing orthodoxy. As John Shart Mull observes: "Persons of genius are rare and are always likely to be a small minority; but in order to have them it is necessary to preserve the soil in which they grow. Genius can only breath freely in an atmosphere of freedom".

State control of mass media places constraints on the access to information and the freedom of expression. The freedom to receive and impart information and ideas through any media and regardless of its frontiers implies some kind of legitimate control by the State. But it does not mean *total* or centralised control of the State which channels information favourable to the governing party and suppresses ideas critical of it. This right is relevant to the fundamentals of any democracy and has been sanctioned by traditions of wise rulers in the Hindu tradition.

Article 23

Manu says that it is the duty of the king to provide employment to everyone according to his learning and worth. We have moved much further than even the days of Thiruvallavar who condemned begging for food in the couplet which says "If begging was intended to be an occupation similar to other forms of work the one who ordained so, should himself suffer like the beggars and die".

Our country is faced with the dilemma of matching unequal capacities with equal opportunities in the context of scarcities in several fields. Today we are faced with ever-increasing cost of living; the uncontrollable inflation; the growing affluence of a small trading class; the precarious position of the national economy: the unprecedented labour and industrial unrest; the gradual deterioration of the physical quality of life of the ordinary people, etc.

However, it must be stressed that an excessive emphasis on duties will only help to play the workers into the hands of their ruthless employers who are out to exploit cheap.

Article 26

Article 26 deals with the right to education, etc.

Complete control of education by the State was something unknown and unheard of in our ancient tradition. Till recently we had enjoyed a system of *denominational* schools with government assistance. Teachers generally welcomed the take-over of schools by the State in 1960, motivated by the security of service it guaranteed. No doubt, today they are having second thoughts about it having been subject to various forms of insecurity and victimisation, and having experienced political interference at its worst denying to them the freedom

to impart knowledge, maintain discipline and earn recognition and reward through *merit and merit alone*.

Governments ought to have supervisory control over education through decentralised administration, no doubt. But the control of education by a group of bureaucrats sitting in the metropolis has caused and is causing confusion and ought to be eliminated. The school belongs to the community. Teachers, parents and the local public must form the vital partnership in the running of a school.

Education must primarily be liberal, liberating one from deadening fears and superstitions and building character giving the ultimate values of truth, goodness, beauty, justice and the like their due place. Hence the importance of *religious education*, the search for God whose "service is perfect freedom" according to the Hindu *sastras*.

But education must also be vocational and specialised as it is essential for one's *livelihood*. It is the duty of a government pledged to the ushering in of a free and just society to ensure universal free, and primary education.

This is the right of every citizen including those from the plantation districts — *the children of plantation workers*. There are areas like these that need rehabilitation and reconstruction. The affairs *here* 'are far from desirable' in the words of the Minister of Education.

At the university level we should be wise in restoring the ideal of university autonomy which is a modern version of our ancient ideal of freedom of learning. *Equal access* to university and higher education *on the basis of merit* is yet subject to unfair checks and arbitrary methods of selection. *Admission* should be strictly on merit, while as a temporary measure, say about twenty per cent of the places be reserved for pupils from deficit areas. Bright pupils from deficit areas can be and often are given scholarships to schools of excellence.

The government must not enjoy complete monopoly in education and can well utilise private accredited bodies to provide and maintain schools under State supervision.

In India quotas for higher education based on language, religion or *area* have been declared illegal and undemocratic militating against national unity.

Finally the need to raise the quality of teachers, especially in view of the exodus of many of them to foreign countries cannot be over-emphasised.

APPENDIX IV

Article 5

1.1 Article 5 of the Universal Declaration of Human Rights provides that "no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This provision is fully in accordance with the religious and cultural traditions of Sri Lanka. In conformity with such traditions and the Universal Declaration of Human Rights, the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka has in Article 11 of Chapter III dealing with Fundamental Rights reproduced Article 5 of the Universal Declaration of Human Rights verbatim.

1.2 In this connection it is also relevant to mention the "Declaration on the Protection of all Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" unanimously adopted by the General Assembly of the United Nations in 1975. Under this Declaration, every State shall take effective measures to prevent torture, etc., from being practised within its jurisdiction (Article 4), shall ensure that, in the training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty, full account is taken of the prohibition against torture, etc., (Article 5), shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory (Article 6), shall ensure that all acts of torture etc. are offences under its criminal law (Article 7), and the Declaration requires the competent authorities of every State to promptly proceed to an impartial investigation (even if there has been no formal complaint) wherever there is reasonable ground to believe that an act of torture, etc. has been committed (Article 9) and, where it is proved that such an act has been committed by or at the instigation of a public official, it requires redress and compensation to be paid to the victim in accordance with national law (Article 11).

2.1 The present Constitution of Sri Lanka contains a more detailed declaration of Fundamental Rights and has provided more

effective remedies for their enforcement than any previous Constitution. Chapter III, which consists of 8 Articles, is headed "Fundamental Rights" and the remedies for the protection of Fundamental Rights and the procedure for their enforcement are set out in Articles 17 and 126 of the Constitution.

2.2 Article 4 (d) of the Constitution of Sri Lanka provides as follows:

"The fundamental rights which are by the Constitution declared and recognised shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided". Article 15 permits restrictions on some fundamental rights for certain purposes and in certain circumstances, but significantly the fundamental right provided for in Article 11 is not one in respect of which any restriction is permitted.

2.3 So far as the remedies for enforcement of Fundamental Rights are concerned, Article 17 of the Constitution provides: "Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter".

2.4 The relevant provisions in Article 126 of the Constitution are as follows:—

"(1) The Supreme Court shall have sole exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognised by Chapter III or Chapter IV".

"(2) 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 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 application may be proceeded with only 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”.

“(3) Paragraph (3) of the Article provides that where the Court of Appeal, in the course of hearing an application for a Writ thinks that there is *prima facie* evidence of an infringement or imminent infringement of a fundamental right recognised in Chapter III or Chapter IV of the Constitution, the Court may refer the matter for determination by the Supreme Court.

“(4) The Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any petition or reference referred to in paragraphs (2) and (3) of this Article or refer the matter back to the Court of Appeal if in its opinion there is no infringement of a fundamental right or language right”.

“(5) The Supreme Court shall hear and finally dispose of any petition or reference under this Article within two months of the filing of such petition or the making of such reference”.

3.1 The objects of the above provisions of the Constitution, in their application to torture or to cruel, inhuman or degrading treatment, are clearly :

- (a) that all organs of the State should conform to the Universal Declaration of Human Rights and other Declarations of the UN by observing Article 11 of the Constitution, and that
- (b) the State should provide adequate relief and redress to the victims of a violation or infringement of Article 11.

4.1 Article 126 (2) entitles a victim of an infringement of any fundamental or language right declared and recognised in the Constitution by any *executive or administrative* action to apply to the Supreme Court for redress or relief. In the context of this Article, the words of Article 4 (d) of the Constitution referred to above (paragraph 2.2) and the objects sought to be achieved (paragraph 3.1 above), the words “executive and administrative Action” are capable of being interpreted to include not only acts of the State executive but also of public officials.

5.1 But adequacy and effectiveness of the remedial right provided by Article 126 of the Constitution arises for consideration in

view of the important decision of the Supreme Court in S.C. Application No. 63/80 (Aiyathurai Thadchanamoorthi vs. The Attorney-General and 3 others) delivered on the 15th August, 1980. In this application of June 1980 the petitioner complained that he was on the 26th of May, 1980 subjected to certain acts of inhuman, or degrading treatment or punishment by the 2nd, 3rd and 4th respondents acting in their capacity as police officers in the service of the Executive Government of Sri Lanka and under colour of such office.

5.2 The Supreme Court on a consideration of the two affidavits filed by the parties and the medical report regarding the injuries on the petitioner held that the material before the Court "was neither clear nor cogent and falls short of even the minimum proof necessary for the court to proceed to further inquiry into the complaint". The Court proceeded further to consider the submissions made on behalf of the Attorney-General by way of preliminary objection that an act done by a State functionary would not constitute State action unless it is done within the scope of the powers given to him, which means in effect that if it is an unlawful act or is an act considered *ultra vires* it would not be considered State action but only as an individual act of the person concerned.

The Supreme Court in its judgment appears to have accepted the view that to entitle a victim of torture or cruel treatment or punishment to relief under Article 126 of the Constitution, he must prove either that the government openly or expressly authorised the acts of torture, etc. or the existence of an administrative practice of the State, and that in order to prove such administrative practice two elements must be proved — (1) repetition of acts of torture, and inhuman or degrading treatment etc. (2) official tolerance of them.

5.3 It is respectfully submitted that this view taken by the Supreme Court considerably limits the effectiveness of the remedy provided by Article 126 of the Constitution for the infringement of the fundamental right declared in Article 11. Our Constitution recognises that the human rights provided as fundamental rights should be observed and protected by all organisations of the State and adequate relief or redress given to the victims of infringement of such rights. In view of the decision of the Supreme Court referred to above, it is necessary to consider amendments to the Constitution to make it

quite clear that the expression "executive or administrative action" includes acts of public officials acting or purporting to act in such capacity and under cover of their offices. It is not sufficient to declare fundamental rights. It is absolutely essential that clear provisions should be made to ensure the protection of these fundamental rights by the executive and the administration, including public officials.

5.4 There is a further matter that requires consideration, namely, whether the procedure presently followed in regard to applications for relief and redress under Article 126 of the Constitution is satisfactory. Articles 17 and 126 confer on the Supreme Court, not an appellate, revisionary or supervisory jurisdiction, but an original jurisdiction to entertain and decide applications for relief for infringement of fundamental rights and "to grant such relief or make such directions as it may deem just and equitable in the circumstances"

Article 126 (2) provides, inter alia, that the application for relief or redress may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused by not less than two Judges. Rules also have been made by the Supreme Court under Article 126 (2). The present practice appears to be that the respondents and the Attorney-General are given notice and the question whether the application should be proceeded with is decided on the petitions and affidavits and any other material filed by the parties.

5.5 The present procedure often causes grave prejudice to an applicant for relief. He is required to apply for relief within one month of the inquiry. Very often he is in detention and most of the material available in the form of records would be in the possession of a State official. Having regard to the nature of the jurisdiction conferred on the Supreme Court, namely original jurisdiction, it is suggested that if the petition and the affidavit (as in the case of a plaint) *ex facie* discloses an infringement of a fundamental right for which relief or redress is asked, the Court should order the application to be proceeded with and should notice the other parties thereafter to file their objections and affidavits. On the disputes which arise on the pleadings, it is submitted that the Court should hold such inquiries as are necessary for the purpose of deciding whether there has been an infringement and what relief should be given. Parties

should also be given the right to summon witnesses. An express statutory provision to this effect would be helpful and would not leave the matter in any doubt. Jurisdiction should also be conferred expressly on the Supreme Court to summon witnesses to give oral evidence and to produce documents, and parties should also be expressly give the right to have witnesses summoned to give oral evidence and to produce documents. To reject an application by deciding not to proceed with it before the applicant (who very often labours under the disability of being held under detention) is given the fullest opportunity of placing all the material before the Court would tantamount to rejection of the application without due hearing.

6.1 Another suggestion relevant to Article 11 of the Constitution (as well as the protection of other Fundamental Rights provided for in our Constitution) is contained in the statement made by Mr. H. W. Jayawardene, Q.C., Chairman of the Sri Lanka Foundation of Human Rights Centre, at the opening session of the Seminar on Religious and Cultural Traditions in the Development of Human Rights in Sri Lanka — namely, the establishment of an Asian Court of Human Rights. In Europe the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 has been incorporated into the national law of several member States of the European Community; and States as well as individuals are given the right to appeal to the European Commission on Human Rights. Individuals can petition the Commission even against their own State, provided all domestic remedies had first been exhausted. Both States and the Commission have the right to bring matters up before the European Court; and if the Commission, having examined an individual's complaint, writes a report favourable to him, his complaint could be brought before the European Court for adjudication.

6.2 It is desirable that this precedent should be followed for the Asian region; and if it is, the establishment of such a Court would provide additional safeguards for the protection of the Fundamental Right declared in Article 11 of the Constitution.

should also be given the right to examine witnesses. An express
provision in the Bill would be helpful and would not
leave the matter in any doubt. The Bill should also be
extended to the Supreme Court to examine witnesses to give
oral evidence and to produce documents and papers should also be
extended to give the right to have witnesses summoned to give oral
evidence and to produce documents. To reject an application for
deciding not to proceed with it before the applicant (who very often
laments under the Bill the right of being held under detention) is given
the fullest opportunity of placing all the material before the Court
would constitute a rejection of the application without the
hearing.

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(as well as the protection of other Fundamental Rights provided
for in our Constitution) is contained in the statement made by
Mr. M. W. Ramesh Babu, Chairman of the Tamil Nadu
Human Rights Centre at the meeting of the National
Human Rights and Criminal Justice Commission in the Department of Human
Rights in Sri Lanka - namely, the establishment of an Asian Court
of Human Rights. In Europe the European Convention for the
Protection of Human Rights and Fundamental Freedoms of 1950
has been incorporated into the national law of every member State
of the European Community, and States as well as individuals are
given the right to appeal to the European Commission on Human
Rights. Individuals can petition the Commission even against their
own State, provided no domestic remedies have been exhausted.
Both States and the Commission have the right to bring matters
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The Catholic Group



The Muslim Group



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ISLAM

MAJISI

REPORT

ISLAM GROUP

ISLAM — ITS BACKGROUND AND CONCEPTS AND CONTRIBUTION TO HUMAN RIGHTS

Sri Lanka is a multi-racial, multi-national and multi-religious country. In such a country complicated issues are bound to arise from time to time. In this context it is well to remember that life is dynamic and so are men and human society. One characteristic of dynamism is that it generates friction. In terms of social values, it means differences and very often disputes.

Difference or the right to differ lies at the root of all knowledge, investigation and progress. We must strive to safeguard the right to differ, to question and dissent and even protest. At the same time we must try to ensure that our differences should act and react constructively and not otherwise. When they threaten to become acute, they must be regulated and sought to be resolved peacefully. This means, broadly, that we must all submit voluntarily, and if need be, even submissively, to what has come to be guided by the Code of Law which in Islamic terms is known as '*Shariah*'.

Man

This is the age of man. Man is beginning to be conscious of his own position in the universe. He demands that his personality and dignity shall be accorded due recognition and respect. He is beginning to take note of what his fellow beings, society and the State owe to him and of what, in turn, he owes to them.

This process needs to be stimulated and accelerated. This consciousness needs to be aroused where it may still be dormant and sharpened where it has been awakened. In this context, emphasis must be laid on man's obligations and duties to his fellow being as the principal means of securing his own rights. For, they are

obverse and reverse of the same coin to the degree to which each of us fulfils his own obligation and discharges his own duties towards his fellow beings. He promotes the climate in which human dignity, freedom and equality may nourish and achieve their fulfilment.

At this point one must pause to ask a relevant question. We have passed through the soul-shattering experience of two world wars in this century. We are in the shadow of a nuclear holocaust. Despite all the efforts that have so far been put forth to the contrary, how is it that after all these, man continues to be the victim of discrimination, intolerance and cruelty at the hands of his fellow men?

