CONSTITUTIONAL GOVERNMENT AND HUMAN RIGHTS IN A DEVELOPING SOCIETY

h A. L. Cooray

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by

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Printed at
The Colombo Apothecaries' Co., Ltd.
125, Glennie Street, Colombo 2.

TO THE MEMORY OF
MY FATHER AND MOTHER

PREFACE

This little book is based on a few lectures and other contributions of mine and deals with problems of constitutional government and human rights mainly with reference to Ceylon. Some at least of these problems are similar to those encountered in other countries of South Asia particularly those having a representative democratic form of government. I might add that the suggestions that were made in the course of these contributions were in fact offered primarily to stimulate discussion which might lead to the formulation of better proposals.

Although the subject-matter has been revised for publication, I am conscious of the fact that the book still contains a number of infirmities. In spite of these defects, the several requests that have been made, particularly by students of law and politics, for the publication of these lectures and articles together in book form have encouraged me to make them available in a revised form to a wider public.

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*The Revision of the Constitution**

Almost fifty years ago, a historic National Conference on Constitutional Reform was held in Colombo. It was during that Conference that the Ceylon National Congress was born. Sir Ponnambalam Arunachalam, who was chosen as the first President of Congress, occupied the chair. Mr. (later Sir) James Peiris, who a couple of years later succeeded Arunachalam as President of Congress, proposed the chief resolution of the Conference. That resolution was to the effect that the Crown Colony system of Government, which had prevailed in the Island for over a hundred years, should be reformed with a view to the realisation of responsible government.

The demand for full responsible government was finally conceded by Britain nearly thirty years later; and on February 4, 1948, Ceylon attained her independence. But it is significant that following the declaration of independence by the Ceylon Independence Act of 1947, neither a Constituent Assembly nor a Constitution Commission was set up to draw up a free Constitution for the country.

The practice of independent peoples starting off by writing down in a formal document, as a matter of necessity, the fundamental principles relating to the organisation of their government has been prevalent for quite a long time. There are good reasons for this practice. Where a Constitution is drafted by competent men and approved by the representatives of the people or by a Constituent Assembly freely elected by them,

*This chapter is based on the Sir James Peiris Centenary lecture delivered by the author on April 11, 1957, as well as on a lecture before the International Law Association of Ceylon on May 2, 1966.

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that Constitution is necessarily treated with great respect by all, including the Government, as the expression of the people's will. The Constitution can claim not only a legal, but also a moral, authority because it has become, so to speak, the embodiment of the nation's beliefs. Under such a Constitution there is greater likelihood that government will be carried on with proper regard to the spirit of the limitations or restrictions which have been imposed by the framers of the Constitution upon the powers of government. That is the essence of constitutional government. Indeed, if the supremacy of the Government majority supersedes the supremacy of the people, and the people's representatives exercise greater authority than the people themselves, that would be the negation of political democracy.

Instead of adopting that procedure, a relatively easier course was adopted. That is to say, an Order in Council was passed removing the limitations on full responsible government contained in the previous Order in Council of 1946. The Constitution which was incorporated in the Order in Council of 1946 was, it is true, based largely on the constitutional scheme formulated by the Ceylon Ministers in accordance with the 1943 Declaration of His Majesty's Government in the United Kingdom. But criticism has been made on the ground that our Constitution did not have its legal origin in this country but obtained the force of law through an Order in Council made in Britain.

Dr. K. C. Wheare, the eminent British jurist has stated: "For some members of the Commonwealth it is not enough to be able to say that they enjoy a system of government which is in no way subordinate to the government of the United Kingdom. They wish to be able to say that their Constitution has the force of law and, if necessary, of supreme law within their territory through its own native authority and not because it was enacted or authorized by the Parliament of the United Kingdom; that is, so to speak, 'home-grown', sprung from their native soil, and not imported from the United Kingdom. They assert not the principle of autonomy only: they assert also a principle of something stronger, of self-sufficiency, of

constitutional autarky or, to use a less familiar but accurate word, a principle of constitutional *autochthony*, of being constitutionally rooted in their own native soil".[1]

This principle of autochthony was first asserted by the Irish in 1922 and was upheld by the Irish Courts which took the view that the 1922 Constitution obtained its legal validity through its approval by the representatives of the people, sitting in the Irish Free State legislature (Dail Eireann) as a Constituent Assembly.[2] This view differed from that taken by the British Courts, namely that as the Parliament of the United Kingdom had not at that time granted independence to Ireland the validity of the 1922 Constitution depended on the embodiment of the Irish draft in the Irish Free State Constitution Act passed by the United Kingdom Parliament.[3]

In 1937 the special procedure adopted by Ireland for the enactment of her republican Constitution was devised to make the assertion of autochthony quite evident. That Constitution was not enacted, like other legislation, by the Irish Parliament. The new republican Constitution which had been drafted by the de Valera Government was approved, but not enacted as law, by the Irish Parliament although it had power to do so. The Statute of Westminister gave full powers to the Parliaments of the Dominions to repeal or amend any Act of Parliament of the United Kingdom in so far as it formed part of their law, just as the Ceylon Independence Act has done in the case of Ceylon. Instead of enacting the Constitution, it was approved by Parliament and submitted to the people under the Plebiscite (Draft Constitution) Act. This Act did not, however, state that their approval constituted its enactment, although the Preamble of the Constitution declared: "We, the people of Eire...Do hereby adopt, enact and give to ourselves, this Constitution".

Dr. Wheare states: "Two points about these events deserve notice. The first is that, on the Irish as well as on the British

1. *The Constitutional Structure of the Commonwealth* (Oxford, Clarendon Press, 1960), p.89.
2. See *The State* (*Ryan*) v. *Lennon* (1935) I.R. 170.
3. *Moore* v. *The Attorney-General for the Irish Free State* (1935) A.C. 484.

view of the legal basis of the Constitution of the Irish Free State, the enactment of the Constitution of 1937 caused a break in Irish constitutional history. There was a gap or break in legal continuity. Whether the Dáil owed its authority to the Irish people or to the Parliament of the United Kingdom, it did not enact or purport to enact the Constitution of 1937. It showed to other Commonwealth countries a method of making a break with the past, and of conducting what, in law, was a revolution, not an amendment or revision of the constitution of 1922. The second point is that Ireland carried out these steps while still within the Commonwealth. It showed the other Commonwealth countries that you could adopt a home-grown institution without being obliged to leave the Commonwealth".[1]

This principle of constitutional autochthony was also asserted in India when that country adopted her republican Constitution. The Indian Independence Act, 1947, set up two independent Dominions, namely India and Pakistan. The Government of India Act, 1935, was amended to suit the new situation created by the grant of independence. Under the Indian Independence Act, the Indian legislature received full powers to make laws for the two countries including the power to repeal or amend any Act of the Parliament of the United Kingdom. That Act also provided that the powers of the legislature of each Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of each Dominion, and that references in the Act to the Legislature of the Dominion shall be construed accordingly. The constitutional measures as well as the Constitutions themselves which were adopted by these two Assemblies were, however, deliberately not submitted to the Governor-General for his assent. In India the question whether the Governor-General's assent was required under the then-existing legislation for constitutional measures passed by the Constituent Assembly was never raised in the Courts. In Pakistan, on the other hand, this question was raised and it was held by the Federal Court that

1. *Op. cit.*, p. 94.

such assent was necessary in order that the constitutional measures of the Constituent Assembly may have the force of law.[1] Thereupon a new Constituent Assembly was summoned in that country by the Governor-General. This Assembly considered and approved the Constitution which was duly presented to the Governor-General for his assent. In that view of the matter there was, so far as India was concerned, a "break in legal continuity" or a legal revolution which the Indian Courts have recognised.

In Ghana the republican Constitution of 1960 has been claimed to have been adopted by a method which resulted in a separate *grundnorm* but without a break in legal continuity or a legal revolution. In a learned article Professor Kenneth Robinson has stated that although there was no break in legal continuity as in Ireland and India "one may perhaps be allowed to consider that the Ghanians have achieved their object, namely, to render fully explicit the separateness of their *grundnorm* and to show that it is manifestly of their own making. In doing so, they may well have provided an example which others may follow of how to do this without a break in legal continuity and without enacting the new constitution in a manner repugnant to the conception of popular sovereignty to which it is designed to give expression".[2]

Ghana after she attained independence in 1957 was, like Ceylon, governed under a Constitution Order in Council made by the Queen in Britain. The Constitution also safeguarded certain fundamental rights and provided for a special method for the amendment of the Constitution, namely, by not less-than two-thirds of the whole number of members of the Assembly. This special procedure for constitutional amendment was repealed by the Constitution (Repeal of Restrictions) Act, 1958, so that amendments could be made by a simple majority of the Assembly. The requirement that Bills became

1. *Federation of Pakistan* v. *Tamizuddin Khan* P.L.R. (1956) W.P. 306. See Sir Ivor Jennings, *Constitutional Problems in Pakistan* (1957); A Gledhill, "The Constitutional Crisis in Pakistan (1954-1955)", *Indian Year Book of International Affairs*, 1955, p. 1.
2. "Constitutional Autochthony in Ghana" (1961) 1 *Journal of Commonwealth Political Studies* 51.

law only when the Royal assent was given remained, however, in the Constitution Order in Council.

The first step taken by the Government to establish the republican Constitution was to introduce the Constituent Assembly and Plebiscite Bill in the House of Assembly to transfer the supreme power to make law, so far as the Constitution was concerned, from Parliament to the National Assembly alone. The Assembly when sitting to consider the Constitution became a Constituent Assembly. It was explained that while in strict law it was for the Constituent Assembly finally to enact into law the new Constitution, the Government considered that the Assembly would be morally bound by the decision of the people after the Constitution had been submitted for their approval in the proposed plebiscite. This Bill provided that Bills passed by the Constituent Assembly did not require the Royal assent. A White Paper was then issued by the Government containing the Draft Constitution of the Republic and a motion for its approval was passed by the Constituent Assembly. After the electorate gave its approval, the Constitution Bill was presented in the Constituent Assembly and given its three readings.

In the case of South Africa, the Republic of South Africa Constitution Act of 1961 was duly enacted, without any break in legal continuity and in the traditional manner, by the previously existing Union Parliament which was composed of the Governor-General, the Senate and the House of Assembly. It was an Act "to constitute the republic of South Africa and to provide for matters incidental thereto". Section 1 of the Act stated that "The Union of South Africa..., shall as from the thirty-first day of May, 1961, be a republic under the name of Republic of South Africa". Incidentally, it may be pointed out that, since there was no legal break creating a new *grundnorm*, it is possible to argue that the entrenched provisions of the previous Constitution remained unaffected by the enactment of the new republican Constitution in South Africa. According to some South African jurists, however, their republican constitution is autochthonous because the Statute of Westminister, 1931, had previously resulted in a formal break in

the legal link with Britain. After this break in legal continuity, a South African *grundnorm* had, in their view, replaced the previous British *grundnorm*. Thereafter the Constitution was rooted in the soil of South Africa through its acceptance in that country.

So far as Ceylon is concerned, in 1956 the late Mr. S. W. R. D. Bandaranaike, then Prime Minister of Ceylon, declared the Government's intention to establish a republican Constitution while remaining a member of the Commonwealth. In 1957 a Joint Committee of the Senate and the House of Representatives was accordingly entrusted with the task of considering a revision of the Constitution with a view (*inter alia*) to the establishment of a republic.

The position in Ceylon is that under the Ceylon Independence Act, 1947, all authority of the United Kingdom Parliament to legislate for Ceylon ceased except at the request and with the consent of Ceylon. Under that Act Her Majesty's Government in the United Kingdom ceased from the 4th of February, 1948 to have responsibility for the government of Ceylon. From that date Ceylon has been an "autonomous community" in the Commonwealth. The Ceylon Independence Act severed the legal links which bound Ceylon to the British Parliament and Government. The Colonial Laws Validity Act, 1865, ceased to apply to any law made by the Parliament of Ceylon and no such law was void or inoperative on the ground of repugnancy to the law of England or to any existing or future Act of Parliament of the United Kingdom. The Colonial Laws Validity Act, section 5, had provided (*inter alia*) that laws respecting the Constitution of a colony should be passed in such manner and form as may be required by any Act of Parliament, Letters Patent, Order in Council or colonial law in force in the colony.

So far as the legislative powers of Her Majesty in Council were concerned, the Ceylon Independence Order in Council, 1947 expressly provided for their cessation. Since the achievement of independence by Ceylon the Courts have accepted and recognised the Constitution which is contained in the Ceylon (Constitution) Order in Council (Chapter 379 of the Legislative

Enactments of Ceylon) as supreme law in Ceylon. Our Courts have taken the view that the Independence Act did not enlarge the area of the powers of the Ceylon Parliament under the Constitution so as to include the power to amend the Constitution notwithstanding the requirements of Section 29 (4). Constitutional amendments must therefore still by passed by Parliament in the particular manner required by this subsection. Any purported amendment in violation of this subsection would be held to be *ultra vires* and invalid by the Courts.

As already stated, by the Ceylon Independence Act and the Ceylon Independence Order in Council the power to make laws was renounced by Britain. The Parliament of Ceylon is therefore the body that is now vested with the power to make laws having force in Ceylon. This power is subject to the procedural requirements contained in Section 29 (4) of the Constitution. If a view which has been expressed *obiter* is correct, the power is also subject to the substantive limitations contained in Section 29 (2).[1] Subject to these limitations contained in her own Constitution, the Ceylon Parliament has, as the Privy Council stated in *Ibralebbe* v. *The Queen*,[2] "the full legislative powers of a sovereign independent State".

If the view is correct that the legal link with Britain was severed in 1948 under the Ceylon Independence Act and the subsequent legislation already referred to, there is obviously no need to make a further break in order to provide for a republican Constitution which has its roots in Ceylon's own soil. A separate *grundnorm* can, on that view, be said to exist even if the new republican Constitution is enacted by the Parliament of Ceylon in the exercise of its supreme legislative power subject only to the provisions of the present Constitution.

If, on the other hand, a deliberate break in legal continuity or a legal revolution on the Irish or Indian model is considered necessary in the enactment of an autochthonous republican Constitution in order to satisfy national sentiment, other procedures as in Ireland and India will be adopted. In such a

1. See *The Bribery Commissioner* v. *Ranasinghe* (1964) 66 N.L.R. 75.
2. (1963) 65 N.L.R. 433.

case, as Dr. Wheare has pointed out, "some arrangement would have to be made to ensure that the courts would accept this new constitution, to avoid the difficulties that might arise if they acted as the Federal Court of Pakistan acted in 1955".[1]

The problems relating to the making of a republican Constitution are not confined to the procedure of its enactment. Its making involves the introduction of new institutions of Government. It means, further, a reappraisal of those institutions which already exist under the present Constitution. Fortunately, even according to its severest critics, our Constitution, like the curate's egg, is good in parts. These parts can therefore be retained to a large extent in the new Constitution.

In our approach to these problems of Constitution-making, with a view to finding out the general nature of their solution, we must draw our inspiration not only from the British system of government. We must also draw from our own experience and that of those democracies, both within and outside the Commonwealth, where conditions similar to ours prevail.

The revised republican Constitution will have to provide a place for the chief Executive who would take the place of the Queen and the Governor-General. This executive power in a democratic republic is normally vested in an elected President.

With regard to the method of election of the President, there are, broadly speaking, two systems to choose from. The first is election through secret ballot by an absolute majority of the two Houses sitting together. It is often claimed that this method, which has been increasingly adopted in recent Constitutions, tends to result in a more harmonious relation between the President and the majority in Parliament. There is another advantage that is sometimes claimed for this method of election of the President: that it would tend to prevent a trial of strength and a political campaign in the country between the contestants which might weaken the position of the President as the head of the State and the embodiment of national unity.

