

Saturday Review

SRI LANKA

Vol. 3 No. 19.

23rd June 1984

ARMY ON GOODWILL VISIT TO S.R.

Accepting the offer of the good offices of SATURDAY REVIEW to the Security Forces in the North to "build-up" a sense of "camaraderie" between them and the people of the region, an Army patrol led by no less than Brigadier Nalin Seneviratne visited our office around 1 p.m. yesterday.

Unfortunately, the man who made the invitation, the Editor, was out at that time.

But contact was finally established and it was agreed that there should be an on-going dialogue between the forces of law and order in the region and the people for the welfare of ALL SRI LANKA.

This does not in any way mean that the SATURDAY REVIEW will sacrifice in any way any of the principles for which it was originally established.

We want peace. Everybody wants peace. Let's ensure peace.

For everyone.

We should like to tell everyone in authority that we at the SATURDAY REVIEW have been much misunderstood.

We are not stooges of anyone.

We are always for fair-play and justice to all.

URO Makes Breakthrough

One of the biggest stumbling blocks to the resolution of the National Question is the breakdown in communications between the Sinhalese and the Tamil people.

In this context, the visit of a delegation from the United Religious Organisations (URO) led by the Ven. Hevanpola Ratnasara Nayake Thero and Fr. Tissa Balasuriya and including members for the Committee for National Harmony from Colombo, to Jaffna this week was a hopeful and welcome development.

The delegation met representatives of the Citizens Committee of Jaffna and other organisations and individuals to continue the process of dialogue started by the Citizens Committee

for National Harmony in Colombo.

The delegation and members of the Jaffna Citizens Committee also met the Military Co-ordinating Officer of the Northern Region, Brig. Nalin Seneviratne and the Commander of the Northern Region, Colonel Ariyapperuma at which means of improving relations between the public and the Security Forces in the North were discussed.

At this meeting an assurance was given that the mere non-possession of a National Identity Card would not result in the arrest of a person. The production of any official document would be accepted as proof of identity.

In case of arrests, the Government Agent's office would be notified within 48 hours of the arrested person's whereabouts.

Certain telephone numbers were given through which the public could make representations or inquiries. (See separate story on this page).

The Security Forces would also leave traffic duties to the Police hereafter.

Some of these decisions were made known to the Press by Fr. Balasuriya at a conference held at the Bishop's House and attended by the Bishop and several leading citizens of Jaffna.

(A further report on the delegation's visit will be published next week).

CENSORED

All news and views appearing in the SATURDAY REVIEW have been subjected to censorship by the Government Agent of Jaffna, who is the Competent Authority appointed for this purpose by the Secretary to the Ministry of State, acting under Emergency regulations.

This is a special censorship that applies only to the SATURDAY REVIEW of all newspapers in Sri Lanka.

In addition to the constraints imposed on us by the censorship, the Sixth Amendment to the Constitution, approved by Parliament on 6th August 1983, states under Article 157 A (1): "No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a Separate State within the territory of Sri Lanka."

We extend the hand of friendship to all who wish to build up a united Sri Lanka, where everyone could live with a sense of physical security and a spirit of equality, irrespective of race, creed or language.

This is our constant prayer.

Let it be the Nation's Prayer as well.

SCHOL. FOR G.A.
Mr. Devanesan Nesiah, Government Agent of Jaffna, will be leaving for the United States at the end of this month to follow a course at the John F. Kennedy School of Government, University of Harvard, Massachusetts.

He will declare open the Show Room and Sales Centre of the Palmyrah Board, Jaffna, at the National Housing Secretariat on Monday 25th June at 10 a.m.

Emergency Numbers

Members of the public in the North who wish to make any complaints against the Security Forces could contact any of the following telephone numbers:

23414=(Palaly Camp)

24381=(Elephant Pass Camp)

22805=(Gurunagar Camp)

This information was released to the press after a

meeting between members of the United Religious Organisations (URO), the Citizens Committee for National Harmony of Colombo and the Citizens Committee of Jaffna with the Co-ordinating Officer of Jaffna, Brigadier Nalin Seneviratne and the Commander, Northern Region, Col. Ariyapperuma, at the Jaffna Kachcheri on 19th June.

INSTANT TELEX & T'PHONE CALLS

NIGHT AND DAY
ANY DAY ANY TIME

GOVT. APPROVED RATES

PROMPT ATTENTION

UNFAILING COURTESY

UTMOST CONFIDENTIALITY

CALL AT

GLOBAL

JAFFNA — COLOMBO

Tele: 23015, 23312, 23249 — 547129, 547890, 32482

Telex: 22119 — 21494 (10 lines)

AB: GLOBAL CE

Saturday Review

SRI LANKA

No. 118, 4th Cross Street,
P. O. Box 122
JAFFNA

Telegrams : SATVIEW

EDITOR

GAMINI NAVARATNE

Subscription Rates inclusive of local postage and foreign Air Mail Rate

Sri Lanka

Annual Rs. 170/-
Half-year Rs. 85/-

India

Annual Rs. 225/-
(Indian Rupees)

Singapore / Malaysia—

U. S. \$ 30

All other Countries

Annual U.S. \$ 50

Cheques payable to
New Era Publications
Ltd.

Advertising Rates

Contracts — Rs. 15/-
per col. centimetre

Casual — Rs. 20/- per
col. centimetre

A MOMENT WITH DIOGENES

"Master," asked his friend from Diogenes, "I have always told my friends, Tamil friends in the south, that if they are not for Eelam and separatism, they should proclaim that fact and reassure us. Why don't they do that?"

"Before they do that," said Diogenes, "the Sinhala leaders must say that the peace-loving Tamils will have the maximum security anywhere in Sri Lanka. If we want the Tamils to feel that they are part of our nation, they must be made to feel that way. The Sinhala leaders must tell the Armed Forces that they must protect all peace-loving people to whatever race they belonged. Only Lalith has recently said it, but it was not given enough publicity in the Press here. The leaders say different things at different times and cause a sense of insecurity among the Tamils. You cannot expect the Tamils to be the target both in the south and in the north. The anti-separatist Tamils are not going to be treated differently if there is another July holocaust".

"Master, what is the substitute you will suggest for the baby elephant gift to Reagan?"

"A book on the Dhamma to Ronald and a blue sapphire to Nancy", replied Diogenes. "I can see the heavens crashing. I understand we gifted a baby elephant to Mao. That was the end of Mao and his good wife. Please check it. I have already mentioned what happened to the Shah of Iran and Sirimavo. Let no misfortune and tragedy overtake democracy and humanity," continued the Master.

"Why did the President say he would avail himself of even the devil to destroy terrorism?"

"He must have meant witchcraft and the kattadiya. surely, he could not have meant Reagan and the Moshad — unless he was joking, but he could not have been joking when Sri Lanka is burning. Surely not?"

"Master, I am sorry to repeat this topic. Why are you so nervous about the gift of the baby elephant? Reagan himself may give us a gift in return".

"Gifts are dangerous. You have heard of the gift of the Trojan horse. We are told we must fear the Greeks even when they bring gifts. We must fear the Americans (not the American people. They are a wonderful lot. when they give us gifts. You see, there is a superstition

that no cutting instrument should be gifted. There is a lot of meaning and omens in gifts. Before we decide on gifts it is safe to consult the villagers".

"Master, what have you to say on the ban on pseudonyms? Will it affect you? We have known you always as Diogenes. How can we know you are really Diogenes?"

"I am Diogenes. I am a re-incarnation of Diogenes. I am no other than Diogenes. I am always Diogenes. I was Diogenes. I have been Diogenes and I will be Diogenes. Diogenes will be remembered when sceptres and crowns keep tumbling down. Diogenes will be remembered even after the human race is extinct after the nuclear war. Anyway, I cannot understand why some people are afraid of pseudonyms. What

is in a name? If anything is published which is defamatory, the law makes the editor and the publisher responsible both in the criminal and civil courts.

"Surely, the editor and the publisher will take care of themselves before they publish defamatory or slanderous articles? Is that not enough? Why are the possibly potential victims panicking? Surely they have nothing to hide? They may not have the hide of a rhinoceros. But they are as innocent as doves. They are purer than vestal virgins and, like Caesar's wife, they are all above suspicion. Surely, in a Dharmishta Society, they should be unperturbed by praise or censure. The existing laws are quite enough to punish slander. I wonder whether pseudonyms are banned in any other democratic country?"

Children who watch less TV better skilled

Tokyo: Japanese children who spend fewer hours watching television have been found to be better skilled at doing daily chores, according to a survey. Most children spend about an hour each day studying at home and three hours watching television, the survey revealed.

The survey, conducted on 15,461 third and sixth-year students across 218 elementary schools, evaluated children's skill at everyday chores like using chopsticks, peeling apples, tying bow-knots, breaking open eggs, tree climbing and kite flying.

The survey also found that children who played outdoors rather than those who stayed inside the house showed the greatest skills at their tasks. Children from rural areas and larger families tended to be more proficient. (*The Times of India*, 1st June).

WORDS OF WISDOM

"The world is a looking glass, and gives back to every man the reflection of his own face."

— Thackeray

"Do not ape the West in fashion and dress. Imbibe their virtuous qualities such as spirit of service, punctuality, perseverance etc. Do not become a slave of fashion and senses."

— Sai Swami Sivananda

"I am often attacked, yet am not hurt; I am equally often praised, and am not elated."

— Marie Corelli

"That which is not good for the beehive, cannot be good for the bee."

— Marcus Aurelius

(Collected by Jupiter)

BOOK REVIEW

Integral perfection

A book to read, a must for all, in modern times of political and ethnic problems is "Integral Perfection". It should be particularly required reading for those trying to find a new spiritual approach to these problems.

Unlike other books in this field, which interest mainly seekers of truth and students of religious and philosophical research, this book is bound to have a wider appeal, particularly when Sri Aurobindo was a politician who turned saint and spent the remainder of his life in seclusion.

The rather difficult and esoteric philosophy of Sri

Aurobindo has been explained with lucid clarity in these pages.

The author, Sri M. P. Pandit has been closely associated with the Sri Aurobindo Ashram in Pondicherry for a number of years.

He is Secretary of Sri Aurobindo Ashram, Pondicherry and Chairman of the World Union International and a reputed scholar, renowned for his clear and lucid exposition of the teachings of Sri Aurobindo and the Mother.

Among the topics of interest include the selections and the mystery of Vedic symbolism, the esoteric meaning of the Vedas, the role of Buddhism in the changing spiritual tradition, the Life Divine, the Culture of Consciousness and the Ideal of Humanity.

The book is a compilation of Sri Pandit's selected talks delivered to Sri Lanka audiences during his first visit here during 1977 and 1978.

"Integral Perfection" is published under the auspices of the Sri Aurobindo Society of Sri Lanka and is priced at Rs.50.

Exploitation of women

"Women, Work and Exploitation" title of one of the latest publications of the WOMEN'S EDUCATION CENTRE, 31, Jayakontha Lane, Off Kirula Road, Colombo 5.

According to a notice issued by the Centre, it states that its objectives are twofold.

"On the one hand, we want to raise important issues regarding the role of women in modern society. It is with this aim that we have launched a programme of publishing simple educational pamphlets for women in Sri Lanka in Sinhala, Tamil and English.

"On the other hand, we hope that through this programme, we can link up with women all over Sri Lanka, to reach a better understanding of their experiences and needs and, together with them, partici-

pate in broader struggles for social change.

"We hope these pamphlets will be of use to all women's groups, organisations and committees in the country."