Man is daily gaining increasing knowledge of the laws of nature and he is gaining mastery over the forces of nature. In other words, science and technology are making rapid progress opening for everyone of us the prospects of a richer, fuller and happier life. One would have thought that all these would have brought in their wake an era in which man could dispense with the weapons of greed, selfishness, exploitation and dominance which had so far been regarded, though erroneously, as contributing towards the welfare and prosperity of those who were, from time to time, in a position to employ them. The truth is daily dawning on us that the prosperity of all is promoted by mutual sharing and co-operation rather than by the exploitation of their dominance of some by others. It must be our constant endeavour to bring this home to all in all the corners of the world.

ISLAM AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

The preamble recalls in general terms the values and purposes which the Declaration is designed to secure and the method by which they might be secured. These values are part of those which Islam seeks to inculcate and establish. Islam lays the duty of constantly expounding Islamic values and exemplifying them in their lives upon every individual Muslim.

It is characteristic of the Qur'an that it accords generous recognition to merit wherever it finds it. In the present context it refers

to people who adhere not to the scriptures in different terms. What actually takes place in the world is otherwise. There is intolerance, discrimination and persecution.

The Declaration bears witness in paragraph 2 of the preamble in these terms. It states: "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people".

Man's quest for values is very important. Negative values such as frustration can occur only if this is not reinforced. The most effective form of reinforcement is Religious Faith. It has to be accepted that the Universe is a definite expression of a divine purpose. This acceptance leads to the religious attitude. The acceptance should result in a mature individual aware of the complications of life. A sense of joy and satisfaction comes in fulfilling one's duties and obligations; self-awareness which requires the course of self-acceptance is the positive value that arises and this fully developed man is born whose inner spiritual growth is his one support. The religious attitude should be the one positive attitude to any venture.

TAWHEED (UNITY OF GOD)

Concept of God

The central pivot around which the doctrine and teaching of Islam revolves is the Unity of God, from which flows the whole of the Islamic way of life. From this concept comes the fundamental unity of the universe, of mankind and of life. The object of Islam is to establish a balance and to bring about an accord between the relationship of man to God, relationship of man to man and his relationship to the universe.

The Qur'an stresses the Unity of God and condemns any idea which might directly or indirectly tend to associate any other thing or being with God as a partner or equal.

Allah is the proper name of God. The Qur'an emphasises that all adoration, glorification, worship and obedience are due to Allah alone. He is the object of the heart's deepest love and devotion. To seek nearness to Him, do His will in all things, to win His pleasure,



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is the purpose of man's creation. He is the source of all beneficence. Everything proceeds from Him and is dependent upon Him. He is Independent and stands in no need of help from any other source. Inasmuch as all sources and means proceed from Him, none exists or subsists outside his control and authority.

The Qur'an teaches that God has throughout affirmed and borne witness to His existence, His Unity, His various Attributes and revealed those to mankind at every stage to the degree to which their knowledge was needed by mankind for the complete fulfilment of life in all its dimensions.

The discovery of all this was not left to man. In other words, the Qur'an repudiates the notion that man, through the use of His intellect, progressively projected His own concept of the Divine.

God is not only the First Cause. He is the Creator, the Maker, the Fashioner. He exercises control over the Universe at all times. Allah is the Creator and the Guardian of all things. The universe was created with a purpose, to help man in the achievement of the object for which he was created.

Political System

The political system of Islam has been based on three principles. That is, *Tawheed* (Unity of God), *Risalah* (Prophethood) and *Khilafah* (Vicegerency).

"*Tawheed*" means one God alone is the Creator, Sustainer and Master of this universe and of all what exists on it, organic and inorganic. The sovereignty of this Kingdom is vested only in Him. He alone has the right to command or forbid. Worship and obedience are due to Him alone, no one else sharing it in any degree or form.

Risalah or Prophethood is the medium through which we receive the Law of God. We have received two things from this source. (a) the revelation of the Qur'an, the Book in which God has expounded His Law; (b) the authoritative interpretation and exemplification to the Book of God by the Prophet Muhammad through word and deed, in his capacity as the Messenger of God.

The broad principles on which the system of human life should be based have been stated in the Book. Further, the Prophet of God has in accordance with the Divine Book set up a model of the system

of life in Islam by practically implementing the Law and providing necessary details where required. The combination of these two elements, according to Islamic theology, is called *shariah*.

Khilafah means representation. The real position and place of man according to Islam, is that of representative of God on this earth, His vicegerent. That is to say, by virtue of the powers delegated to him by God, he is required to exercise Divine Authority in this world within the limits prescribed by God. The authority of *Khilafah* is bestowed on mankind as a whole.

Every person in an Islamic society enjoys the rights and powers of the *Khilafah* of God. In this respect, all individuals are equal. No one takes precedence over another or can deprive anyone else of his rights and powers.

Therefore, the Islamic concept of Human Rights is different from that of the Western concept. In Islam sovereignty belongs to God and Man is His vicegerent. In the Western concept sovereignty rests with the people. The vicegerent, therefore, is a deputy exercising delegated powers.

The object of an Islamic State (or the Muslim community in the absence of an Islamic State) is to enjoin what is good and forbid what is evil and make justice prevail in the world. Islamic teachings, therefore, emphasise man's obligations which enjoy priority over his rights irrespective of the role he plays in the society.

The Human Rights Charter is one which is conceived by man and is subject to alteration or change. But Human Rights as conceived in Islam, granted not by any human authority but by God in the form of Divine Commandments, are accepted by every Muslim and every Muslim State is duty-bound to observe. As such, they are eternal and there is no room for revision or abrogation.

The above words from a lecture delivered by the late revered Maulana Maududi form an appropriate introduction when we are discussing the Universal Declaration of Human Rights.

ISLAM AND HUMAN RIGHTS

The Past, Present and the Future

The Prophet said, "My generation is the best, then the succeeding one, then the one after that, and thereafter, a decline will set in which will last a thousand years".¹

Subsequent events have proved the birth of its prophecy. Islamic history tells us that the decline in moral and spiritual values began in the period indicated in the prophecy. The neglect of these values began to undermine other values also.

The values of Islam in the course of history appeared to have been neglected and a process of decline had set in. But this process of decline was gradual. But it was resisted from time to time by regional revivals and efforts at reform. However, the revolution brought about by Islam was so comprehensive, so all-pervading, so broad-based and so deep that even a prolonged period of decline did not make the evil results visible to an outside observer till more than half of it had lapsed.

Articles 1 – 3

When Islamic values were weakened at the level of the leadership, those values have been inextricably woven into the social and cultural fabric of the society that they remained intact even to this day. Among these values is the concept of human equality and brotherhood. There is no race, colour, caste consciousness in Muslim society at all.

Article 4

Slavery

At the advent of Islam slavery was an established institution in all parts of the world. One of the first things that Islam did in this regard is to categorically prohibit the raiding of other tribes for purposes of taking captives, as happened in Africa and elsewhere in the 16th Century. The Prophet said that a person who sold a free man into slavery would incur the severe displeasure of Allah and would be liable to undergo chastisement.

Another source of supply of slaves was war. Prisoners were captured on the battle field in wars which were made obligatory in defence of the freedom of conscience. Islam provided numerous ways

1. *Bukhari*, Ch. IV on Eschewing Wordly Splendour.

by which the prisoners could regain their freedom. Islam's approach to the ending of slavery was practical and effective. It did not seek to end it with a stroke of the pen. It was woven deeply into the economic structure of the time.

Article 5

Torture and Degrading Punishment

There are three types of punishment Islam prescribes. The first is based on reformation of the individual—flogging is one such punishment; the second is a deterrent—amputation of the hand for theft; the third is retribution—taking of a life for a life.

The question of punishment is tied up with the hierarchy of values which Islam prescribes. In the realm of penal law certain penalties might appear to be severe and even harsh. But this is not the occasion to launch on a relative merit or usefulness of different types of punishment. One or two questions might, however, be set down as relevant in this context.

According to Islam, the obligation of punishment is not only legal but also moral and spiritual. It being so, the Qur'anic outlook on the nature of punishment is that the values nurture the life-blood of the society. Order should be preserved, if need be, even at the cost of mutilating or taking the life of the criminal and no softness should be observed, because that would degenerate finally into the adoption of expediency, the condoning of crime and the consequent deterioration of moral standards. This is what is happening in the world today.

As far as the Qur'an is concerned, the principle is, the higher the value that is violated, the severer the punishment and the lower in grade the violated value, the lighter, comparatively speaking, the punishment.

Islam has given the highest place to woman, her honour and chastity. It seeks to safeguard her honour. It is opposed to treating her indifferently or as a sex object or sex symbol. In that context it prescribes flogging for adultery or fornication. It first makes a broad-based provision for the conduct of family life, in which it is not necessary nor could any excuse be found for the undermining of family life by loose behaviour. If, after all, those provisions are made, people

resort to deviations, then such conduct is punished somewhat severely, perhaps by modern standards, in order to deter others like minded and as a corrective measure. More so, when widest possible limits are being given to man to take not one but four wives and in spite of that if he goes and commits adultery, he is flogged.

In the case of theft, cutting off of the hand is permitted, but this is preceded by the establishment of a social security scheme which gives no excuse for anyone to steal. If this social security scheme fails, then this punishment is not permitted. If the scheme is in operation and there is no excuse for stealing, then amputation is permitted as a deterrent. This punishment is intended to be inflicted where Islam is practised in totality. During time of famine this was suspended.

In the case of killing, the deliberate murderer is put to death by law. If, however, there is repentance and if the dependents of the victim agree, reconciliation is brought about and compensation is made to the aggravated party.

If the values inculcated in the individual are operative in society, sex offences, offences against property and against the human person would not take place. If these values are disregarded, then these forms of punishment are resorted to even though they appear severe and savage to people who do not take these values seriously. The incidence of crime and the infliction of these forms of punishment are not common in Islamic countries where Islamic values prevail. There is more crime on the so-called civilised centres which cry aloud against these punishments. The effectiveness of this provision is evident in the fact that in the Kingdom of Saudi Arabia merchandise is left unattended when the owner resorts to pray at the call of prayer.

Articles 6 - 11

The Qur'an sets up strict standards of administration of justice, the independence and integrity of judges, non-discrimination and the duty of witnesses to come forward to bear true witness without fear or favour or partiality. But on the decline of other values, these standards too suffered decline. It is noteworthy, however, that the office of *Quazi* (Judge) has throughout been held in high honour and enjoyed great prestige in Muslim lands. Nobody is above the law and the dictum 'The King can do no wrong' finds no place in Islam.

Article 12

Right to Privacy, etc.

Muslim society has been particularly sensitive on the subject matter of this Article. These values have throughout been sought to be safeguarded. For instance, eavesdropping, reading other people's letters, in the modern context, telephone tapping and 'bugging' would fall within the ambit of the prohibition of invasion into privacy prescribed by Islam.

With regard to family life, it is strictly enjoined that entry into even one's own house should be after obtaining the permission of the inmates.

Articles 13 – 15

Islam has set up a world-wide brotherhood. A Muslim finds himself at home almost everywhere. Muslims have been great travelers. The idea of divided and separate nationalities is for them a comparatively new and somewhat unfamiliar concept, restrictive and sometimes disturbing in its manifestations and irksome in practice. A Muslim is, by instinct and outlook, more of an internationalist, or rather a world citizen, than a nationalist.

Arab nationalism which began to be nurtured in the period immediately preceding the First World War (1914–1918) and received a great fillip during the course of that war as well as in the post-war period is a recent phenomenon. The policies and rivalries of the colonial powers, which did not fail to influence Turkey, the Middle East Mandates, followed by the partition of Palestine and the setting up of the State of Israel, are some of the factors that have brought about Arab nationalism and are giving it an aura of permanence. Even so, it is a linguistic, cultural and regional rather than a strict national concept.

Article 16

When a decline sets in any society, the weaker elements, which stand in need of protection, suffer to a great degree than the stronger elements. Muslim society has been no exception. During its period of decline, women suffered even more than men. Their position and interests were neglected and encroached upon, rather than supported and protected. They often became victims of man's greed, rapacity and passion, though outward forms were still sought to be preserved.

Compliance with legal requirements, when they could not be circumvented with impunity, was often purely literal, and sometimes served only as a cloak for deception and fraud. The spirit of equity and good conscience suffered a severe setback and men, instead of being watchful guardians over women and ever mindful of their duty to their Lord became the exploiters of the fairer and weaker sex.

In the Islamic system woman, as an heir to her parents, husband and children, and being entitled to *Mahr* (a settlement as part of her marriage contract) could occupy a position of comparative economic security. But what happened to her was that she was often deprived of her rights of inheritance, the payment of her *Mahr* neglected, and when paid, it was in many cases appropriated by her guardian. So much did this become the norm in some Muslim countries that the *Mahr* began to be described by non-Muslim writers as the purchase price for the wife paid by the husband to her guardian.

Nearer home, in Sri Lanka and South India, un-Islamic practices in this regard have crept into Muslim society due to lack of Islamic education. It is the bride's parents who have to give a dowry to the bridegroom, with the result many are the Muslim maidens who are denied the happiness of married life, with obvious evil consequences to society.

Educational standards deteriorated again, more grievously among women than among men and, in consequence, among the poorer sections, women often remained unaware of their legal rights, and knew not how to secure and enforce them.

In the matter of divorce, the position of the woman was seriously weakened. The safeguards provided by the Qur'anic jurisprudence were ignored. Even the letter of the law was watered down to suit the caprice and convenience of the husband.

The lengthy process of divorce, designed to provide greater opportunities of reconciliation was telescoped, and the continuation of a marriage became dependent upon the sweet will and pleasure of the husband. The wife's right to demand a dissolution (*khul'u*)—co-extensive under the law with that of the husband, but requiring recourse to the Quazi, so that the wife's position and property rights might be fully safeguarded—was permitted to fall into disuse.

The permission to marry more women than one at a time, subject to a maximum of four, designed to make provision for certain contingencies, has been misconstrued. The strict condition of equality of treatment :

“...marry of the women, who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then one (only)....”

(*Qur'an*, Ch. IV, verse 3).

was ignored altogether.

A constraint was imposed by the economic resources of the husband. In those cases, even this failed to operate.

Article 17

This Article, even as Islam recognises the individual's right to own property alone as well as in association with others. This does not mean that the Islamic economic system is synonymous with capitalism as opposed to Communism or Scientific Socialism of Karl Marx.

All human systems and institutions aim at realising some human value or values. Capitalism is grounded in the value of freedom. The effort to realise this value brought about revolutionary changes in the fields of social life, politics and economics. In the general social life emerged the phenomenon of increasing respect for anti-authoritarianism leading to disrespect for all authority, including that of parents, teachers and the Church. There is nothing strange in this, because freedom emerged as the highest value as a reaction to the authoritarianism of the Church, at the time when Europe was blessed with the Renaissance and the Industrial Revolution. However, this disrespect has assumed enormous proportions today leading almost to anarchy. In the political field, autocracy gave way to democracy which became a tremendous source of strength for some Western countries which provided the milieu for it to flourish.

In the field of economics, the value of freedom was realised in terms of 'free enterprise—*laissez faire* which finally built up monopoly capitalism. This process gave tremendous economic power to Western Europe and America and culminated in imperialism and colonialism, which undermined a very important human value, namely, the value of equality. Such a result was inherent in the philosophy of capitalism and could not be avoided.

However, it is human to yearn for the realisation not only of freedom but also of equality, and of several other values besides. Hence, a radical reaction came, resulting in Communism or the Scientific Socialism of Karl Márx. If Marx's mind had penetrated the true nature of the evil of Capitalism which he set out to eradicate, the result would have been something else. He, however, just picked up the value of equality and made it the foundation of his social philosophy. But with what result? There are so many states in the world today that have adopted the Marxist-Leninist ideology. Everywhere the effort to realise the value of equality in terms of Scientific Socialism has invariably resulted in depriving the people of the value of freedom. This tragedy again, like the tragedy of Capitalism, was inherent in the situation.