The second method is by direct election by the people. This system is sometimes modified so that the President is elected

1. Wheare, *op. cit.*, p. 112.

not by the voters directly but through an electoral college chosen by them.

The President would hold office for a definite term, though he would be eligible for re-election. Certain Constitutions expressly limit his re-eligibility to one or two terms. In addition to the President it may be necessary to provide for a Vice-President elected in the same manner as the President.

So far as the powers and functions of the President are concerned, since he would be elected by the people, either directly or indirectly, there seems to be no reason why he should be a mere figurehead exercising only purely formal functions. But, except where he is given explicit authority to act in his discretion, he would act on the advice of the Cabinet. It is also desirable that, as in most democratic Constitutions, the emergency powers of the Government should be incorporated in the Constitution itself and vested in the President subject to the normal safeguards of Parliamentary control and approval.

It may also be found desirable to provide that the President should appoint the Prime Minister on the nomination of the House of Representatives. The advantage is that it would relieve the President of what would otherwise be to him a very delicate task, especially if after a general election no party has an absolute majority. This is a possibility particularly in a country like ours where a rigid two-party system does not prevail as in England. The other members of the Cabinet could be appointed on the nomination of the Prime Minister with the approval of the House of Representatives.

It would be an advantage to define as far as possible the powers which would be vested in the President. Under the present Constitution the powers of the Governor-General are stated to be exercisable, subject to the Constitution and of any other law, "as far as may be" in accordance with the constitutional conventions applicable to the exercise of similar powers in the United Kingdom by Her Majesty. This incorporation of British conventions by reference has in the past given rise to certain difficulties and doubts. For example, in April 1960 there was considerable uncertainty with regard to the extent of

the Governor-General's obligation to accede to a request by the Prime Minister, Mr. Dudley Senanayake, for a dissolution of Parliament. The Press deemed it necessary, in the public interest, to seek some clarification on this matter.[1] In any event, it is certain that under a republican Constitution the incorporation of British conventions by reference will be strongly resisted by public opinion in the country.

Another constitutional question which, as stated by the Government, demands investigation concerns the Senate. This institution has of course merited the attention of critics almost from its inception, or even earlier, from its conception. But it has so far gone untouched and, to cite the words of Walter Bagehot used with reference to the British House of Lords, "quite safe from rough destruction though not from inward decay, from assassination—not from atrophy, from abolition—not from decline".

Ideally, the case for a unicameral legislature, especially in a unitary State, is unanswerable. As Abbé Sieyès has stated: "If a Second Chamber dissents from the First, it is mischievous, while if it agrees it is superfluous". But as Bagehot had pointed out with reference to Britain, though with an ideal Lower House an Upper House would be unnecessary, beside the actual House a revising legislature was extremely useful.

The Soulbury Commission which was appointed in 1944 to report on constitutional reform in Ceylon was of the view that a Second Chamber could make a valuable contribution to the political education of the general public. The Commission stated that there were a number of eminent individuals of high educational and intellectual attainments and possessing notable professional or administrative qualifications and a wide experience of affairs who were averse to entering political life through the hurly-burly of a Parliamentary election. The Commission

1. See S. A. de Smith, "Dissolution of Parliament and the Governor-General's Powers", *Ceylon Daily News*, April 1, 1960 and J. A. L. Cooray, "Dissolution of Parliament—The Limits of the Governor-General's Discretion", *Times of Ceylon*, April 10, 1960 (See Appendix, *post*). See also de Smith, *The New Commonwealth and its Constitutions*, pp. 82-86.

considered that it would be an advantage to the country to enjoy the services of men upon whom party or communal ties rested more lightly and who could express their views freely and frankly without feeling themselves constrained to consider the possible repercussions upon their electoral prospects. In this connection it is interesting to note that the famous Bryce Report as well as various Conferences on the Reform of the Second Chamber in Britain have also pointed out that a Second Chamber could usefully perform such functions as the examination and revision of bills brought from the other House, the initiation of bills dealing with subjects of a practically non-controversial character, the interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable public opinion to be adequately expressed on it and the free and frank discussion of large and important questions from a non-partisan angle.

"What is required", a learned writer has stated with reference to a Second Chamber in England,[1] "is a House containing all the great men of the nation except those who cannot be spared from, or who prefer to remain in the House of Commons. To command the degree of confidence which is necessary for the fulfilment of their role, they must be appointed upon their individual merits, represent all sections of the nation, and be divorced as far as possible from the partisanship of party politics. These last three considerations are of such importance that they can be regarded as three further axioms for any scheme of reform....

"Party politics are a necessity in the House of Commons, where fierce battles of national policy have to be fought out and without which the invaluable function of an Opposition could not be carried on. But the House of Lords should stand well above such conflict. It is no part of their duty to determine national policies, but only to advise and ensure that as expressed in legislation, they do indeed conform with the mature wishes of the nation. While a Government and its supporters might

1. Martin Lindsay, "*Shall We Reform The Lords?*" (London), pp. 42, 47.

well submit with good grace to a limited delay imposed by a non-party chamber, not for an instant would they do so if it were the action of their political opponents".

Judged by these standards, many competent critics have expressed the view that our Senate's record has not been satisfactory. Criticism has been made on the ground that there has been far too little of the careful and efficient scrutiny or the mature discussion of legislative measures that one is inclined to expect of a revising Chamber. For example, although successive statutes have conferred legislative, judicial and quasi-judicial powers on administrative bodies, the problems arising from such delegated legislation and administrative justice have not been discussed in its debates with the detailed thoroughness these matters certainly deserved in that Chamber. What is more, although the Senate has power to originate bills other than money bills, not many important laws or necessary legal reforms have originated in that Chamber. The British House of Lords, in spite of its hereditary element, has a better record in this respect. To give one illustration, the Companies Bill, 1947, was introduced through that House, and over 300 amendments were made to it before it reached the House of Commons which had been during that period almost inundated with other legislation. There are many almost non-controversial legislative measures that the Senate, with more time at its disposal than the House of Representatives, might usefully have originated.

It should be said in fairness to the Senate that in spite of the drawbacks resulting from the method of selection of Senators the proceedings have on certain occasions reached a high standard. In spite of such instances it is difficult to make out a case for the retention of the Senate in the revised Constitution, except as a non-party Chamber.

We therefore come back to our perennial question—what, then, shall we do with the Senate? It has often been suggested that, in order to retrieve the situation, Senators should be nominated not on the basis of party considerations, as has been the almost invariable custom in the past, but entirely on merit. It is interesting to note, however, that the same suggestion was made with regard to appointments to the Canadian Senate. It

has continued, nevertheless, to be filled with people whom Professor Kennedy, the well-known Canadian constitutional lawyer, once described as "partisans and political supporters".

In order to secure the appointment of Senators on merit the suggestion has also been made in Ceylon and elsewhere that they should be selected from panels of candidates. These panels would be submitted to the Government by functional groups such as professional, educational, cultural, trade union, commercial, agricultural, social service and similar organisations. The difficulty here would be to draw up a satisfactory scheme of functional representation. This principle is found, however, in Constitutions such as those of Ireland and Trinidad. Another suggestion is that the selection of Senators should be made by a triumvirate consisting of the Prime Minister, the President of the Senate and the Leader of the Opposition. But any such scheme, whether it is based on nomination, election or functional representation, is bound to provoke controversy. It may however be possible for a competent Constitution Committee to devise a satisfactory scheme for a Second Chamber suitable for Ceylon, where adequate deliberation and discussion of national questions by competent men from a non-party angle can take place.

It would appear therefore that the abolition of the Senate should be undertaken only when it has become quite clear that reform along these lines is not a practical possibility in Ceylon. Even in that event, probably some other provision will have to be made for the examination and revision of legislation which is so voluminous and complicated today.

The Public Service Commission is another institution which has come in recently for quite a lot of criticism. Under the Constitution the appointment, transfer, dismissal and disciplinary control of public officers are vested in the Commission.

As far back as 1928 the Donoughmore Commission, which had been appointed for the reform of the then-existing Constitution, had recommended in their Report that some machinery for dealing with appointments and promotions of public servants should be provided which would protect members of Parliament from the pressure of their constituents and would

inspire in the public service a confidence that matters relating to them would be decided on strict merit and not on political or communal considerations. It was with this end in view that the Soulbury Commission recommended in 1945 the establishment of an independent Public Service Commission.

The difficulty that has arisen is mainly the result of hitching an independent Public Service Commission on to a Constitution that has to be worked on the principle of ministerial responsibility. The tragedy of the Public Service Commission is that under the Constitution it is expected, like Janus, to face both ways—in the direction of public service independence from ministerial control over appointments, transfers, dismissals and disciplinary control, as well as in the opposite direction, giving effect to the principle of ministerial responsibility to Parliament for the acts of the public service.

There has been, as a result, criticism of the P.S.C., on the one hand, on the ground that it has yielded to ministerial and political pressures that have been applied by successive Governments in power. On the other hand, Ministers have maintained that it is unfair to hold them responsible for the acts of public servants when the control over them is vested in an independent Public Service Commission. This anomalous constitutional position has resulted in "accommodation" on the part of the Public Service Commission to the political pulls and pressures of successive Governments in power. Notwithstanding such "accommodation" there have been attempts made by Ministers in the past to shift their responsibility by public criticism of Government officers under their charge.

The remedy for this state of affairs does not seem to lie in scrapping the Public Service Commission and substituting nothing in its place. It lies rather in providing as far as possible for freedom from political interference without at the same time thwarting the necessary doctrine of ministerial responsibility which has become a feature of our Constitution.

Some countries, such as South Africa and India, have been successful to some extent in finding a solution to this problem. In these countries the P.S.C. is vested with the function of making *recommendations* to the Government regarding certain

matters relating to appointments, promotions, transfers, dismissals, and disciplinary control of public servants. These recommendations cannot be rejected or varied without the sanction of the Chief Executive of those countries. Where a recommendation of the P.S.C. is not adopted by the Government, the matter must be brought to the notice of Parliament. The result is that if the Government interferes with the function of the P.S.C. on party or other extraneous considerations, the matter would be exposed to the sanction of parliamentary and public disapproval. With a view to securing the independence of the Commission from external interference, it is provided in India that a member of the Public Service Commission becomes on the expiration of his term of office ineligible for reappointment or for further employment under the Government. Further, except in the case of insolvency, infirmity and engagement in public employment, a member of the Commission can be removed from office only by order of the President on the ground of misbehaviour; and after the Supreme Court, on reference being made to it by the President, has after inquiry reported that such member ought on any such ground to be removed.

Under a republican system of government, certain changes in the judicial system are also inevitable. For example, the right of appeal to the Privy Council, which is now based fundamentally on the Crown's prerogative, would have to be reviewed and it would be necessary to provide expressly for a final Court of Appeal.

In certain Commonwealth countries there are two sections of the Supreme Court, namely, the Court of Appeal and the High Court. In others there are two distinct courts, namely, a High Court exercising original jurisdiction and a Court of Final Appeal which is called the Supreme Court. In the case of Malaysia, special provision was made for appeals to the Privy Council under the Federation of Malaya Independence Act, 1957. The Act provides that the Queen may by Order in Council confer on the Judicial Committee of the Privy Council such jurisdiction in respect of appeals from the Supreme Court of the Federation as appears to Her to be appropriate for giving

effect to any arrangements made between Her Majesty and the Head of the Federation.

It is also noteworthy that in some countries, the President has the power to refer to the Supreme Court for its opinion any question of law or fact which is of public importance and also any bills alleged to be repugnant to the Constitution.

Hardly any substantial reform seems to be called for in connection with the Judicial Service Commission. To draw a parallel between it and the P.S.C. would be misleading and fallacious. So far as the judiciary is concerned, the Ministers are not responsible to Parliament. In fact, the doctrine of judicial independence of the Executive and of the Legislature is a fundamental principle of the Rule of Law and the dominant characteristic of any democratic Constitution. To take away from the Judicial Service Commission its powers of control over judicial officers and hand them over to the executive power would be a denial of this doctrine.

There have been suggestions that there should be some limitation on the present almost unfettered power of appointment of Supreme Court judges by the Executive by a requirement similar to that found under some Commonwealth Constitutions. Under those Constitutions appointments must be made after consultation with such of the judges of the Supreme Court as the Executive may deem necessary for the purpose and, in the case of the appointment of judges other than the Chief Justice, after consultation with the latter.[1]

Our Constitution provides that a judge of the Supreme Court holds office until he reaches the age of sixty-two years, but that the Governor-General may permit a judge who has passed that age to continue in office for a period not exceeding twelve months. This power of extension of the retiring age of judges has been criticised on the ground that it is not in conformity with the principle of judicial independence.

There is one matter on which there is a large measure of agreement. That is the matter of the incorporation of fundamental rights in the Constitution. The Universal Declaration of

1. The Constitution of India, Art. 124 (2). See also the Constitutions of Malaysia and Tanganyika.

Human Rights of the United Nations shows the large measure of agreement even among the nations in regard to these rights. In the most recent Constitutions, we find that fundamental rights are defined and guaranteed.

A comprehensive chapter on fundamental rights in the Constitution would include, among others, the following: Equality of all persons before the law; the protection against retrospective offences and punishments; the prohibition of discrimination on grounds of race, religion, caste, sex or place of birth; protection of life and personal liberty; freedom of speech and of the Press; freedom of assembly and association; freedom of movement, of residence, of acquisition of property and of business or profession; the inviolability of the dwelling; freedom of conscience and the free profession, practice and propagation of religion and the freedom to establish and maintain institutions for religious and charitable purposes; freedom to own, acquire and dispose of property subject to reasonable restrictions imposed by law; the payment of just compensation for property acquired for a public purpose; the preservation of the language, script and culture of the minorities.

It is not suggested that a guarantee of human rights is always a sufficient protection for all individuals and communities. Human rights are the rights of every individual citizen in the State, irrespective of the particular community he may belong to. When States defined and guaranteed fundamental rights, and fixed them in the form of positive law in their Constitutions, their object was to ensure "the recognition of the inherent dignity and of the equal and inalienable rights" possessed by all human beings who belonged to the respective countries as "the foundation of freedom, justice and peace".

It has been said on high authority:[1]

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty and property, to free speech, a free press,

1. *West Virginia State Board of Education* v. *Barnette* 319 U.S. 624.

freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections".

Indeed, the moral basis upon which any Constitution can claim authority and obedience lies in the establishment under it of a Government which respects the human rights of every citizen. In other words, it is only a Constitution which embodies what are considered by all sections of the people to be the principles of good and just government that can command the necessary loyalty and respect of the people and thus become immune from frequent changes made without sufficient deliberation. Such a Constitution places the foundations of that nation's society on a universal standard of morality and on a higher law.

In addition to fundamental rights which the Courts are required to recognise and enforce, some Constitutions contain what are called "Directive principles of social policy". Such Constitutions include those of Bolivia, Cuba, Czechoslovakia, Denmark, Japan, Switzerland and the U.S.S.R., in addition to the Irish and the Indian Constitutions. In the last two Constitutions it is explicitly stated that these principles are intended for the general guidance of the Legislature, the Executive and the Judiciary. One of the principles commonly stated is that the State will strive to promote the welfare of the whole people by securing and protecting, as effectively as it may, a social order in which justice shall inform all the institutions of the national life. It is also stated that in particular the State shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; and that the strength and health of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their sex, age or strength. These fundamental declarations have been deliberately

inserted by the framers of these Constitutions in order that they may command the respect, and hence the obedience, of the people as their political covenant besides being their supreme legal document.

