

CIVIL SOCIETY **IN** SRI LANKA

A Symposium

Presentations by

G.L. Peiris

Charles Abeysekera

Bradman Weerakoon

With Comments by

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FIVE REQUIREMENTS FOR CIVIL SOCIETY

G.L.Peiris

I think we are gathered here on a day that is particularly auspicious for two reasons. One of these reasons was the enactment in Parliament about an hour ago of the Human Rights Commission Law. To me what is even more significant than the enactment of that law, a significant milestone though it is in human rights jurisprudence in our country, was the manner in which consensus was arrived at in Parliament in respect of the modalities and approaches that are necessary in our contemporary social context to create and to develop effective mechanisms and structures for the protection and furtherance of human rights. The Government had given a great deal of thought to the provisions of this law; it was brought before Parliament on the 22nd of February. On that occasion distinguished speakers on the floor of Parliament on both sides of the House, made some valuable suggestions with regard to the improvement of this law. The Government readily agreed on that occasion to refer the bill to a standing committee for the purpose of evaluating in depth the suggestions which had been made. That was done in due course, and the Government accepted more than two thirds of the amendments which had been proposed by the opposition. When I spoke to Parliament on that occasion I made the point that a bipartisan approach to these questions is a sine qua non for effectiveness, because these are institutions which we are engaged in creating for the betterment of our country. These are structures which will outlive Sri Lanka's tenth Parliament, and indeed most of us. And If they are to stand the test of time, if they are to prove durable and lasting, a contribution of permanent values to the political culture and to the jurisprudence of our country, it is necessary that we reflect on these issues in a spirit of objectivity and detachment, jettisoning narrow myopic or partisan attitudes. And that is precisely what the Government undertook to do on that occasion. And what happened today in Parliament is a convincing demonstration of our commitment to pursue these objectives

in a spirit which I defined on the Government's behalf on that occasion.

There were several amendments which were proposed today under the standing orders of Parliament. Parliament today can consider only amendments to the amendments made by the standing committee. We could not traverse the boundaries of those amendments. Nevertheless within those frontiers, as many as 17 amendments were proposed on the floor of the House by several members of the opposition. One of these amendments was of particular interest to me. It involved some inconsistencies with the constitution. And we have to decide whether to accept this amendment. I think it will probably interest you to know something about what happened in the House today. It is to my mind, a development of historic significance, and I do hope that it represents a happy augury for the future. Article 126 of the Constitution of Sri Lanka contains a provision that a person complaining of an infringement of his fundamental rights must take his case to the Supreme Court within a period of 30 days. Thereafter the case is time-barred, the person is precluded by Article 126 from invoking the jurisdiction of the Supreme Court after a lapse of 30 days. That is of course a very short period. As you are aware, in the United States in particular, the courts have pointed out that restrictions of this kind must be very stringently interpreted. The Supreme Court of the United States has been at great pains to cut down in the course of judicial interpretation the scope and the ambit of procedural fetters of this kind, which stultify the actual enjoyment on the ground of substantive rights which are guaranteed by the constitutional instrument. This is a consistent philosophy and ideology which permeates judgements of the Supreme Courts of the United States on this point. Mr. Hameed, speaking in the House today, pointed out that there was a particular problem which arose in this connection, in the Sri Lankan setting. He said that when a person goes before the Human Rights Commission in order to complain of an injustice that has been meted out to him, naturally he gets locked in the procedures of the Human Rights Commission. Unwittingly the time begins to run against him as far as Article 126 of the Constitution is concerned. The result may therefore be that he is deprived of the opportunity of taking his grievance to the Supreme Court because by the time the Human Rights