The truth of the matter is that if a society adopts freedom as a fundamental value, there will be no equality; similarly, if a society adopts equality as its fundamental value, the value of freedom will disappear. However, for the proper development of human communities, both values, freedom as well as equality, are necessary. The question is: How to bring about this consummation?

The Qur'an has supplied the answer in its philosophy of Unity. It seeks to establish a harmonious union between these two values through the adoption of the value of Justice, as the fundamental value on which the social order should be founded. If this is achieved, it would be possible to realise both freedom and equality in due proportion, without sacrificing either. In consequence, a synthesis of the merits of free enterprise and of controlled economy will emerge making it possible to establish a welfare society which will function on the principle, not of class warfare, or of exploitation of labour or of capital, but of mutual co-operation and concern for one another, justice, fellowship and above all, love.

This welfare society will ensure a just distribution of wealth on the basis of just reward for labour, talent and achievement, and will guarantee to every citizen the basic needs of life in terms of food, clothing, shelter, medical assistance, education and leisure. In such a state, no one, to whatever station in life he may belong, will be wronged in any manner; exploitation of man by man will disappear; freedom and equality in respect of human dignity being accepted as

the birth-right of every human being. This is what the Qur'anic philosophy of unity envisages in respect of the economic structure of society.

(Dr. Fazlur Rahman Ansari Al Qaderi, *Qur'anic Foundation of Muslim Society*).

Articles 18 and 19

These Articles are concerned with the freedom of thought, conscience, religion, opinion and expression, including the freedom to change one's religion and to manifest it in teaching, practice, worship and observance, and the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.

It may be said that Islam is on all fours with the provisions of these Articles.

Islam being a missionary religion, it must stand for freedom of conscience. It addresses itself to the whole of mankind irrespective of frontiers. It addresses itself to the whole of mankind and draws its attention to the difference between belief and disbelief and to the moral and spiritual consequences of righteous action in contrast with evil conduct. It also gives directions as to the manner in which the message of Islam is to be conveyed to mankind.

It stands for complete sincerity in all relationship and insists on conformity of conduct with profession. Hypocrisy and insincerity are condemned in severe terms.

The Qur'an invites, nay, enjoins reflection and the exercise of reason, understanding and judgement at every step. Failure to do so counts as a serious default for which an individual is accountable. It thus seeks to foster the development of these faculties and actively promote freedom of thought, opinion and expression.

Islam enjoins everybody to seek, receive and impart information and ideas through any media and regardless of frontiers. This is essential so that knowledge may be fostered and ignorance dispelled. (*Qur'an*, Ch. 39, verse 9).

The Prophet said: "The seeking of knowledge is a duty laid upon every Muslim man and woman. He exhorted, 'Go forth in search of knowledge even unto Cathay'."

Truth is a value indispensable to journalism. Too ready a credence of rumours and their wide publicity may cause serious consequences in the sphere of international relations. These rumours may have their origin in deliberate mischief or may be the product of a too active imagination, but the harm done might sometimes be serious. The Qur'an warns Muslims to be extremely careful in this respect. They are told to apply a rigorous test to everything that may emanate from a source not completely dependable and trustworthy, for carelessness in this respect might not only give rise to tension but also entail great consequences.

"O ye who believe! If an evil-liver bring you tidings, verify it, lest ye smite some folk in ignorance and afterward repent of what ye did". (*Qur'an*, Ch. XLIX, verse 6).

The tendency to broadcast all manner of news, even news that might have an effect of disturbing people's minds and agitate public opinion is deprecated.

"And if any tidings, whether of safety or fear come unto them, they hoise it abroad, whereas if they had referred it to the messenger and such of them as are in authority, those among them who are able to think out the matter would have known it. If it had not been for the grace of Allah and His mercy ye would have followed Satan, save a few (of you)". (*Qur'an*, Ch. IV, verse 83).

This verse does not deprecate merely the publishing of an irresponsible rumour or a piece of false news, rather it emphasises that news that affects public security or is likely to disturb the public mind or agitate public opinion should be referred to the proper authorities for them to determine whether immediate publication is or is not desirable in the public interest.

Article 20

This Article is designed to secure the right of free, peaceful association, which is, in fact, consequent upon the right to freedom of thought, opinion and expression. The need for its specific formulation has arisen in consequence of certain political and economic developments in recent times.

Paragraph 2 of the Article has direct reference to political and economic systems in which membership of certain parties, groups,

organisations is sought to be secured or promoted through compulsion or coercion.

Islam stands firmly and uncompromisingly on freedom of conscience. It does not seek to secure even belief in God, which is the principal concern of religion, through compulsion or coercion. Much less does it obstruct free association for the achievement of beneficent and lawful purposes through peaceful methods. Indeed, it encourages and even enjoins such association and co-operation, but forbids co-operation in sin and transgression, which obviously cannot be described as peaceful.

Conspiracies are severely condemned. All association and conferring together must be for the promotion of beneficence.

Three types of associations and conferences are encouraged as desirable and beneficent, namely, those that are charitable, promotes welfare and strengthens peace. "Whose does that, seeking the pleasure of Allah, We shall soon bestow on him a great reward". (*Qur'an*, Ch. IV, verse 114).

Article 21

This Article seeks to secure everyone's right to participate in the Government of his country, and to have equal access to public service in his country, and that the freely expressed will of the people shall be the basis of the authority of Government.

In this context, the basic Islamic concept is that sovereignty over the universe belongs to God, but that man, as God's vicegerent, is invested with authority in certain spheres as a trust, in respect of the exercise of which he is answerable and accountable to God. This principle operates in every sphere of life. The Prophet said, "Everyone of you is a steward, and is responsible and accountable for that which is committed to his care". The sovereign is responsible and answerable for his people. Every man is responsible and answerable for the members of his family. Every woman is responsible and answerable for her home and children. Every servant is responsible and answerable for the property of his master that is in his charge.

In the sphere of Government and the conduct of public affairs, the *Qur'an* lays down certain general directions which must be carried into effect, to be worked out according to the needs, demands and

requirements of each situation. It begins by prescribing as a binding obligation that authority in public matters which it describes as a trust, must be vested in the people best capable of exercising it.

This shows that sovereignty, in this context, is delegated to the people and they are admonished to commit its exercise into the hands of those who are best fitted to discharge its responsibilities. The obligation thus laid upon the people to choose their representatives wisely, is balanced by the corresponding obligation laid upon those who are entrusted with authority to exercise it justly and equitably. These two obligations, if duly discharged, would ensure good and beneficent administration of public affairs. The concluding portion of the verse implies that the Muslims might, from time to time, be tempted to depart from these two fundamental principles and to try other experiments; but they are warned that what Allah has admonished them with is above the most excellent and the most beneficent method of discharging these responsibilities. Allah will watch over the process and will call to account those responsible in respect of any default committed by them.

Islam has not prescribed any particular method for the exercise of the franchise and has left the people free to adopt such method or system as in particular situation may be deemed to be best fitted for the purpose laid down.

The State must carry out its responsibilities in consultation with the people directly or through their representative, as the situation may demand. This is necessary for the purpose of keeping the administration in touch with the people and informed of their views and also for the purpose of training the representatives.

The administration of public affairs through appropriate consultation of competent persons should be a characteristic of the Muslim society.

On the part of the people, co-operation with and obedience to those set in authority and entrusted with the conduct of public affairs is placed in juxtaposition to the duty of obedience owed to God and His Messenger. If any difference should develop, they must be settled in accordance with the precepts laid down in the Qur'an and illustrated and expounded by the Prophet. The Qur'an and its illustration and exposition by the Prophet must always prevail.

But a shift towards monarchy started after the first four *Khalifahs* and the *Khilafah* took on more and more the complexion and trappings of monarchy.

Among the lines of Heads of State of Damascus and Baghdad and later in Cordova, Granada, Fez, Cairo, Delhi, Istanbul and several other capitals, there followed a whole galaxy of brilliant, wise and beneficent rulers and administrators. Simple, pious, devoted and God-fearing; they enjoined the good and forbade evil and proved themselves righteous servants of Allah. They illustrated in their lives and example the saying of the Prophet, "The Chief of a people is truly their servant". Their annals illumine and adorn whole chapters and volumes of history. But the increasing disregard of the fundamentals laid down by the Qur'an mentioned above, began to affect other values also. This could be perceived not only in the deteriorating standards of administration but also in the decline in the social, economic and intellectual spheres. Over wide regions freedom and independence were forfeited.

While, however, a neglect of the values taught by the Qur'an was bound to entail loss and damage in every sphere, a return to those values would revive beneficence, progress and prosperity for all in every direction. Those values have been tried over long periods in vast regions of the earth by men of all races, colours and conditions and have proved their total beneficence.

Articles 22 – 28

This group of Articles is directed towards securing a reasonable standard of living for everyone through proper education, appropriate and adequate training, availability of work, gainful employment, so that human personality may have full opportunities of development, human dignity be safeguarded and human life become progressively fuller, richer, healthier and happier.

Most of these objectives are covered by the social and economic values sought to be inculcated and promoted by Islam. The rest spell out these values in specific details, the need having been manifested by current social and economic systems.

In Islam all these are part of a more comprehensive pattern which includes moral and spiritual values also, as is bound to be the case with any pattern of values sought to be inculcated by a religion. In

fact, Islam treats social and economic values as complementary to moral and spiritual values and that is why the former have been expounded in such details and have been sought to be fostered as part of a comprehensive pattern.

For instance, though the Prophet chose to live not merely a simple life but also an austere one, he warned against extreme privation as likely to affect a person's moral and spiritual evolution. "Safeguard yourselves against penury, for it might tend to push a person into disbelief". For the same reason he said, "There is no monasticism in Islam", basing himself upon the Qur'an.

Islam inculcates the acceptance of life and the beneficent use of all Divine bounties.

"Say: Who hath forbidden the adornment of Allah which He hath brought forth for His bondsmen, and the good things of His providing?" (*Qur'an*, Ch. VII, verse 32).

At the dawn of human history it was laid down that all men shall be entitled to food, clothing and shelter.

"It is (vouchsafed) unto thee that thou hungerest not therein nor art naked. And though thirstest not therein nor art exposed to the sun's heat". (*Qur'an*, Ch. XX, verses 118 and 119).

This was the beginning of the human society.

Islam put into practice the first effective concept of the Welfare State. Within a few years of the organisation of the first Islamic State, a provision of basic necessities for everyone was assured. Not only was the State fully conscious of its duties in this regard, but individuals were also keen to perform their obligations towards the widow, the orphan, the needy, the captive, the debtor, the neighbour and the wayfarer.

Long before the general diffusion of prosperity had reduced the need and multiplied the resources, public as well as private, available for meeting it, the Prophet's exhortation and his example had so stimulated and sharpened the concept of human brotherhood among the Muslims, that sharing their all even in the midst of adversity, became an outstanding Muslim characteristic. The prophet had suggested that in the case of extreme necessity it would be well to follow the

the example of the Ash'ari Tribe "who when confronted with shortage of provisions, collect all they have and divide equally among themselves. So, they are of me and I am of them".

The Qur'an bears witness that these exhortations were taken to heart by the Muslims.

Of the Ansars of Medina and the early refugees settled in Medina, it says :

"Those who entered the city and the faith before them love those who flee unto them for refuge, and find in their breasts no need for that which hath been given them, but prefer (the fugitives) above themselves though poverty become their lot. And whoso is saved from his own avarice—such are they who are successful". (*Qur'an*, Ch. LIX, verse 9).

In the time of the Abbasid Khilafah there was scarcely anyone to be found in any city of the Muslim domains who was in need of, or was willing to accept charity. This was symptomatic of the tremendous revolution that had already been achieved in all spheres of life—social, economic, intellectual, moral and spiritual. Science, art, learning and philosophy burgeoned forth and permeated every layer of society. History, poetry, song and fable, all bear witness to it. This is proof that Islamic values, as set forth in the Qur'anic illustration and expounded by the Prophet, had been put into effect and had borne rich and plentiful fruit.

The basic objectives of these articles were thus achieved to a high degree under the Islamic system in the conditions that prevailed 13 centuries ago. Some of the specific details set out in the Articles are designed to meet conditions and needs which have emerged and manifested themselves in recent times. The larger objectives are still the same and Islam is in full sympathy with them.

If any of the means and methods set forth in these Articles are found to be out of step with Islamic values—social, economic, cultural, moral and spiritual—alternative means and methods more in accord with those values can be availed of for the purpose of achieving the agreed objectives.

Articles 29 and 30

Like most subjects affecting human personality, the subject of human rights has many facets. Freedom rightly occupies a place in

the forefront. Yet, to ensure due freedom to everyone, freedom of each must be curbed, restrained and regulated. As has been wisely observed, our only freedom is the right to discipline our freedom.

The Declaration has not overlooked this aspect. These two Articles take care of it. It is a truism that every right carried with it a corresponding duty. It is the due observance and discharge of the duty that fully safeguards the rights.

It must be recognised that legislative, administrative and judicial checks and balances, essential as they are and scrupulously as they must be devised and maintained, can cover but a sector of the total field of human rights. Further, legal sanctions, however valuable in their reparatory and deterrent aspects, can come into operation only after a breach of obligation has occurred. This breach must come to the notice of authorities, and established by relevant, admissible and cogent evidence. This means, first, that the whole field cannot be made subject to legal sanctions, and, secondly, that the sector which may be covered cannot be completely and effectively safeguarded.

What is further needed is a lively consciousness of the unity of man and the interdependence of all in present day conditions. That consciousness can be aroused at various levels, and through the acceptance of a variety of concepts and values. The most effective and pervasive concept, however, is that mankind—all men, without distinction of colour, creed or race—are the creatures of the One Living, Loving, Almighty, Merciful and Compassionate Creator to Whom the welfare of each is equally dear, to Whom all must return and to Whom all are accountable and responsible for their thoughts, designs, motives, actions and omissions. Unless that concept grips and inspires the hearts and souls of men, it is not possible to establish true brotherhood and that equality between all grades and sections of mankind. Here we enter the province of religion.

True brotherhood can be established universally only through firm faith in the Unity of the Creator. That faith alone has the power to make our approach to each fellow being of whatever race, colour, creed, religion or language, one of eager friendship and deep devotion. Each one of us must recognise every other as a creature and servant of the Lord of the Universe Whom we acknowledge, accept

and worship as our Creator and Maker, and to Whom the deepest devotion of our hearts and our truest allegiance are due. Through Him and for His sake we can readily and truly accept each human being as a comrade and brother, a fellow traveller on the same path, a fellow participant in the same glorious adventure which is the seeking in all things. The will and pleasure of our Lord and Creator, Most Glorious, ever Merciful. This is the only way in which the welfare of every one of our fellow beings can become a matter of as grave a concern to us as our own.

The unity of man derives directly from the Unity of the Creator. It is only by virtue of our relationship through God, the Creator and Maker of us all, that we can arrive at a true realisation of our own unity. There are, of course, other bonds—blood relationship, common nationality, common ideals, common pursuits, devotion to a common cause, etc.—and these bring about association, co-operation, sympathy and a sense of belonging—but while they tend to bring together, they can also divide individuals, groups and nations. None of them can be relied upon to promote, foster and cement unity in all situations and circumstances. It is only the reality and firmness of faith in a common—Beneficent Creator that can unite and foster sympathy, love and devotion.