Finally, with regard to the question of the approach to constitutional revision there is not the least doubt that we must try and benefit from the experience of those countries which have faced constitutional problems somewhat similar to ours. It is, however, essential that the particular constitutional changes contemplated by us should be carefully and dispassionately studied and formulated in the light of local conditions and experience. The making of a Constitution is a national undertaking. Party politics and Constitution-making go ill together. If, after a close and careful investigation by competent men and men representative of the entire nation, we are reasonably confident that we are substituting something better in the interests of our country and of all her people, then it becomes our duty to effect the change. But the mere pulling down of the institutions of government, without proper investigation, although it is quite easy, will be of little avail. As Mirabeau has said in those famous words: "Pygmies can destroy, it takes giants to build".

APPENDIX TO CHAPTER I

DISSOLUTION OF PARLIAMENT*

The limits of the Governor-General's discretion

The question as to whether, and, if so, when the Governor-General can constitutionally refuse to accede to a request by the Prime Minister for a dissolution has recently been the subject-matter of debate in the Press and elsewhere.

In this connection it is necessary to recall that, under our Constitution, the Governor-General is required to act, as far as may be, in accordance with the constitutional conventions applicable to the exercise of the similar power by Her Majesty in the United Kingdom.

When we turn, however, to British conventional precedents relating to the exercise of this same power, we find that for over a hundred years there has been no precedent in the United Kingdom of a refusal by a Sovereign of a Prime Minister's request for a dissolution. Although, no doubt, this fact is rather significant, it does not necessarily follow from it that a request for a dissolution can under no circumstances be refused.

For instance, the Sovereign could constitutionally refuse to grant a second dissolution to a Prime Minister who has shortly before been already granted one dissolution and failed to obtain a majority.

As it is often said, a right to a dissolution is not to a series of dissolutions. Again, the question of a refusal naturally assumed great importance in Britain during those periods when there were more than two major parties and a minority government was in office.

Such a case occurred in the United Kingdom in 1923, when none of the three main parties at that time (Labour, Conservatives and the Liberals) had an absolute majority in the House. In that situation Mr. Asquith, the leader of the Liberal Party, suggested "that the time had come when it should be accepted as a constitutional convention that, in the event of

*The author's article in the "*Times of Ceylon*," April 10, 1960.

a party taking office in a minority and being defeated in the Commons, it should not be entitled as of right to a dissolution, but the Crown should be at liberty to consider the possibility of finding a leader who would consent to take office and carry on the administration without a dissolution".

Mr. Asquith argued that the prerogative of the Crown meant that, when a second dissolution was called for very soon after an earlier one, the Crown was "not bound to take the advice of a particular Ministry to put its subjects to the tumult and the turmoil of a series of general elections so long as it can find other Ministers who are prepared to give it a trial".

He went on to state more explicitly that on the defeat of the Labour Government, which was in a minority in the House, the King would be at liberty to refuse a dissolution to Mr. MacDonald, the Labour Prime Minister, if it were asked for, and that an effort should be made to find a Ministry ready to carry on, and avoid a fresh dissolution of Parliament so soon after the election of 1923.

The comments of Keith and Laski on this episode are so relevant to us at the present time that they merit reproduction. Keith stated: "Serious consideration would have shown that, however, when the occasion arose in the particular political conditions, the King would be under every conceivable obligation to allow the ministry to take the verdict of the country. Mr. Asquith perhaps forgot that a dissolution is an appeal to the political sovereign and that when it is asked for every consideration of constitutional propriety normally demands that it be conceded. In fact the King did concede it without hesitation[1] to Mr. MacDonald as had been clear even to many of Mr. Asquith's sympathisers long before the event took place".

Laski also argued with great force that if the King had refused a dissolution to Mr. MacDonald and invited Mr. Asquith to form a Government, the latter being the head of a party even smaller than that of Mr. MacDonald would have

1. Sir Harold Nicolson in his *Life of King George V* has since stated that the dissolution was granted with reluctance.

been bound, in course of time, to be defeated also and to have requested a dissolution. To have granted it would have evoked once more the accusation that the King was discriminating between parties".

In fact Laski went so far as to suggest that the emphasis upon what he called "the automatism of the prerogative" was the surest way to the preservation of royal neutrality, and further, that the safeguard against an unwise dissolution was the probability that the Government which sought it would be forced to pay the penalty by the country for so doing. That, he added, was the case with Mr. Baldwin in 1923 and with Mr. MacDonald in 1924.

Although this precedent cannot be said to have definitely settled the general question of refusal, it clearly shows that a request for a dissolution will be refused only in very exceptional circumstances.

As reference is usually made in this connection to certain precedents in some of the older Dominions, it should be pointed out that, apart from the fact that they are strictly not applicable under our Constitution (which refers to U.K. Conventions), we find that Dominion usage in this matter has varied from the British in some degree. In fact, until the Imperial Conference of 1926 the Governor-General of a Dominion had a greater discretion in the exercise of his powers than the Queen in England and was regarded as the representative of the British Government.

In what has come to be known as the famous "Byng Incident" of Canada, in 1926 Lord Byng, the Governor-General, refused a request for a dissolution made by Mr. Mackenzie King, the Liberal Prime Minister, one reason for the refusal being that the same Prime Minister, Mr. King, had only a short time previously advised and obtained a dissolution but had been unable to obtain an effective majority. On being refused a dissolution Mr. King resigned, insisting that the Governor-General had no right to refuse his advice. The Governor-General thereupon sent for the Conservative Opposition leader, Mr. Meighen who, relying on the support of the Progressives, formed a Government.

The Progressives, however, withdrew their support not long afterwards and Mr. Meighen's Government was also defeated, whereupon he asked for and was given a dissolution by the Governor-General. The raising of the constitutional issue of the refusal of a dissolution to Mr. King (in spite of the fact that he had already been given a dissolution only a short time earlier), coupled with the grant of a dissolution to Mr. Meighen, was one of the main causes of the crushing defeat of Mr. Meighen's Conservative Party at the general election which followed. The defeat also placed the Governor-General in a most embarrassing position and he became the target of strong criticism as a result of his having earlier refused a dissolution to Mr. King, and granted it not long afterwards to Mr. Meighen.

Again, in 1939 the Governor-General of South Africa, Sir Patrick Duncan, refused a dissolution to the Prime Minister, General Hertzog, and sent for General Smuts who formed a Government. In this case too, there was considerable controversy over the constitutional propriety of the Governor-General's action. It is significant that the refusal was defended on the ground that Hertzog's request for a dissolution had the support of only a minority of his Cabinet. It was also stated by the Governor-General as another special circumstance that the question of South Africa's participation in the war was before the people during the previous election and it was left to be decided by Parliament. When war broke out, Hertzog's Government had placed the matter before Parliament which had decided by a considerable majority to adopt the policy of the Opposition leader, General Smuts.

To sum up, the position with regard to the Prime Minister's right to a dissolution appears to be as follows: The Governor-General has a limited discretion which he can exercise in certain exceptional circumstances. In particular the Governor-General may refuse a dissolution (a) where a previous dissolution has already been given shortly before to the same Prime Minister who, having failed to get a majority, asks for another, and (b) where there exists a general consensus of opinion as to the

very great likelihood of a stable alternate Government for a substantial period, depending on the support of a majority having a common policy endorsed by the electorate.

The mere fact that some sort of alternate Government is possible does not, and should not, as H.V. Evatt has pointed out, prevent the grant of a dissolution by the Queen's Representative. In fact, an error of judgment, as in the case of Lord Byng, in refusing a dissolution to one Prime Minister and having to grant it not long afterwards to his successor, would place the Governor-General in a most unenviable position, particularly if the previous Prime Minister's party is returned again at the ensuing general election.

Unless there is clear evidence of such exceptional circumstances as mentioned above, it would seem that the electorate as the political sovereign should be afforded, as Berriedale Keith has stated, "the opportunity to cast a decisive vote in place of the dubious verdict of the preceding election", and of providing a Government with a stable majority.

II

*Human Rights and Their Protection in Ceylon**

By human rights we mean those inalienable moral rights which belong to every human being. They belong to him, it has been said, by virtue of his inherent dignity and worth as a member of the human family. As the Universal Declaration of Human Rights points out:

"Recognition (of these rights) is the foundation of freedom, justice and peace in the world..... It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

This concept of human rights is, in fact, part of the religious and cultural heritage of man. It is derived from ancient philosophies and religions of both the East and the West. The basis of human rights lies as much in the Eastern concept of "Dharma", meaning sense of right or duty, as in the Scholastic theory of law, so called by virtue of its accordance with right reason. According to Dharma and natural law, the ruler himself is subject to the law. The foundation of this Rule of Law is the intrinsic worth of the human person and therefore all persons without exception must respect and obey this law. As far back as twenty-three centuries ago Asoka, the Buddhist Emperor of India, proclaimed to his subjects some of the important

* This chapter is based on two introductory addresses delivered by the author, one at the Seminar on Human Rights held in Colombo in 1966 on the occasion of the visit of Justice Potter Stewart of the United States Supreme Court; and the other at the Symposium on Human Rights organised by the Law Students' Union at the Ceylon Law College to celebrate United Nations' Day, 1967.

human rights as found in Hindu and Buddhist teachings. For instance, with regard to freedom of conscience and religious toleration he said:

"He who exalts his own belief, discrediting all others, does so surely to obey his religion with the intention of making a display of it. But behaving thus, he gives it the hardest blows. And for this reason concord is good only in so far as all listen to each other's creeds and love to listen to them. It is the desire of the king, dear to the gods, that all creeds be illumined and they profess pure doctrines....."

In the Middle East, the Jewish, Christian and Islamic beliefs in the making of man "in God's own image and likeness" also recognised the unique dignity and value of the human person. As it has been expressed, God "in creating human nature, didst most wonderfully dignify it, and has still more wonderfully renewed it".

In the West too, the important natural rights of man were elaborated by great thinkers and laid down as being of universal application. In the Middle Ages, philosophers like St. Thomas Aquinas stressed the intrinsic superiority of natural law and natural rights over legal rights created by more positive laws—the natural law being, as he expressed it, "the participation in the eternal law of the mind of the rational creature".

The rights of man which constitute the foundation of justice imply the duty of everyone in relation to others—the duty, as St. Thomas puts it, "to give to each man his due". In a letter to Julian Huxley, who was Director-General of UNESCO, Mahatma Gandhi has written much to the same effect:

"I learnt", wrote Gandhi, "from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done".

So far as the protection of fundamental human rights in Ceylon is concerned, we have had, as compared with many other countries, a great initial advantage. For over two thousand years of the Island's long history the Courts of Law have occupied a unique place in its system of government. A hierarchical system of judicature was one of the dominant characteristics of the ancient Sinhalese kingdom which existed

unbroken up to the British occupation of Kandy in 1815. It is also a well-known fact that from the beginning of the British occupation the Courts which were established in this country have played a dynamic role as the fearless upholders of the principle of equal justice under the rule of law.

In order to protect these rights and to prevent the abuse of the powers of government conferred by law, the established courts were, almost from their inception, vested with the judicial power and with independence. With the grant of political independence to Ceylon and the enactment of the Constitution of 1946-1947 the importance of securing the independence of the judges for the protection of the rights of citizens and for the prevention of abuse of governmental powers was appreciated by the framers of the Constitution.[1] The judicial power that was so vested in the established Courts of Law cannot be taken away or eroded in the course of ordinary legislation.[2] In order to secure judicial independence it is constitutionally provided that the judges of the Supreme Court hold office during good behaviour and cannot be removed except by the Governor-General on an address of the Senate and the House of Representatives. The Constitution provides further that the salaries of these judges shall be determined by Parliament and charged on the Consolidated Fund and that they cannot be diminished during their term of office.

With regard to the procedural machinery for the enforcement of the rights of persons and the prevention of the abuse of powers, in addition to the ordinary legal remedies the Supreme Court was vested under successive Charters of Justice and ultimately under the Courts Ordinance with the power to issue mandates in the nature of writs. Of these writs, mandamus, certiorari and prohibition are frequently issued to public authorities to prevent them from exceding or abusing their legal powers. Experience suggests that these and other writs should be incorporated in the Constitution and that their scope should be widened to meet modern requirements. So far as the writ of habeas corpus is concerned, it has almost from

1. *The Bribery Commissioner* v. *Ranasinghe* (1964) 66 N.L.R. 73 at pp. 74-75.
2. *Ibid.*, at p. 76.

the inception of the Supreme Court been regarded as one of the most important safeguards of personal freedom in Ceylon. This writ is available against any person detaining another without lawful justification in order to secure the detainee's release from unlawful confinement. As far back as 1864 it was stated by the Supreme Court that the right to issue a writ of habeas corpus was one of the most sacred functions entrusted to a judge, and unless a cause, and sufficient cause, was shown at once for a person's detention, he was entitled to his liberty.[1] It is significant that habeas corpus can be obtained not only by the person unlawfully detained but by anyone else on his behalf. Two other judicial remedies, namely, the Injunction and the Declaration, are also increasingly used to challenge the abuse of power by public bodies and to enforce the rights of citizens.

Under the doctrine of the Rule of Law which prevails in Ceylon, where a person's fundamental rights—such as those of personal freedom, freedom of speech, of association or of public meeting—are infringed without legal justification, he may seek his remedy according to the ordinary law of the land. According to our law a person has the right to speak, write or publish what he chooses or go or meet others where he pleases so long as he does not thereby infringe the statute law or the legal rights of others.

In accordance with this doctrine of the Rule of Law the Court will interpret strictly any statute which purports to interfere with the freedom of the citizen. The rule of construction adopted by the courts is in favour of such freedom. In the Bracegirdle case Chief Justice Abrahams said:[2]

"We have heard this case with most anxious care, and I approach the question of our decision with equally anxious consideration as must always be done by judges where the liberty of the subject is concerned..... It (the jurisdiction of the judges) is now frequently the only refuge of the subject against the unlawful acts of the Executive, the higher officials, or more frequently the subordinate officials. I hope it will always remain

1. Legal Miscellany 58 at p. 61.
2. (1937) 39 N.L.R. 193 at p. 205, citing an English judgment.

the duty of the judges to protect these people".

In the Bracegirdle case the Supreme Court held that the power of the Governor to issue an order for arrest, detention and deportation under the Order in Council of 1896 was not absolute and could be exercised only in a state of emergency contemplated by the preamble to the amending Order in Council of March 1916. The Court held that in Ceylon no person could be deprived of his liberty except by judicial process and accordingly ordered the release of Bracegirdle. More recently the Supreme Court has observed that no unreasonable restrictions should be placed by the Executive on a person's freedom of movement and that the holder of a valid passport and a return ticket to travel abroad has the right to leave the Island and return without hindrance.[1] This striking example illustrates the extent to which the Courts in Ceylon, like those in Britain and the United States, have been ready to use their power of judicial review in order to check the excessive or abusive exercise of power by the Administration.

The International Congress of Jurists held in Rio de Janeiro in December 1962 has expressed the view that where there is a complaint of an infringement affecting human rights the Courts should be entitled to take into consideration at least as an element of interpretation and as a standard of conduct in civilised communities the provisions of the Universal Declaration of Human Rights. So far as the Supreme Court of Ceylon is concerned it has recognised the Declaration as being "of the highest moral authority"[2], although it has not imposed any legal obligation on Ceylon as a member of the United Nations. This view of our Courts is in consonance with that expressed by the Congress of Rio and with the expression of our determination under the Charter as a member of the United Nations "to reaffirm faith in fundamental human rights".