Another of the Centre's informative publications is "The Exploitation of Women on the Plantations" by Rachel Kurian and Kumari Jayawardena.

NOTICE TO SUBSCRIBERS

Those subscribers who have still not renewed their subscriptions for the year 1984 are kindly requested to send in their orders early, furnishing particulars to:-

The Circulation Manager
Saturday Review,
P. O. Box 122,
JAFFNA.

With best
compliments

**VIJAYA
PRESS**

OFFSET,

LETTER PRESS AND
COLOUR PRINTERS

551, K. K. S. Road,

JAFFNA.

T'phone: 23045

GUARDED APPROACHES

WITH the scheduled arrival in Colombo late last week of Appapillai Amirthalingam, the secretary-general of the Tamil United Liberation Front (TULF), cautious optimism pervades New Delhi. After a gap of nine weeks, during which at least 75 lives were lost in the northern districts of Sri Lanka in violence caused by the Sinhalese armed forces and the Tamil extremists, the round-table conference resumes in a bid to find a political solution to the Tamil problem.

The incidents at Chunnakam, Jaffna and in the sea off Talaimannar during the past five weeks have badly dampened the spirits of the Tamils. While they have angered the people in India and Tamil Nadu in particular, they have caused fresh anxiety in the Government of India. The visit of Sri Lanka's newly appointed Minister for National Security, Lalith Athulathmudali, to the Indian capital last fortnight achieved a limited purpose. The Minister tried his best to convince the Indian leaders that Sri Lankan President J. R. Jayewardene was also keen as them to find a political solution to the problem.

BIG MAJORITY

When Jayewardene visited New Delhi last November, he gave the impression that he would be able to meet TULF demands - for regional autonomy in particular - through a constitutional amendment. His inability to fulfil his own assurance has surprised and embarrassed Indian leaders. "You have such a big majority in your Parliament," said Mrs. Gandhi to Athulathmudali when he called on her, "how come it was not possible to implement a promise given by your President?"

The young Minister explained to her that it was not that simple. Even though Gopalaswami Parthasarathi, the Prime Minister's special envoy, hammered out the proposals - known as Annexure C - after talking to Jayewardene, his colleagues and the TULF, they were found to be unacceptable to the President's Cabinet, the ruling United National Party (UNP), the opposition Sri Lanka Freedom Party (SLFP), and the Buddhist clergy. The SLFP dubbed the proposals as the "Indian solution" and walked out of the talks. Finding himself in a tight corner, Jayewardene was forced to disown them.

Even though the extremists had promised that if

the moderate TULF procures an acceptable solution, they will abide by it, the way the January-March talks were heading disheartened them. They resumed violent activities half-way through the negotiations. This hardened the Sinhalese postures at the talks. The armed forces swiftly moved into Jaffna in large numbers, said to be more than 3,000, to control the situation.

A CEASE FIRE

Athulathmudali defended the heavy presence of the troops in Jaffna as a reaction to terrorist activity. If the terrorists declare a cease-fire, the Minister said he would consider a matching gesture - meaning a possible reduction in the number of troops. If the talks later this fortnight are to achieve measure of success, it is important to

President Jayewardene is due to meet the Indian Prime Minister, Mrs. Indira Gandhi, by her special invitation, in New Delhi, on 30th June.

The meeting, taking place soon after Mr. Jayewardene's visits to China, South Korea, Japan and the United States of America, is likely to be of great significance for further Sri Lanka - India relations.

This commentary, written by S. Venkat Narayan Senior Editor of INDIA TODAY and published before the latest round of talks designed to find a lasting solution to the National Question were held - the on-off talks have been postponed again for 5th July - throws further light on the move made by India to facilitate a negotiated settlement of the National Question.

ensure there are no violence and killings, perpetrated either by the extremists or the troops. Informal efforts on behalf of the Sri Lankan and Indian governments and the TULF are under way to see that no untoward incidents take place while the talks are in progress.

India has noted Colombo's sensitivity to Amirthalingam's presence in Madras and his access to leaders in Delhi. Mrs. Gandhi made it clear to Athulathmudali that she never met the TULF leader for more than five minutes at any time. Only her special envoy, Parthasarathi, did all the talking with him. As if to respect Jayewardene's sentiments, Amirthalingam has stopped visiting New Delhi. However, he telephoned Parthasarathi to find out what transpired at the Minister's talks in Delhi.

At the end of his talks, Athulathmudali told INDIA TODAY: "For the talks to succeed, it is important that

Amirthalingam goes back to Colombo at his earliest convenience. He must campaign for his point of view to be accepted by the Sinhalese people". The TULF leader was making preparations to leave Madras late last week. He plans to travel in the Tamil areas of northern and eastern Sri Lanka first. He will then hold informal talks with leaders of the UNP, SLFP and the Buddhist clergy in Colombo. In a telephonic interview on the eve of his departure, Amirthalingam said: "I do not understand what President Jayewardene meant when he talked about the joint executive in his INDIA TODAY interview. If it has no legal status, it will not satisfy anybody. Unless there is a set-up in which all Tamils can be brought together, it will not satisfy our aspirations".

It is not clear what Jayewardene will come up with at the conference. What is certain is that he has learnt his lessons from the failure of the earlier talks. Fresh proposals, if any, will now be discussed informally by leaders of the UNP, SLFP, the Buddhist clergy and the TULF in a bid to arrive at some kind of consensus before the formal talks resume.

The next few days are crucial for the success of the talks. Colombo can create a conducive atmosphere by instilling a sense of confidence in the Tamils who have been badly shaken since the riots of July 1983. Withdrawal of some of the forces in Jaffna will be a great help. But this will be possible only if the extremists promise to behave themselves by openly declaring a cease-fire and thus save scores of precious lives of innocent victims of the crossfire between them and the Sinhalese troops.

Amirthalingam has vowed to continue to persist with his efforts for a political solution. The failure of the recent talks has certainly disappointed him and the majority of the Tamils who are essentially peace-loving people. "We cannot afford to lose hope. It is immoral to be pessimistic", said Ne-

elan Tiruchelvam, the lawyer and former TULF MP. And for its part, New Delhi has decided to keep a low profile. Parthasarathi does not seem to have any intention for the present to visit Colombo unless Jayewardene specifically asks him to.

There is a possibility of Jayewardene visiting New Delhi this month or the next on his way to or back from China or the US for a meeting with Mrs. Gandhi at her request. This will certainly provide a new impetus to the Colombo talks.

Plug in your banana tree!

Television aerials on rooftops have become an ugly feature of the metropolitan scene all over the world. Now an Indian scientist has come up with a way of dispensing with aerials. Since plants and trees can transmit electromagnetic impulses like the metallic antenna used for television signal reception, you just plug into a date palm, a betel bush, a papaya, or a coconut palm...

Dr. Shiv Prasad Kosta is a space scientist of international standing and a staunch champion of the natural way of living. Deputy Director of the Indian Space Research Organization's Satellite Centre on the outskirts of Bangalore, he believes he can effect a kind of "green revolution" in the cities of India, and his findings have been re-

ceived enthusiastically by two leading telecommunications journals in the Federal Republic of Germany.

Kosta's discovery is based on the fact that certain geometrically-shaped green vegetation, on account of its water and organic content, can sustain, propagate and radiate electromagnetic waves from its structure when suitably excited. He has devised an easy-to-use technique of connecting the television to tree branches or leaves through an inexpensive cable. "All you do is to prick the cable to the surface of the stem or leaf of the plant", he says.

(From "Development Forum" New York.)

Rabbit—Zebra—Noorani

Chandrica Brands

Roofing Tiles
Bricks & Concrete Blocks, etc.

Sole Distributors:

M.T. Ponnampalam

36, K. K. S. Road, — Jaffna.

Telephone 23493

SUPREME COURT

SATURDAY REVIEW CASE

Mr. Justice Wimalaratne in his judgment said; The 'SATURDAY REVIEW' is an English Weekly newspaper published in Jaffna by the New Era Publications Ltd. Its objects are described in a publication brochure as being to establish a two way communication between all persons and nationalities in Sri Lanka, and to stand up against injustices, acts of discrimination and violations of human rights and freedoms. It devotes itself not only to political but also to cultural matters, concentrating mainly on events in the Northern province. The petitioners in the two applications Nos. 85/83 and 6/84 claim to be and to have been regular readers of this newspaper from the time it commenced publication in January 1982 while the 5th Petitioner in No. 85/83 has also been a regular contributor to a column for which he was paid Rs. 250/- each week. They are all citizens of Sri Lanka and claim to be entitled to the fundamental right of equality with other readers of newspapers, guaranteed by Article 12 (1) of the Constitution and to the fundamental right of speech and expression guaranteed by Article 14 (1) (a). They say that there has been a violation of these fundamental rights as a result of the complete banning of the publication of this newspaper.

On 18.5.83 the Government declared a State of Emergency under the Public Security Ordinance (Cap. 40) Acting under Section 5 of that Ordinance the President made certain Emergency Regulations, known as the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1983. With the extension of the State of Emergency from month to month these regulations were also renewed each month. The 1st Respondent is the Competent Authority appointed for the purpose of the regulations; the 2nd Respondent is the Inspector General of Police and the 3rd Respondent is the Attorney General.

On 1-7-83 the 1st Respondent acting in terms of Regulation 14(3) of the said Regulations made order that:-

(a) no person shall print, publish or distribute or in any way be concerned in the printing, publication or distribution of the "Saturday Review" for a period of one month from the date of that order;

(b) the printing press in which the said newspaper was

printed shall for a period of one month from that date not be used for any purpose whatsoever.

This order has been renewed from time to time. The present applications relate to the banning of the printing and publication of the newspaper by subsequent orders dated 18.11.83 and 18.12.83.

The Petitioners state that in the "Saturday Review" at no time has there been publication of matter calculated to be prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community. Neither has there been any matter inciting persons to mutiny, riot or civil commotion. The Competent Authority

We publish today the full text of the judgment of Mr. Justice D. Wimalaratne, with Mr. Justice Colin Thome, Mr. Justice Parinda Ranasinghe and Mr. Justice Cader agreeing in respect of fundamental rights applications No. 85/83 and No. 6/84 filed under Article 126 of the Constitution. The separate judgment of Mr. Justice M. Rodrigo (which basically agreed with the main judgment: will be published next week)

The five Judges were unanimous in dismissing both applications without costs.

Both applications were in respect of the sealing of the SATURDAY REVIEW by the Jayewardene Government under emergency powers on 1st July 1983.

The first application (No. 85 of 1983) was filed by Mr. K. Visuvalingam, Mr. N. Kanagarajayagam, Mr. J. X. Philippillai, Mr. V. Kanapathipillai, Mr. Gamini Navaratne, Mr. N. Kandasamy, Mr. Oscar P. L. Pereira and Mr. T. U. Cooray.

The second application (No. 6 of 1984) was filed by Mr. V. Kanapathipillai, Fr Tissa Balasuriya and Mr. Manel Fonseka

could not therefore have formed the opinion which he says he had prior to acting in terms of Regulation 14(3). The Saturday Review has from its inception been critical of aspects of Government policy besides publishing views of the manner in which the security forces and the police behaved in exercising their powers. The Competent Authority's order banning the Saturday Review was void and consequently the fundamental rights of the petitioners to the freedom to receive information from and to contribute to that paper have been violated.