The consciousness of accountability, both here and hereafter, resulting from such faith can ensure the due discharge of the duties and obligations that we owe to our fellow beings in all spheres of life. These in turn comprise all their rights and freedoms. If a fraction of the care and concern that we devote to obtaining recognition of and respect for what we claim as our rights could be transferred and devoted to the scrupulous discharge of the duties and obligations that we owe to our fellow beings, all human rights in every sphere of life would be fully safeguarded.

In conclusion we find, subject to the limitations we have observed, the Declaration constitutes an epoch-making formulation of human rights, based upon the widest possible consensus so far achieved and recorded by man. In spirit, the Declaration, as far as it goes and Islam are in accord. In respect of certain specific details, the Declaration employs language which is too general; Islam spells out the necessary safeguards. Occasionally, but unavoidably, there is a difference of approach. Islam and the Declaration are both concerned with human

welfare, prosperity and happiness; but while the Declaration is concerned to secure them at the material level, through physical means and during this life only, Islam being a religion, is concerned to secure them at all levels, through every available means, both here and hereafter.

Islam recognises the inter-play and interaction of all values and neglects none. It pays due regard to the need of co-ordination between them, which necessitates that a certain primacy must be assigned to and observed in respect of moral and spiritual values. These latter are not the primary concern of the Declaration. This divergence of approach leaves open the possibility of conflicting provisions for the regulation of a specific detail. When this happens, and the conflict proves reconcilable, then it is obvious that so far as Islamic society is concerned, the Islamic provision must continue to have priority.

Subject to this somewhat remote contingency, the revival and strengthening of true Islamic values would only help and promote the achievement of the objectives of the Declaration.

In the context of Sri Lanka, the principles we cherish and uphold face the risk of succumbing to ideas and philosophies alien to our culture and tradition, unless we take energetic steps to not only revive them but also to hand them down in all their purity to the future generations. This could be done only through education which aims at the total development of man. It is through this education that future generations will be able to comprehend their obligations to society and thereby their own rights.²

N.B.

With regard to the Paper on "Islamic Concept of Human Rights to a Social and Just Society", presented by Mr. Kamil Azad, since he was absent his Paper was not considered by the Group and *is not to be printed*.

ANNEX

HUMAN RIGHTS IN ISLAM

Given below are rights regarding protection of life, justice, equality, freedom, privacy, property, economic stability, etc.

2. Please see annex for details on the saying of the *Qur'an* regarding Human Rights.

Right to Protection of Life

According to the Qur'an, human life is sacrosanct. Of several verses which affirm the inviolability of human life, except for a just cause, the following may be noted :

"Nor take life—which God has made sacred—except for just cause, and if anyone is slain wrongfully, we have given his heir authority (to demand *Qisaas*—requittal—or to forgive) : but let him not exceed bounds in the matter of taking life; for he is helped (by the Law)".

Right to Justice

The first and foremost duty of Prophet Muhammad (on whom be peace) was to establish justice, and this continues to be the duty of the community's Ruling Agencies. Not only are the public authorities bound to provide justice to all, everyone has a right to protest against injustice. In this regard the following verses, amongst others, may be noted :

"O ye who believe! Stand out firmly for God, as witnesses to fair dealing, and let not the hatred of others to you make you swerve and fear God. For God is well acquainted with all that ye do".

"We sent aforetime our apostles with clear Signs and sent down with them the Book and the Balance (of Right and Wrong) that men may stand forth in justice".

Right to Equality

Between man and man, the Qur'an recognises only one criterion for superiority and that is righteous conduct (*Taqwa*). All distinctions based on parentage, tribal relationships, colour and country are irrelevant. The following verse is the great Charter in respect of this right :

"O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily, the most honoured of you in the sight of Allah is (he who is, the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)).

The Prophet has said :

“O men, all of you are descended from Adam and Adam was made of clay. There is no pride whatsoever in ancestry. There is no merit in an Arab against a non-Arab. Verily, the most meritorious among you in the sight of God is he who is God-fearing”.

The Right to Freedom

Modern constitutions divide freedom into various sub-divisions like freedom of expression, freedom of movement etc. Qur'an on the other hand, amongst other directions, makes one comprehensive declaration that no person in authority, even a Prophet, has the right to subjugate another in any manner. Allah says :

“It is not (possible) that man, to whom is given the Book, and Wisdom, and the Prophetic Office, should say to people: ‘Be ye my worshippers rather than God’s’. On the contrary (he would say) : ‘Be ye worshippers of him who is truly the Cherisher of all for ye have taught the Book and ye have studied it earnestly”.

The Right to Privacy

Privacy according to the Qur'an is the right of everyone. It is essential for a full flowering of personality. The following verses may be noted :

“O ye who believe! Enter not houses other than your own, until ye have asked permission and saluted those in them : that is best for you, in order that ye may heed (what is seemly). If ye find no one in the house, enter not until permission is given to you; If ye are asked to go back, go back; that makes for greater purity for yourselves: and God knows well all that ye do”.

Economic Rights

It is the duty of the community of believers to look after those who have suffered permanent or temporary disability, and, for that reason, cannot contribute to the social security provided by the system of *Zakat*. Allied to this obligation is the natural corollary that believers must have an opportunity to labour and to acquire the good things of life and to get full and fair compensation for their labour. See the following verses :

“And in no wise covet those things in which God hath bestowed. His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask God of His bounty. For God hath full knowledge of all things”.

“And render to the kindred their due rights, as (also) to those in want, and to the wayfarer: but squander not (your wealth) in the manner of a spendthrift. Verily, spendthrifts are brothers of the Evil Ones; and the Evil One is to his Lord (Himself) ungrateful”.

“Make not thy hand tied (like a niggard’s) to thy neck nor stretch it forth to its utmost reach, so that thou become blame-worthy and destitute”.

“Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes)”;

“And in their wealth and possessions (was remembered) the right of the (needy). Him who asked, and him who (for some reason) was prevented (from need), him who (for some reason) was prevented (from asking)”.

Right to Property

There are many verses in the Qur’an which prescribe rules of conduct in which spending from one’s wealth is the operative part: for example, payment of *Zakat*, *Sadaqah* and making of certain expiations. People are encouraged to earn by lawful means and to spend their wealth in accordance with the guidance provided by Allah as in the following verses :

“O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill: nor kill (or destroy) yourselves: for verily, God has been to you most Merciful”.

“O ye who believe! There are indeed many among the priests and anchorites, who in falsehood devour the substance of men and hinder (them) from the Way of God. And there are those who bury gold and silver and spend it not in the Way of God : announce unto them a most grievous penalty”.

"And when the Prayer is finished, then may ye disperse through the land, and seek of the Bounty of God: and celebrate the Praises of God often (and without stint) that ye may prosper".

i. The dignity of man :

"We have honoured the sons of Adam". (*Al-Qur'an*).

ii. No distinction in dignity and fundamental rights between one man and another :

"There is no advantage for an Arab over a non-Arab or for a white man over a black man excepting by piety". (*Saying of the Prophet*).

iii. The call for the unity of the human race :

"Human creatures are the families of God and the ones who are most loved by Him are those who are most useful to their families". (*Saying of the Prophet*).

iv. The call for the common good as well as for the performance of all kinds of righteous deeds towards all human beings :

"O mankind! We created you from a single (pair) or a male and a female and made you in nations and tribes that you may know each other (not that you may despise each other). Verily, the most honoured of you in the sight of God is he who is the most righteous of you". (*Al-Qur'an*)

"God forbids you not, with regard to those who fight you not for (your) faith nor drive you out of your homes, from dealing kindly and justly with them; for God loves those who are just". (*Al-Qur'an*).

v. Religious freedom to every one :

"Let there be no compulsion in religion".

"Will you then compel mankind against their will to believe?"

vi. Prohibition of any attack on the property or the life of a man :

"You are forbidden to attack the property or the lives of others". (*Saying of the Prophet*).

vii. House immunity for the protection of man's freedom :

“O! you who believe, enter not houses other than your own, until you have asked permission and saluted those in them; that is best for you, in order that you may heed (what is seemly). (*Al-Qur'an*).

viii. Reciprocal responsibility among members of society, as to the right of every person to lead an honourable life, by levying a certain tax on the wealth of those who are financially able, so as to be paid to those in need.

“And in their wealth the beggar and the deprived have due share” (*Al-Qur'an*).

“Ye can pass beyond the zones of the Heavens and the Earth, pass ye! Not without authority shall ye be able to pass!” (*Al-Qur'an*).

ix. Enforcing penalty on all those refusing to be schooled or to do schooling, a position not yet available in any other state :

“Let people learn from their neighbours and let others teach their neighbours, otherwise I will be fast in my punishment” (*Saying of the Prophet*).

x. Imposition of health quarantine in the event of any epidemic, an Islamic practice for the last 14 centuries :

“If an epidemic breaks out in the area and you happen to be there, do not leave it, and if you happen to be away, do not try to enter it”. (*Saying of the Prophet*.)

will. These immunities for the protection of man's freedom :
 "Of you who believe, enter our houses after their own
 own will; you have asked permission and refused
 these immunities; that is best for you in order that you
 may find what is sound." (Al-Jawab)
 the responsibility among members of society, as in
 the right of every person to lead an honorable life, by
 levying a certain tax on the wealth of those who are finan-
 cially able, so as to be paid to those in need.
 "And in their wealth the beggar and the distressed find
 due right." (Al-Jawab)
 "It can give beyond the scope of the Haraj and the
 Earth give you that without anxiety, what we also
 desire." (Al-Jawab)
 in. Endowing property on all those tending to be withdrawn or
 to be returning a position not yet available in more active
 state :
 "Let people learn from their neighbours and let others
 learn their neighbours, otherwise I will be lost among
 suchness." (Jawab of the Prophet)
 a. imposition of wealth penalties in the event of any calamity
 as future security for the land in countries :
 "If an epidemic breaks out in the area and you happen
 to be there, do not leave it, and if you happen to be
 away, do not return until it." (Jawab of the Prophet)

CATHOLICISM

CATHOLICISM

REPORT

CATHOLIC GROUP

Scope

The discussions within the Catholic group were structured in relation to five broad objectives :

1. to look at the Catholic community as part of the larger social community of Sri Lanka and examine its relationship with the other religions and their fundamental traditions and teaching on human rights;
2. to attempt to trace the development of awareness of human rights within the Catholic community in this country and the Catholic contribution to the protection and promotion of human rights;
3. To review current Catholic teaching and declarations on the subject of human rights ;
4. to evaluate the importance of the present situation both locally and globally as a determinant of the future;
5. to assess the contribution which Catholic thinking concerning human rights can make to the Sri Lankan society of the future; to examine contemporary society with a view to adverting to the erosion of human rights and the dangers to their exercise and thereby to promote public dialogue and public vigilance to ensure the protection of human rights.

The group did not choose as its point of departure the Universal Declaration of Human Rights because in its view that document tends to be juridical in its expression, individualist in emphasis and restricted in its perspective on community. However, the group recognizes the importance of the Declaration as a common standard of achievement for all peoples and all nations.

Historical setting

The current awareness of human rights and their significance is the result of a long evolutionary process which goes back in Sri Lanka's history to pre-Buddhist society. Early social organisation appears to

have been communitarian and the aspect of duty received emphasis. Even as early as the fourth century B.C. there appears to have been the concept of community, not merely of a village. *Gamani* (leader of the community) was the title of the person who stood at the head of the village community before the institution of monarchy.

The story of the first Sinhalese king, Pandukabhaya (377 B.C. to 307 B.C.) is overlaid with much legend and folklore. However, there emerges from the historical narrative the concept of a social order the maintenance of which was the responsibility chiefly of the ruler. He had obligations to the social community, chief among them being the provision of a water supply for the people and for the irrigation of paddy fields, the provision of cleansing and scavenging of the streets, sanitation, care of the sick, a cemetery, and the building of shrines for the veneration of the various cultic spirits. Here then was recognition by the ruler that it was his obligation to ensure that the basic material needs of his people organised as a community were met and that facilities had also to be provided for the people to give expression to certain non-material needs by way of worship, veneration or propitiation. That the performance of certain tasks considered menial at the time was entrusted to *candalas* (outcastes) is indicative of a division of labour based on a social hierarchy of occupational groups.

It would appear that this division of labour owes its origin to the system of caste which prevailed in India from ancient times. But in Sri Lanka the hierarchical order of caste was different from the Indian and the occupational groups exceeded the four broad categories of the Indian system. Besides, in Sri Lanka caste was a secular system and had no religious sanction in Buddhism.

Sri Lanka's proximity to India and its strategic position as an island on the sea routes to the east and west made it open from ancient times to external influences, chief among them being the Indian inheritance, particularly during the ancient and medieval period of the Island's history. Despite its proximity to the Indian sub-continent, Sri Lanka being an island, was able to maintain its individuality. Hence, even the Indian influence and the Buddhist tradition, which are part of the country's inheritance, found their own peculiar expression in Sri Lanka. While there are commonalities with the Indian tradition there is also a distinct Sri Lankan cultural expression.

In the Hindu and Buddhist cosmologies and time-frame man's sojourn on planet earth is a series of existences and not a single life span. And the entire cosmos is viewed as a coherent, self-ordained whole with its own organising principle and its own laws. Not only is there kinship of man with other living beings and with Nature and links with other planets but also man's striving for self-perfection necessitates the achieving of right relationships between man and man and between himself and other living beings. There is thus the concept of a cosmic community within which there are innumerable smaller communities.

Within the community which is man's habitation the dominant concept and cohesive principle is one of *Duty* — of ordered relationships, of norms of conduct, of reciprocal obligations, from which emerge rights. Man's striving for the development of himself and his perfection including expiation for the evil of his previous births which condition his present existence is within the context of community.

In the Buddhist view, not only has the individual to strive for his own perfection and make expiation for the evil-doing of his past but also he has the obligation of helping others, especially the handicapped and those who suffer deprivation to make expiation for their own past evil. It is by fulfilling one's obligations to community that rights arise. And, ordering the whole complex of man's relationships is the *Dhamma*, the pursuit of which helps reduce evil, furthers the reconciliation of man to man and enables him to achieve liberation from his self-centredness.

Traditional Governance of the Sinhalese

In the traditional governance of the Sinhalese the ruler, too, was subject to the dominant concept and cohesive principle of *Duty*. He had to accept the indigenous social organisation and uphold its value system. He had obligations to his subjects, who in turn had obligations to him and the social community. The exercise of power was a ministry to the ruled. And the conscription of labour by the king was for the execution of works considered necessary for the welfare of the community. The hydraulic civilisation of the ancient Sinhalese owed its achievement largely to its communitarian organisation.

While it was the king's duty to ensure that the major irrigation works which served the requirements of more than one village com-

munity were maintained properly, the principle of subsidiarity was applicable to the maintenance of the smaller village tanks, which was the collective responsibility of the village communities that depended on them. The control of water supply and its equitable distribution was the ruler's responsibility. It is significant to note that although the cultivator had an individual right to his paddy land the right to the use of water was that of the collective and water management was determined in relation to the needs and benefit of the community. So also the decision-making regarding which crops to cultivate and where. There was mutual aid and shared responsibility in the cultivation process, too.

In self-governance at the local level, the *Gam Sabha*, the village council, arrived at its decisions according to the principle of consensus. Wielding an integrative influence over the entire community in ancient and medieval Sinhalese society was the village temple, which was the meeting place of the laity. It was at the temple that the *Dhamma* was preached, ritual and ceremonies were performed and learning and the arts promoted. Thus the temple, tank and the village were the symbols of the traditional community organisation which was linked by a reciprocity of duty.