Commission disposes of the matter, the month has already elapsed and he is no longer able to invoke the jurisdiction of the Supreme Court. Mr. Hameed therefore made the suggestion that we should look at the problem in this way. Article 126 should not be applied to a situation where a man has taken his case to the Human Rights Commission. And as long as the case is pending before the Human Rights Commission, time should not begin to run against him for the purpose of the application of Article 126 of the Constitution. It's a very interesting solution. In a special situation where he has already gone to one tribunal, he is awaiting the decision of that tribunal. The lapse of time for the purpose of Article 126 should be held in suspense, it should be postponed. That was the thrust of the suggestion that was made by Mr. A.C.S. Hameed. Now I thought about this carefully during the lunch interval and I decided to accept this suggestion. In my view it improves the content of the law. There is very little merit in creating sophisticated and impressive structures if their practical functioning is inhibited and stultified by considerations of this kind. Particularly in the social context of Sri Lanka, having regard to our mores and the realities of our ground situations, we have to focus as much upon the practical aspects of these situations, to make these remedies meaningful, substantial and relevant to the vast mass of our people. Otherwise the structures that we create through our supreme legislature may be conceptually impressive, nevertheless they may mean very little to ordinary people, and to that extent the purpose of the legal system may not be adequately fulfilled. I therefore decided to accept this amendment and I telephoned both the Leader of the House and the Leader of the Opposition to say that the Government will accept this amendment provided that a 2/3rd majority is available at the time the vote is taken. When the vote was in fact taken earlier this afternoon, there were 166 members present in Parliament on both sides of the House, and without a single exception all 166 members present under the distinguished chairmanship of my friend Mr. Rauff Hakeem, who conducted somewhat complicated proceedings with exemplary dignity and courtesy, voted for it. We were able in that situation to get this amendment through unanimously without any division at all, and with every member present in the House, whatever the party to which they belonged, supporting this

amendment - the United National Party, the minority groups in the opposition as well as the Peoples Alliance. So I think that is very much the approach that we need to adopt to issues which lie at the very heart of civil society and constitutional reforms. That is why I ventured to entertain the hope that this may represent the trend of things to come if we are to sort out the problems that I mentioned and if we are to face the challenges of the 21st century with courage and fortitude. So that is the first reason why I consider this occasion to be a happy and auspicious one from the point of view of the values that we all believe in, and the practical steps that we are engaged in taking at the present time to accomplish those objectives on the ground.

The second reason why I think this occasion is a particularly happy one is that we have today, a book in Tamil, on Democracy and Human Rights which is authored - with his usual intellectual sensitivity and perception - by my friend Dr Neelan Tiruchelvam. This is a significant event, not only because of the relevant and topical nature of the themes that he addresses in this book, but more specially because of the medium in which the book is written. I think we need to appreciate that a corpus of knowledge, the distilled essence of wisdom pertaining to human rights, if it is available solely and exclusively through a medium which is comprehensible, which is intelligible to a microscopic section, a miniscule part of the Sri Lanka community, that is hardly a desirable state of things, that is a state of things which leaves much to be desired. We are not dealing here with esoteric branches of the law, far removed from the experience of ordinary people. On the contrary, these are issues which touch the hearts and minds, the daily lives of ordinary people in our country. The point of departure, therefore, should be heightened and increased awareness without which the enforcement of human rights must necessarily prove abortive and futile. So we have to begin by informing the public mind, by enthusing and invigorating the Sri Lankan community by means of a consciousness of the value systems that underpin human rights jurisprudence. And if this is to be achieved with even a modicum of success, it has to be done through languages which are part and parcel of the experience of ordinary people who inhabit our land.

If I were asked what are the irreducible minimum elements for the establishment of civil society in our country, I would answer the question in this way. There are five basic requirements. I am thinking of the social contexts of our country, there are no universal prescriptions in these matters. We have to adapt our thinking to suit our particular situations. Now the five elements that I have in mind are these.