Under the Emergency Regulations the Competent Authority had the power to impose censorship under Regulation 14(1) which he has exercised in the case of virtually all other newspapers. Instead of making such an order in respect of the Saturday Review the Competent Authority has prohibited the Satur-

day Review from being published at all and thereby its readers including the petitioners have been deprived of valuable information from that paper or from contributing to it, their views on public questions. Thereby there has been discrimination between readers of and contributors to the Saturday Review, vis-a-vis readers of and contributors to other newspapers, thus violating the fundamental rights of the petitioners guaranteed under Article 12(1) of the Constitution.

They pray for a declaration that the orders of the Competent Authority are null and void and that the consequent acts of the 2nd respondent and his subordinates are in contravention of the provi-

sions of the Constitution. They ask for damages by way of compensation and costs.

In the affidavits of the Competent Authority he states that the Saturday Review is a political newspaper advocating the cause of dividing the country and the establishment of a State known as Eelam for the Tamils in the North and East of the Country; many of the articles and items published suggested that its publishers eschewed democratic process, negotiations and campaigns based on non-violence as a means of resolving the problems facing the Tamils of Sri Lanka and that they openly encourage the adoption of force and terrorism as the only means; the newspaper also gave prominent publicity to the acts of the terrorist movements operating in the North, particularly of the organisation calling itself the Tamil Eelam Liberation Front (T. E. L. F.) and often eulogised such con-

duct with a view to encouraging the growth of such movements and the use of force against the lawfully established government; and that the tenor of the articles and news items were blatantly communalistic and constantly highlighted alleged grievances, and injustices committed against the Tamil community which was capable of arousing communal feelings among this community and encouraged conduct prejudicial to the maintenance of public order and security.

Immediately prior to the first order of the Competent Authority made on 1-7-83, a hartal organised by the T. E. L. F. led to large scale violence in the North resulting in serious loss and damage to property. He was of the view that the sealing of the "Saturday Review" (and another newspaper in Jaffna) was a measure which was necessary to prevent further escalation of violence. The orders made by him were made bona fide and on being satisfied that upon a consideration of the contents of the Saturday Review newspapers published prior to 1-7-83 (random extracts of articles and news items which were produced marked IRI to IRI4), they contained matter which was prejudicial to the interests of national security, preservation of public order and matters likely to encourage or cause unrest, communal disharmony and civil commotion in the country. The 1st respondent specifically denies that there has been any violation of the fundamental rights of the petitioners guaranteed under Articles 12(1) or 14(1)(a) of the Constitution.

Locus Standi At the arguments before us the learned Deputy Solicitor General raised an argument that the petitioners have no locus standi to make these applications under Article 126 of the Constitution, for the reason that the orders of the Competent Authority are directed at the printers, publishers and distributors of the Saturday Review only. If any persons can complain of a violation of the fundamental rights guaranteed under Articles 12(1) and 14(1)(a) they are the printers publishers and distributors of that paper, and certainly not readers and contributors. The printers, publishers and distributors of the Saturday Review have not invoked the provisions of Article 126, may be for the reason, surmises the Deputy

Solicitor General, that they are satisfied with the order of this Court made on their applications in respect of the banning of the paper during the four previous months. So how, then, he asks, can readers and contributors complain? Equal protection should have its bounds and should not be extended to limitless areas. If so extended the flood gates would be open for the defendants of printers, publishers or distributors and even newspaper vendors to claim that their fundamental rights have been violated as a result of closure of a newspaper, and accordingly claim damages for such violation.

Mr. Nadesan's answer to this contention is that within the ambit of the freedom of speech and expression is included the freedom of the recipient of information. In order to give a meaning to the freedom of speech and expression one has of necessity to recognise the freedom of the recipient of information, and of news and of views. The State is pledged to establish in Sri Lanka a Democratic Socialist Society, one of the objects of which includes the full realisation of the fundamental rights and freedoms of all people. How can that object be achieved, he asks, if a restricted interpretation is placed on the fundamental rights to equality and freedom of speech and expression. The freedom of speech will be a hollow concept if the freedom of the recipient is not recognised. In this connection he has referred us to—

(a) The International Bill of Human Rights. Sri Lanka becomes a signatory to the covenant on Civil and Political Rights on the full moon day of Vesak, 1980. Article 19(2) enjoins that "everyone shall have the freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds regardless of all frontiers, either orally or in writing or in print or in the form of art or through any media of his choice.

(b) A booklet published by our present President Mr. J. R. Jayewardene when he was the Leader of the Opposition in the National State Assembly, being the written submission which he and his lawyers submitted to the then Constitutional Court which considered the constitutionality of the Press Coun-

JUDGMENT

Bill. Under the heading "The freedom of thought and expression and the freedom of the Press" appear the following paragraphs.

1-2 It is submitted that there are two priorities involved in the concept of freedom of speech, namely—

(a) the source from which the communication issues, and
(b) perhaps the more important one, the recipient of the communication.

The freedom to express one's thoughts is confined to a few compared to the wider circle to which freedom of expression is extended in so far as the recipient is concerned, namely the community.

1-3 It is in the freedom of the recipient that public opinion has its birth. The Press provides the data by which such opinions find their fullest expression. Therefore it is man's right as the recipient of information to look to as many sources of information as he likes; and it is equally the duty of the Press which provides the information to seek it from as many sources as possible. If, however, the sources of information become concentrated in one, or restricted to a few bodies, then the formation of ideas is limited. It is in such circumstances only proper that the sources of information available to the public should be enlarged rather than restricted; therefore there can be no justification for interference with the freedom of the Press".

(c) The decision in **K. Narayana Vs. State: AIR (1973) Kerala (FB)97** where the Court held that the freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution (which corresponds to Article 14(1)(a) of our Constitution) included the freedom to acquire knowledge, to read books and periodicals and to read any type of literature, subject only to reasonable restrictions being placed on such right.

(d) The decision in **Stanley Vs. Georgia 394 U. S. 557, 564 (1969)**. Where the U. S. Supreme Court held that the First Amendment freedom of Speech and the Press encompasses "the right to receive information and ideas". These rights are, however, not absolute but subject to important qualifications.

The learned Deputy Solicitor General contended in this connection that what has been restricted is not the right of the recipient of information but the right of the publisher. The right to read flowed from publication.

Since the paper was banned there has been no publication. So how can one conceive of a right to read what has not been published?

One has to bear in mind that the freedom of speech and expression is one of the most cherished of the fundamental rights enshrined in the Constitutions of all civilised countries. Text books and decisions of the highest Courts in the United Kingdom, the United States and India are studded with quotations expressing sentiments such as these—

"Without freedom of speech the appeal to reason, which is the basis of democracy, cannot be made". Sir Ivor Jennings in "Cabinet Government" p. 13.

"A free Press stands as one of the interpreters between the government and the people. To allow it to be fettered is to fetter ourselves" Justice Sutherland in **Grosjean Vs. American Press Co. 297 U. S. 233 (1936)**.

The freedom of expression is an essential prerequisite for the communication of ideas. When more than one view is possible on a problem which the State is called upon to settle, then it is best that all views be heard, and if the Press is an important medium of communication of the various views how is a contributor to a newspaper which espouses a particular cause be able to put forward his case if there is a total ban on the publication of that newspaper? How will a regular reader of a particular newspaper be able to gather views and form views if that particular newspaper is banned? It is only a free Press which can, therefore, propagate a diversity of views and ideas and advance the right to a free and general discussion on all matters of public importance within, of course, the limits prescribed by the law. The eloquent sentiments as those quoted above only go to confirm the liberal view propounded by our President that "the victory of persuasion over force could be ensured and achieved only by permitting public discussion". Public discussion is not a one-sided affair. Public discussion needs for its full realisation the recognition, respect and advancement, by all organs of government, of the right of the person who is the recipient of information as well. Otherwise the freedom of speech and expression will lose much of its value.

I am of the view that the fundamental right to the

freedom of speech and expression includes the freedom of the recipient. Accordingly the Petitioners have a locus standi to seek relief under Article 126. But like all fundamental rights, the fundamental right of the recipient is also subject to the same restrictions. Just as much as the exercise and operation of the fundamental rights declared and recognised by Articles 12 & 14 are subject to such restrictions as may be prescribed by law (including emergency regulations) in the interests of national security, public order and the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society, the recipients of information are subject to the very same restrictions.

Emergency Regulations which impose the necessary restrictions are made by the President under section 5 of the Public Security Ordinance. Section 8 of the Ordinance provides that no emergency regulation, and no order, rule or direction made or given thereunder shall be called in question in any Court. The effect of such finality clauses has best been stated as follows:—

"The Courts have made it a rule that such clauses cannot hamper the operation of judicial control..... there is a firm judicial policy against allowing the rule of law to be undermined by weakening the powers of the Courts. Statutory restrictions on judicial remedies are given the narrowest possible construction, sometimes even against the plain meaning of the words. This is sound policy, since otherwise administrative authorities would be given uncontrollable power and could violate the law at will".

Administrative Law by Wade (4th Ed.) 566 Section 8 of the Public Security Ordinance does not in my view prevent the petitioners from obtaining relief if they succeed in establishing that their fundamental rights guaranteed under Articles 12 (1) & 14 (1) (a) have been infringed otherwise than in accordance with the restrictions enumerated in Article 15 (7).

The freedom of speech and expression, including, publication, is guaranteed to every citizen by Article 14 (1) (a) . . . In discussing

the question of Locus Standi I have taken the view that within this freedom is encompassed the freedom of the recipient of information, but that just as much as there may be placed restrictions on the freedom of speech and expression, the self same restrictions would apply to the freedom of the recipients. These restrictions contained in Article 15 (7) and referred to earlier are much wider than any restrictions on the freedom of speech and expression provided for in the Constitutions of India and the United States. In the U. S. the First Amendment which provides that "Congress shall make no law.... abridging the freedom of speech or of the press" does not permit of any constitutional restrictions. But the Supreme Court has worked out reasonable restrictions for example, that the restriction of this freedom is only justified if there is "a clear and present danger" or on "a balancing of the competing interests" between free speech and the needs of society. The freedom of expression, therefore, depends to a large extent on the philosophy of the Judges.

In India, before the First Amendment to the Constitution was effected in 1951 no restriction could have been placed on the freedom of speech and expression on the ground that such restriction was necessary in the interests of "public order". Soon after the decision in **Romesh Thapar's case (A.I.R (1950) S. C. 124)** restrictions were permitted to be placed on this freedom "in the interests of public order". In my judgment in **B. A. Sirdawana and others Vs D. J. F. Liyanage and others** (also known as the "Aththa" case) in S.C. Application No. 120/82 S. C. Minutes of 27.1.83) interpreted the words "for the preservation of public order" in Regulation 14 (3) to mean "for the prevention of disorder or the maintenance of peace and tranquillity".

Regulation 14 (3) vests a discretion in the Competent Authority. It is a well established rule that in reviewing the exercise of discretion the Court must not substitute its own opinion for that of the Competent Authority. If his decision is within the bounds of reasonableness, it is not the function of the Court to look further into the merits—**Wade p. 348**. The approach

of the Courts to this question has been explained in several cases.

In **Liversidge Vs. Anderson (1942) A. C. 206, 239** Lord Atkin said "If there are reasonable grounds, the Judge has no further duty of deciding whether he would have formed the same belief".

In **Re W (An infant) (1971) A. C. 682 at p. 700** Lord Hailsham said thus:

"Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.... not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no Court should seek to replace the individual's judgment with his own".

In **Secretary of State for Education & Science Vs. Tameside Metropolitan Borough Council (1976) 3 WLR at 652** Lord Denning said, in the Court of Appeal:—

"No one can properly be labelled as unreasonable unless he is not only wrong but unreasonably wrong, so wrong that no reasonable person could sensibly take that view".