It is necessary to point out that certain statutes have expressly

1. See *Digest of Judicial Decisions*, L. G. Weeramantry (Journal of the I.C.J., Vol. VI, pp. 319-320).
2. *Leelawathie* v. *Minister of Defence and External Affairs* (1965) 68 N.L.R. 487 at p. 490. On the desirability of recognising the Declaration in the Courts, see T. S. Fernando, "Human Rights as a Tradition of the East", *Ceylon Daily News*, December 10, 1964.

provided for a derogation of some of the common law rights of the citizen. Thus under the Public Security Ordinance, emergency regulations may be made by the Governor-General authorising the suspension of some of these rights during a state of public emergency the existence or imminence of which the Government, and not the Courts, is the sole judge. The Ordinance secures, however, that these emergency powers of the Government are surrounded, as they are in Britain, by the safeguard of parliamentary control. On the other hand, unlike in Britain, emergency regulations in Ceylon may, if it appears to the Governor-General to be necessary or expedient, provide for the trial of offenders by such courts, not being courts martial, and in accordance with such procedure, as may be provided for by the regulations. They may provide even for the detention of persons.

These restrictions on the rights of the citizen may be justified under the principle of the Rule of Law only where the ordinary law is not adequate to meet an emergency situation. But such restrictions should, in accordance with the Rule of Law, contain reasonable safeguards. Particularly in the case of preventive detention, as a resolution of the 1965 Conference at Bangkok of the South-East Asian and Pacific Conference of Jurists points out, there should be provision against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention with a right of judicial review and with the right to representation by counsel at all stages.

In addition to their protection by the Courts under the ordinary law, human rights are sought to be recognised and protected also by the incorporation of Bills of Rights in written Constitutions. This practice of the constitutional recognition and guarantee of fundamental human rights goes back to the American Bill of Rights and the French Declaration of the Rights of Man, both dating from the latter part of the eighteenth century. More recently, of course, the inspiration has come from the Universal Declaration of Human Rights. The Declaration is important also for the reason that it contains not only the traditional civil and political rights but also a group

of economic, social and cultural rights. Under this group are included the right of everyone to work, to free choice of employment, to just and favourable conditions of work and remuneration, to protection against unemployment, to equal pay for equal work, to form and join trade unions, and to an adequate standard of living, including food, clothing and housing. Similar rights have been inserted in certain Constitutions as Directive Principles of State Policy for the guidance of the Legislature. Although these Principles are not enforceable in the courts and cannot override the fundamental rights guaranteed under the Constitution, they may nevertheless be judicially recognised in order to determine the scope of those rights which are constitutionally guaranteed.

Moreover, it is through civil and political rights, such as the right of everyone to freedom of speech, assembly and association and the right to take part in the government of the country and to choose their governors at free and periodical elections, that the people under a representative form of government secure for themselves their economic, social and cultural rights. It is noteworthy that it was after the grant of universal suffrage in 1931 that the demand by the people for economic, social and cultural rights gathered momentum.

In Ceylon, particularly after 1931, it has been considered to be a function of government to secure for the people not only their civil and political rights but also their economic, social and cultural rights. There has since been a considerable volume of legislation providing for various matters of social security and economic welfare. For example, legislative provision has been made for minimum wages and for wages boards to regulate wages and other emoluments in trades; for the regulation of employment, hours of work and remuneration of shop and office employees; for the grant of holidays to workmen; for provident funds for certain classes of employees; for the registration of trade unions; for the investigation and settlement of industrial disputes; for the regulation of employment of women, young persons and children; for the safety and welfare of workers in factories; for workmen's compensation and for maternity benefits.

Legislation has also been passed to provide for important social services and to secure a higher standard of living in relation to food, housing, health and education. Certain agrarian reforms have also been carried out by legislation. Provision has, for example, been made for greater security of tenure to tenant-cultivators of paddy lands and for guaranteed prices for the purchase by the government of certain agricultural products, including paddy. Quite apart from the enactment of economic and social legislation, the agitation in the legislature and in the country compels the government to pay heed to the day-to-day economic needs of the people.

The civil and political rights contained in the Declaration are for the greater part identical with those recognised under our Common law though not all of them are guaranteed under our Constitution. They include the right to life, liberty and security of person; freedom of religion, of its practice, worship and observance; equality before the law; the prohibition of discrimination on such grounds as race, religion, caste or sex; freedom of speech, of peaceable assembly and of association; freedom of movement and the right of equal access to public service and to take part in the government of the country.

A mere declaration of rights even in the Constitution will not, however, be of much practical value unless effective remedies are also provided for the enforcement of these rights. The value of such remedies assumes an increasing importance with the steady growth of administrative powers in Ceylon and other developing countries. In India the Constitution itself guarantees the right to move the Supreme Court by appropriate proceedings for this purpose. It confers power on the Supreme Court to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate. In the absence of similar provision in our Constitution, certain statutes have purported to exclude the supervisory jurisdiction of the Supreme Court in this respect by providing that certain Ministerial orders and decisions "shall be final and conclusive and shall not be called in question in any court whether by way of writ, order, mandate or otherwise". It is pertinent to mention in this

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connection that the Supreme Court has stated that under our law every person has the right of access to the Courts of Law for the determination of his legal rights even against the executive authorities and "to none will the courts deny that right if their powers are invoked in appropriate proceedings".[1] So far as the express statutory exclusion of the power to grant writs in certain classes of orders is concerned, it seems therefore, putting it at the lowest, doubtful whether that power, which was conferred on the Supreme Court by the Charter of Justice of 1833 and was continued in later Ordinances along with the Judicial Power, can be excluded in this manner.[2] In any event the absolute finality of administrative orders and decrees and their exemption from judicial review will have a tendency to lead to the servile State with its denial of the supremacy of law and the freedom of the citizen.

The agitation for a constitutional Bill of Rights in Ceylon really commenced after the 1943 Declaration of the British Government on Constitutional Reform. When the Board of Ministers in Ceylon were drafting their constitutional scheme in terms of that Declaration the Ceylon National Congress, at the request of some Congress Ministers, submitted to the Board for its consideration a draft Constitution prepared by the present writer embodying also a comprehensive Bill of Rights.[3] It was the writer's view that a justiciable Constitutional Bill of Rights with procedural remedies for their enforcement would help considerably in protecting human rights in a country such as ours with conditions and traditions so different from those of Britain.[4] Mr. D. S. Senanayake was himself very keen that the new Constitution should contain comprehensive guarantees of human rights so that the fears of certain minority communities with regard to their position in the new political order might be allayed. At that time Sir Ivor Jennings was,

1. *Modera Patawata Co-operative Fishing Society Ltd.* v. *Gunawardena* (1959) 62 N.L.R. 188 at p. 192.
2. See *Anthony Naide* v. *The Ceylon Tea Plantation Co. Ltd.* (1966) 68 N.L.R. 558 at p. 570, per H.N.G. Fernando S.P.J. (later C.J.).
3. "25 Years—but Yet"! (Congress 1945) p. 29.
4. See my article on "The Constitution in the Making", *Times of Ceylon*, October 16, 1943.

in addition to his work at the Ceylon University, the chief unofficial constitutional adviser to the Ministers. Although Sir Ivor made a remarkable contribution towards the making of the new Constitution, he held strong views with regard to the constitutional incorporation of a Bill of Rights. As he wrote later:

"In Britain we have no Bill of Rights; we merely have liberty according to law, and we think—truly, I believe—that we do the job better than any country which has a Bill of Rights or a Declaration of the Rights of Man".[1]

It is of interest to note that Sir Ivor changed his views on this subject in later years after observing for a considerable period of time the working of the Ceylon Constitution. In a talk over the British Broadcasting Corporation and also elsewhere he candidly admitted that a comprehensive chapter of fundamental rights was very desirable in Ceylon's Constitution particularly in the conditions prevailing in Ceylon.

The Board of Ministers decided in 1944 not to incorporate in their draft Constitution a Bill of Rights but, instead, to include a provision which, according to Sir Ivor Jennings, was based on section 5 of the Government of Ireland Act, 1920, prohibiting legislation infringing religious freedom or discriminating against persons of any community or religion. This particular provision subsequently became part of section 29(2) of the Ceylon Constitution.

The Judicial Committee of the Privy Council, which still remains this country's highest Court of Appeal, has stated in a recent judgment that section 29 (2) of the Constitution represents the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which *inter se* they accepted the Constitution and it is therefore unalterable under the Constitution.[2] Unless any person or body desires to prohibit or restrict religious freedom or to discriminate between persons of different communities or religions or to alter the constitution of religious bodies without their consent, the question of the effect of this dictum of the Privy Council will remain mainly academic. Nevertheless it is noteworthy that the Privy Council,

1. *Approach to Self-Government* (1958) (C.U.P.) , p. 20.
2. *The Bribery Commissioner* v. *Ranasinghe* (1964) 66 N.L.R. 73 at p. 78.

as one expects of that august body, has chosen its words with care. It cannot be said on the authority of that statement that any fetters have been imposed upon the people of this country in the exercise of their undoubted power after independence to adopt, enact and give to themselves a republican Constitution.

The rights that are guaranteed under our Constitution, like all its other provisions, are guaranteed by the implied power of judicial review of the constitutionality of parliamentary legislation. Just as Chief Justice John Marshall had done earlier in the famous American Case of *Marbury* v. *Madison*, this power has been asserted by our Courts as essentially attached to a rigid Constitution. It has been said on high judicial authority that unless the courts could intervene where the provisions of the Constitution are violated, the principle of the supremacy of the fundamental law would become but as "sounding brass or a tinkling cymbal".[1]

The Supreme Court will not however set aside legislation "because it is said to offend against the spirit of the Constitution though that spirit is not expressed in words".[2] Nor will it set aside legislation because it does not conform to the generally accepted requirements of the Rule of Law. Thus with regard to retrospective legislation the Court has observed:[3]

"We share the intense and almost universal aversion to *ex post facto* laws in the strict sense, that is laws which render unlawful and punishable acts which, at the time of their commission, had not actually been declared to be an offence. And we cannot deny that in this instance we have to apply such a law . . . Nevertheless it is not for us to judge the necessity for such a law".

There has been, almost from the inception of the present Constitution, a strong body of opinion that the individual rights guaranteed in section 29 (2) are not sufficient and that a comprehensive Bill of Rights should be written into the Constitution. The fact that India has incorporated a comprehensive

1. *National Labour Relations Board* v. *Robbins Tire and Rubber Co.* 161 F.2 El. 798, 804. Cited in Benard Schwartz, *American Constitutional Law* (1955), p. 11.
2. *Kariapper* v. *Wijesinghe* (1966) 68 N.L.R. 529 at p. 537.
3. *The Queen* v. *Liyanage and others* (1963) 65 N.L.R. 73 at p. 84.

list of fundamental rights in its republican Constitution has also had a great influence in Ceylon. Moreover, in the absence of a Bill of Rights in the Constitution, the very wide arbitrary powers granted to the Executive, particularly by the Public Security Ordinance, although they may be necessary in a public emergency, can be abused and lead to dangerous consequences. It was no surprise therefore that when a Joint Committee of Parliament was appointed in 1957 to consider a revision of the Constitution one of the specific matters referred to it was the guaranteeing of fundamental rights. By 1959 the Joint Parliamentary Committee had almost completed the drafting of a chapter of fundamental rights. This was in no small measure due to the initiative and interest taken by its Chairman, the late Prime Minister, Mr. S. W. R. D. Bandaranaike. Since his death in 1959 hardly any meaningful steps have been taken in this direction.

The large measure of agreement among the members of the Joint Parliamentary Committee regarding the fundamental rights to be guaranteed in the Constitution was due to their realisation of an important fact—that in the context of economic development in a plural society a guarantee of rights was a vital necessity.

There is no doubt that the legal and constitutional protection of fundamental human rights is of considerable value. But it is not part of the judicial function to remedy every kind of injustice or every infringement of fundamental rights. The courts can give relief only if the infringement amounts to a breach of the law. It is therefore desirable that there should be established in Ceylon an independent authority in the nature of a Parliamentary Commissioner or Ombudsman to investigate and redress informally and speedily the grievances of citizens relating to acts of maladministration which fall short of breaches of legal rights. It cannot, however, be too strongly emphasized that although laws and institutions may go a long way to safeguard human rights, in the ultimate analysis what will be decisive in this regard is the will and vigilance of the people. It is their will that can make human rights really effective in practice and secure for all persons freedom, equality and justice.

III

*An Ombudsman for Ceylon?**

With the rapid expansion of the activities of government in Ceylon, as in other countries, there has been a simultaneous increase in the powers of administrative authorities. As a result of this development there is an urgent need for the establishment of some independent authority for the securing of redress to aggrieved persons in areas where the existing legal and constitutional machinery is insufficient or ineffective. Complaints are often made that proper standards of conduct are not observed by public officers. The complaints include those of negligence, inefficiency, unfair discrimination, oppressive behaviour, delay and even failure to reply to communications addressed to administrative authorities.

Few would deny that in the expanding sphere of state activity and administrative power the present constitutional, legal and administrative remedies are inadequate to deal with all types of maladministration. For example, in order to institute a regular action in a court of law, the grievance must amount to a cause of action recognised by law. Even in cases where express rights of appeal to the courts against administrative decisions are conferred by statutes on specified grounds the scope of the appeal from such decisions is strictly confined to those grounds of appeal. Similarly where a complainant invokes the supervisory jurisdiction of the Supreme Court, it will grant relief only where the administrative agency has exceeded its

*This chapter is based on an Introductory Paper by the author who was co-rapporteur of the Committee on "The Ombudsman as a Reality in South-East Asia" at the Ceylon Colloquium on the Rule of Law (International Commission of Jurists) held in Colombo in January 1966, and on a lecture delivered by him at the Ceylon Law College in March 1965.

powers and acted in breach of certain principles recognised by law. The Court limits its control to strictly "illegal" acts with the result that the citizen is left without any legal remedy in cases of maladministration which stop short of illegality. As long as a subjective discretion is exercised by an administrative authority on issues of fact, the erroneous decision of that authority on the weight of evidence cannot, unlike in the French *Conseil d'Etat*, be the subject of judicial review. It is well established in Ceylon that the Court does not substitute its own discretion in place of that given to the administrative authority by law. It will only interfere with administrative discretion if it is abused or is based on extraneous, irrelevant or improper considerations.

It is true that in certain countries, such as the United States, the reviewing Court goes somewhat further than in other common-law countries and examines findings of fact in order to satisfy itself whether or not those findings are based on "substantial evidence". It is also true that Courts in many countries have used their creative power to grant relief in deserving cases. The American and Ceylon Courts, for example, have controlled the arbitrary exercise of official discretion in withholding passports from certain citizens of those countries. But the creative power of the Courts by itself is inadequate to correct all types of administrative abuse. There is the further difficulty that even in cases where judicial review is available for redress of grievances, the parties especially in developing countries are often too poor or the subject-matter of dispute is too small for such remedies to be pursued in the Courts, having regard to the delays and the high costs of litigation. Another drawback in the judicial remedy is that departmental files and other government documents are sometimes withheld from Courts by the Executive on the legal plea that they relate to affairs of State or are communications made in official confidence by the disclosure of which the public interest would suffer.