The Tamil population of Sri Lanka also has a long religious-cultural tradition in which duty to the community receives emphasis. In ancient times the Tamil influence was confined to the northern part of the Island where the Tamils had settled, but from about the second century B.C. when the early Tamil rulers of Anuradhapura held sway for some time, Hindu influence spread gradually. From about the seventh century A.D. the Tamil element became predominant in the northern part of the Island. At the time Christianity came to Sri Lanka, in the sixteenth century, there were in addition to the Sinhalese-Buddhist and Tamil-Hindu populations small communities of Muslims in several coastal areas in particular.

Advent of Christianity

It was into such a society with its own long-established religious-cultural traditions and value systems that the Franciscan missionaries who accompanied the Portuguese colonial power introduced the Catholic form of Christianity. In return for special privileges granted to it by the Pope, Portugal was required to extend its patronage (*padroado*) to the Church in its colonies by providing them with missionaries as well as funds for their maintenance.

The advent of Christianity to Sri Lanka was in the wake of its rise as a political power in the West and the growing belief within the Catholic Church that it represented the "perfect society". The Church's power-consciousness appears to have affected its attitude to the long-established religions of Asia which perhaps explains its failure at the time to discern their values.

The introduction of Christianity by a colonial power and the attitude of hostility on the part of the Portuguese officials and missionaries towards the religious traditions of the indigenous people resulted in a strong antipathy to the Portuguese and a suspicion of Catholicism itself. But where the missionaries presented themselves not as agents of a foreign power but as teachers of religious faith they were received with respect and friendliness even by the Buddhist kings of the time.

With a few exceptions, it was the failure of the foreign missionaries of the time to seek to understand the religious traditions and culture of the indigenous people, which they considered "pagan" and the attempt to impose a supposedly "superior" culture pattern on the indigenous population which caused resentment and even hostility.

The Church's power-consciousness and attitude of superiority affected the credibility of its communication of the Christian world view, in particular its perception of man.

The Christian Vision

The Christian vision of the universe as being God's creation and that all men are brothers under the fatherhood of God, introduces to the Sri Lankan tradition a new interpretation of the concept of human quality and the dignity of the human person. Also new was the teaching that man has but one life to lead and that, here on earth. And man's ultimate destiny is to share for ever after his sojourn on earth the beatitude of God. Man is essentially developmental. He is not born perfect but has to grow during his life towards a series of ends which would enable him to reach self-fulfilment, self-achievement, the full flowering of himself. Man has therefore not only an inclination but also a duty to develop himself and grow from imperfection and the propensity to evil because of the taint of original sin, towards his own perfection. This he does in and through society, in relationship with other persons. His growth to self-fulfilment also

obliges him to participate in the development of society, too. By his very nature as an intelligent, free, responsible and social being man has a mutuality of rights and obligations. His very nature demands freedom for the exercise of rights and the performance of obligations. Man's obligation to tend towards his development is the source of his rights. He must be free to tend toward his goals. He must have the possibility and the liberty of achieving them. Rights and duties are reciprocal for the individual, for the family, for social groups and the State itself.

The right to a human existence in keeping with his dignity, the right of association through families and social and economic groups and the right to self-perfection and the obligations that arise therefrom rank high in the hierarchy of rights and duties, for they are basic to man's existence. As a social being, man belongs to a series of communities which are necessary for his development and in the growth of which he participates. There is a relationship of interdependence between himself and those communities. Social, though he is, he has a right to self-identity in the collective, but the common good would take precedence over the good of the few. While the Christian accepts the validity of social groupings, no group or social, political, economic or religious structure and not even the State has a total claim on the human person, who has a relationship in conscience with God. In the Christian view, rights and duties have their source and sustenance in Natural Law, which is God's plan for man.

Catholic Contribution to Sri Lankan Society

Thus Catholic teaching at the point of its insertion into Sri Lankan society presented a vision of life which while accepting some elements of the Buddhist and Hindu traditions such as the dignity of the human person, the obligation of duty to the community, the primacy of the common good, the obligation to help the afflicted, the handicapped and the needy, offered a rationale and motivation for the pursuit of those values, which was substantially different from both the Buddhist and Hindu positions. Exemplifying those values, the Catholic Church engaged in educational activities on a wide scale through a network of schools of its own. Although there were shortcomings in such work, by bringing education within the reach of sections of the population, which up to then had little or no opportunity

for such facilities, it afforded less privileged persons in particular the means of self-development and social mobility, which enabled them to overcome the constraints of caste and class.

The Church also provided institutional care in homes which it established for the sick, the orphaned, the aged, the handicapped and the destitute, thereby giving a credible witness to the right of the helpless, the handicapped and the deprived, too, to a human existence in keeping with their innate dignity.

Communitarian witness to justice and concern for those categories of deprived and handicapped persons was also given by the Church through the various communities of men and women who dedicate themselves to the religious life, taking a vow of poverty, sharing their goods in common and spending themselves in the causes they serve.

The Catholic Church in this country presented this vision of man in relation to God and society and gave witness of it primarily through its activities in education and care of the sick and the handicapped, but its alliance first with the Portuguese colonial power and its comparatively privileged position during the British colonial administration gave it a foreign image.

While upholding the person's right to self-perfection and the freedom of conscience, in the schools which the Catholic Church set up and ran, it refused till recently to teach the non-Catholic children their respective religions on the ground that to do so would be to uphold indirectly what the Church considered to be error. This was based on the principle held in the Catholic Church that error had no rights. It was applied also to persons who were considered to be in error. This principle was later clarified in keeping with man's right to follow his conscience, and at the Second Vatican Council the concept of religious liberty was clarified. And before the introduction of the Conscience Clause in the Education Code non-Catholic children in some Catholic schools were obliged to attend classes in Scripture. The Church's self-understanding and perception of the rights and duties of its own members has grown over the years. Likewise its attitude towards other religions, particularly the pre-Christian religions of Asia. There is now a dialogic approach to them and a greater realisation that God manifests himself in history and works through

other religions as well and through persons and communities of no religion, too. The Church's growing self-awareness is also a process of self-purification.

Where earlier the Church tended to speak of rights and duties in the abstract and did not seek to evaluate the social context in which they occur, it is now increasingly concerned with integral human development and seeks to incarnate itself in the societies and cultures in which it lives.

Present-day Catholic Thinking

Present-day Catholic thinking on human rights reflects an evolution in the Church's own social teaching and makes explicit its position that religion is part of the total social reality and that the religious vision of life is integral, admitting of no dichotomy between the sacred and the secular in that every human activity has a moral dimension. While each sphere of life has its own autonomy and competence, it is the obligation of religion to be so present in society as to give witness to those values which it seeks to proclaim and protect. To the extent that religion alienates itself from society it undermines its own credibility and erodes the basis of its validity. And where society divorces itself from religion it denies itself those values which give deeper meaning to life and human relationships beyond the merely material.

Specifically therefore, the *Pastoral Constitution on the Church in the Modern World* issued by the Second Vatican Council held from 1963 to 1965 articulates succinctly the intimate bond between the Church and mankind. The opening passage of that document reads: "The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these too are the joys and hopes, the griefs and anxieties of the followers of Christ. Indeed, nothing genuinely human fails to raise an echo in their hearts. For theirs is a community composed of men. United in Christ, they are led by the Holy Spirit in their journey to the kingdom of their Father and they have welcomed the news of salvation which is meant for every man. That is why this community realises that it is truly and intimately linked with mankind and its history....."

Almost seventy years before this Second Vatican Council document, *Gaudium et Spes*, the social teaching of the Church as distinct from the general body of Christian philosophy and doctrine came to

be made explicit with that great encyclical of Pope Leo XIII, *Rerum Novarum*, (in 1891) the first papal pronouncement concerned specifically with social problems. That document and the social encyclicals that followed were responses to actual situations which threaten not only the rights of individuals but also the rights of groups as well as of nations. They outline principles governing contemporary man's responsibility for social structures and institutions and seek to foster among Catholics a community sense of responsibility to challenge injustice.

Justice in the Bible

But why this concern for justice? The thrust of the Biblical message is a call to justice. The Old Testament focus is on a just God, and the prophets being regarded as the conscience of Israel, repeatedly call its people to justice. God is just in Himself, in his actions in history and wants man to be just and build an order of just relations. Sacred history begins with deliverance from the captivity of Egypt (*Exodus* 3) and continues throughout the Bible. Every intervention of God in favour of his people is seen as an act of justice, liberative and salvific (*Psalms* 40, 10; 33, 4-5; 89, 14).

God is just in himself and in his actions in history but he wants man to be just too. Men share in God's justice—

1. as a gift of God given to kings, leaders, the Messiah, the people;
2. in imitation of God. Man is created in God's image and hence must strive to be like him (*Genesis* 1.26);
3. as a proper human achievement, the result of man's own endeavour to build a just human order.

The message on the imperatives of justice is found in all sections of the Old Testament, particularly in the Prophets, who fulminate against the unjust, the oppressors and the exploiters.

On injustice—

Isaiah 5 : 8; 59 : 3-4; 59 : 8.

Habakkuk 1 : 1-13; 2 : 6; 2 : 9; 2 : 12; 2 : 15.

Amos 2 : 6-7.

Jeremiah 22 : 13-19.

On the rejection of religious formalism—

Amos 4 : 4-5; 5 : 21-24; 8 : 4-6.

Hosea 4 : 7; 5 : 6; 6 : 6; 6 : 7-10; 7 : 1-2.

Micah 6 : 6-8.

Isaiah 1 : 10-13; 3 : 13-15; 5 : 11-13; 58 : 3-7.

Jeremiah 7 : 21-23.

On violence against human dignity—

Habakkuk 2 : 6; 2 : 9; 2 : 12; 2 : 15.

Ezekiel 7 : 2-14.

Isaiah 10 : 1-4.

On bribery and corruption and perversion of the judicial processes—

Amos 5 : 12.

Isaiah 10 : 1-2; 1 : 23.

Amos 2 : 6; 5 : 7 and 10-12.

Micah 6 : 10

On the poor and the rich—

Hosea 12 : 8;

Isaiah 3 : 16-26; 5 : 8; 5 : 11-13.

Micah 2 : 2.

Jeremiah 5 : 1-6.

Amos 4 : 1; 5 : 11.

On oppression of the poor—

Amos 8 : 4-7; 4 : 1-3.

Isaiah 3 : 13-15.

Ezekiel 34 : 1-6.

On power-service—

Amos 2 : 6-7; 4 : 1; 5 : 10-12.

Isaiah 10 : 1-2.

In the New Testament we see Jesus as the promised Messiah of the Old Testament. He accepted the great prophetic traditions of Justice in the Prophets and the Law (*Matthew* 5 : 17-18).

He preached the coming of the Kingdom of God, gave us its charter in the Beatitudes, its structure in the parables, its moral demands in his preaching. He felt that his life, words and deeds were the coming of the Kingdom (*Matthew* 12 : 28; *Mark* 1 : 15).

The Kingdom of God is a complex of relationships, reminders and responses of those who hear the word of God and do it, those who do God's will or at least seek to do it.

In his first sermon at Nazareth Jesus announces his programme for the Kingdom as the bringing of the good news to the poor, proclaiming release to the captives, giving sight to the blind, setting at liberty the oppressed and proclaiming a jubilee year of justice and pardon (*Luke 4 : 18-21*). In other places too, Jesus describes his work in similar terms as setting up of a Kingdom of Justice especially for the poor, the weak, the marginalized (*Matthew 6 : 33; 25 : 31-40; Luke 7 : 22; 19 : 5-10; 16 : 19-31*). The eight beatitudes of the Sermon on the Mount clearly specify the values of the Kingdom (*Matthew 5 : 3-11*). Justice is a major value. It is situated in a complex of other values—mercy, compassion, purity of heart, love of peace, detachment, willingness to struggle for justice.

Luke (6 : 20) says the poor and the destitute are blessed and the Kingdom belongs to them. They are the beneficiaries of the total revolution that the Kingdom will bring. Jesus releases a movement in history that will liberate all men both rich and poor from the whole range of oppression, personal and social that constrain and diminish them.

James writes strongly in his letter (*1 : 9-11; 2 : 1-7; 2 : 14-17 and 5 : 1-16*) of the futility of faith without good works, in particular of the imperative to help the poor and the oppressed.

Jesus not only preached justice but also fought for it. He championed the poor, those who mourn, those deprived of their legal rights or illegally mistreated, who have been swindled, abused or insulted, those who existed on the fringe of Jewish society, the publicans and sinners. In the circle of his own disciples he treated women with complete equality. In his demonstrative concern for children he gave them new value, for children had no value for their own sake in Jewish society.

The Kingdom of God is dynamic and evolutionary. While there is a divine element in the coming of the Kingdom there is also human effort involved (*Revelation 21*).

Within the Church there is now an increasing awareness of the need for action for justice. The World Synod of Bishops in Rome in 1971, therefore, proclaimed : "Action on behalf of justice and parti-

cipation in the transformation of the world appear to us as a constitutive dimension of the preaching of the Gospel or in other words, of the Church's mission for the redemption of the human race and its liberation from every oppressive situation".

The social encyclicals are in that tradition of concern for justice in the world. *Rerum Novarum* (Condition of Labour) was followed in 1931 by *Quadragesimo Anno* (on reconstructing the Social Order) by Pius XI; *Summi Pontificatus* (on the Function of the State in the Modern World) by Pius XII in 1939; *Mater et Magistra* (Christianity and Social Progress) by John XXIII in 1961 and *Pacem in Terris* (Peace on Earth) also by John XXIII in 1963; *Populorum Progressio* (Development of Peoples) by Paul VI in 1967 and *Redemptor Hominis* (Redeemer of Man) by John Paul II in 1979. All these not only outline principles but also seek to analyse social and economic structures and urge their radical reform.

Catholic Bishops of Sri Lanka on Human Rights

The Catholic bishops of Sri Lanka in a joint pastoral on Human Rights and Duties written in 1955 in a socio-economic climate less difficult than it now is, referred to the social problem as having come to take first place in most minds. Commenting on wages as having first claim on industry, they said. "A minimum living wage is, therefore, absolutely essential, i.e. one adequate for the bare necessities and decencies of human life."

"This is a claim of elementary social justice and not of charity and without it no economic system can be considered equitable".

The bishops then went on to discuss the need for a family wage, for equitable distribution, the right to expect the Government to provide the citizen with opportunities for earning his livelihood. "It is the Government's duty to take measures to provide employment, decent housing, sufficient food and necessary sanitation. The continued existence of unemployment and slums is therefore a standing indictment of a Government's inefficiency or inability to cope with the problems of society". Referring to the workers' right to form trade unions, the bishops said "it is an inherent natural right not derived from the State; in fact it is the source of the very State itself. Therefore, since the State exists in consequence of the right of human association, it cannot deny to others what is the basis of its own existence".

Contemporary Concern

The contemporary concern for human rights and justice among Catholics in this country reflects on the one hand a global concern. In the Christian perception there is a unity of the human species in spite of existential differentiations of race, nation and other communitarian groupings which are all legitimate in a hierarchy of values.

In the present situation there is a tendency to legitimise an individualistic perception of man, viewing him apart from his legitimate communitarian dimension. It exposes the weak to depredations by the strong in terms of competitive efficiency to which the world gives an implied moral legitimacy.

There is today a world economy and a world society in formation and the Christian is concerned with justice in the world order because individuals even in remote corners of the world are deprived of human rights by the exploitative elements in the world economy—especially the abuse of high finance and high technology. Sophisticated technology, international competition, monopoly practices and the international control of resources and employment of labour to serve the world market are all part of that system, which is moved more by economic demand and less by human need.