Said Lord Diplock in the House of Lords, in the same case:—

"The very concept of administrative discretion involved a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred", at p. 681.

These were the principles which influenced this Court in its determination in the **Aththa Case** (above). It is now necessary to see whether there existed material in the publications of the "Saturday Review" on which the Competent Authority could reasonably have formed the opinion which he says he did.

In a consideration of the reasonableness of the orders of the Competent Authority the Court has to bear in mind that they have been made during a period of Emergency. The need for a State of Emergency is a matter to be decided solely by the President. The restrictions on the freedoms enshrined in the Constitution will necessarily be greater during a period of emergency than in periods of peace, and tranquillity. What is obnoxious during a crisis or a State of Emergency may not be so in normal times. The necessity for quick action for the preservation of

(Continued on page 8)

History & Ethnicity of

(Continued from last issue)

This is the concluding part of the paper titled the "Peopling of Sri Lanka: the National Question and Some Problems of History and Ethnicity" by Dr. Senake Bandaranayake presented at a seminar on "Nationality Problems in Sri Lanka" held by the Social Scientists' Association of Nawala Road, Colombo-5, and subsequently published in a book titled "Ethnicity and Social Change in Sri Lanka."

The accuracy of the chronicles when dealing with events of the historical period have given a special validity to their accounts of the proto-historic era. However, despite, the weight of popular and semi-scholarly acceptance of the Vijaya story, most modern historians are agreed that the story itself is purely legendary, a myth of origin, synthesized from various early Indian legends and to be understood in terms of the historiographical objectives of the chroniclers rather than as actual historical records. The same historians, however, still tend to accept the basic premise of the Vijaya story that civilization in Sri Lanka had its origins in the settlement and expansion of migrant colonists from the Indian mainland.

A fresh look at this problem has to start from the premise that our knowledge of the developments of the protohistoric era and the beginnings of history is as yet inadequate for us to come to anything like a preliminary level of understanding, let alone a definitive conclusion. Our present ideas are based solely on literary traditions and the linguistic evidence of the proto-Sinhala language contained in the Brahmi inscriptions. All other forms of evidence currently utilized are of dubious value. It is only the recovery of the material remains of the prehistoric and protohistoric periods by archaeological excavations, the further investigation of literary, linguistic and ethnological evidence by acceptable modern methods, and comparative studies of Sri Lankan, Indian and Southeast Asian material, they can lead us to a better understanding of the actual historical developments.

Some of the new lines of investigation that scholars are now beginning to pursue are worth looking at, if only briefly, because they show that we are quite justified

in challenging the existing framework of historical belief. We have already referred to the broad outline of the prehistoric situation and it is worth observing that the most recent excavations seem to confirm earlier hunches that at least some of the mesolithic hunter-gatherers had begun to practise primitive methods of food production. This is testified to by finds of food grains amongst the occupation debris at one of the major mesolithic sites in the country and also by changes in vegetation brought about in certain areas, possibly as a result of prehistoric chena cultivation.

This seems to indicate the possibility that the transition from nomadic hunting to settled food production may have already begun amongst the prehistoric peoples of the island independently of migratory intervention, at least in its early stages.

Another line of investigation has dealt with the skeletal remains of the so-called Balangoda man, a group of early inhabitants of the Balangoda district, dating from about the 5th or 6th millennium B.C. Comparative analysis of the data with later material from historical and contemporary populations has shown a biological continuum between the prehistoric and historic peoples. Similarly, blood group and genetic studies seem to indicate that Sri Lankans occupy a place or a scale of genetic distance somewhere between Southern India and Southeast Asia and much closer to the former than to the latter — or in other words they display a racial mix quite appropriate to the island's geographical location.

Whatever the geographical and ethnic origins of the early Sri Lankans, historical probabilities alone make it unlikely they were a homogeneous migrant group. Considering the complex processes involved in the peopling of an island of this size, with a long history of human habitation, it is most likely that the Sri Lankans were as heterogeneous in the prehistoric and protohistoric past as they are today.

A further area of study — of increasing importance in contemporary archaeological interests — concerns the megalithic culture complexes which have been found in many parts of the island, but which seems to have a high degree of concentration in the northern and eastern dry zone. Some attention has been paid to these megalithic monuments in the past two or three

decades, but in recent years there has been an increasing research interest in this field. It seems clear that this megalithic culture is associated with the use or even the introduction of iron, with fairly advanced forms of pottery, with agriculture and irrigation based settlement and also possibly with a considerable degree of social differentiation. A display in the National Museum in Colombo shows the possible links between the megalithic peoples, the early Brahmi inscriptions and the village irrigation works. This would seem to indicate that the spread of this megalithic culture may well hold important clues to the agricultural transformation that was taking place in the protohistoric era, probably in its later rather than its early phases, and also to the beginnings of the historical civilization.

USEFUL INDEX

A study of the internal development and variations of the Sri Lankan megalithic culture (s) and a comparison between the local megalithic assemblages and those of southern and central India, on the one hand, and of Southeast Asia, on the other, will give us a useful index to the character and dynamism of the historical processes at work in Sri Lanka during the protohistoric and early historic period. It will also provide us with an insight into the relationship between Sri Lanka and Peninsular India where the largest concentration of Indian megalithic sites is to be found. Once again, the question of the migration of culture (ideas, techniques, etc.) as contradistinct to the migration of peoples will be the major problematic that arises in the study of this material.

The leap from protohistory to history in the earliest phase of the historical period (3rd century B.C. to 1st Century A.C.) is marked by the dramatic appearance of the Brahmi inscriptions. These are associated, on the one hand, with cultural phenomena such as the spread of the proto-Sinhala language and the rise of Buddhism and, on the other, with socio-economic and technological developments — the extensive proliferation of wet rice cultivation and tank irrigation and the appearance of distinct forms of social differentiation. The greater part of the inscriptions seem to be the work of an emerging elite, who are clearly the owners and controllers of wealth and the dispensers of political power and religious patronage.

What is of specific interest to us here is the significance this has in relation to the peopling and settlement of the island and the emergence of a Sinhalese *ethnos*.

What these Brahmi inscriptions indicate is a sudden upsurge of historical development, a kind of revolutionary transformation, one of whose distinct features is the wide spread use of the proto-Sinhala language. The extraordinary homogeneity of the language found in these inscriptions and their extensive spread throughout the agricultural settlements in the island seem at first glance to support the view that they were the result of a sudden wave of migration of an at least linguistically homogeneous cultural group. But looked at realistically and in terms of the pre- and protohistoric developments that we have been discussing, we can also interpret this as a culmination or turning point in the process that were at work in the protohistoric period, the end product of several centuries of historical development.

SPECIAL

CHARACTER

What is significant and at the same time puzzling is that the proto-Sinhala language of these inscriptions belongs to the broad group of North Indian prakrits, a branch of the Indo-European family of languages. Alone with closely related language of the Maldivian Islands, which has a similar character and chronology, it represents the southern-most extension of the Indo-European language family, separated from the main block of such languages in north India by the large Dravidian linguistic region that covers the southern half of the Indian Peninsula.

Current linguistic studies indicate that the Sinhala language both in its early and later phases of evolution has a special character. While displaying affinities with both western and eastern Indian prakrits, it still retains its own separate identity; i.e. it is related to but quite distinct from the Indian prakrits, on the one hand, and profoundly influenced by though different from, the Dravidian languages, on the other. In short, its synthetic character and local specialization, even as early as the 3rd century B.C., are of a high degree.

The question we must then ask ourselves is how do we interpret this development in the absence of any other

archeological evidence — and also, what questions should we then pose in the archaeological research that we are to undertake, now and in the future? Is this language the product of one or more waves of migrants who brought with them the rudiments of mixture of prakritic dialects which coalesced into a homogenous language during the proto-historic phase? Or is it an overlay created by a migrant elite who were also wholly or partially coincident with the ruling strata that emerged in the later phases of protohistoric development? Or, a third possibility, is it the acquisition or proliferation by the leadership of an emerging civilization of a synthesizing language, whose constituent elements have been acquired either internally or externally from quantitatively insignificant but linguistically advanced migrants, thereby improving communications and uniting heterogeneous groups? Clearly this linguistic process was accompanied or preceded by a similarly homogenous synthesis in the development of material culture, methods of agricultural production, social relations and political institutions and paralleled by the adoption and growth of an advanced religion, Buddhism.

The significance of these developments in relation to the question we are discussing here is that they marked the historical beginnings of the Sinhalese people as a distinct *ethnos*, whatever their origins and whatever ethnic groups and cultural elements went into their undoubtedly composite formation. This formation, as we have seen, may well have included South Indian megalithic culture, in which migration would surely have played some role, as well as North Indian linguistic connections, which could not have taken place without direct migratory contact. But, what is more important than the concern with origins and sources, is the task of discovering the dynamic internal processes that led to this creative synthesis. It is archaeology alone, on a scientific basis that can accomplish that task, for ultimately it is only the retrieval and interpretation of the material remains of the cultures themselves that were involved in this process that can establish, even in a fragmentary way, what actually took place.

At the same time, to speak of the emergence of a Sinhalese *ethnos* requires at least two important qualifications. One, that this does not necessarily mean ethnic self-

Sri Lankan Problems

identity and, the other, that it does not mean the completion but rather the early beginnings of the social and cultural formation of the Sinhala people.

In a paper presented in this collection, Gunawardena warns us about projecting modern ethnic self-consciousness back into historical times and gives us an extensive analysis of the significance of the term *Sinhala*. He shows us that the term seems to have had a narrow application in early times, referring initially only to a small ruling stratum or kin group, claiming descent from the companions of the mythical Vijaya. It was only later extended to their own immediate followers and finally to the entire people whom they ruled.

LONG HISTORY

Again, it is important to keep in mind that the ethnic composition of the Sinhalese, both in a cultural and also a bio-ethnic and demographic sense, was not the product of a single historical period or a unilinear process, but one that took place throughout a long history. Even in recent times we have evidence of the entry and absorption of various groups and communities, both migrant and indigenous, and a variety of cultural elements into the changing and evolving character of the Sinhala-speaking people and the culture associated with them. There is no doubt that the Tamil contribution to this has been of considerable importance throughout history, while at the same time it lies to the credit of the Sinhalese that in a small and relatively insignificant island at the southern extremity of the Indian Peninsula, they produced a distinctive culture and civilization through a continuing process of creative synthesis. The patterns of integration and differentiation, which are demonstrated in past epochs, are still active and the challenge which faces our society today is to understand and master the dynamic and progressive content of these developments and apply them to the problems of the day.

The same methodology and analysis can be applied to the other nationalities in Sri Lanka, whether appearance on the stage of Sri Lanka history was coeval with or subsequent to that of the Sinhala-speaking people. The most obvious example of this is that of the Sri Lankan Tamils who

have shared this island with the Sinhalese, in one way another, from early historic and, probably, protohistoric time. The existence of people with a distinct Tamil ethnic identity from a very early period is evidenced in the Brahmi inscriptions. An equally significant connection is that the material culture of the protohistoric and early historic periods as well as other non-material cultural phenomena show clear relationship between Sri Lanka and southern India. Comparative studies of the material culture associated with the megalithic complex as well as of the megalithic burial practices, themselves, and also of the irrigation technology, agricultural techniques and both plant and animal domestication in the two regions will certainly give us a clearer picture of this relationship. The proximity of South India and the narrowness of the Indo-Sri Lanka straits must certainly have provided easy access to migratory and trading contact in pre-historic times, as in later history.