Administrative tribunals which have been set up under various statutes do not also have a sufficiently wide jurisdiction to provide adequate remedies in many cases of maladministration. The extension as far as possible of the existing provisions

of the statutory right of appeal to such tribunals, although it is very desirable in the modern context of developing countries, cannot adequately solve the problem of the abuse of power relating to the manner in which administrative discretions are exercised. Moreover administrative tribunals cannot act as quickly, informally or effectively as an Ombudsman or Independent Parliamentary Commissioner. Even in a country like Britain with a proliferation of administrative tribunals and with an Administration credited with traditionally high standards of efficiency and fair dealing, there existed, as the famous Crichel Down Enquiry so patently revealed, a considerable gap in the remedies against the abuse of administrative power. It will be recalled that this enquiry was ordered by the Minister of Agriculture into the complaint of a person whose land, which had been requisitioned during World War II, had not been returned to him when it was no longer needed for the purpose for which it had been requisitioned.

There are numerous "Crichel Downs" in Ceylon and in other developing countries but there are only a very few individuals, wealthy or influential like Commander Martin, who can successfully obtain an enquiry under the prevailing system. Even in England, as Lord Shawcross has stated, "the little farmer with four acres and a cow could never have attempted to force the battlements of Crichel Down". In Ceylon and developing countries of South Asia the aggrieved citizen is very often "the little man".

Another method which is adopted in Ceylon for the purpose of obtaining redress of grievances sustained by the ordinary citizen at the hands of the Administration is through Parliament. This remedy too is not, under Parliamentary machinery on the "Westminster Model", sufficiently adequate for that purpose. It is true that, since in these countries Ministers are responsible to Parliament for the acts of the Administration, it is open to an aggrieved citizen to try to obtain redress through his Member of Parliament. The Member can always raise the matter with the Minister concerned or in Parliament itself at question times or by moving that a petition be read and referred to the Public Petitions Committee. The matter may also be raised on

adjournment of Parliament or in the course of debate. However, the effectiveness of the parliamentary remedy depends to a large extent on the political alignment of the Member raising it and on the Minister's officials who prepare the answer than on the intrinsic merits of the original complaint. For obvious reasons the Minister will be inclined to support the officers who are under his charge. Moreover, in the case of local authorities and public corporations the Minister may disclaim responsibility on the ground that the complaint relates to day-to-day administration. In order to make this parliamentary remedy, and indeed the control of the Executive which is a function of Parliament, more effective in practice, it would seem that there should be some further machinery in the nature of an Ombudsman or Independent Parliamentary Commissioner for the investigation of the complaints of citizens against the Administration.

How then should we bridge this gap in the remedies against administrative action? If we look at precedents in other parts of the world we find that this problem has been dealt with in one of two main ways. Firstly, in France and in other countries which have followed the French precedent, there is a special Administrative Court (*Conseil d'Etat*) and local Administrative Courts presided over by independent professional judges to investigate complaints against the Administration. These courts have developed a body of *jurisprudence* or case law providing for cheap, flexible and effective remedies which are often the admiration of other countries. There is under the French system a more or less complete and logical method of legal and judicial control extending to the facts and grounds of administrative discretionary action. But many countries, particularly those based on British conceptions of common law and legal procedure, do not seem to favour the system of administrative courts based on the *Conseil d'Etat* and are inclined to take the view that they do not fit into their legal and political systems. The experience of some countries which have tried to introduce the *Conseil d'Etat* into their systems appear to lend some support to this view. This is of course not to suggest that the *Conseil d'Etat* cannot under any circumstances be

adapted to suit the requirements of individual countries. It should be stated that even in countries with sysetms of administrative courts, the institution of the Ombudsman may, as in Sweden and Finland, perform a necessary and useful function.

The increasingly popular method of dealing with the problem of maladministration, speedily, informally and without cost, is through the establishment of an independent Parliamentary Commissioner or an "Ombudsman" as he is known in Scandinavian countries. In Sweden there has been a Parliamentary Commissioner of Justice ("Justitieombudsman") appointed by Parliament since 1809 and a special Parliamentary Commissioner for Military Administration ("Militieombudsman") since 1915. Finland in 1919 established the institution of a Parliamentary Commissioner based on the Swedish model. Alfred Bexelius, the Swedish Ombudsman, has said :

"The Ombudsman has great freedom in deciding the direction of his supervisory activity. Every citizen has the right to complain to him. No one need employ a lawyer to approach him. He receives an average of 1,200 complaints a year and he investigates every one that he thinks is well founded. Neither the Government nor Parliament can stop the investigation of a complaint".

The office of Parliamentary Commissioner in Denmark where there is ministerial responsibility to Parliament is deserving of special study in Ceylon and other countries in this Region which are based on a similar parliamentary system of government. The new Constitution of June 5, 1953 (Section 55) provides: "By statute there shall be provision for the appointment by the Folketing (Parliament) of one or two persons, who shall not be members of the Folketing, to supervise the civil and military administration of the State". In 1954, Act No. 203 was passed giving effect to this provision and Mr. Stephan Hurwitz became the first holder of the office. The Act provided that the Parliamentary Commissioner should not be a member of the Folketing, should be legally qualified and, subject to such general rules as might be laid down for his activities, be independent of the Folketing in the performance of his duties. According to the Act and the Directives for the

Parliamentary Commissioner's activities which were passed by Parliament in 1956 in pursuance of the Act, his jurisdiction comprises Ministers, civil servants and all other persons acting in the service of the State, except judges. By an Act of Parliament of 1961 the Danish Parliamentary Commissioner's jurisdiction has been extended to cover persons acting in the service of local authorities in matters for which recourse may be had to a central government authority. It may be mentioned here that, so far as the countries of the South Asian Region are concerned, broadly speaking, it is desirable that the local administration should also be subject to the Ombudsman's jurisdiction. This matter is, however, best decided in practice by each country having regard to the constitutional relation existing between the Central Government and the local authorities.

The 1954 Act in Denmark further provided that complaints might be lodged with the Parliamentary Commissioner by any person and that he might take up a matter for investigation on his own initiative. It is also provided that any person deprived of his personal liberty is entitled to address written communications in sealed envelopes to the Commissioner. In this connection Mr. Hurwitz has mentioned that inspections of prisons and penal institutions are made by him (usually after announcement in advance), and the prisoners are informed that they will have an opportunity of talking to the Commissioner without the presence of any officials from the prison.[1]

"Justice", the British Section of the International Commission of Jurists, decided in 1959 to institute an independent inquiry into the adequacy in Britain of the then existing means for investigating complaints against administrative acts or decisions of Government Departments and other public bodies, where there was no tribunal or other legal procedure available for dealing with such complaints, and to consider possible improvements to such means, with particular reference to the Scandinavian institution of the Ombudsman. The Report of "Justice", (which was compiled by Sir John Whyatt, formerly

1. *Public Law* (1958), p. 240.

Chief Justice of Singapore, and his colleagues who included Lord Shawcross, Sir Sydney Caine, Professor H. W. R. Wade and Mr. Norman Marsh) was published in November 1961. It recommended the establishment in Britain of a Parliamentary Commissioner along the lines of the Scandinavian Ombudsman and with an independent status like that of the Auditor-General. Plans for the establishment of such a Parliamentary Commissioner for Administration on the general model of the Scandinavian Ombudsman were subsequently outlined in a White Paper issued by the British Government. Explaining the need for such an official the Government stated that the existing safeguards including the right of appeal to tribunals or to review by the Courts could not cover all cases where a private person felt he was suffering from an injustice through faulty government administration. The new office was intended "to develop those remedies still further". Although according to the White Paper proposals Britain's Parliamentary Commissioner was to deal only with complaints referred to him by Members of Parliament, it is interesting to note that it was subsequently suggested by some learned organisations in that country that the initiation of inquiries by the Commissioner should not be restricted to those arising from such complaints.

A Parliamentary Commissioner for Administration has since been appointed in Britain under the Parliamentary Commissioner Act, 1967. The Commissioner can only deal with complaints of maladministration which are referred to him by Members of Parliament. As the Parliamentary Commissioner (Sir Edmund Compton) has pointed out, "it was the desire of Parliament that the office should not be set up to replace the intimate connections that M.Ps have with their constituencies but rather to reinforce them". There are, however, serious disadvantages in obliging an aggrieved constituent to deal with his M.P. alone. In fact, as already stated, there has been considerable criticism of this provision in England. It is significant that in this connection the Ceylon Colloquium on the Rule of Law held in February 1966 has stated in its conclusions that the Ombudsman should, as in New Zealand, deal with complaints lodged by any aggrieved person and also take up any

matter on his own initiative.

New Zealand in 1962 had the distinction of being the first Commonwealth country to adopt the institution of the Ombudsman. The New Zealand Parliamentary Commissioner (Ombudsman) Act, No. 10 of 1962, provides for the investigation, either on receiving a complaint or of his own initiative, of "any decision or recommendation or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity" in or by any of the scheduled Departments of State and other organisations. Unlike his British counterpart the New Zealand Commissioner has authority to investigate all "unfair and unjust" decisions and not merely those involving maladministration. The Commissioner is not authorised to investigate any decision, recommendation, act or omission in respect of which a right of appeal or objection or a right to apply for a review on the merits of the case lies to a court or tribunal, whether or not the right of appeal or application has been exercised.

The Commissioner in New Zealand is appointed by the Governor-General on the recommendation of the House of Representatives. He is removable only on an address from the House of Representatives. His power is limited to making a recommendation to the competent executive body. Unlike his Swedish counterpart, he has no power to institute proceedings for maladministration nor even to order proceedings to be instituted as in Denmark. The Commissioner's power is nevertheless sufficient to discourage maladministration because such acts would be the subject-matter of Ministerial and Parliamentary questions. The fear of publicity minimises to a large extent such acts of injustice. The Commissioner is precluded from investigating certain matters such as legal advice given to the Crown, discipline and terms of service in the armed forces and other matters in which there are already statutory provisions for appeal or review. It is also provided that the Commissioner must, on the request of any Minister, consult that Minister before reaching a final opinion and that any Minister who is concerned may be consulted at any time during or after the investigation. There is further provision that disclosure cannot

be required where the Attorney-General certifies that the giving of information or the answering of any question or the production of any document or paper or thing might prejudice security, defence, international relations, the investigation and detection of offences, or which would involve the disclosure of proceedings of the Cabinet or any Cabinet committee relating to matters of a secret or confidential nature.

Sir Guy Powles was appointed on October 1, 1962 as the first holder of this office in New Zealand. Sir Guy was ideally suited for the office. He possessed the respect and confidence of Parliament, of the government authorities and of the various sections of the general public. He had a successful career as a lawyer, administrator and diplomat. As Ombudsman, Sir Guy has formulated general principles of procedural fairness and administrative courtesy and laid down standards of conduct which the Administration should obey. He has also wielded his powers with restraint and fairness. He has not laid himself open to the charge of interfering with the functions of the Administration or of impairing its efficiency. He has laid down that matters of policy are not matters of administration which are within his jurisdiction.

The Report of the New Zealand Ombudsman for 1964 showed the extent to which administrative injustice could exist in a modern welfare State and how satisfactorily many acts of maladministration could be remedied by the institution of the Ombudsman. In numerous cases both sides had been brought together by the Ombudsman and a mutually satisfactory solution arrived at. The Report contained a summary of one particularly noteworthy case dealt with by the Ombudsman. It is recorded that after a complaint had been investigated by the Ombudsman the Chairman of the Social Security Committee apologised to a mother of four children who had been told by one of his officers to return the next day to collect her new order book although she had already travelled a considerable distance to come to the office. Similar cases of maladministration are of considerable frequency in other welfare States of the Region but go without any redress in the absence of suitable remedial machinery.

Norway has been the last of the Scandinavian countries to establish the institution of an Ombudsman. The Government's statement introducing the Ombudsman Bill in the Storting summarised some of the chief merits of this institution:

"The system of an Ombudsman may be of great help to anyone who feels that he has been subject to abuse of power by administrative authorities. To bring a suit at a court of justice may appear to be difficult and expensive. Not everybody will have the opportunity of having a case debated in the Storting by interpellation and question. Many people will also shrink from the idea of going to the newspapers with a case. By bringing the matter before the Ombudsman, the person concerned may have it examined in a simple and inexpensive manner.

The system will probably be advantageous to the public service also, as the Ombudsman will clear up and eliminate complaints which have no firm bases. In this way he may turn out to be a protector of government employees as against querulous and other quarrelsome persons. Further, the Ombudsman may lessen the burden of work for the members of the Storting, who now constantly get complaints from private persons concerning the activities of some administrative authority".

Mention should also be made of the fact that in Soviet Russia, in East European countries and in Japan there are institutions which in some respects resemble that of the Scandinavian Ombudsman. It is interesting to note that the new Constitution of Guyana provides specifically for the appointment of an Ombudsman. Even in the United States a strong case has been made out for American Ombudsmen by such eminent jurists as Kenneth Culp Davis and Walter Gellhorn. In Gellhorn's view, although the U.S. is rich in responsive administrators and procedural safeguards against official abuse, the country's channels of complaint are so clogged that citizens either get no hearing or win isolated victories that rarely cure the root causes of their grievances.

The question of the desirability of having an Ombudsman in Ceylon, particularly in view of the increasing growth of administrative powers, was raised by the writer in April 1963 in the course of a public lecture given at the Institute of Chartered

Accountants of Ceylon.[1] It was there suggested that this method of dealing with maladministration through an Ombudsman was peculiarly suitable to developing countries of South Asia such as Ceylon, because most of the complainants are persons of limited means. The informal nature of the investigation by an Ombudsman or a Parliamentary Commissioner for Administration will not normally involve any expenditure by way of legal costs or other expenses. If, however, the Ombudsman does determine in an exceptional case that any person should be represented by lawyers or otherwise, it could be provided in the Act constituting the office that he may consider payment towards that person's legal costs in the case.

In recent times the agitation for an Ombudsman has been considerably stepped up in Ceylon. There have been numerous allegations of abuse of powers by public officers including the Police. These allegations are at present given publicity in various forums. Those officers, who now complain that allegations made against them are baseless, will themselves welcome a stoppage of the present practice and its substitution by an investigation by a high independent official like the Ombudsman. Moreover the establishment of the Ombudsman will enable Ministers and government officers to devote more time for their administrative duties, due to shrinkage in the correspondence between them and citizens with regard to the redress of wrongs alleged to have been done by the Administration.

The South-East Asian and Pacific Conference of Jurists held in Bangkok in February 1965 made a Declaration that, in the light of the experience gained in Scandinavia and New Zealand, consideration should be given to the Ombudsman concept as a means of individual redress and the improvement of administration. The Conference arrived at the conclusion that, while adaptation to local circumstances would be necessary, it was understood that the basic principles underlying such a concept were: the complete independence of the office from the Executive; its full and untrammelled power, including access to files and the hearing of witnesses, to investigate complaints

1. See *Constitutional and Public Finance in Ceylon*, pp. 8-9, 15.

against administrative actions of the Executive; and the limitation of its power to recommendations addressed to competent legislative and executive organs.

The Declaration of Colombo which was made by the South-East Asian Conference of Jurists who assembled in Colombo from January 10-13, 1966 also noted:

"That a Parliamentary Commissioner for Administration or Ombudsman provides an informal and prompt means of drawing attention to the grievances of citizens in their dealings with the administration, of securing redress of such grievances by the weapons of publicity, persuasion and recommendation and generally of ensuring the highest standards of efficient and fair administration".