The global factors have repercussions within our country, too, and affect the rights, particularly of the poorer classes of the population. Besides these, there are other factors of local origin which have resulted in a growing consciousness among the people of their rights and of the dangers to their exercise. Among these factors are the spread of secondary and tertiary education, the expansion of the mass media, increasing politicisation of the voter, unionisation of labour, the raising of class consciousness through the activity of the Marxist parties in particular, the rising level of expectations of the population on account of the equity-oriented welfare programmes of successive Governments during the first 30 years after Independence, and the present growth-emphatic, export-oriented model of development, which has had the effect of widening the gap between the rich and the poor.

The action for justice including the reform of social and economic structures or their replacement is not a recent manifestation of Catholic groups in this country. Its origin could be traced to the

thirties of this century with the forming of the Catholic Social Guild and the consequent founding of the Social Justice Movement and public agitation through various fora for labour and other social legislation safeguarding the rights of workers, the poor and the other underprivileged sections of the population. The worker movements of Christian inspiration that began in the late forties, the Centre for Society and Religion, the Satyodaya Centre, the Co-ordinating Secretariat for Plantations and the Commission for Justice and Peace are some of the organisations whose activities have helped to heighten awareness of injustice and the need for positive action for the creation of a just society.

The present times have also witnessed both globally and regionally within the Catholic Church action for the conscientization of people for justice. Catholics in Sri Lanka have through various external linkages participated both individually and collectively in such action, which has taken various forms—of a mass character as well as of diminutive proportions. Among the most significant recent collective declarations by Catholic leaders on the theme of justice was the 1971 Rome Synod of the world's Catholic bishops and the declarations of the Latin American bishops at Medellin in Colombia in 1968 and Puebla in Mexico in 1979. There is within the Catholic Church a growing radicalisation of thought and action. However, within the Church in Sri Lanka such radicalisation would appear to be marginal.

The Catholic community in Sri Lanka being part of a global community, shares the insights and benefits from the initiatives and experiences of such universal membership. The North-South relationship is also reflected within its universal membership. The alliance of the global power elites counts among its members those who profess the Catholic faith. In the predominantly Catholic-populated countries of Latin America and the Philippines the oppressor and the oppressed ostensibly worship the same Lord.

In Sri Lanka the Catholic community represents only about seven per cent of the total population and nearly 68 per cent of its membership is drawn from among the poor, about 28 per cent from the middle class, while the rest belong to the upper class.

Human Rights in Sri Lanka : Dangers and Trends

The Christian contribution to the Sri Lankan society of the future in the matter of human rights must, from the outset, be one of integral liberation, which consists at the same time of the liberation of

persons from selfishness and greed, and liberation of society at the national and international level. It, therefore, calls for a challenge to oneself and the existing social order which is heavily weighted in favour of a few rich.

The first human right that is lost in the Third World including Sri Lanka by considerable numbers of our people is the *right to a minimum sufficiency of food*. According to the Survey of Consumer Finances conducted by the Central Bank of Ceylon in 1973 about 19 per cent of the country's households suffered Absolute Poverty in that they lacked the minimum sufficiency of calories and proteins in their diet. Its incidence was highest in the up-country areas in villages hemmed in between large estates which had their own labour force and were not dependent on goods and services from the villages. About 50 per cent of the population could be considered to be living without the satisfaction of their basic needs. Up to 1978 they were assisted by the State by the provision of subsidised food rations. Since then assistance takes the form of food stamps which are exchangeable for specified basic food commodities. Growing inflation has necessitated the expenditure of over 70 per cent of the monthly earnings of the poorer sections of the urban proletariat on food requirements alone. The Urban Family Budget Survey conducted during the first quarter of 1977 by the Department of Census and Statistics revealed that in the Colombo Municipal area the lowest income group of Rs. 0-199 spent 70.6 per cent on food and drink alone, leaving very little for clothing, housing, education, health needs, transport and recreation. Our first duty in the promotion of human rights in community is to strive for the elimination of absolute poverty.

It has been estimated that about 53 per cent of the resident population of the city of Colombo live in slums, shanties or tenement gardens for want of adequate housing. On the tea plantations many estate workers are condemned to live in line-rooms that are dark, dingy and insanitary. The acute inadequacy of urban housing, in particular, has been aggravated by the phenomenal rise in house rents; caused partly by the demands of tourism and by the influx of a considerable number of highly-paid foreign consultant and technical personnel, which problem affects not only the urban poor but also the middle class.

The *danger to the physical quality of life* of large sections of the population is a consequence of a pattern of economic development which fosters *the concentration of economic power in the hands of a few elites* in co-operation with international high finance and sophisticated technology. The lack of circumspection in the introduction of high technology together with a particular pattern of development threatens the disruption of the culture of the people including their value systems by a process of proletarianisation of the masses. This pattern of development with its concentration of economic power tends to promote greed and an acquisitive spirit and generates dependence increasingly on foreign technology, which could destroy indigenous initiative and the spirit of self-reliance. The dependence on foreign technology is linked with dependence on foreign capital and funding agencies to the detriment of the country's independence and self-respect.

A second danger to human rights is from the concentration of political power through various constitutional and judicial structures, legislative measures and administrative devices which together have the effect of restricting people's participation in the political processes.

In particular, there is a *restriction of access to information*. The individual's right to seek, receive and impart ideas through any media is fundamental for his self-development and his participation in the development of the social community. But while Article 19 of the Universal Declaration of Human Rights makes explicit the freedom of information, Article 14(1)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka refers only to the freedom of speech and expression including publication. Furthermore, the constraints enumerated in Section 16 of the Sri Lanka Press Council Law No. 5 of 1973 inhibit the free flow of information in respect of the several matters enumerated therein.

In addition, State management of two of the three main newspaper publishing institutions and State monopoly of radio and television together with the constraints imposed by the Press Council Law concentrate rather than diversify sources of information and tend

to make the State-managed media subservient, partial to the State and to the interests of the ruling party, restrict the expression of public opinion and generally erode the freedom of information.

A further constraint on the freedom of information and on the people's participation in the legislative process is that *public access to proposed legislation is restricted* in that gazettes of Bills are not freely available to facilitate public discussion and the addressing of petitions by members of the public to the Supreme Court on issues of constitutionality of Bills. Further, rulings of the Supreme Court that are communicated to the Speaker in the exercise of the Court's constitutional jurisdiction are invariably not published in the national newspapers before the Bills are discussed in Parliament.

The tendency to rush important Bills through Parliament does not enable even Members of Parliament, particularly of the Opposition, to study them adequately before debating them.

Further, an ominous trend is the *final and conclusive character of several pieces of legislation* that have been enacted in recent years which seek to preclude judicial review of the decisions of the executive purporting to act under the provisions of the respective laws. While the State has an obligation to protect the human rights of the community, particularly of the weak, the rights of the State for this or any other purpose are not absolute. Its actions must be made justiciable.

It is the teaching of the Catholic Church that "culture must be made to bear on the integral perfection of the human person, and on the good of the community and the whole of society" (*Church in the Modern World*, Chapter II, Section 2, paragraph 59). Human rights in society should also be protected by recognising the rights not only of individuals but also of legitimate groups such as ethnic, linguistic and religious communities in a plural society and of legitimate social and economic structures such as village-level organisations and trade unions. Specifically, there is need for recognition of the right of the Tamil-speaking people to the use of their language as a national language, particularly in their transaction of official business with the State, which should be ensured as provided for in the Constitution and be protected against arbitrary infractions by the executive.

Consultation of and participation by people's organisations in the democratic processes should be encouraged by the decentralisation

of power, ensuring non-interference in their functioning and non-manipulation of such structures by either the State or political parties.

According to the social teaching of the Catholic Church, the right of freely founding labour unions is among the basic rights of the human person, who also has the right to take part freely in the activity of labour unions without risk of reprisal. Socio-economic disputes should be settled by discussion between the parties. In the Church's view, "the strike can still be a necessary though ultimate means for the defence of the workers' own rights and the fulfilment of their just demands. As soon as possible, however, ways and means should be sought to resume negotiations and the discussion of reconciliation". (*Church in the Modern World*, Chapter III, Section 2, paragraph 68).

It is also the teaching of the Church that in keeping with the principle of subsidiarity, family and social or cultural groups as well as intermediate bodies should not be hindered or deprived of their own lawful activity. "For their part, citizens, both as individuals and in association, should be on guard against granting Government too much authority and inappropriately seeking from it excessive conveniences and advantages, with a consequent weakening of the sense of responsibility on the part of individuals, families and social groups." (*Church in the Modern World*, Chapter IV, Section 2, paragraph 75).

Grave concern has been expressed at the *growing institutionalisation of political preferment*, which began with the pernicious "chit" system of the previous regime and the establishment of the Political Authority system for peripheral administration. Now witnessed is the consolidation of a blatantly partisan system of recruitment for employment which goes by the description of "job bank", access to which is through the favour of the Member of Parliament for the area of one's residence. This is a *denial of the right to equality* (guaranteed by Article 12 of the Constitution) and specifically of the equality of employment opportunity and is in practice open to abuse by discriminating on the ground of a person's political opinion.

It has been noted with alarm that *post-election violence* against supporters of defeated candidates and *victimisation* of public sector and corporation employees in particular, because of alleged political partiality have become a feature of public life in this country since

the late fifties. Also, acquisition by the State of the property or business undertakings of the political opponents of the party in power is further evidence of such political victimisation. The cumulative effect of such vendetta is increasing divisiveness, continued disturbance of the social peace and disruption of the cordial relationships that should prevail irrespective of political ideology and affiliations. It is hoped that the recently-introduced legal restrictions on post-election processions would help minimise the incidence of violence as an aftermath of elections.

Cause for dismay is the *recurring tendency to institutionalise political revenge and victimisation and the enactment of retroactive legislation* by which to achieve such purposes. This was witnessed especially in 1959 in connection with the Bandaranaike assassination case; in 1962 in respect of the Coup case; in the post-Insurgency enactment of the Criminal Justice Commission Act No. 14 of 1972; the subsequent Exchange Control (Amendment) Law of 1972 and the Special Presidential Commissions of Inquiry Law No. 7 of 1978 and the connected SPCI Act No. 4 of 1978. There has been, what has been described as the dilution of the judicial process to serve political purposes by the appointment of special tribunals where the rules of evidence and procedure are relaxed and from whose findings no appeal is permitted. As observed by Amnesty International, "the effect of doing so is very seriously to put in jeopardy the public regard for the independence of the judiciary and to inflict a kind of second class justice for political offenders".

Abhorrence of retroactive legislation applies also to the *retroactive categorisation as offences* such legally undefined terms as "abuse of power" and "misuse of power". While lapses in ethical behaviour by holders of public and political office are not to be condoned, their conduct, too, calls for investigation and public exposure in accordance with the principle of a full and fair inquiry.

While the *stewardship of power always has moral obligations* and must be subject to public judgement, the investigation of offences alleged to have been committed by those who have held or hold public office or exercise political power must be with adequate safeguards, particularly where penal consequences or civic disabilities are to result from the findings of such tribunals. Further, persons against whom such an investigating tribunal makes adverse findings must

have the right of appeal to a higher tribunal according to law. Failure to adopt such safeguards could lead to the conclusion that different norms of justice are applicable to alleged political offenders and that an arbitrary process is permissible to disqualify one's political opponents.

With the introduction of the elective principle in representative Government in the 19th century Christian thinking supports both the *right of the individual to vote and the right to be a candidate for election*, subject, of course, to certain conditions such as moral rectitude and psychological maturity. In this connection the failure of the Catholic community to speak up for the nearly one million persons of Indian origin who were deprived of their right of franchise by the Citizenship Act of 1948 is aggravated by the fact that the overwhelming majority of those affected were poor estate workers who belonged to a socially depressed class.

An *imminent danger to human rights* in our country is that the *concentration of financial power in the hands of a few* will so shape its polity as to protect the economic gains already obtained and to make the ground secure for the extraction of further gains. So that even a Government which at the outset wants to be basically democratic would be propelled by the "robber barons" to become more and more repressive. The movement towards dictatorship—keeping, however, the slogans of democracy and even of socialism—tends to accelerate as the economic power of capital becomes stronger and the insensitivity to the sub-human conditions of the oppressed grows into inhumanity, manifesting itself in repression.

Legitimate Task

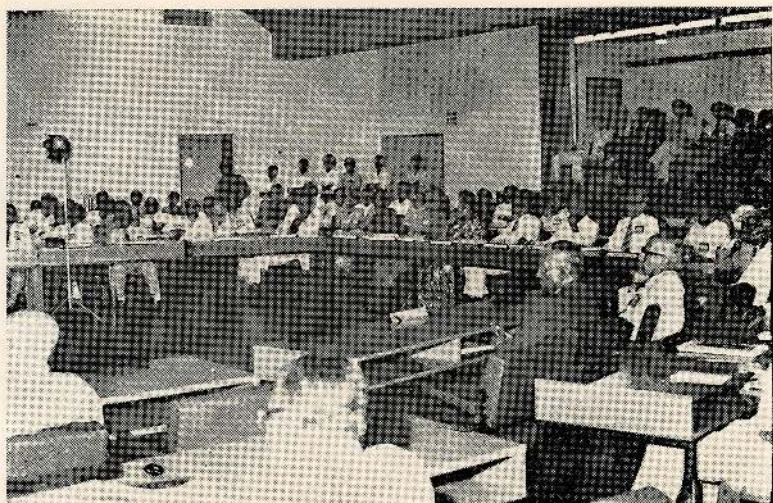
It is possible that when the Catholic Church as an institution comments on human rights its action might lead to misunderstanding. Because of its role and competence the Church is in no way to be confused with the political community nor is it bound to any political system. But it claims that it is always and everywhere legitimate for it to preach the faith with true freedom, to teach its social doctrine and to discharge its duty among men without hindrance. Its task includes also the right to pass moral judgments, even on matters touching the political order, whenever basic personal rights or the salvation of souls make such judgments necessary. (*Church in the Modern World*, Chapter IV, paragraph 76).

Individual Catholics, both as persons and citizens have a right and duty to contribute according to their ability to the progress of the social community. They have a legitimate variety of possible options including political options to choose from and while being inspired by the same Christian faith the commitment of each Catholic could be different. Further, while he shares with persons of other faiths as well as with those who profess no religion at all a will to live in brotherhood and a thirst for justice and peace which call for vigilance to combat conditions contrary to the principles of a true humanism, by virtue of his Christian faith he belongs to a tradition which asserts that "to know God is to do justice"—meaning thereby to receive the righteousness of God and to express it to others. For the Christian the call to justice is primarily a call to personal conversion to the Lord which leads him to strive for the transformation of the world.

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The Christian Group



The closing session of the Seminar

CHRISTIANITY

CHRISTIANITY

REPORT

CHRISTIAN GROUP

PART I

Summary of the Findings of the Christian Group

1. At the very centre of the Christian Gospel are three fundamental premises which justify the involvement of Christian people in all that concerns Human responsibilities and rights. The *first* is that God is Sovereign and responsible for all creation and that all things belong to Him. The *second* is that God is Love, an aspect of His nature that was uniquely demonstrated in the person of Jesus Christ. The *third* is that man has unlimited potential for goodness, being created "in His image" and having at the same time the infinite resources of the Holy Spirit for achieving goodness and can overcome the power of his sin "in union with Christ". Thus "the Fatherhood of God" and "the Brotherhood of man" are inevitable implications of the Gospel Message to be accepted and obeyed. The birth of Jesus was itself a sign of His involvement in Humanity and his 33 years on earth amply showed his acceptance of and commitment to life with all its implications of tragedy and triumph. While we are "*in the world*", the Gospel obliges us to seek to transcend its shortcomings as we are not "*of the world*". We are called, while already in the world, to be members of God's Kingdom. We cannot do so as long as we compromise with the evil in the world and do not seek to overcome it.