PATRONS ALSO

There are many references in Sri Lankan history to Tamils and Tamil communities, not only as the invaders or usurpers in which role they may be frequently portrayed, but also as patrons of Buddhism, as guardians of the Tooth-Relic, as mercenaries and as partisans deeply involved in the internal politics of the island, and as merchants and traders. There is also ample evidence, as Liyanagamage has recently pointed out, of the close and often forgotten relationship maintained between Sri Lankan Buddhists and Tamil Buddhists in South India. A major role in the emergence and consolidation of a Sri Lankan Tamil *ethnos* is played by the formation of a Tamil kingdom in the north from the 13th to the early 17th century and by the presence of significant Tamil elements in the Vanni principalities during the period from the 13th to the 19th century.

Once again, patterns of convergence and divergence, of integration and differentiation, and also of homogeneity and heterogeneity are apparent in these developments showing that the history of the Tamil peoples of Sri Lanka, like that of the Sinhalese, is not a simple unilinear process.

What is true of the Sinhalese and Tamils is also

applicable to the other major nationality, the Muslims; or, in a somewhat different way to much smaller ethnic groups such as the Burghers and even to that large community of more recent migrants, the Indian Tamils of the tea producing areas of the central highlands. The Muslim presence in this island dates back, again on the basis of epigraphic and literary evidence, to the 9th or 10th century. An important role was played by the Muslims in the development of trade and commerce and also in what we may call the second *urbanisation*, after the 13th century, when port cities and urban settlements came to form a significant aspect of the Sri Lankan economy and polity. In the course of this urbanisation, the evolution of the Muslim *ethnos* took specific local forms in which internal development seems to have played as or more significant a part as migration and other external factors. Similarly, the third *urbanisation* and the growth of modern middle class modes of life, which took place under colonial domination, saw a major role played by the Burghers, the importance of whose contribution was often in inverse proportion to their numbers. The distinctive character of their urban 'sub-culture' owes as much to its development within the Sri Lankan context and its synthesis with indigenous elements as to its extraneous origins. As for the Indian Tamils—who range from numerous small groups of varied geographical social and economic origins, to the large-scale estate communities—they present a clearly observable example of only incipient migration, settlement, localisation and synthesis that must have occurred, in different ways, throughout the history of the peopling and settlement of the island.

Looked at in this way, the history of ethnic formation in Sri Lanka can be seen as a complex process involving, in the first instance, the convergence of various pre- and protohistoric developments into the formation of major ethnic group associated with the evolution of Sri Lankan history and culture, the Sinhalese; and, in the second instance, the parallel or mostly subsequent emergence in historic times of other major or minor communities; third, in modern times, the convergence of this historically complex multiplicity of ethnic groups

into a larger, more comprehensive, if still incipient, *Sri Lankan nation*. Despite the survival of traditional ethnic differentiation and of contradiction and conflict between ethnic groups, there is in modern Sri Lanka society and culture, a distinct similarity of cultural patterns, from area to area and group to group covering both material and spiritual realms and across ethnic barriers. Although we live at a time which may seem to be one domi-

nated by heated inter-ethnic contradictions and endemic ethnic and caste rivalries, the unities that have been established in the daily life of Sri Lanka society in the late 20th century show a pathway to the future. A study of Sri Lanka history, stripped of its myths and distortions and free from communalist bias, *On one side or the other* can do much to contribute to the historic process of the formation of an integrated, polyethnic modern nation.

Groundwater Pollution

Groundwater which is the most viable source of potable water in the Jaffna Peninsula must be managed with sound hydrogeological understanding if serious health hazards are to be avoided. In the Peninsula numerous pit latrines, Septic Tanks and unprotected wells in close proximity to each other represent a serious groundwater pollution hazard. The risk of groundwater pollution by faecal bacteria is already very high. The recent directive of the Jaffna Municipal authorities to all households to install Septic Tanks if carried out will further aggravate the situation. Although interested individuals and professionals have in the past aired their concern regarding this potentially dangerous problem, no systematic study has been done up to now.

Another component of the hazard represented by pit latrines is the major build-up of nitrogenous effluent in the surrounding soil. Intensive arable agriculture may also lead to high nitrate concentrations in the ground water.

The potential health implication for infants by ingesting excessive nitrate concentrations in drinking water has been a topic of continuing medical attention and the possible effects on adults of high nitrate intakes over long periods is a subject of growing medical concern.

Another problem peculiar to the Peninsula is the risk of saline water intrusion into the groundwater aquifers due to excessive pumping for agricultural purposes. Saline water intrusion might also occur because of indiscriminate quarrying of rock in coastal areas.

Therefore a comprehensive study will have to be made to tackle the following problems:

1. Serious groundwater pollution hazard represented by pit latrines in hydrogeological environment.

This hazard has two distinct components:

(a) Rapid transport of faecal bacteria to the water-table before natural elimination can take place.

(b) Major build-up of nitrogenous effluent in the surrounding soil.

2. Link between intensive arable agriculture and high nitrates.

3. Saline water intrusion due to excessive pumping of groundwater and indiscriminate quarrying of rock in coastal areas.

The University of Jaffna which is the most appropriate institute to lead such a study should lose no time in setting up an organisational network in collaboration with the Government Agent and the Municipal Authorities. Other institutions which should be invited to aid the study are the Water Resources Board, the National Water Supply and Drainage Board, the Survey Department, the Irrigation Department, the Department of Agriculture and the Faculties of Engineering at Peradeniya and Moratuwa.

The study should aim at establishing the causes and mechanisms of pollution of water supply wells and considering possible remedial action. This would involve detailed evaluation of the factors controlling water and pollutant movements in the unsaturated and saturated zones around selected water supply wells.

by MANOHARAN

(Continued from page 5)

public order, which means the prevention of disorder, and for the maintenance of peace and tranquillity has to be recognised. Sometimes he may err in his judgment, sometimes he may be over-cautious, but as long as he has acted in the honest belief this action was necessary to achieve the object set out in the Regulation, then the Court will not interfere.

The State of Emergency was declared at 5 p.m. on the 18th of May 1983, on the day when elections to the local bodies, including local bodies in the Northern and Eastern Provinces were being held. There had admittedly been certain incidents on that day at Kantharmadan in Jaffna. It is alleged that some militant youth had fired at the security forces killing Corporal Jayawardena and injuring several soldiers at the polling station and that in retaliation the security forces had run amok, set fire to no less than 64 houses and a large number of vehicles in Arasady Road. These incidents were given prominence in the Saturday Review of 21.5.83. Another incident involving the shooting of two Air Force personnel in the heart of the Vavuniya town, and retaliation by way of setting fire to the "Gandhyan farm" and several shops in Vavuniya were reported in the Saturday Review of 4.6.83. In the Eastern Province violence had erupted on 11.6.83 at a time when a curfew was in force. Bombs were alleged to have been thrown at the house of the M. P. for Trincomalee and the Saturday Review of that day reported that the armed forces or their hired thugs were suspected of this violence. There were two issues of the Saturday Review thereafter; they were the issues of 18.6.83 and 25.6.83, to which reference will be made later. At about the same time a "hartal" was organised by the T.U.L.F. to be staged in Jaffna on some date before the 1st of July 1983. The Competent Authority had thereupon decided to ban the publication of this newspaper which he did by his first order dated 1.7.83.

The material on which the Competent Authority says he formed his opinion

(A) In paragraph 15 of document marked IRI (which was the affidavit the Competent Authority filed in the previous application No. 47/83 in which his orders dated 1.7.83 and 18.7.83 were challenged) he states that the Saturday Review is a political newspaper advocating the cause of dividing the country and the establishment of a State known

Saturday Review case

as Eelam for the Tamils in the North and East of the Country.

Mr. Nadesan submits that there was nothing illegal in espousing the cause of separatism by peaceful means prior to the enactment of the Sixth Amendment to the Constitution in August 1983. A noteworthy fact is that during the first six months of its publication (1-1-82 to 30-6-82) the paper had been sent free to all Members of Parliament and to several other persons occupying public positions in Sri Lanka. Subsequently some of these persons have subscribed and obtained copies of the newspaper. But no action had been taken against the paper for the cause it espoused.

In the early editions of the paper there could be no doubt that the Saturday Review lived up to its task of espousing a cause and no exception could therefore have been taken to such a policy prior to the Sixth Amendment.

(B) In paragraph 16 the Competent Authority says that many of the articles and items published suggested that the publishers eschewed democratic processes, negotiations and campaigns based on non violence as a means of resolving the problems of the Tamil people and openly encouraged the adoption of force and terrorism as the only means to a solution. Mr. Nadesan denied this allegation and stated that this was far from the truth. He referred us to several articles and editorials where the paper had advocated non-violence, and I have selected just two illustrations.

(1) Editorial of 20-2-82 Under the heading "Why breed more terrorists?" appears the following passages;

"Terrorists, whether we like them or not, cannot be equalled with robbers and thieves and thugs and looters and arsonists. The only thing in common between the two is their addiction and violence and violence certainly cannot be condoned by any civilised society which believes in the rule of law."

"Military solution are no answer to political problems."

(ii) The issue of 14-5-83 published an article by K. Shanmugan Bar-at-law titled "The cause is just, but guns are not, the answer" in which appears the passage "if no satisfactory solution is reached, the Tamil leadership will have no alternative but to demise effective methods to achieve their goal. The one and only practical and effective methods is to organise the entire Tamil nation for a non-violent struggle on the

lines of the Gandhian campaign in India, Gandhiji defeated the mighty British power not with guns but with his non-violent satyagraha."

On the other hand the learned Deputy Solicitor General indicated that much water had flowed under bridges of the Aruvi Aru since about April 1984 referred us to several issues of the paper which according to him were calculated to exacerbate communal feeling, to ridicule any further negotiations with the Government, to ridicule the T.U.L.F. which was keeping up a dialogue with the Government and to deflate the value of the Parliamentary system. They also published grossly distorted versions of the incidents in the North and East with a view to creating a climate for further violence.

The issue of 21-5-83 contains two letters written by the Eelam Tamil Association of Australia. The first is an open letter addressed to Mr. Amirthalingam, General Secretary of the T.U.L.F. written by Dr. Sundarasingham President of the Association and it calls upon Mr. Amirthalingam to step down. It says "We strongly point out to you that the Tamil people gave you and your T.U.L.F. Parliamentarians a clear and unequivocal mandate to strive for and achieve an independent Sovereign State of Tamil Eelam and not to compromise for anything short of this. You were most certainly not given any right to conduct back door dialogues asking for D.D.C.'s and other petty concessions.... You are most definitely not capable of leading Eelam Tamils to freedom. Therefore please step down."

The other is "A call to all Eelam Tamils at home and abroad to stand up and be counted". It states that every Eelam Tamil, no matter where he lives today is part and parcel of the struggle. It eulogises the "soul stirring acts of heroisms of Kuttimani, Jegan, Thangathurai and others in the face of death.... the martyrdom of Sivakumaran, Inbam, Selvam add countless number of other Tamil youths for the cause, whether is something of a Tamil 'miracle' in modern times.

The issue of 11-6-83 contains an article "Taking a close look at Non Violence" by Kumar. It says "It is clear that the Tamil People in Sri Lanka will not be given their right to self determination without a struggle."

"The satyagraha strategy is for another lot to try again and be met with more violence. This cannot go on for ever and we are back in square 1. There is not a single

country in the world which has liberated itself through non-violence."