When this question of the appointment of an Ombudsman was mooted in some countries certain arguments were adduced against it. For instance, in countries with systems of Cabinet government it has sometimes been said that the powers of the Ombudsman relating to discretionary decisions of administrative authorities may interfere with the execution of policy for which the Government is responsible and answerable to the people and their representatives in the legislature. But it has not been suggested by those who recommend the establishment of an Ombudsman that his jurisdiction should extent to any consideration of policy. There cannot therefore be any interference with ministerial responsibility to Parliament. His main function is to receive and investigate complaints. As Stephan Hurwitz has stressed with reference to the functions of the Parliamentary Commissioner in Denmark, "he has no authority to change an administrative decision. The duty of the Commissioner is to act as a supervisor of government administration and not as a special court of appeal. The administration is not obliged to follow the recommendations of the Commissioner"[1] ... Nor should the existence of the Ombudsman interfere in any way with the existing practice of referring complaints to Members of Parliament so that they may raise those matters in the legislature. On the other hand, it is very likely that Members

1. The Ombudsman 1961. Copenhagen.

will welcome the opportunity and find it convenient to refer such complaints where necessary to the Ombudsman and secure justice for their constituents. At present these complaints are referred to the appropriate department which in effect acts as a judge in its own cause.

It has been stated, mainly by those in charge of the Administration, that the smooth working of governmental machinery and indeed the public interest itself would be adversely affected if every official act or document becomes open to scrutiny as of right at the instance of citizens. But the public interest does not seem to have suffered in a country like Sweden where for nearly two centuries citizens have had access to official documents subject to a few exceptions such as those which relate to the security of the country, its relations with foreign Powers and the prevention and prosecution of crime. The conclusions of the Ceylon Colloquium on the Rule of Law also state that, so far as the countries of the South Asian Region are concerned, the Ombudsman should have the power to require full disclosure of documents except in respect of such matters as security, defence, international relations and Cabinet papers.

Another objection which was originally put forward by some civil servants in Denmark was that the institution of the Ombudsman would result in less flexibility in that public servants would be afraid to take responsibility without being protected by written rules. This fear too has apparently been proved by experience to be unfounded.[1] In fact, in the Scandinavian countries the Public Service has continued to be at least as efficient as it was before the establishment of the office of Ombudsman. It has further been objected that it would be difficult to obtain the services of a suitable person who would enjoy the confidence of the legislature and of the country as a whole. But there are persons, such as present or former members of the Judiciary, who will command the necessary public confidence.

A more serious objection against the Ombudsman concept is that it is not suitable for countries inhabited by large

1. I. M. Pederson, "The Danish Parliamentary Commissioner in Action", Public Law, 1960, p. 149.

populations, for the reason that he could not possibly deal with the large number of complaints that would be made. It is also said that a proliferation of regional Ombudsmen on the lines of a government department would run the serious risk of depersonalising the institution and minimising the value of a man of integrity respected by the community.[1] Whatever be the merits of these contentions, so far as small countries like Ceylon are concerned, an Ombudsman with a relatively small department will be sufficient. In countries like Denmark, Sweden and New Zealand the complaints received are dealt with by small staffs.

There is also the objection that is sometimes taken that the establishment of such an institution would lead to the multiplication of unfounded complaints against administrative officials, a result which it is said would lead to a discontented Administration. As a matter of fact, many public servants, police officials in particular, have considered the present position in Ceylon and other countries of the Region to be demoralising. They complain that, in the absence of machinery for the proper investigation of alleged administrative abuses by an independent official, allegations which they consider unfounded are made by interested persons in public forums without the officials concerned being given an opportunity of meeting the charges and exculpating themselves. Such officials would welcome an investigation by an independent official like the Ombudsman. The Ministers too, who will be relieved to a great extent of the necessity of inquiring into such complaints against public officers, will be able to devote more of their time to the important functions of government.

Against these objections, perhaps the most formidable argument in favour of the Ombudsman concept is that the mere existence of such an official would go a long way to discourage administrative officials from abusing their powers through fear that such abuses and injustices would be brought by the victim to the "Grievance Man", and through him, where necessary, to the Minister and to Parliament itself.

1. See L. J. Blom-Cooper, "An Ombudsman in Britain?", Public Law, 1960, p. 149.

This has been the experience not only of the Scandinavian countries but also of New Zealand.

Alfred Bexelius, the Swedish Ombudsman has stated:

"Even if the Ombudsman's office has not done and cannot do anything remarkable, it is an expression of real democracy that society maintains an institution with the object of protecting citizens against society's own organs, and that everybody in society has the right to have his complaints against authority investigated, even if he is poor and without social position in the country".

This statement is particularly applicable to Ceylon and to the other representative democracies of South Asia.

IV

*Some Problems of Representative Government in South Asia**

Although the problems of government in the representative democracies of the South Asian region are by no means identical, they are remarkably similar in many respects. This is due, in some measure, to their having shared a common experience. Representative democracies such as India, Ceylon, Singapore and Malaysia were under British colonial rule until their attainment of independence. The Philippines was under the rule of the United States.

The traditional societies existing in these South Asian democracies have other common features. There is, more or less, a diversity of people in each country, based on race, language, religion and social status. Poverty is remarkably widespread. As a result, there is throughout the region an urgent need for national unity and rapid economic development and, so far as the rights of the people are concerned, for an adequate increase in the standard of living.

The post-independence period in the representative democracies of South Asia has clearly revealed that political independence and representative government are not ends in themselves; that, rather, they are means for the achievement of the desired objectives of economic development and of political and social justice for every individual irrespective of his race,

*This chapter is based on a Paper submitted by the author as the delegate from Ceylon to the Commonwealth Relations Conference organised by the Royal Institute of International Affairs and held in Lagos, Nigeria, in January 1962, as well as on a lecture at the Indian School of International Studies, New Delhi, in September, 1968.

religion, caste or class. Independence and democratic government mean very little to a hungry man. They may mean even less to a man who is deliberately discriminated against in his own country because of his race, religion, caste or other similar consideration.

Poverty and discrimination are, however, not the only impediments to the maintenance of democratic government and the Rule of Law in South Asia. They are perhaps the most formidable, but there are many other obstacles. Administrative inefficiency and corruption, for instance. Some of these impediments, particularly corruption, are not so strong in countries having an effective Opposition in the legislature and an electorate which is informed and vigilant.

In spite of these persistent causes of instability, it is significant that the people's mandate given in successive general elections in countries like Ceylon and India has been remarkably consistent: namely, that economic development and social justice should be achieved through representative democratic machinery and without the sacrifice of fundamental human freedoms.

It is also becoming evident that the longer the experience in the working of representative democracy, the greater is the likelihood of its survival in the countries of the region. To take the case of Ceylon, which has had a comparatively long record of universal suffrage and free elections, even the humblest peasant knows that the people can choose as well as turn out their government. It is difficult to imagine that such people will willingly or easily give up this cherished right of choosing their governors which they have exercised for many decades.

At the same time, with the impact of economic planning and social change, there has been a growing realisation that certain British-type institutions will have to be considerably modified in order to meet the economic and social needs of the people. In Ceylon, for example, a revision of the Westminster-model Constitution has, for some time, been considered to be necessary in the light of past experience.

One of the most important problems facing the developing democracies of South Asia is that of ensuring a strong and stable executive government which could force the pace of

economic development. Mr. S. W. R. D. Bandaranaike, in an address before the Indian Council of World Affairs in New Delhi in December 1957 when he was Prime Minister of Ceylon, commended for the consideration of Asian democracies an "executive type" of government in which all members of Parliament, whatever the party to which they might belong, could have some share in government, though, as he said, the majority party would naturally have the major share. He recalled the experiment on these lines carried out in Ceylon from 1931 until 1946, and said that such a form of government would not destroy the party system but would lay greater emphasis on the work of the country than on party.

The executive committee system which was referred to by Mr. Bandaranaike and which prevailed under the Donoughmore Constitution of Ceylon did undoubtedly possess certain advantages, notably the utilisation of the services of members of all parties in the constructive work of government. But that system contained also some serious defects which resulted in its abolition and replacement by the Cabinet system of government in 1946. As Sir Andrew Caldecott, the Governor of Ceylon, stated in his Despatch to the Secretary of State in 1938, although much useful work had been done in executive committees, that system had made administration cumbrous and dilatory, and prevented the fixation and concentration of collective policy and responsibility. The administration, according to Sir Andrew, had become centrifugal and each committee went its own way without any common direction or control.

The new Constitution accordingly introduced the British-type Cabinet system of government which had been favoured not only by the Governor and the later Soulbury Commission on Constitutional Reform, but also by the Ceylon Ministers themselves in their draft constitutional scheme. The Cabinet system, however, has its critics in the developing democracies of Asia. It has been said, for example, that the system does not conduce to such strong and efficient government as is required for rapid development. In particular, criticism has been made on the ground that the Cabinet government does not enable persons with special knowledge of their subjects to make the

necessary decisions in the interests of economic efficiency. Pandit Jawaharlal Nehru, although a supporter of the Cabinet system, has nevertheless remarked that it was curious that while people consulted specialists in regard to their private affairs, they entrusted their most important public matters to politicians who did not have an adequate training to be able to measure up to their responsibilities.

Criticism in Asia is also directed to the fact that since the Cabinet is dependent for its continued existence on its party majority in the legislature, there is a tendency for decisions to be taken in order to ensure its temporary popularity and not in the long-term interests of the entire country. A party's political advantage often takes precedence over national unity and development. Political parties have been reluctant to act unitedly for implementing even measures of national development which have been accepted by the people as necessary and urgent. Decisions are taken by one party or opposed by another merely with the view of securing political gain. Many party politicians in this region have deemed it more profitable in their quest of popularity and power to appeal to racial, religious, caste and other sectarian feelings rather than to issues relating to the integrated development of the nation. When important questions affecting the entire nation have arisen for quick decision party polemics has sometimes resulted in unnecessarily long debates and inconclusive discussions in the legislature. It is claimed that these are luxuries which developing countries can ill afford. It has been pointed out that even the strike weapon has been exploited by party men for their political gain and several man-days have thereby been lost to the detriment of national development. Nepotism, opportunism and corruption have also impeded economic development and efficiency. There has also been widespread criticism in some countries of the region that appointments to the public service have been made not on the grounds of efficiency and merit but on political patronage based on some kind of "spoils" system.

Having regard to these defects and the need for harnessing the united effort of the whole nation towards development,

opponents of the party system have advocated its abolition or its replacement by one party which could secure the services of all in the urgent tasks of government. It is, at first sight, an attractive suggestion. But experience has shown that a single-party system, although it may mean strong executive government, has a tendency to lead towards the eclipse of Parliament and of responsible government. Nor have the single-party States or the "Guided" Democracies of South Asia fared better than others in the attainment of their economic, social and political objectives. There are countries, both in the East and in the West, where the political leadership necessary for economic development and efficiency has been adequately supplied by democratic parties embracing the entire nation and organised on the basis of social and economic policies.

Political parties are indispensable for the creation of an effective Opposition in Parliament. There cannot be any doubt that an adequate expression of public opinion through parties is necessary for the successful working of representative democracy. It is through the party system that the representative form of democracy seeks to give free expression to the differing views held by the electorate. This system demands that groups sharing similar economic and political views should be allowed to place them before the people so that they may elect, from the competing parties, the government of their choice. The democratic system demands that the people should have the right to change, through the exercise of their vote, a government which has forfeited their confidence. It is the Opposition which provides the people with the choice of such an alternative government. While the Government is in office, the Opposition criticises it on behalf of the nation. This system also enables the people to solve their problems in a peaceful and pragmatic manner. It is also a fact that the general body of voters are not sufficiently equipped to choose between the rival solutions to the complex problems facing the nation. The party system enables the people to be presented with alternate programmes and policies in a manner in which they can easily understand.

It is necessary to realise that some of the defects of the party system are due to the peculiar evolution of that system in South

Asia. In the period preceding independence there were in these countries national freedom movements which, although comprising various racial, religious, linguistic and economic interests, worked together for the common cause of ending foreign rule. With the advent of independence the party which had been identified with the freedom movement naturally obtained political power. The enthronement of such a party led by the freedom heroes of the nation delayed considerably the emergence of a strong and responsible Opposition. In countries like India, Ceylon, Philippines and Malaysia, leaders of the freedom movement, who were wedded to a form of liberal democracy, continued to be at the helm of affairs for a comparatively long period after independence. During that period the prevailing system of representative democracy had a tendency to stabilise itself. In India Pandit Nehru, as the political heir of Gandhi, held the post of Prime Minister until his death in 1964. Although D. S. Senanayake and S. W. R. D. Bandaranaike in Ceylon did not quite possess the national image that Gandhi and Nehru had in India, Ceylon's democratic system of government had the advantage of a more literate electorate which had exercised universal adult suffrage since 1931, earlier than any other Asian country. The result has been a high degree of stability of government through the polarisation of the system around two main parties.

Reference has already been made to the necessity of retaining the party system as what Bagehot called "the vital principle of representative government". That does not of course mean that the undoubted defects of the system should not be mitigated as far as possible by a reform of certain political institutions. These reforms would need to be directed, for example, towards providing for a strong and stable executive within the democratic system and the establishment of permanent Advisory Committees in the legislature as part of its organisation. A strong case can be made out for such Committees composed of members of both the Government and the Opposition on the model of the Public Accounts Committee now prevailing in some countries of the region. To take an example, Committees on Delegated Legislation could be established in those countries

which do not have them in order to scrutinize and effectively "screen" regulations and other forms of subordinate legislation which under modern conditions are increasingly made under various enabling statutes by Ministers and other subordinate law-making bodies. Such a Committee would go a long way to prevent Parliament from becoming, due to pressure of time, a mere ratifying authority for such subordinate legislation. It would thereby effectively safeguard the legislative supremacy of Parliament.

It is of interest to note that in India there are informal Consultative Committees for the various Ministries. They provide for informal discussions between Members of Parliament and the Ministries of the Government on the working of administrative departments. In England Mr. L. S. Amery in the course of his Chichele lectures at Oxford has suggested the institution of parliamentary committees, presided over by the Ministers concerned, as a method of supplying the House with better information on many subjects than can be supplied by occasional debates and by questions, and of keeping Ministers more closely in touch with members on their special subjects. "My own experience in the offices which I have held", says Mr. Amery[1] "is that I should have gained by such regular opportunities of giving information and explaining my policies and of gathering the views of those interested, and that the effect upon the quality of debates would have been equally beneficial". He also cites a passage from Lord Haldane's Machinery of Government Committee which advocated such committees for their value not only to Ministers but to their departments:

"The particular argument in favour of some such system to which we feel justified in drawing attention is that if Parliament were furnished, through such Committees of its members, with fuller knowledge of the work of departments, and of the objects which Ministers have in view, the officers of the departments would be encouraged to lay more stress upon constructive work in administering the services entrusted to them for the benefit of the community than upon anticipating criticism which

1. *Thoughts on the Constitution*, p. 54.

may be, and in present conditions often is, based upon imperfect knowledge of the facts or the principles at issue".

The adoption of a system of advisory committees in Parliament may also meet to some extent the point made by Mr. Bandaranaike in New Delhi and which was referred to earlier. The committees would of course have no executive powers. They would not interfere with ministerial decisions. As Harold Laski has pointed out, these committees attached to each Ministry would watch the process of administration, make suggestions on policy for examination and discuss confidentially the principles of bills before the prestige of the Minister became associated with each clause and schedule of their content.[1] In short, they would tend to make the functions of members of Parliament more meaningful in the modern context.

It is also worth considering whether the problem of minimising the evils of the party system and of ensuring strong and stable government can be met at least to some extent by providing for a fixed Executive. It may be possible to devise such an Executive by some adaptation to the requirements of each country of the Cabinet and Presidential systems. It must be conceded that a Parliamentary Executive on the Westminster model is less able to resist undue party and other pressures than a fixed Executive of the Presidential type. The actions of pressure groups have had adverse effects on national unity and development in some parliamentary democracies of the region.