2. A full appreciation of human rights requires a person-centred approach. Individually, every man is a creature of God and every person is potentially a member of His family as he or she comes to Him in faith and obedience (*Jn. 1 : 12; Rom. 8 : 19*). This implies the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family."¹ Group rights are an ex-

1. From preamble to the Universal Declaration.

tension of such personal rights and, in fact, are valid only in so far as they contribute to the dignity, integrity and development of the personality of *all* individual human beings and so fulfils the Christian ideal of brotherhood as they seek to live in community with each other. Personal and Group Rights are inter-related.

3. The right to life, liberty, and security (i.e. Article 3 of the Universal Declaration) and freedom, equality and dignity (i.e. Article 1) are the most fundamental of human rights. From these flow all the other rights. These rights should be equally affirmed and guaranteed for all citizens, irrespective of ethnicity, class, community or other group. There is a basic message here for all the peoples of our land as the creation of God called to be full and equal members of His family—a family in which there is no such thing as Jew and Greek, slave and freeman, male and female. (*Galatians 3 : 28 NEB*).

4. In the context of a society in which the large majority are poor and a significant minority are living in abject poverty, the most urgent of these rights relate to the needs for minimum standards of food, clothing, shelter, health care and social security (i.e. Article 25). These and other economic and social and cultural rights are elaborated in the **International Covenant on Economics, Social and Cultural Rights**. Likewise civil and political rights are elaborated in the **International Covenant on Civil and Political Rights**. These rights, even when set out in a collective manner, do not substitute for personal rights—and as they are extensions of it they are an asset to most of the basic rights of individuals. **It is urgently essential that the Optional Protocol to make these rights properly justiciable should be officially accepted without delay if we are not to forfeit the credibility of our people and of the people of the world if we are seriously concerned with Human Rights.**

5. On the basis of our fundamental premises **we condemn all violence, oppression and torture, whatever form they take, whether open or subtly concealed within the established order.** The sanction of the economic, social and political systems or of the administration or the judiciary do not render violence or denial of human rights acceptable. Rather any effort to seek such legitimisation makes the denial of human rights even more reprehensible.

6. A particularly obnoxious manifestation of such violence is **the affluence** we frequently see not only but specially in countries such as ours where millions of people live in deep poverty. As the early

Fathers of the Christian Church strongly and consistently asserted and the Christian social tradition continued to affirm, in the midst of poverty all affluence is the result of oppression and injustice—current or past. Perpetuation of such injustice is both obscene and a persistent act of violence on the needy. An individual or society or State which even passively acquiesces in such covert violence must share the responsibility for the denial of basic human rights.

7. The affluence of the rich of our society is compounded by *the frequent ostentatious display* of such affluence. We note that while in the post-war period a significant number of leaders of the developed countries adopted a simple way of life and set a noble example, most of the leaders of the developing countries have failed in this respect. **If the leaders of rich nations are rich, there is no reason why the leaders of the poor nations too should try to be rich as they seem to be doing today.**

8. Because of all this **the emancipation of oppressed and disadvantaged sections of society** must claim our prior attention in the struggle for human rights. Such groups may consist of ethnic communities, such as the so-called “Indian Tamil” population which suffers special disadvantages in respect of citizenship and voting rights, educational facilities, etc., of caste groups, particularly the so-called “untouchable” communities which our society often seeks to deprive of the basic human dignity which is the birth-right of all human beings; or of other communities the members of which face discrimination and obstacles to their development in their environment.

9. This principle must be extended to **non-ethnic communities which suffer special deprivation** such as slum dwellers and the population of underdeveloped rural areas. Groups which suffer special disadvantages—such as women or children or old people—also need special attention. So do the deaf, the blind, the lame and mentally handicapped. A society which does not provide special protection and support for individuals or groups which suffer special disabilities cannot claim to observe human rights or even to be a civilized society, however glittering the outward appearance of prosperity may be.

10. Special reference needs to be made to the question of **children and their education**. The problem of children in general and of their education is a vexed problem and is only one degree removed from a special problem of the grievously disadvantaged children of the

slums and of the plantations. **We believe that the child has an inalienable right to respect as an individual and as a person.** Society does not have the right to distort or maim the natural, social, spiritual and individual development of the child into a loving person with respect for all his fellow human beings. We, therefore, believe that **the present system of education** which often serves to reproduce in children who will be leaders of the next generation the same deficiencies and evils we find in society today, **needs to be given a complete overhaul.** In this respect, some of the ideas put forward by Paulo Freire and Ivan Illich in the "de-schooling of society" need to be considered with some respect.

11. The reference made to the rights of groups is not intended to decloud the issue of "individual" human rights which we believe are today becoming increasingly vulnerable in present day world society as well as in Sri Lankan society. We believe it is important to **safeguard the social, religious and political rights of all individuals.** Political rights as well as social rights are involved in the right of freedom of expression, assembly, publication and participation in public life. In particular, we do not consider it ethical for any kind of deprivation of these rights to occur on a politically partisan basis. We would affirm this individual right for persons of all political persuasion, even if we, as Christians, have fundamental disagreements with them.

12. **Highly centralised government** and other massive impersonal institutions, both public and private, contradict human rights. We need to evolve towards a society of small **self-governing communities** in which economic, social, cultural and political activities are conducted on the basis of co-operation and partnership. This ideal is as much in harmony with our cultural traditions as with our religious convictions (up Gansabhas, Panchayats, village, temple and parish communities). This can happen within a nation where only the overall economic guidelines are set by the State and certain basic political and socio-economic stabilities are guaranteed.

13. The development of human rights demands **the optimum** (and not the maximum) **use of resources, human and physical,** for the present and for the future. The waste of resources and the destruction of the environment which we see around us are contrary to the divine plan of creation and offends against the religio-ethical concept of human rights.

14. Immersed as we are in a long tradition of social belief and action and a religious tradition of social values ranging back to 5000 years from the days of the Old Testament, we Christians cannot believe in any form of social or economic organisation as a self-sufficient means of salvation. **Our Christian calling takes us beyond politics and economics and beyond civil society.** In the Christian tradition we are opposed to human deprivation of all types—whether physical and economic leading to poverty or social, cultural and political leading to repression. The only difference between these two types of human oppression and basic denial of rights is that the former is passive and derived from the socio-economic order, while the latter is active and is more apparent in authoritarian societies. The Christian tradition equally opposes all these forms of deprivation. A long tradition dating from the early Christian Fathers and the Apostles as well as from the prophets like Amos and Isaiah clearly underline that God's creation was meant to be enjoyed in common by all God's creatures. The early Fathers emphasised that property is rooted in sin and the early Christian community reaffirmed this truth. The Malvern Declaration made in 1941 under the Chairmanship of Dr. William Temple, then Archbishop of Canterbury, laid down clearly that property is a trust and should not be used against the interests of any of God's creatures. We have attached this Declaration to the text of our main document.

15. We who affirm that human rights emerge from religious convictions no less than from secular ideals see that there is **broad area of concurrence between different religions** on the nature and scope of human rights. Thus there are good prospects for inter-religious co-operation and co-ordinated action for the development of human rights.

16. It is essential, therefore, that there should be **regular consultation between religious groups and joint action at all levels for the promotion of human rights**—from the neighbourhood and village levels to the national and international levels. Such cooperation requires mutual appreciation of the theological and philosophical bases for human rights in different religions and their various traditions developed over the centuries. Such interaction by helping to create a general **"Public Philosophy" of Human Rights** will help not only to further personal rights of individuals but also the liberation of disadvantaged sections of the population and the promotion of good relationships between neighbourhood groups and between different communities affecting the whole nation.

PART II

Recommendations

In the current context of Sri Lanka we specially recommend for immediate attention the following aspects of human rights:—

1. The Universal Rule of Law

We recommend that the universality of Law in its applicability to all citizens be recognised not only in theory but also in practice. A corollary to this recognition would be that there should be **no discriminatory or selective application of penal provisions to any group of citizens—political, social, ethnic, caste, etc.,** e.g. a scheme which provides for action against corrupt members of the previous Government but which does not **in practice** touch members of the present Government is itself a corrupt scheme which flouts certain basic human rights. Regrettably such gross violations of human rights are becoming increasingly a part of the prevalent systems of Government. Such practices should be exposed for what they are—the corrupt use of Government power for personal or sectarian purposes.

2. Retroactive Legislation

Accepting the Rule of Law and the Rule of Equity, it follows that the making of any activity to be legally an offence long after its alleged commission is **repugnant to basic principles of justice and fair play.** Equally reprehensible is the use of parliamentary power to impose additional disabilities on the offender after the offender has been found guilty and disabilities imposed in terms of prevalent legislation. We believe that the resort to such legislation is not only an infringement of human rights but carries within it the danger of unsettling and derailing the democratic political process altogether and the use of Parliamentary majorities to pass retroactive legislation which could stifle opposition activities of a democratic character but inconvenient to the party in power in any manner which goes against the Universal Declaration of Human Rights and the Covenants the implementation of which all Human Rights Movements ought to uphold, could create a dangerous reaction. We would urge the immediate vacation of any action taken through special legislation to impose penalties for offences which were not even defined or recognised at the time of alleged commission, or to impose penalties not previously specified even in respect of offences defined and recognised at the time they were committed.

3. Independence of the Judiciary

To ensure the continuance of the healthy tradition of separation of powers between the legislature and the judiciary and between politicians and judges, we emphasise the need to ensure security of tenure of Judges. We consider it impermissible and unethical that Judges of the Higher Courts should be retired prior to their normal retirement, even by operation of law. It is hardly necessary to spell out the insidious effect that such insecurity of tenure is likely to be on the traditional strength and impartiality of Sri Lanka's Judges. Such a law also breaches the **principle** of non-retroactive legislation.

4. Right of Appeal

We recommend full recognition of the right of appeal, including appeal from Tribunals set up under Special Law, to a panel of at least five Judges of the Supreme Court. This should be made a Fundamental Law and should include the right to appeal to an Appellate Bench of 7 Judges where the decision appealed from is by a Tribunal of 5 Judges.

5. Internationally Accepted Workers' Rights

We recommend the unqualified acceptance of the unfettered right of workers to strike in pursuance of a dispute regarding employment, freedom of association and democratic rights for and within workers' associations and organisations. We are deeply concerned by action to lock-out strikers by employers, whether Government or private, and also deplore legislation which we understand is under consideration for restricting workers' trade union rights. Any restriction of such rights can only be justified in a time of emergency, during a period of insurrection or grave threat to national security.

6. Media Freedom

We believe that it is most reprehensible when media is both overwhelmingly Government controlled or overwhelmingly private controlled. The ideal situation we would consider acceptable is **a many sided and plural ownership and control of all media** not only to enable but also to foster the freedom of opinion in dissent which all upholders of genuine socialism and genuine democracy ought to safeguard. True freedom necessarily implies the viable existence of such a range and variety of media. We would include the right for a co-operatively controlled press and other media to exist. This involves

the guarantee and protection of real Media Freedom in our land—and the setting up of a **Press Council** and other Media Councils which could be **effectively free**.

7. Safeguarding and Promoting Children's Rights

In Sri Lanka where the child-adult ratio is exceptionally high, it is of crucial importance that thinking on children's rights (linked with duties) be fostered in the schools. We would, however, caution against undue haste. Interpretation of and research on human rights in the Lankian context, the study of school syllabuses and the appropriate orientation of school heads and selected teachers are important preliminaries towards this objective.

High priority should be given to legislation serving as a point of reference in any discussion on children's rights. We recommend that a **Children's Charter** guaranteeing basic rights to children is greatly to be desired. It should be **complemented by a radically changed education system** which will remove the existing disparities and promote equality among all young people of this land.

8. New Policies and Strategies in Education

We recommend that early steps be taken to :

- (a) **Raise the quality of our educational institutions and the status of our teachers** and in particular the standards of the poorest and worst equipped schools so that at least at the primary level, inequalities in educational facilities may be minimised. The hundreds of estate schools and the hundreds of other one or two teacher schools in remote rural areas merit priority attention.
- (b) Structure educational institutions from the Nurseries to the Universities to be **managed by the community** they serve and to form vital components of it. These institutions should themselves be designed and function as co-operative communities which will serve to initiate the young into **the art and science of community living**.
- (c) Supplement the system of formal education by a system of non-formal education which will on the one hand provide avenues for drop-outs to resume their education, and on the other to serve national needs in respect of skills and orientation.

- (d) Develop more realistic and diversified curricula which will uncover the potential of all children, not merely those who are academically gifted or socially privileged.
- (e) Use educational institutions to foster communal harmony by bringing together in the class room, sports field, *shramadana* camps, etc. children of different communities in an atmosphere conducive to this objective. The development of multi-ethnic educational institutions; the elimination of teaching material harmful to national unity (e.g. the Sinhala Grade I Reader which says "Sri Lanka belongs to the Sinhalese" as against the Tamil Grade I Reader which says "Sri Lanka belongs to the Sinhalese, Tamils and Muslims"); inclusion of teaching material conducive to national unity (e.g. an anthology of writings of persons of different communities); the correction of history to emphasise the unity and contribution of different cultures rather than the communal friction (hitherto exaggerated) in our past; the teaching of Sinhala, Tamil and English to all children; etc. are a vital part of personality formation for a truly united Sri Lanka.

9. Develop Educational Facilities Available to the Handicapped

We affirm the need for legislation concerning education of the handicapped and the allocation of substantial resources to educate the handicapped. We concur with the I.L.O. Recommendation 99 of 1955 that "their need of opportunities to receive education and vocational preparation must be equal to those of non-disabled children".

10. The Tamil Problem

There is an urgent need for the Government to have a dialogue with the Tamil leadership on issues concerning citizenship, language, territorial identity, autonomy and participation in Government, recruitment and deployment of the security forces, and equal access to higher education and the public service and to take necessary legislative and administrative measures embodying the settlement reached if the communal problem that has beset our nation for so long is to be satisfactorily solved.

11. Rights of Depressed Communities and Sections of the People

We recommend purposeful action to integrate marginalised groups of the population into the main stream of development—particularly the Rodiyas, the Veddahs, the "untouchable communities",

the dwellers in slums, in plantations and depressed rural areas. To carry this out it may become necessary to impose essential restraints on the interplay of free market forces of the same order as those already devised for guaranteed price schemes, consumer protection etc. It may also be necessary as a transitional measure to allow special concessions in respect of education, employment and other facilities to such depressed communities.

12. Adequate and Suitable Housing

We recommend the provision of adequate and suitable housing for all persons in the slums in urban and rural areas and in the plantation 'line-rooms'. Slums and line-rooms are **affronts to human dignity** and no individual or family should be driven to live under such conditions. We also urge **the revision of laws pertaining to housing** to prevent the exploitation of the tenant by the landlord or of the landlord by the tenant.

13. Capital Punishments and Other Degrading Punishments

We recommend serious consideration be given to **the abolition of capital punishment**. All forms of punishment which are cruel, degrading, humiliating and offensive to the dignity of the human person should be done away with and penal provision should aim at reforming and redeeming wrong doers rather than applying to them the principles of the ancient *lex talionis*

14. Remand Prisoners

We also recommend that the conditions under which **remand prisoners** as well as young women in the House of Detention could be kept remanded from a period as long as 5 years to an "indefinite period" should be abolished outright and systems of parole and supervision substituted therefore. We firmly affirm that purely vindictive or purely deterrent punishment is unchristian and offends against the teachings of Jesus Christ.