"Freedom fighters must carry on their struggle in the territory of their choosing with weapons of their choosing: non-cooperation, strikes, boycott etc. Each area will have to work out ways best suited to itself. In the final stages, if and when necessary guns will have to be used. By then the freedom fighters would have so integrated with the people that they would move among the people like fish in the ocean."

"Non violence should not be allowed to be the sacred cow before which we must all kneel. National liberation struggles deal with matters of life and death for millions of people and every care must be taken to see that the weapons used are effective. To announce at the outset of a struggle that it is completely non violent is to give great comfort and cheer to an opponent fully armed. He will use his weapons with abandon knowing that no physical harm will happen to him."

Also in the same issue was a news item about new posters signed by the Peoples Liberation Organisation of Tamil Eelam appearing in the walls of Jaffna calling upon the people to take up arms against the repression of the State.

The issue of 18-6-83 contains an Article "Freedom's Journey" by S. D. A. Ariyadurai. He states that after the Moses of the Tamils (Mr. Chelvanayakam) had marched with the Tamil people for 25 long years, always confining his strategies to Gandhian principles, the mantle of leadership fell on the present leader of the T. U. L. F. who, according to the author, is looked upon as Joshua of the Tamils. "Either He would prove his hilt or fall by the way for Gandhyan style of leadership seems to have taken back seat on especially proved during the local Government Elections (18-5-83) and Subas Chandra Boses and Baghet Singhs have emerged to the fore". Again: "Perhaps the Tamil Nation has lost its faith in Gandhyan politics particularly when the forces of evil stationed in Tamil areas have not even spared Gandhyan itself, which is only a social service organisation."

In the issue of 25-6-83 is published a letter to the Editor by Miss Niranjana Seilathurai of Sandilipay under the heading "what Gandhi's assassin said in his own defence: 'After observing that Gandhiji's inner voice, spiritual power and doctrine of non violence crumbled before

Mr. Jinnah's iron will, the assassin is alleged to have said 'I felt that Indian politics in the absence of Gandhiji would surely be practical, able to retaliate and would be powerful with armed forces.' The writer says that it is a strange irony that satyagrahis and peace lovers like Gandhiji, Martin Luther King and Anvar Sadat met with their end by violence.

The same issue reported a draft plan for a form of Regional Autonomy as an alternative to Tamil Eelam being drafted by three Ministers of the Government, in consultation with a member of the T. U. L. F. The following passage, Deputy Solicitor General contends is indicative of the attitude of the paper to these negotiations:-

"Militant Tamil Youth have yet to make known their stand on these peace plans and regional autonomy moves. So far the only reaction has been from the Tamil Eelam Liberation Army. This group believed to be aligned to Kuttimani and Thangathurai distributed a 4 page pamphlet on Thursday (23rd June) categorically declaring its opposition to any peace talks which rule out Tamil Eelam".

The learned Deputy Solicitor General contends that these articles were calculated to instigate and incite the Tamil youth to violence. These and similar articles have debunked non-violence and the Gandhyan principles, they have ridiculed the elected representatives of the Tamil people who were seeking to achieve a settlement to their problems by peaceful means, and have if not explicitly, certainly implicitly eulogised the activities of the terrorists in no uncertain terms. The Competent Authority was therefore well justified in the opinion he formed prior to the banning of the paper.

Mr. Nadesan has addressed us at length on the purpose for which these articles were published and the reasonable interpretation that is capable of being placed on each of them. Some were intended to make people think and form their own views on the present situation, others like "Freedom's Journey" are inspiring studies whilst still others like the posters were news items to enable the authorities to know the thinking of the Tamil People. He claimed that the paper had an intelligent readership representing the elite of society who could not have been incited by such articles.

(C) In paragraph 17 the Competent Authority states that prominent publicity was given by this paper to the terrorists in the North and often eulogized their conduct with a view to encouraging the growth of terrorist movement. (Continued on page 9)

Saturday Review case...

(Continued from page 8)

ments and the use of force against the Government. Besides the material referred to in the discussion under paragraph 16 the Deputy Solicitor General referred also to news items appearing in the first page of the issue of 21-5-83 where under the heading "Army Run Amok" is an account of the happenings at the Saiva Prakasa Vidyalayam polling booth on 18-5-83. It says that "about eight youth had come there at 4 p.m. and exchanged fire for about 25 minutes. Later they coolly wheeled away on their bicycles leaving behind Corporal Jayawardena dead and soldier Bandara, P. C. Tillekeratne and Premadasa badly injured. Eye witnesses said that the youth had spoken to the public as they cycled along Adiyapatham Road, Tinnevely, introducing themselves as Prabakaran group". This, according to Mr. Nadesan was a news item which appeared in other newspapers as well. The Deputy Solicitor General submits that no reasonable newspaper should have referred to this "cool" attitude of the terrorists. Instead of condemnation the paper has indulged in eulogising.

(D) In paragraph 18 the Competent Authority states that the paper has given undue prominent coverage to so called excesses committed by the armed forces and the police in an effort to arouse communal passions. In support of this allegation the Deputy Solicitor General referred us to the following issues:-

The issue of 21-5-83 where the headline of the first page reads,

"ARSON, THEFTS, ASSAULTS: ARMY RUN AMOK"

Mr. Nadesan says that this is a correct account of what happened on polling day at Kantharmadam. If the newspapers did not give publicity to such excesses of the law enforcement and military officers how was the Government to know and to take preventive action. He referred us to the news items of the 'Island' paper, 20-5-83 and the 'Sun' paper of 19-5-83 which referred to the same incidents. It was as a result of such publicity that the Commander of the Army was able to take certain disciplinary action against certain officers.

The issue of 28-5-83 contains several photographs of the destruction under the caption "Army Orgy at Kantharmadam" on Election night 18-5-83. One of the pictures is that of the wooden chariot of a Hindu temple at Palam road which is alleged to have been set on fire and partially burnt.

This issue carries also an eye witnesses account of certain incidents said to have taken place in the Yarl Devi

train on the morning of 19-5-83 under the heading "Police Rowdism in Jaffna-Colombo Train".

There are also eye witnesses accounts of how the Army prevented the Police from dousing the fire when the house of the Chief Manager of the Bank of Ceylon at Kantharmadam was set on fire by the Army soon after the elections on 18-5-83.

The issue of 4-6-83 has a headline "Armed Forces attack Gandhiyam farm; Vavuniya shops burnt". Mr. Nadesan says that this is a news item and nothing said there is an exaggeration.

Also in the same issue are accounts of the deaths of Navaratnarajah and of Srisankandarajah, both of whom had died whilst in Army custody. The judicial verdicts were verdicts of homicide.

The issue of 18-6-83 carries a letter to the editor from one Samudran written from Tokyo under the heading "State terrorism and T.U.L.F. opportunism". The Army attack on Kantharmadam is compared to the horrors of the American occupation of Vietnam and the Pakistani occupation of Bangladesh which according to the writer "are not remote imaginations any more to the children of Jaffna". "State terrorism as most blatant manifestation of national oppression, has produced its inevitable dialectical opposite ie: resistance from the oppressed". The growing consciousness of the Tamil masses to State terrorism is seen as "the negation of the T.U.L.F. as an inimical anachronism". The T.U.L.F. is branded as being fathered by liberals and nurtured in parliamentary opportunism with "Amir as the tragic figure of this historic transition".

(E) In paragraph 19 the Competent Authority states-

(i) that the tenor of the articles and news items were blatantly communalistic and constantly highlighted alleged grievances and injustices committed against the Tamil community capable of arousing communal feelings among that community;

(ii) that the editorial policy in the context of the circumstances prevailing in the country at that time, was extremely prejudicial to the security and safety of the country and its citizens.

(i) As illustrating the communalistic policy of the paper reference has been made to the following among other articles:-

In the issue of 28-5-83 there has been published an anonymous postcard. It pur-

ports to be an ultimatum issued by the Sinhala United Liberation Front of the U.N.P. from its headquarters at Siri Kotha. It enjoins the Tamils to leave Sri Lanka and go back to Tamil Nadu, their traditional homeland. It alleges that "you bloody Tamils invaded our Sinhala homeland and grabbed our lands, property, jobs etc".

The Deputy Solicitor General asks why, even if some fanatic Sinhalese wrote such a letter, a responsible newspaper considered it desirable to publish it? Would not the publication of this type of anonymous letter naturally rouse the feelings of the Tamil people?

In the issue of 18-6-83 there is reproduced a letter by a 'Hindu' reader writing from Ooty bearing the heading "Appearances are dangerously deceptive in Sri Lanka". It refers to the several acts of discrimination perpetrated against the Tamils and observes that "What is at stake is the identity of the Tamils as a separate ethnic, cultural and linguistic minority and the right to live in the land of their birth with dignity and self respect as equal citizens with the Sinhalese. It is this right that is attacked by the Chauvinist philosophy which informs and guides the Enoch Powells of the Sinhalese ruling clique".

A sinister and calculated move is on, the writer says, to deprive the Tamils of their soul by depriving them of their language, denying them their fundamental rights and destroying their culture. As an illustration there is a reference to the famous 'muruga' at Kataragama being converted into a Sinhalese deity.

Also in the same issue is an Article titled "Cultural Racism in Vavuniya". It is an attack on the architecture of the recently built Archeological Museum in Vavuniya alleging that it symbolises Sinhala Buddhist arrogance and oppression rather than tolerance and matriya. It calls upon the Tamil people as a mark of protest not to participate in the opening ceremony of the Museum erected behind the enigmatic Buddha Statue.

(ii) Mr. Nadesan denies that the editorial policy was calculated to endanger the safety of the country or to be prejudicial to national security. The Saturday Review, he claimed, had always stood for national interest. It was, however, bold and forthright and expressed views on all matters of public interest. The primary function of a newspaper is to convey information to

the public and in the performance of that function the Saturday Review published articles and letters from readers expressing various shades of opinion. The ideas contained in them in no way reflected the editorial policy of the Saturday Review.

If the Army ran amok, for instance, a newspaper must report it so that preventive steps could be taken. Also such news stories as well as activities of the terrorists, be they from the North or the South would arouse tremendous public interest; so why should such stories be suppressed, he asks, because they had nothing to do with public security.

He referred us in particular to the earlier edition of the paper published in the year 1982 where there was nothing to indicate anything prejudicial to the national interest. On the other hand the views expressed resulted in rectifying some of the injustices perpetrated by the Government on the Tamil people. As an illustration he referred us to the editorial in the issue of 6-2-82 which criticised the proposal of the Government to decentralise the issuing of passports by opening passport offices in Kandy and Galle but leaving out Jaffna. The substance of the editorial was that by such conduct the Government was making the Tamils feel that they did not belong to the same family. The editorial yielded results as the Government soon thereafter opened a passport office in Jaffna as well.

It was factually wrong, he contended, for the Competent Authority to have thought that Saturday Review had conducted itself in a manner prejudicial of the national interest for the reason that it had been critical and outspoken. That is what newspaper has to be. If not for newspapers the Watergate scandal would never have been exposed would Tanaka the former Prime Minister of Japan been jailed for bribery.

He therefore invited us to examine all the material published in the paper and come to the conclusion whether the Competent Authority has made a correct assessment and acted fairly in dealing with the paper. We have examined the material as fully as is relevant for the purpose of these cases. It appears to me, as did appear to Wanasundera J. who has observed in his judgment in S. C. Application No. 47/83 that "the publishers have tried to be as objective as possible, and have sought to prod-

uce a weekly newspaper which appears to be a cut above the average newspaper judged by journalistic standards"; but that "unfortunately there has also crept into this publication material that must necessarily attract the attention of the authorities at a time when there were unsettled conditions in the country". The evaluation of the material which has been referred to by me is not the function of the Court but the function of the Competent Authority. All that the law permits the Court to decide is whether the Competent Authority can possibly be labelled as unreasonable on his evaluation of this material. He cannot be labelled as unreasonable unless, in the words of Lord Denning (above) "he is not only wrong, but unreasonably wrong, so wrong that no reasonable person could sensibly take that view". It is not possible for me to say that the Competent Authority was unreasonable, having regard to the material contained in the issues of May and June 1983.