It has been claimed for the executive system in Switzerland that it combines the chief merits of both the Parliamentary and the Presidential systems. The Swiss Ministry is directly elected by the legislature for the full parliamentary term. The choice of Ministers is not confined to members of the legislature. The best persons whose services are available are elected to assume charge of the complicated task of government. In the United States, the Soviet Union, France and some other countries too the "Ministers" who compose the "Cabinet" are generally chosen from those who have special knowledge of the subjects under their charge. As under the Presidential system

1. H. J. Laski, *Parliamentary Government in England*, p. 211.

the Ministry cannot be dismissed during its term of office. It is therefore better able to make its decisions without being unduly influenced by outside pressures. But the Swiss system has an advantage over the Presidential system in that under it Ministers are able to take part in the proceedings of the legislature.

The constitutional entrenchment of fundamental rights and of judicial independence would also help to secure political stability and national unity which are so necessary for the successful execution of plans for development. A Bill of Rights, however, is not a panacea for all the ills that are prevalent in the mixed societies of South Asia. But it does go a long way to safeguard persons of various communities against discrimination and to secure their co-operation in the work of national development. In developing countries particularly the emphasis would have to be placed not only on the classical civil and political rights of individuals and groups but also on their economic, social and cultural rights. But a guarantee of rights cannot by itself establish a new social and political order based on justice to all persons unless it is reinforced by the general will of the people. As Jawaharlal Nehru has pointed out, although the Constitution and an independent Judiciary may help, in the final analysis the people have to develop tolerance and respect for each other. What will be decisive for national unity and integration is the presence or absence of this spirit of tolerance and the abhorrence of discrimination in all its forms.

Rapid economic development and social welfare is dependent on sound public administration. The efficient administration of the functions of government in that regard depends in turn very largely on the goodwill and efficiency of the public service. The goodwill of public servants can be secured by the recognition of their economic, social and cultural rights by the State. These rights have been defined in the Universal Declaration and other documents of the United Nations. Primarily they involve fair wages, social security and a decent living for themselves and their families. So far as efficiency and experience in administration are concerned, South Asian countries like

India, Pakistan, Ceylon, Philippines and Malaysia were fortunate, as compared with certain African countries, in that at the time of their attainment of independence the public services were manned to a considerable extent by experienced local personnel. The number of public servants, however, steadily increased with the expansion of the public sector and the growth of governmental activity[1]. Regardless of the fact that the functions of government were rapidly changing, the colonial pattern of recruitment for the public service continued to be followed in many countries of South Asia. That pattern favoured a broad general education to specialised training in the selection of the higher administrative personnel. As a result, development and other economic functions of government suffered to a considerable extent from the usual defects which are attached to an unskilled bureaucracy. The Report of the British Committee on the Training of Civil Servants points out:

"The faults most frequently enumerated are over-devotion to precedent, remoteness from the rest of the community, inaccessibility and faulty handling of the general public; lack of initiation and imagination; ineffective organisation and waste of manpower; procrastination and unwillingness to take responsibility or to give decisions".

These defects were heightened by a relative paucity of local personnel with the requisite scientific and technological "know-how" to formulate and implement the plans and projects necessary for economic development. For several reasons there has also been a flight of technically and scientifically trained personnel from certain Asian countries to the developed nations of the West. This is the "brain-drain" problem with which many developing countries are afflicted.

It is therefore necessary that in the developing countries of South Asia the colonial pattern of the public service should be revised and refashioned according to a new plan for the integration of its structure with an overall plan for national development. The public administration should be so reconstituted as

1. In Ceylon, for example, as the Report of the Wilmot Perera Salaries Commission pointed out, "the strength of the public service has nearly doubled in a period of ten years since 1948".

o be the efficient and dynamic instrument for the execution of the national plan.

There is also the need in certain South Asian countries to relieve, in the interests of political and economic efficiency, the concentration and congestion of work that now exists in the central administration. In the modern social context it is desirable that the local government authorities should be enabled to perform wider functions not only political but also economic. In its essence such a devolution of functions would accord with the tradition of village government under the ancient Panchayat and Ceylon Gamsabhāva systems. The participation of the people in government becomes meaningful only when it start from the base, from the smaller groups of society where the preponderant majority lives. In countries such as Yugoslavia it has been claimed that a very high rate of economic development has been achieved through a decentralised administration. It is not only in the sphere of day-to-day administration that a certain amount of devolution is desirable. Since planning is considered to be necessary for development in the South Asian democracies, the inspiration for such planned development in these free societies should come from the people themselves organised in appropriate local institutions and social groups. Such an organisation would facilitate the combination of economic planning with respect for fundamental human rights. It would help to secure the necessary participation of the people in the development programmes of the central Government.

In the developing countries there are many important fields of necessary development where private enterprise is not willing to enter, due to such reasons as lack of sufficient capital or of its foreign exchange component, slowness and insufficiency of profits and other similar reasons. In these as well as other fields of activity governments in South Asia have intervened due to pragmatic as well as collectivist reasons. The important place thus occupied by the public sector in the development plans of South Asian countries has given rise to difficult problems of constitutional government. One of the main problems is that of maintaining effective parliamentary supervision of

public concerns without impairing their efficient and profitable operation. There has been a tendency in the South Asian region to adopt the institutional device of the Public Corporation for the purpose of reconciling the efficient and independent day-to-day administration of public enterprise with the principle of parliamentary and ministerial control. In many countries of the region such reconciliation has not in fact been achieved in practice. In India and Ceylon the working of Public Corporations has come under strong parliamentary criticism.

There have been complaints by Boards of Public Corporations that their commercial judgment in internal matters has been interfered with; that ministerial directions regarding pricing policies of Corporations have been based more on political expediency than on their economic operation; and that questions have been asked and answered in Parliament with regard to the conduct of their day-to-day affairs as distinct from general issues of policy. It has also been suggested that there has been undue ministerial and other political interference with administrative decisions made by the Boards and generally with the internal management of public enterprise. The Boards have ascribed the unsatisfactory performance of the industries or enterprises under their charge to such interference which has deprived them of initiative and flexibility of movement which are characteristic of private enterprise.

On the other hand, Parliamentarians and Ministers have maintained that there must, in the public interest, be effective parliamentary and ministerial control over the policy of nationalised industries, particularly in developing countries. It has been pointed out that such enterprise forms an essential part of the national economic plan. Moreover, Corporations very largely depend on the financial assistance provided by the central government. Ministerial responsibility to Parliament, it has been suggested, demands direction and supervision of such enterprise by the Minister concerned.

It is not easy to combine the autonomy of the Board with ministerial responsibility for public enterprise. But an effort should be made to draw as clear a line of demarcation as possible between general policy and day-to-day management and to

define the respective responsibilities of the Minister and the Board if the enterprise is to be run efficiently on commercial lines. A definition of such responsibilities would also facilitate the parliamentary control of public enterprise. In Britain recent constituent statutes normally provide that the Minister shall be entitled to give directions of a general character to a Public Corporation in relation to matters appearing to him to affect the national interest. Thus the Atomic Energy Authority Act, 1954 confers power on the Minister of Science to give the Atomic Energy Authority "such directions as he may think fit, and the Authority shall comply with any directions so given", but the Minister "shall not regard it as his duty to intervene in detail in the conduct by the Authority of their affairs unless in his opinion overriding national interests so require". The British Select Parliamentary Committee on Nationalised Industries has recommended in a report that "when a Minister wishes, on grounds of national interest, to override the commercial judgment of a chairman, he should do so by a directive which should be published".

Since the Board of a Corporation is responsible for the efficient commercial operation of the particular industry or business, its members should be appointed not on the basis of political affiliation or as a party reward, but on their competence and ability to man the industry or service in the interests of the public. The best available Board must be appointed. There have been complaints in countries of this region that this principle of appointment has often been disregarded for political, communal and other extraneous reasons. It is also desirable that the employees of the Corporations should be appointed by their Boards of Management and that the latter should also be responsible for their terms and conditions of service. Where the executive Government is able to exercise undue political pressure with regard to such matters, the result has been the employment of excessive labour and the increase of unjustified emoluments.

It is also desirable that some consultative machinery should be provided for the active participation of the employees and of the community in the national enterprises. So far as disputes between employees and the corporation are concerned, there

should be joint machinery for their peaceful settlement by conciliation and arbitration.

There does not appear to be any valid reason why public corporations should not be legally liable in the same way as private persons are. Their constituent statutes should provide that they are not to be regarded as the servants or agents of the Crown or as enjoying any immunity or privilege. They would thus be prevented from using "the shield of the State" to protect their illegal acts in countries where the government is immune from civil wrongs committed by it or its servants. In Ceylon, as a general rule, the constituent statutes provide that the corporations may be sued in their own name.

Public control over the Corporations and similar government-sponsored institutions includes also the audit of their affairs by independent experts. As Mr. A. Weerasinghe, a former Auditor-General of Ceylon, has suggested wasteful expenditure and inefficiency could be checked, as in Canada, by pre-audit as well. But in order to assist effective parliamentary control of public enterprise the function of audit should not be confined to the discovery of irregularities according to rules of colonial Civil Service and Treasury procedure. In fact one of the purposes for the establishment of Public Corporations is the elimination of rigid public service administration and Treasury control which hamstring public enterprise. The approach should rather be positive in order to facilitate efficiency, adaptability and rapid development. The strict functions of audit should be combined with a review of the financial management of public enterprises according to commercial principles. The audit reports should, for example, contain an examination of the extent to which intended targets have been achieved by the Public Corporations and other public enterprises. As Mr. Bernard Soysa, M.P., Chairman of the Public Accounts Committee of the Ceylon House of Representatives, has stated:

"A developing country operating on the basis of a plan, and the implementation of a plan, requires that audit shall play a more dynamic role. Planning and implementation require constant checking and rechecking in order that targets

may be if necessary revised and decided targets may be attained...

If, in fact, audit functions in a dynamic way, promoting growth and development, with technical advice where necessary, pointing out early mistakes which might occur—with that entire process geared to the implementation of a plan, surely, far from having a paralysing effect the Auditor-General's intervention would be welcomed as a shot in the arm".[1]

It is indeed desirable that there should be legal provision for such a regular evaluation of plans and progress of work. The enlarged function of public audit control that is envisaged is best performed, as in countries such as Yugoslavia and Israel, by a separate branch of specialised audit having the requisite expert knowledge of the principles of financial management of public enterprises. Such a body would be of assistance to Parliament in the exercise of its control over Public Corporations. It could also advise the Minister when such advice is requested by him, for example, in the exercise of his direction-issuing power.

It is necessary that the examination of the reports and accounts of corporations should be done without undue delay by a Public Accounts Committee or preferably by a Parliamentary Committee on Public Corporations. Such a Committee has been established in the British House of Commons in 1956. Its main function is "to examine the reports and accounts of the nationalised industries, with the object of informing Parliament about the aims, activities and problems of the corporations and not of controlling their work". The Committee provides the necessary liaison between Parliament and the Corporations. It has issued a number of valuable reports and has made several thorough investigations reviewing the general policies and workings of certain nationalised industries. In order to facilitate the examination of reports and accounts there should be a time limit laid down by law under a Financial Administration Act for the furnishing of the annual accounts by Government Departments, Corporations and other public bodies and

1. *Proceedings of a Seminar on the Role of Audit in a Developing Country* (Government Press, Ceylon), pp. 18, 23.

for laying them before Parliament. Delay in the furnishing of accounts and in the answering of audit queries has, in certain countries of the region, resulted in parliamentary control over public expenditure becoming inadequate. Such control would be made very effective if the Parliamentary Committee is assisted by a staff of independent experts who could examine and report to the Committee on such matters as management efficiency, profitability, attainment of approved plans and targets and a general evaluation of the work of the corporations.

In the changing societies of South Asian democracies it is essential that the law should be geared to the economic, social and technological change that is taking place. As Dr. W. Friedmann has stated, "the law must, especially in contemporary conditions of articulate law-making by legislators, courts and others, respond to social change if it is to fulfil its function as a paramount instrument of social order".[1] It should also be the function of law to reconcile the rights of the individual with the general interests of the community. The law should not be allowed to become what Justice Holmes once called "a brooding omnipresence in the sky". It must be made the articulate voice of the people and a flexible instrument of political and social justice.

It is necessary that there should be in the first place a simplification and modernisation of the existing law. There is admittedly a considerable amount of dead wood that remains to be cleared. Generally speaking, in the democracies of this region the law still remains far too bulky, technical and cumbrous to suit the modern social and economic needs of these developing societies. Its complexity and unwieldiness together with resultant defects such as the law's delays and expense are among the most agonising problems connected with the maintenance of the Rule of Law and of democratic government in the region. As far back as 1936 the Ceylon Judicial Commission in its Report had pointed out that the statute law of the Island, substantive and procedural, was in many cases out of date, and that it had never received that revision which statute law

1. *Law in a Changing Society* (1959), p. ix.

seemed constantly to require if it was to be adequate to changing needs.[1]

It is also necessary that law reform should be followed up by codification. This is itself an essential pre-requisite for the translation of the law from English to the national languages. Codification and translation are vital for making the law accessible to the people in their own language and for their participation in the legal process in so far as it affects them. Such participation by the people is necessary for the maintenance of the Rule of Law and the successful working of representative government in South Asia. For the purpose of keeping the law up to date and for its codification, prior to translation, some permanent machinery such as a Law Commission is necessary. The Commission would invite proposals for the revision of the law from judges, lawyers, law teachers and other members of the public. The existence of a Ministry of Justice in many countries of South Asia would facilitate the implementation of the proposals for law reform by legislation.

In South Asia access to the Courts of law often presents difficulties to a large number of persons due to their poverty. It is imperative in the interests of democratic government and the Rule of Law that legal aid systems should be provided to render assistance to those in need, at least in cases where fundamental rights are alleged to be infringed.

In the legal systems of the South Asian democracies Administrative Law is becoming increasingly important. The increase in governmental activity in social and economic matters has necessitated the delegation by the legislature of considerable powers of legislation and adjudication to Ministers and administrative authorities. It is a mistake to regard such delegation by itself as a "New Despotism" or an infringement of the Rule of Law. As the Report of the Donoughmore Committee on Ministers' Powers[2] has pointed out in England, there are good reasons for delegated legislation: among them are pressure on parliamentary time, technicality of the subject-matter, flexibility of such legislation, the

1. Sessional Paper VI, p. 1.
2. (1932) Cmd. 4060.

opportunity for experiment and the necessity for quick action especially in times of emergency. For these very reasons, it is impractical to expect the legislature at its ordinary sittings to scrutinise adequately the various kinds of delegated legislation laid before it without the aid of a Standing Scrutinising Committee of Parliament.

The necessity for administrative adjudication arises from the fact that the implementation particularly of social and economic legislation demands a speedy, cheap, informal and largely functional process in consonance with the policy which is behind such legislation. In recent times there has been a proliferation of such tribunals in South Asia. There has also been a tendency in some enabling statutes to place administrative decisions taken under them beyond the supervisory jurisdiction of the courts of law. The judicial review of the legality of administrative action is an essential requirement of the Rule of Law. It is therefore desirable that the supervisory jurisdiction of the courts exercised through the grant of writs and orders should be embodied, as in India, in the Constitution itself. In addition there is an urgent need in many South Asian democracies for reforms in the law relating to tribunals. Legislation prescribing fair administrative procedure with regard to statutory inquiries is essential in the interests of justice.