15. A New Life Style

We recommend that a New Life Style is essential for all citizens of Sri Lanka as for the citizens of all countries in the world. The idea of a simpler life style, consuming very much less resources, materials, energy and more particularly less of the non-renewable resources, is steadily gaining ground. We believe that over-consumption whether of food and drink or of other material resources is an evil which sins

against the basic perspectives for righteousness of the founders of all the world's great religions without exception. Both secular and religious thinking today is converging to a single point of belief and action to the effect that all waste of resources as well as maldistribution of these resources between and within nations is impermissible because such profligacy sins not only against those deprived here in the present but also against future generations. **A simple way of life is, therefore, the only course open to humanity to avoid a bleak future.**

16. Family and Community Life

Since Human Rights has meaning only in the context of human relationships, we recommend measures for promoting awareness on the subject. This is best done through a re-vitalized family life and community activities, where young and old would foregather under a common umbrella of rights and duties. We are also of the opinion that this should be jointly done by the State and voluntary agencies who have the expertise or are already pledged to this task.

17. The Call to Righteousness

The State commands such overwhelming authority that its posture on moral issues can exercise a decisive influence in a climate where such terms as justice and equality are household words. The call to "righteousness" is not strange to the Christian who believes with St. Paul, that "the kingdom of heaven is not meat and drink but righteousness and peace and joy in the Holy Spirit". It would, therefore, cause the Christian deep concern to see in this country philosophies and measures which place purely material prosperity over human values, promote or accentuate inequality or condone evil.

18. A Public Philosophy

We recommend that this series of Seminars should be made the base of a series of further efforts all over the island to promote public opinion on a religio-ethical basis and to sensitise the nation on basic issues on Human Rights about which the participating groups have been concerned. We suggest that the **Human Rights Centre** be made a place of Prayer, Meditation, Research, Promotional work and other practical action. There is an urgent need for this specially in terms of the religio-ethical perspectives with which these Seminars are concerned with the special insights they provide for the solution of the problems of human rights today.

19. The Christian Approach

We affirm that the Christian approach to society and to social action is not negative or defensive but dynamic, revolutionary and sacrificial. Many are the cases where Christians have laid down their lives for just causes. In the world today, as there have been in the past, there are many cases of dedicated Christians, including priests, who have died in espousing the cause of the needy, the oppressed and the down-trodden. There is a challenge here in terms of the basic Biblical truths both to the Churches and to individual Christians in the light of the Gospel of Jesus Christ, His life, His death and Resurrection and the promise of eternal life in His Kingdom.

20. The Bible provides ample inspiration for such revolutionary activity. The "Magnificat" or the Song of Mary has been described as the most beautiful expression of the revolutionary ideal. It celebrates God's actions in that "He has stretched out his right arm and scattered the proud with all their plans. He has brought down mighty kings from their thrones and lifted up the lowly. He has filled the hungry with good things and sent the rich away with empty hands". (*Luke 1 : 51-55 TEV*).

21. We close with the words of Amos the Prophet of the 8th Century B.C. who invokes the judgement of God on those "that tread upon the poor . . . and turn aside from the way of the afflicted". He prophesied that "... because you trample upon the poor and take from him exactions of wheat, you have built houses of hewn stone, but you shall not dwell in them; you have planted pleasant vineyards, but shall not drink wine of them". As the poor of the world are not only the economically poor but also **all those who suffer from the abuse of power everywhere**, we believe that the challenge to Christians and to the Churches in the prophetic tradition of the Scriptures and of the Christian Social Teaching down the ages must be accepted by us all if we are to fulfil our human responsibilities and promote Human Rights so that we may join with all persons of goodwill to bring about a **New Order of Society** with the resources of God's Kingdom being made to all God's children "on earth as it is in heaven".

FINAL REPORT

SEMINAR ON RELIGIOUS AND CULTURAL TRADITIONS IN THE DEVELOPMENT OF HUMAN RIGHTS IN SRI LANKA

This Seminar representing the views of the five major religious groups holds in common the opinion that fundamental human rights are inalienable, and that a valid basis for the meaningful consideration of human rights is the universal love of man and animal and the respect for everything that exists, both animate and inanimate, including the environment. While the different religions have their distinct religious perceptions and philosophical explanations of the universe, of human relationships and of development, of motivations and of ultimate destiny, the religious and cultural traditions of the five major religions uphold in common certain basic moral and ethical values for the promotion of which man must be enabled to exercise his rights and perform his duties in a mutuality of relationships. Among these values held in common are human dignity and worth, equality, freedom, love and compassion, truth, justice and brotherhood, and charity.

In Sri Lanka's context the exercise of human rights is linked with the value systems and traditions of the major religions and is reflected by and large in the way of life of the people. Their respect for human rights and their observance is not something new and strange. The perception of human rights and their understanding are neither specifically western nor recent in origin. While acknowledging the great importance of the Universal Declaration of Human Rights, the religious groups regard the Declaration as limited in its approach by being largely western in perceptions and individualistic in emphasis. The insights and perceptions of the Declaration could be enhanced by the religious perceptions and dimensions of the five major religions and their value systems. Among the insights the religions have to offer are :

- (a) emphasis on the need for purification of the person from evil and the tendency towards evil and a growth of human values in the hearts and minds of people.

- (b) emphasis on the fulfilment of duty and obligations as the best safeguard of rights; that duties and rights are reciprocal.
- (c) emphasis on the interdependence of person and the community including the State, and the organic relationship of the person towards society, beginning with the primary unit of the family.

To that extent the Declaration lacks both depth of perception and insights which religion alone can give. While the Declaration is a juridical enumeration of rights the perceptions of the religions give meaning to the need for rights and duties by which they tend simultaneously towards purification of the individual and development of the social community.

The Seminar in its examination of the central theme did not concern itself exclusively with philosophical and academic concept and abstractions but sought to evaluate their relevance and applicability to society, particularly to Sri Lankan society. To the extent that religion alienates itself from society, it undermines its own credibility and erodes the basis of its validity. Thus all five religious groups with varying degrees of emphasis and interpretation focused attention on what they consider to be current human rights issues in Sri Lanka. These are found in the respective Rapporteurs' Reports.

The question why religions are concerned with human rights was viewed from many angles. It was stated that religions could be means of—

- (a) promoting peace and harmony with justice, between conflicting interests in a plural society because they share a common core of values.
- (b) ensuring that the basic human needs are satisfied in order that every person may enjoy a better quality of life and a greater access to the exercise of the freedoms to which they are entitled.
- (c) helping to preserve human rights and prevent their violation.
- (d) heightening awareness among the people of Sri Lanka of their rights and duties.
- (e) promoting action to conserve and prevent waste of natural resources, which are essential requisites satisfying basic human needs.

In respect of the contribution which the religions and the cultural traditions of Sri Lanka could make to a further understanding, observance and promotion of human rights, the Seminar emphasised the following :

- (a) the need to create a climate of goodwill and understanding by enhancing religious values in society, with a view to the full development of the human personality;
- (b) the fostering of a simple life-style and the growth of a self-reliant society;
- (c) the manifestation of a greater concern for the large numbers who live in abject poverty and to initiate programmes for their benefit;
- (d) promotion of inter-religious understanding, mutual respect for the religions and greater inter-cultural dialogue;
- (e) the promotion of inter-racial harmony, thereby easing tensions which have their origin in prejudice or misunderstanding;
- (f) the setting up of machinery which could be activated specially under emergency situations to prevent excessive use of force by the armed forces and the police;
- (g) the development of the potential of the religions to reinforce the ethical and moral values in society in order to promote human rights;
- (h) the development of concern for the spirituality not only of persons but also of institutions.

As regards fundamental human rights issues in Sri Lanka, the Seminar considered five broad areas and indicated its concern on specific issues :

1. Hunger, Health and Housing

- (a) The obligation of the social community to ensure essential human needs in terms of food, clothing and shelter to all people who live in poverty;
- (b) to reduce wide economic and social disparities;
- (c) ensure to the underprivileged masses adequate access to services which would help improve the quality of life—such services as health, education and social welfare.

2. Work and Employment

- (a) right to the means of livelihood;
- (b) just employer-employee relations with adequate legislation and enforcement machinery;
- (c) provision of adequate social security measures for all sections of the community;
- (d) due consideration for the rights of working mothers and working women in general; and their hours and conditions of work;
- (e) equal pay for equal work;
- (f) measures to prevent discriminatory treatment in recruitment for and whilst in employment;
- (g) Due respect be paid to the reciprocal obligations of employer and employee, and the obligation of the employee to give the whole of his working time to his work.

3. Education

- (a) The need for changes in the education system in order to expand the scope of formal and non-formal education in terms of the country's requirements;
- (b) the need for reforms to ensure equal educational opportunities at all levels, including the disabled and the handicapped;
- (c) the need for greater emphasis on human values and character formation in drawing up educational curricula;
- (d) the need to involve educators, parents and the community in the formulation of educational policy at every level, local, regional and national, and in the management of institutions in the national interest;
- (e) the need to frame a comprehensive modern law of education to replace the existing law, embodying its purposes, obligations, direction and control;
- (f) concern over increasing commercialisation of the educational process;
- (g) respect for the child's right to education and personal development without excessive influence of the adult;
- (h) to ensure the provision of adequate facilities for religious education.

4. Freedom of Speech and Information

- (a) concern over state-controlled media, and restriction on the flow of information and the absence of multiple ownership;
- (b) the need to enhance freedom of expression and publication for preserving democracy;
- (c) concern over the growth of consumerist values through all the mass media, and the consequent threat to the value systems in society;
- (d) propagation of authentic information on social matters.

5. Participatory Democracy including the Rule of Law

- (a) concern over politicization leading to greater divisiveness in society;
- (b) need for further decentralization of administrative machinery and developmental efforts to ensure greater degree of popular participation;
- (c) concern over the growth of massive impersonal institutions which are counter-productive of true personal freedom;
- (d) assurance of effective protection of persons found guilty of alleged offences of their right to appeal;
- (c) need to create conditions for the restoration of traditional self-help community life;
- (d) the provision of adequate legal machinery for the enforcement of Human Rights and prevention of torture;
- (e) the provision for payment of adequate compensation by the State to victims of torture, where such acts are inflicted by servants of the State;
- (f) provisions relating to the independence of the Judiciary and the tenure of judges should not be amended except by a referendum;
- (g) early enactment of legislation relating to the appointment of an Ombudsman and adequate publication of the Bill before it is passed by Parliament;
- (h) We affirm the fundamental rights contained in Ch. III of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka;

- (i) concern for the supremacy of the Rule of Law to be recognised and adhered to;
- (j) concern over arbitrary arrest, detention, and torture, especially in times of emergency;
- (k) concern for safety of persons in custody for excessive periods of time pending trial.

On the subject of the contribution, which the religions could make on these issues the following suggestions were made:—

- (1) The setting up of a multi-religious centre for the promotion of human rights and as a centre for worship, reflection and fellowship of all religions.
- (2) Continuing process of meetings among religious groups in the country to discuss fundamental human rights issues.
- (3) The setting up of an on-going forum to—
 - (i) carry out indepth studies on moral and ethical dimensions of human rights issues, and
 - (ii) enable a continuing dialogue among major religious groups.
- (4) The need for continuous vigilance and public dialogue and conscientization of the people and the realisation of the importance of inter-religious approach for safeguarding and developing human rights.
- (5) In the preaching, teaching, ritual actions and other collective manifestations of our religions, stress should be laid on the social impact and dimensions of our beliefs. The personal and social aspects of the liberation and salvation we preach and announce should go together.

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1. Rev. Henpitagedera Gnanawasa Thera Prof. of Buddhist Studies, Saraswati Pirivena, Divulapitiya	<i>Buddhist Sangha — A Model Implementation of the Theory of Human Rights.</i>
2. Dr. Jotiya Dhirasekera Editor-in-Chief Encyclopaedia of Buddhism 135, Dharmapala Mawatha, Colombo 3.	<i>Human Rights and the Means Recommended for Their Fulfil- ment in Buddhism.</i>
3. Dr. L. P. N. Perera Director Post-Graduate Institute of Pali and Buddhist Studies, University of Kelaniya.	<i>State Leadership in the Effective Implementation of Human Rights Concepts — A Study of the Buddhist Historical Context.</i>
4. Dr. Chandima Wijebandara Head, Dept. of Buddhist Culture, Post-Graduate Institute of Pali and Buddhist Studies, University of Kelaniya.	<i>Buddhist Human Rights Concept and Its Social Manifestation.</i>
5. Dr. (Mrs) T. Kariyawasam, Commissioner of Educational Publications, Colombo 10.	<i>The Social, Spiritual and Intel- lectual Development of Women within the Perspective of Human Rights as found in Buddhism.</i>

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2. Mr. Manicka Idaikkadar, M.A. (Cant.), M.Sc. (Lond.), F.S.S. (Lond), Statistician, F.A.O. (UN) Kinross Avenue, Colombo 4.	<i>Some Underlying Human Rights in Hindu Religious Freedom and Traditions</i>
3. Mr. N. Sabaratnam, Principal Emeritus Jaffna Hindu College, 110, Ambalavanar Road, Jaffna.	<i>Philosophical Presuppositions of Saiva Siddhanta in the Hindu Culture, their Implication and Impact on Human Rights</i>
4. Prof. A. Sathasivam, Head of the Department of Languages and Cultural Studies, University of Colombo.	<i>The Concepts of Human Rights and Duties in the Saiva School of Hinduism</i>
5. Mr. C. Ranganathan, Q.C., 52, Vivekananda Road, Colombo 6.	<i>Some Basic Concepts and Ideals of Human Rights in Hinduism and the Importance of Religion in the Development of Human Rights</i>

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2. Mr. A. M. Ameen, Late Director General, Islamic Secretariat, 27, Fareed Place, Colombo 4.	<i>Sri Lanka Problems and their Implications in Terms of Human Rights in Islamic Perspective.</i>
3. Mr. Kamil Asad, Dept. of Arabic and Islamic Culture, Dumbara Campus, Polgolla.	<i>Islamic Concept of Human Rights and a Just Society.</i>
4. Maulana Yusuf Talal Ali, Rector, Jamiya Naleemiah, Beruwela.	<i>Human Rights and the Position of Woman in Islam.</i>
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2. Fr. Vianney Fernando, Social and Economic Development Center, 133, Kynsey Road, Colombo 8.	<i>Present Day Catholic Thinking of Human Rights.</i>
3. Fr. Robert Luckhart, 'Sevaka Sevena' Bandarawela.	<i>On Stepping into the Future— An Interlude.</i>
4. Fr. Paul Caspersz Satyodaya, 30, Pushpadana Mawatha, Kandy.	<i>The Contribution which Christian Thinking Concerning Human Rights can make to the Ceylonese Society of the Future.</i>
5. Mr. G. I. O. M. Kurukulasuriya, Associate Director, Marga Institute, Colombo 5.	<i>A Description of Sri Lanka Society Today—Its Fundamental Traditions, Its Philosophy and Its Self-understanding.</i>

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4. Mr. George Gnanamuttu, Bible Society of Ceylon, 293, Galle Road, Colombo 3.	<i>Fundamental Human Rights in Relation to Indian Labour in Sri Lanka.</i>
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