I am therefore of the view that the fundamental right of the publishers of the Saturday Review has been lawfully restricted by the Competent Authority and accordingly the fundamental right of the Petitioners as readers and contributors have also been lawfully restricted. The Petitioner's claim under Article 14 (1) (a) thus fails.

The Fundamental Right guaranteed by Article 12(1)

"All persons are equal before the law and are entitled to the equal protection of the law." Mr. Nadesan's contention is that readers of all newspapers are entitled to equal treatment by the law without discrimination. The object of this Article is to ensure that arbitrary discrimination shall not be made by the State or its organs between persons A and person B who answer to the same description.

Equality before the law does not mean that the same set of laws, or the same set of administrative orders, shall apply to all persons under every circumstance, ignoring differences between man and situations. Article 12 does not, therefore, forbid a reasonable classification because all persons are not similarly situated, and all situations can never be the same. Discrimination to be violative of Article 12 must be discrimination between equals. There can be no infringement of this Article where unequals are treated differently.

In the operation or implementation of an administrative scheme, such as the imposition of a censorship or the prohibition of the

(Continued on page 10)

Saturday Review case...

(Continued from page 9)

publication of a news paper, the State is permitted to take one unequal administrative actions in its dealings with individuals or groups whose circumstances or situations are different. Newspapers differ in their respective policies, opinions and tastes. No two newspaper as in the case of individuals, are alike. Each newspaper caters to a different readership and so among the readership too there is a difference. In a permissible classification mathematical nicety and perfect equality are not possible and are not required in the case of newspapers and their readers. The executive, in implementing an administrative scheme is free to recognise degrees of harm, and may confine its restrictions to those cases when the need is deemed to be the clearest. **Shri Ram Krishna Dalmia at al Vs Justice S.R. Tendolkar et al A. I. R. S. C. 538.**

Mr. Nadesan's complaint is that the Competent Authority has not, in his affidavits in reply to the Petitioner's averment of discrimination, specified the reason as to why he imposed a total ban on the publication of the Saturday Review whilst imposing only a censorship in the case of other publications. The answer of the Competent Authority to this allegation of discrimination is a bare denial. No reasons have been given for such differentiation. In the absence of valid reasons for such discrimination learned Counsel invites us to draw the inference that there is no intelligible differentia on which the orders of the Competent Authority's are based.

This raises the question on whom is the burden of proof of infringement of the fundamental right guaranteed by Articles 12 (1)? Mr. Nadesan has emphasised Article 3 and 4 of the Constitution and in particular Article 4 (d) which ordains that the fundamental rights that are declared and recognised by the Constitution shall be respected, secured and advanced by all organs of government, and shall not be abridged, restricted or denied save as provided in the constitution. He draw our attention to the fact that provision similar to Article 4 (d) is not incorporated in the Indian Constitution and that decisions of the Indian Courts on the burden of proof may not be appropriate in interpreting Article 12 of our Constitution.

In this connection Counsel referred us to **Eleko Vs. Officer Administering the Government of Nigeria (1931) A. G. 662** and **R. Vs. Brixton Prison Gover-**

nor (1969)2 All ER 347 both cases of illegal detention, where Lord Atkin in the former case, and Chief Justice Lord Parker in the latter, stated the cardinal principle of English Law that no member of the executive can interfere with the liberty of a British subject except on the condition that he can support the legality of his action before a Court of justice, and that at the end of the day it was for the members of the executive to satisfy the Court as to the validity of the order.

What was challenged in **Eleko's case** was an order made by the Government of Nigeria providing that the appellant who was the applicant for the writ of habeas corpus shall leave a specified area and on his failing to comply, ordered his deportation to another place in the colony. The Governor could only make that order validly if the applicant was a native chief; if he had been deposed; and there was a native law or custom which required him to leave the area. These were the conditions precedent to a valid order of deportation and there could be no doubt that the executive had to establish that these conditions existed.

In the latter case under the Commonwealth Immigration Act, 1962, an Immigration officer had a discretion to admit or refuse admission to the U. K. of a Commonwealth immigrant after an examination provided for in a schedule to the Act, the relevant portion of which stated that a person shall not be required to submit to examination under this para after the expiration of the period of 24 hours from that time he lands in the U.K. Lord Parker took the view that it was for the immigration officer and not his the immigrant, to establish the time at which the immigrant had landed in the U. K.

But we are in the arena of fundamental rights, and I think different principles are applicable. It seems to me that where a person invokes the provisions of Article 126 and complains of a violation of the fundamental right to equality the burden is on him to establish the discrimination by executive or administrative action. The principle finds support from the decision in **Prohudas Morarjee Vs. Union of India AIR (1966) SC 1044** "To make out a case of denial of equal protection, a plea of differential treatment is by itself not sufficient. The petitioner pleading that Article 14 (corres-

ponding to our Article 12 (1)) has been violated must make out that not only had he been treated differently from others, but that he has been so treated from persons similarly circumscribed without any reasonable basis, and that such differential treatment is unjustifiable".

This principle was affirmed by the Court in the case of **Dr N.R.W. Perera Vs. The University Grants Commission (S. C. Application No. 57/80; S. C. Minutes of 4.8.80)**. "A person relying on a plea of

unlawful discrimination must set out with sufficient particulars his plea showing how between persons similarly circumscribed discrimination has been made, which discrimination is founded on no intelligible differentia. If the petitioner established similarity between persons who are subject to differential treatment it is for the State to establish that the differentiation is based on a rational object sought to be achieved by it. But where similarity is not shown, the plea as to infringement of Article 12 must fail" per **Sharvananda J. at p. 13.**

The petitioners have not discharged the burden which

was on them to establish discrimination. Their claim that their fundamental right to equality has been violated must also fail for the reason that the Saturday Review was published in Jaffna where there was considerable disorder, and where that was a threat to national security unlike in other parts of the country. The publications in Jaffna could not therefore be said to be "similarly circumscribed" as the publications in other parts of the Country at the same time.

For these reasons these Applications are dismissed, but without costs.

Suggestions for a Federal State

The Editor,
Saturday Review.

It is a historical truth that neither the Sinhalese nor the indigenous Tamils in Sri Lanka are a pure race, whether they come from the north, south, east, west or the central highlands. The "Koviyars" (a caste) of Jaffna, though Tamil-speaking, are Sinhalese in origin. The Sinhalese of the coastal belt from Chilaw to Moratuwa and further south, the saliyas (a caste) the Ponnampummas, Weerakkodis, etc., are Tamilian in origin, though Sinhala-speaking today.

The Sinhala origin of this country has only a limited historicity of 2500 years. Prior to that, it was a Dravidian history which cannot be shrugged off for the sublime pleasure and comforts of a misguided few. There are a few myths that have seeped deep into the consciousness of the Sinhalese masses. Some of them are - Sri Lanka is Sinhala; to be Sinhalese is to be Buddhist; to be a Sinhala Buddhist is to shoulder the burdens of protecting the Theravada Buddhism in its pure form.

King Rawana was a Tamil and Rama was from the northern parts of India. The war between the two was not a war between India and Sri Lanka. Actually, it was a war between two clans.

The Sinhala kingdoms in Rajarata took part in power politics in mainland India by aligning themselves with one power block or another, thus earning the justifiable wrath of the power block they opposed, which when it gained sufficient strength, took the earliest opportunity to invade this country to cut the king of Rajarata to his correct size, thus

neutralizing a potential enemy at their southern door step. It should be clearly noted that all this had nothing to do with race as it is presently understood. It was merely dynastic wars between two royal classes.

As for the claim that Asoka did not send any missionary to South India because he respected the territorial rights of the Sri Lankan monarch, my limited knowledge of history gives me the impression that neither Asoka nor the latter day Akbar the Great were able to control and contain the kingdoms south of Deccan.

Buddhism spread quite rapidly in Tamil-speaking areas at a particular period in history. Manimekalai and Silappadikaram are two great Tamil Buddhist works written during this golden age. Mahinda Thero and Buddhagosha, both Tamils come to Sri Lanka to spread the Dhamma.

My suggestions for a federal states of Sri Lanka is as follows:

Northern Province - Jaffna, Vavuniya, Mannar.

Eastern Province - Trincomalee, Batticaloa, Amparal and Mullaitivu.

Western Province - Colombo, Gampaha, Kalutara, Galle, Matara and Puttalam.

Ruhunu - Hambantota, Moneragala, Badulla.

Rajarata - Anuradhapura, Polonnaruwa.

Central Uda Rata - Kandy, Matale, Kegalle, Ratnapura, Kurunegala, Nuwara Eliya.

The above could be reasonably compromised without altering the ethnic balance in them.

E. S. Mahendrarajah
Kings Street,
Matale.



Way out of Deadlock

Editor,
Saturday Review.

It is clear that the Sinhalese participants at the All Party Conference are not prepared to concede regional councils to the TULF. It is equally clear that the TULF is not prepared to accept anything less than regional councils. What is the way out of the deadlock?

The objective of the TULF and the "Tigers" is not so much to carve out a separate state for the North but to preserve the identity of the Tamils of the North.

The Jaffna Tamils are a community within a community. Though of Dravidian origin, the Jaffna Tamils have customs, habits, and a dialect all of their own.

I am sure the TULF will accept district council, if the Government will give the assurance to the TULF that it will not colonise the North with non-Tamils.

Is it too much for the Government, in the interests of peace, national unity and progress, to grant this concession which will ensure the identity of the Jaffnese for ever without impairing the unity or national integrity of Sri Lanka?

There is a wrong notion that the Jaffnese are averse to non-Tamils settling down in their midst. This is totally incorrect. What the Jaffna man objects to is forced colonisation of the North by the Government, reducing the Jaffna Tamil to a non-entity in his own homeland.

D. J. Thamotheram
18/1, Vivekananda Road,
Colombo 6.

PRESS FREEDOM : CRM REMINDS JR OF HIS OWN WORDS

"According to the newspapers, the Minister of Justice, Mr. Nissanka Wijeyeratne, is proposing to the Government an amendment to the Press Council Law under which any proprietor, printer, publisher or editor of any newspaper publishing anonymous or pseudonymous articles or reports shall be guilty of an offence, liable to be punished with a term of imprisonment not exceeding one year or a fine not exceeding two thousand rupees or both.

"Such an amendment violates the fundamental right of freedom of speech, expression and publication enshrined in Article 14 (1) (a) of our Constitution and under its provisions cannot become law unless passed by a 2/3rd of the members of Parliament and subsequently approved by the people at a referendum.

"Under the Newspapers Ordinance, no person shall print or publish any newspaper in this country without making a written declaration to the Registrar of Newspapers in a prescribed form specifying the title of the newspaper, where it is to be printed and also the true name and place of abode of all persons intended to be the printer, the publisher and the proprietor. Any changes are also required to be registered. This provision has been made to enable criminal or civil proceedings to be instituted by any party aggrieved against the printer or publisher of a newspaper, which also includes the Editor, in respect of any violation of the rights of others or any infringement

of the law. What then is the necessity for the proposed amendments?