In the developing countries of South Asia, where agriculture still remains the chief economic activity, adequate land reform measures are vitally necessary for the promotion of economic progress, for the establishment of social justice and for the effective maintenance of representative government and the Rule of Law. Feudal and colonial systems of land tenure in the region continue to have adverse effects on agricultural production. In the developing countries of South Asia economic development is largely dependent on agriculture, which still has a relatively low productivity. A considerable portion of the cultivated land in these countries is yet under tenancy in spite of measures which have been taken for the transfer of ownership to cultivators. It is not enough to reform land tenure. Along with such reform there must be established the

necessary institutional machinery for popular participation. It is also necessary that there should be an integrated approach to the question of land reform which must fit in to the national development plan.

In India, Ceylon and other countries of the region considerable progress is being made to provide for security of tenure, reduction of rent, ownership for tenants and the abolition of intermediary tenureholders. In most States of India there is a ceiling on individual land holdings and control over sub-division and fragmentation of holdings through inheritance and otherwise. There is also in South Asia a movement for the development of co-operatives and of rural credit facilities for the benefit of the farmers. In Ceylon the Paddy Lands Act provides not only for greater security of tenure to tenant cultivators of paddy lands and for inheritance rights to such lands but also for the consolidation of holdings and the establishment of Cultivation Committees. There is also legislation providing for guaranteed prices for paddy and certain other important agricultural products.

The problems of the South Asian representative democracies demand that, where necessary, the institutions and rules of government should be reformed so that they would respond with greater harmony to the economic and social needs of the people. The representative form of democracy possesses the undoubted advantages of flexibility, diversity, experiment and peaceful change. The success of that form of government in South Asia as elsewhere depends not merely on constitutional and legal rules but demands certain qualities of a high order from the governors as well as the governed. If such necessary requisites as public spirit, tolerance and self-restraint are not wanting, representative government in South Asia under disinterested leadership may yet reconcile, as no other system can, the needs of the person with those of society and safeguard individual as well as collective freedom from the abuse of power.

V

*Human Rights, Development and International Order**

One of the dominant principles underlying the Charter of the United Nations is the close connection between the recognition of the fundamental rights of all members of the human family and the maintenance of international peace and order. In fact one of the purposes of the United Nations as stated in the Charter was the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. All member States have also pledged themselves under the Charter to take joint and separate action in co-operation with the Organisation for the achievement of its purposes. As the Universal Declaration of Human Rights proclaimed by the General Assembly declares in its Preamble, the recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world as well as the highest aspiration of the common people.

International concern for the protection of human rights received this new impetus under the Charter of the United Nations as a result of their deprivation by those regimes in the world which recognised no law higher than that of the State. For the first time in history, under an international Charter, States pledged themselves to promote respect for fundamental rights of the individual. These rights were defined in 1948 in the Universal Declaration of Human Rights. "It is too late

*This chapter is based on an address delivered by the author on "Human Rights and World Order" at the Ceylon Symposium on Human Rights organised by the Law Students' Union at the Ceylon Law College in October 1967.

now", Mrs. Pandit of India has stated in the General Assembly of the U.N., "to argue that fundamental violations of the principles of the Charter are matters of domestic jurisdiction of member States. If this was the case, the Charter would be a dead letter, and our professions about a free world, free from inequalities of race, free from want and free from fear, are empty mockery".[1]

On December 16, 1966, a notable event took place in pursuance of the obligation of member States to promote respect for human rights. That was the unanimous adoption by the General Assembly of two International Covenants, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights. These Covenants have spelled out in greater detail the rights defined in the Universal Declaration of 1948.

In spite of the Universal Declaration and the many International Conventions on Human Rights there have been in many parts of the world brutal violations and flagrant denials of human rights. Glaring instances of discrimination and oppression on such grounds as race, religion, colour, caste, poverty and social origin have even compelled those oppressed "to have recourse, as a last resort, to rebellion against tyranny and oppression". When violations of human rights have been brought to the notice of the organs of the United Nations, "accused" States have sometimes pleaded that they were matters essentially within their domestic jurisdiction. They have been content to ignore the fact that under the Charter they have pledged themselves to promote and encourage respect for human rights and fundamental freedoms. Even in those instances where some action has been taken by the United Nations at the international level, it has seldom been effective.

The ineffectiveness of action both in the domestic and international spheres has, in many cases of breaches of human rights, been due to the absence of a satisfactory procedure for their implementation and to the omission of the right of individual redress. At the national level, it is therefore necessary that there should be comprehensive guarantees of fundamental human

1. Journal of U.N., No. 54, Suppl. A-A/P.V./50, p. 356.

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rights enshrined in laws and constitutions and enforced by independent judges free from political control and influence. Especially in developing countries, judicial procedures need to be supplemented by more informal methods of investigation and redress such as that by an Ombudsman.

At the regional and world level, the existing procedures need to be co-ordinated and strengthened as far as practicable in the direction of some form of judicial or quasi-judicial machinery, with the right of individual access. In the matter of the collective enforcement of human rights at the regional level, the European Convention which was signed on November 4, 1950, provided a spectacular advance. Under the Convention, the institutional machinery of implementation consists of the Commission and the Court of Human Rights. According to Article 25 of the Convention any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set out in the Convention may petition the Commission. This right is, however, subject to the condition that the Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Regional Conventions of this type can usefully pave the way for the ultimate adoption of international machinery for implementing the Universal Declaration and of the human rights provisions of the U.N. Charter.

So far as implementation through an International Court of Human Rights is concerned, having regard to the views held by a considerable number of member States of the United Nations such a Court, even with only a declaratory jurisdiction, is likely to remain an ideal at least in the near future. Perhaps the most that can be hoped for would be the establishment of some kind of informal and advisory machinery of implementation. As a matter of fact, the Commission on Human Rights has submitted a draft resolution for the establishment of a United Nations High Commissioner for Human Rights. His duties would be, *inter alia*, to assist in promoting and encouraging universal and effective respect for human rights and fundamental freedoms for all. In particular, he would be

authorised to render assistance and services to any member State or member of any of U.N. specialised agencies at the request of that State. He would have access to communications concerning human rights addressed to the United Nations and could, whenever he deemed it appropriate, bring them to the attention of the Government of any member State to which such communications explicitly referred. The High Commissioner would be required to report to the General Assembly through the Economic and Social Council on developments in the field of human rights including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialised agencies, and on his evaluation of the significant progress and problems.

In order to assist the Economic and Social Council to carry out its recommendatory function under the Charter for the purpose of promoting respect for, and observance of, human rights the Commission of Human Rights was set up in 1946. In 1947 the Council approved the statement of the Commission that the latter "recognises that it has no power to take any action in regard to any complaints concerning human rights". It is debatable whether this view is in accordance with the provisions of the Charter. In any event, the exercise of the obligatory function of the United Nations under Article 55 of the Charter to promote universal respect for, and observance of, human rights will be greatly facilitated if the Commission is updated and assigned functions which are in keeping with its increasing importance.

In spite of much admirable work accomplished by the United Nations to promote observance of human rights, there have been violations of them in many parts of the world. The rights that have been violated have not only been civil and political. Less publicised but not less deplorable have been the violations of economic, social and cultural rights. This denial of justice, whether political or social, has been a threat to peace and security, both domestic and international.

So far as social injustice is concerned, poverty offers the greatest threat to peace. The extent of this threat can be visualised from the fact that there are, according to some estimates,

over 150 million families in developing countries living in "sub-human" conditions and that two thirds of the world's inhabitants are poverty-stricken and under-fed. As the Preamble of the Universal Declaration of Human Rights states, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

Litvinov once stated that peace was indivisible. So is justice. Political and social justice, as well as national and international justice are inseparable. Social justice in the national sphere demands the protection of the economically weaker sections of the community. It is necessarily connected with international social justice which requires the prevention of exploitation of the poorer nations by those which are economically rich and powerful.

Under the Charter of the United Nations member States have pledged themselves to promote social progress and to achieve international co operation in solving international economic and social problems. The duties of member States under the principles of the Charter as well as of international social justice demand that the economically advanced nations should encourage the initiative of the less advanced countries and assist them towards their "take-off" and self-development. The emphasis should be on fair trade rather than on aid.

Trade restrictions in the developed countries have, however, discouraged the exports of developing countries. Although the "Kennedy Round" was a noteworthy step forward in the development of trade relations among the industrially advanced countries, it was not followed by a similar "New Delhi Round" directed towards the creation of economic relations beneficial to developing countries. The buyers' market in the economically advanced countries has been able to dictate the terms of trade to developing countries, thereby defying the canons of international social justice. In recent years the export prices of primary agricultural commodities have been declining progressively while the prices of manufactured goods, including those needed for agricultural development and which are imported by developing countries, have risen steadily. As Pope Paul has

stated in his Encyclical Letter on the Development of Peoples: "Raw materials produced by under-developed countries are subject to wide and sudden fluctuations in price, a state of affairs far removed from the progressively increasing value of industrial products. . . . The poor nations remain ever poor while the rich ones become still richer". The seriousness of the position can be gauged from the fact that these primary commodities amount to over 80 per cent of the exports of developing countries.

Ceylon, which is a good example of such developing countries has, during the decade 1957 to 1966, lost over 3,000 million rupees as a result of the fall in export prices of its major primary commodities. The value of foreign aid received during this period was only about one-fifth of the loss in export earnings. The fall in export prices has therefore naturally had adverse effects on the development programmes and the rates of economic growth of Ceylon and of other developing countries.

Institutions like the International Monetary Fund have not been of much assistance to developing countries in their difficulties caused by this decline in commodity prices. Nor has there been any substantial co-operation by the Fund on this matter with the United Nations Conference on Trade and Development (UNCTAD). As Dr. Raul Prebisch, the former Secretary-General of the United Nations Conference on Trade and Development has pointed out, the gap between the foreign exchange requirements of developing countries for development and their earnings continues to remain very wide.

It is therefore imperative that concrete measures should be taken for the stabilisation at a fair level of prices of primary commodities and other exports of developing countries. Among the measures that are generally suggested are the adoption of international commodity agreements and trade and tariff preferences. It is urgently necessary that meaningful steps should be taken to realise at least in some measure the general objective of UNCTAD—to reshape world trade "in harmony with all the needs and interests of developing countries in particular and of the world as a whole". If just and stable prices can be obtained for exports of developing countries, it would

progressively lessen the need for foreign aid and enable these countries to discharge their own primary responsibility for development.

In the present state of growing economic disparity between the developed and developing countries, economic aid is required by the latter for their economic growth. The domestic capital of the economically poor countries requires to be supplemented with loans and other aid from the developed countries. It is significant that the amount of aid that has so far been given by the developed countries amounts to less than one per cent of their gross national product which is the target suggested by UNCTAD. Some aid-receiving countries have complained that a considerable portion of the aid that is given is tied to the purchase of imports from the donor countries. The aid-receiving countries have thus been denied free competition in the world market for the purchase of their imports. It is obvious that the insistence of such tied bilateral aid by the lending countries results often in injustice. Again, many loans that have been granted to developing countries have been for relatively short terms and have carried comparatively high rates of interest. Such aid has created serious debt service burdens in many developing countries. Most of the aid could not be used for development because it went out again as repayment of capital and interest. The result has been the mounting external debts of developing countries.

The aid-receiving countries on their part can encourage the grant of international aid on just and liberal terms. They owe a duty to take adequate steps to ensure the best possible use and absorption of the aid that is given for stimulating planned development and for diversifying their economies. Those projects should be selected which are most conducive to national economic development. There is also the need to effect the necessary changes in the traditional and colonial patterns of their societies and establish such administrative and other institutional machinery as is necessary for those purposes. Above all, there must be planned mobilisation of domestic finance and other internal resources for development.

In spite of the widespread failure to recognise the political

and economic rights of individuals and nations and the ineffectiveness of the procedure for their enforcement which has been followed by the United Nations, no cause exists for despair. There is not the least doubt that the educative value and moral influence of the Universal Declaration and of other International Conventions are increasing. This influence is clearly discernible in the constitutional provisions, domestic laws and governmental policies as well as in the judicial and administrative decisions of many countries.

The oppressed themselves are becoming increasingly aware of the freedom and justice to which they are entitled. As U Thant has pointed out, even the world wide protest movement of youth may often be a manifestation of their concern for justice. This concern for human rights will be even more widespread with the creation of enlightened public opinion on a wider scale by individuals and organisations such as those connected with religion, politics and culture.

At the regional and international level a considerable number of Covenants and Conventions are being ratified and implemented by an increasing number of States. Recent International Covenants such as those on Civil and Political Rights and on Economic, Social and Cultural Rights have provided certain machinery and procedure for their implementation. The United Nations has also conducted various studies and provided technical assistance in the field of human rights. Its programme of advisory services has been impressive. A useful contribution has been made by U.N. Seminars which have been held at world and regional levels. In spite of legal and political objections which have been raised with regard to its competence to deal with specific violations, the General Assembly has discussed the position of human rights in various countries and made recommendations on alleged violations of rights of individuals and groups. Such discussions and recommendations, even where they have not achieve positive results, have been helpful in invoking the sanction of world public opinion on the violations as disclosed in proceedings in the United Nations.

There has also been a progressive, though slow, movement by the Organs of the United Nations and its Specialised Agencies

to promote "conditions of economic and social progress and development". (Article 55 of the Charter). Regional Development bodies, such as the Colombo Plan Agency in South East Asia, are rendering much useful service in this connection. In recent times an increased amount of capital aid and technical assistance has been available to developing countries from U.N. Specialised Agencies, such as the World Bank Group and the I.L.O. as well as from economically advanced countries. There has also been to some extent an easing of the terms of aid.

A true and lasting peace based on a new World Order will depend on the extent of the realisation of those human freedoms which have been described by Franklin D. Roosevelt as freedom of expression, freedom of worship, freedom from want and freedom from fear for all peoples everywhere in the world. This Order based on justice is hampered not by the will of the people in any country but by the artificial and national barriers that have come into existence in the world. The result is that actions of sovereign States and their policies with regard to the rest of the world continue to be governed, in spite of the U.N. Charter and International Conventions, primarily by their self-interest and not by the interest of international justice and peace. As Clausewitz maintained, war is a continuation of this policy by different means.

If the new Order is to be based on freedom, justice and peace in the world in the spirit of the Universal Declaration of Human Rights, these artificial barriers of absolute sovereignty and of exclusive domestic jurisdiction must be lifted as far as possible in order to realise the inherent dignity and rights of all members of the human family. Mahatma Gandhi has stated that "God made man but He never made those national frontiers". The rigid nation-State pattern of world society has become inadequate to the needs of a new world, with its amazing scientific and technological advances. Our anachronistic pattern of society requires reform for the successful solution of the problems of hunger, fear and discrimination. The Second Session of the United Nations Conference on Trade and Development (UNCTAD II) showed quite clearly that even in the shrinking world of this nuclear age these man-

made national barriers offer the greatest hindrance to the adoption of an effective global strategy for planned economic development through trade and aid.

It is, however, unrealistic to imagine that a new international Order based on justice and peace can be built by a majority of member States of the United Nations without the cooperation and consent of the nuclear super-Powers. The United Nations, nevertheless, remains the symbol of the hopes and aspirations of mankind. The Organisation has proved to be remarkably adaptable and is supported by enlightened public opinion throughout the world. As Mr. Dudley Senanayake, the Prime Minister of Ceylon, stated on the occasion of the 22nd anniversary of the U.N., although the ideal of a world Government seemed far away today, the development of the United Nations was a necessary step in that direction.

It is by supporting and further strengthening this World Organisation, by making its membership universal and by developing its principal and subsidiary Organs in the realities of contemporary international society that the United Nations can hope to meet effectively the challenge of the new age. There is no reason to assume that man who has succeeded in exploring the mysteries of space cannot penetrate the national barriers to attain world peace and unity. Man, the conqueror of space, can still unite the world.