"Freedom of speech and of the Press are the foundation of all democratic societies for without free political discussion, no public education, so essential for the proper functioning of the process of popular government, is possible. As has been said in a well-known American case, *Thornhill vs The State of Alabama* (1940) 310 v 388 84 Law 1098: "The safeguarding of freedom of speech and the Press to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the process of education and discussion is essential to free Government."

"A free and untrammelled press is an essential instrument for free speech and expression. In this connection, we can do no better than quote from the submissions made under the signatures of Mr. J. R. Jayewardene and a distinguished team of lawyers headed by Mr. H. W. Jayewardene, Q. C., to the Constitutional Court objecting to the enactment of the Press Council Bill by the previous Government, a Bill which was also opposed by the CRM.

"The freedom of the Press is the essence of liberty and this is the source of all other liberties. If this freedom is suppressed, restrained or controlled, then the foundation for autocracy is laid. Freedom of expression and

freedom of speech is the basis of freedom of thought. Speech is the institution by which man gives expression to his right to think freely. If therefore the freedom of speech is affected, it would equally affect the freedom of thought. In such a context an examination of the structure of the Press would show that it is an institution created by a developed society to convey the thoughts of the people. It also provides the material for other people to think and form their own opinion. This is of fundamental importance.

"It is submitted that there are two priorities involved in the concept of freedom of speech, namely

- (a) the source from which the communication issues, and
- (b) perhaps the more important one, the recipient of the communication.

The freedom to express one's thoughts is confined to a few compared to the wider circle to which the freedom of expression is extended in so far as the recipient is concerned, namely the community.

"It is in the freedom of the recipient that public opinion has its birth. The Press provides the data by which such opinions find their fullest expression. Therefore it is man's right as the recipient of information to look to as many sources of information as

he likes; and it is equally the duty of the Press—which provides the information—to seek it from as many sources as possible. If, however, the sources of information become concentrated in one, or restricted to a few bodies, then the formation of ideas is limited. It is in such circumstances only proper that the sources of infor-

The Civil Rights Movement of Sri Lanka, in a lengthy statement, has condemned the proposed amendment of the Press Council law to make it an offence for newspapers to publish reports and articles under pseudonyms.

Here are a few excerpts from the statement:

mation available to the public should be enlarged rather than restricted; therefore there can be no justification for interference with the freedom of the Press."

64th BIRTHDAY

His Holiness G. G. Lakshmi Narayana Swamigi celebrated his 64th birthday with devotees in Trincomalee on 9th June. He stayed in Trincomalee district for a week and met leaders of all faiths to help stabilise peace in the area.

HINDU LODGE

The Nallur Hindu Lodge, constructed by the Jaffna Municipal Council, was declared open by Mr. C.V.K. Sivagnanam, Municipal Commissioner of Jaffna, on Thursday, 14th June.

CHESTO

the Sweet

that relieves coughs and colds

An excellent mouth freshener

Available at all good stores.

A New Path-Breaking Book on ETHNICITY AND SOCIAL CHANGE IN SRI LANKA

Papers by Sinhala and Tamil Scholars
analysing the historical
roots of ethnicity

and
the myths and misinterpretations
behind ethnic dogmas

Available at all leading bookshops

IN ENGLISH : Rs. 25-00
IN SINHALA : Rs. 15-00

Inquiries from:

Social Scientists' Association
129/6A, Nawala Road,
COLOMBO 5.

SPORTS

CENTRAL UNDER 17 SURE OF TROPHY

Jaffna Central made certain of the Jaffna School's Under 17 Trophy when they, in their last outing, took first innings honours over Jaffna Hindu.

Jaffna Hindu, taking strike first, put up a formidable score of 201 in even time with P. Ragunathan top scoring with a delightful 60. Central's diminutive spinner Terry Mahan Ganeshalingam once again proved his class when he claimed 5 scalps at a personal cost of 69 runs.

Jaffna Central in reply started disastrously, losing the first two wickets without

any runs on the board. A bright partnership between K. Jeyakumar and skipper K. Rajasekar saw Central out of harm's way. Jeyakumar punched a grand 107, which included 15 hits to the ropes, while Rajasekar scored an effervescent 64.

Jaffna Central raced past Hindu's score for the loss of four wickets and at the end of the innings had collected 287.

Others who entered double figures were A. Newton 41, and Terry Mahan Ganeshalingam 30. Hindu's V. Drukeshkumar bowled best to capture 6 wickets.

by Victor S. Kiruparaj

The main scores:
Jaffna Hindu (1st Innings 201)

P. Ragunathan 60, V. Drukeshkumar 32, K. Premnath 31, Terry Mahan Ganeshalingam 5 for 69, S. Nagathas 3 for 52, R. Umaharan 2 for 28.

Jaffna Central 1st Innings 281

K. Jeyakumar 107, K. Rajasekar 64, S. Newton 40, Terry Mahan Ganeshalingam 30, K. Vivekanandan 15, V. Drukeshkumar 6 for 69, K. Premnath 2 for 41.

St. John's who finished runners-up have lost only to Jaffna Central. It beat Jaffna Hindu, St. Patrick's, Kokuvil Hindu and Jaffna College.

Saturday Review

SRI LANKA

CP : PLAIN INTIMIDATION OF PRESS

The following statement was issued by the Central Committee of the Communist Party Sri Lanka at its meeting on 11th June:

"The Communist Party of Sri Lanka condemns the Cabinet's decision to make even further inroads into the freedom of the press and the freedom of speech guaranteed in its own Constitution through new laws to compel the authors or originators of published news or comment to disclose their identity.

"This is a clear attempt to intimidate informants regarding corruption and malpractice in Government and to restrict the area of expressed opposition to Government policies. In today's situation, everyone knows that those who expose or oppose malpractice in this Government risk not merely personal discrimination and administrative penalties but also personal violence at the hands of specially-organised bands of hooligans.

As the existing laws are more than sufficient to protect public personalities from defamation or slander, there is absolutely no excuse for the proposed new laws,

"The new proposal is yet another step in the Government's relentless march towards despotic and dictatorial rule.

"The Communist party is glad to note that the new draconian measure has been opposed by all non-Governmental political parties and sections of the mass media. Even some supporters of the Government have expressed reservation, unease and criticism about it.

"The Communist Party appeals to all newspapers, journalists and workers in the mass media who value the freedom of the Press and in the expression of ideas, to unite to demand that the Government abandons this reactionary decision.

5-★ DEMOCRACY!

President J. R. Jayewardene appealed to members of the United States House Foreign Affairs Committee to refrain from helping Sri Lankans, mostly Tamils, seeking political asylum in the US.

In what appeared to be a plea to the US Congress, the visiting President said: "There are many Tamils who come to your country asking for refugee status or political asylum."

"Please do not help them, because helping them would mean helping the northern terrorists. So please do not help them," he told the Committee at a coffee meeting in the Rayburn office building of the House.

The President revealed that the Prevention of Terr-

orism Act would be repealed soon because "we find it is useless against the terrorists".

He said the government was not violating human rights. There had been free elections and "we are a five star democracy".

But he pointed out that a democracy could not survive if a group of terrorists waged a war against it. "I need your help and also India's help to tackle the terrorist problem".

Mr Jayewardene said he was going to India on his way home and "I hope to ask Mrs. Indira Gandhi to ask the Tamil Nadu Government to stop supporting Sri Lankan terrorists".

In a revealing address to the Committee over coffee, the Sri Lanka President earlier said that the majority community in Sri Lanka was the Sinhalese who had no place to live other than Sri Lanka.....

(from the Island 21st June)

JR VOWS FREEDOM FOR ALL

President Jayewardene, speaking at a State Department luncheon in his honour in Washington, said his Government was pledged to safeguard the rights of all communities.

"We will not be diverted from the responsibility of seeking a negotiated settlement of any issues that divide our communities," he said.

He was responding to a toast proposed by the Secretary of State, Mr. George Schultz, and stressed the commitment to democracy

which bound the US and Sri Lanka.

"Our views on world political situations do not always coincide, yet we have been united in many common endeavours down the years.

"Our strongest bond is our mutual commitment to democracy. Modern democracy in Sri Lanka is over 50 years old but the practice of Government with the consent of the governed is fully in keeping with the long-established philosophical traditions guiding our people.

"Democratic institutions flourished at the grassroots level in Sri Lanka hundreds of years ago. Today, our Constitution enshrines the sovereignty of the people; preserves human rights and guarantees freedoms to all citizens. These rights are justiciable before an independent judiciary.

"Today's world faces the new and repugnant threat of terrorism. Civilised human beings cannot accept the argument of force as a substitute for the force of argument. We must all be united and unflinching, therefore, in resisting the vicious threat of terrorism, whatever mask or disguise it sometimes wears.

"Sri Lanka faces this threat from separatists who want to divide our country. The extent to which they will go was recently demonstrated when they kidnapped an American couple working in Sri Lanka.

"The Government of Sri Lanka is pledged to safeguard the rights of all communities. We will not be diverted from the responsibility of seeking a negotiated settlement of any issues that divide our communities. We will never agree to the division of our country. We will never submit to terrorism. We have never been conquered nor ever will be....."

TAMILS ALL!

At the White House meeting between the U.S. and Sri Lanka delegation on 12th June, President Jayawardene listed the number of high officials in his administration who are Tamils. The President told President Reagan and his Cabinet Colleagues that his Attorney-General was a Tamil, his Inspector-General of Police was a Tamil and that his next Chief Justice would be a Tamil.

"I don't have a Vice-President," he told Reagan, "but if I did have one I would like to have a Tamil."

Daily News, 21st June



Animal Industry Consultancy and Services (Pte) Limited.

The above Company maintains a multi-disciplinary team of Consultants drawn from Sri Lanka, Asia-Pacific Region and some selected industrialised countries in the field of animal production and health and processing and marketing.

Its Branch at 89, Second Cross Street, Jaffna, provides the following services:

- (1) A VETERINARY POLYCLINIC with surgical facility at 89, Second Cross Street, Jaffna (Working hours 8 a. m. — 8 p. m.)
- (2) Advice on production, management and health care to dairy and poultry enterprises with the provision of all required inputs as a package. The service is on a monthly "Retainer Fee" agreement basis.
- (3) Artificial Insemination and pregnancy diagnosis service and treatment of infertility problems.
- (4) Sale of chicks, animal feed, veterinary drugs.
- (5) Preparation of financially analysed FEASIBILITY REPORTS FOR INVESTMENT in livestock enterprises; supervision of implementation and providing management personnel.

For further information contact:

THE MANAGING DIRECTOR, AICS,
41 1/1, Gregory's Road, Colombo 7 (Tel: 598542)
or Branch Manager, 89, Second Cross Street, Jaffna.

NEVER — ANY BROOMSTICKS!

"Down with Broomsticks! On with the March!" That seems to be the reaction to our report in the issue of 9th June that a group of ladies in Jaffna are planning a demonstration to focus national attention on problems of the people in the region. A number of them have suggested that since what is planned is a purely peaceful affair, nobody should carry broomsticks, which are identified in the minds of many persons, especially males, as weapons of offence.

SORRY, NO SPACE

Owing to our decision to publish in full the judgement of the Supreme Court in the SATURDAY REVIEW case, a number of articles, letters and news items intended for publication in this issue have been held up.

Printed at Kalanilaya Atchaham, 303, K. K. S. Road, Jaffna, and published by New Era Publications Ltd., 118, 4th Cross Street, Jaffna on 23rd June 1984. Registered as a newspaper at the General Post Office, Sri Lanka, under QJ 101.