The first requirement in my view is that of empowerment. People have to be empowered. They must have the authority to do the kinds of things which their nature, their genius, would impel them to do, and as far as Sri Lanka is concerned there is certainly no dearth of potential in that regard. So the systems and the procedures of our society must be so designed as to bring out the best in people and to enable the fullest possible degree of self-expression. This can be achieved only through optimal empowerment. Not only in the political sphere, in the political, social and economic spheres. Economically people must be free from want. They must be able to realise the full potential of their personality. They must have the opportunity to participate fully in decision making processes. That is what devolution of power, at bottom, is all about. They must have access to courts and other institutions dispensing justice, in order to ensure that the community treats them as they ought to be treated. So the empowerment of people, to bring them out into the forefront, is absolutely necessary if you are to achieve even the rudiments of civil society. So I would identify that as the first requirement. Indeed the distinguishing characteristic, the hallmark of a modern society, in the true sense of that word, as distinguished from an archaic, traditional, obsolete, anachronistic society. That is the element of empowerment.

Two, I would say, is the element of participation. Pragmatically, circumstances that obtain in that society should be conducive to people responding and actually exercising, enjoying the powers that the community has placed at their disposal. This has to do with awareness, education. People have to be conscious of their rights. If that is not the case, then the existence of the rights and even the existence of remedies for the enforcement of those rights would mean very little in practice. So participation is very necessary. About four months ago when I went to Delhi to attend the SAARC Finance Ministers' Conference on

behalf of Her Excellency the President, I had a very interesting conversation with Dr Manmohan Singh, at that time the Finance Minister of India. And he told me that in his view, one of India's signal achievements in the field of constitutional reform in recent years, had been the addition of a third level of government in the Indian political structure. He was referring to the creation of the Panchayat - a local government tier in addition to the Federal government and the State governments. And he told me something which struck me as very interesting. I mentioned this to the President on my return, and she too thought that there was great value in the perspective that he offered me in the course of that conversation. He said in India, following the ideals of Mahatma Gandhi, the Congress Government of Narasimha Rao at that time had figured out that if they want to support village projects - potable water or the construction of roads, hospitals, schools at the village level - that it really did not make sense to make the financial resources available to the State government. That it was much more sensible to give the money to the very people who are going to be the beneficiaries of these programs. The point of what he was telling me was that the Indian government wanted to make the beneficiaries participants in the processes of planning, managing and executing the programs that were designed for their welfare. And Dr Manmohan Singh made the point that if this is done there would be less waste, because the people who take the money from the hands of the Federal Government are the people who are going to benefit from those resources. They are not intermediaries, they are not middlemen, consequently the chances of waste are very significantly diminished in that situation. So empowerment and participation go together. There is an element of reciprocity between them. They are two sides of the coin. You empower people and then you encourage them to participate fully on the basis of that empowerment. I would define that as the corner stone, the very pivot of civil society.

Then the third requirement, in my view, is that of stability. There must be stability and continuity with regard to basic political and constitutional structures. That is why we are quite determined that the constitution that we give the Republic of Sri Lanka is a constitution that will stand the test of time. I remember in one of my first speeches in

parliament I made this point, and at that time the **Leader of the Opposition** was the Hon. Gamini Dissanayake, and in his reply, which is there in Hansard, he agreed that this was the most essential element of any viable approach to constitutional reform in our country at the present time. Constitutions must not come and go, they must not be fleeting, they must not be evanescent. If you look at the experience of Latin America in particular, it is not difficult to come to the conclusion that if constitutions last such brief periods of time, that would generally be the precursor to social turbulence of a high order, the collapse of democratic systems and the rise of dictatorships and tyrannies of various kinds. This is because people lose confidence in constitutional values in a situation that is pervaded by that degree of impermanence and instability. So that is why I would identify stability as my third requirement. I fervently believe that in regard to certain facets of public policy, such as the ethnic question in our country, and also economic management as a whole, there have to be shared values among the major political parties in the country, and there has to be a large measure of consensus among ordinary people on both sides of the divide. That is the only road to salvation. So that I would identify as the third characteristic.

The fourth element, in my view, is that of rationality. I have often asked myself how is it that this is often wanting in a country with all the natural advantages of Sri Lanka - an intelligent, a lively population, very interested in political issues, accustomed to discussing political issues in buses, trains, boutiques all over the country, people who have been accustomed to the use of universal adult suffrage since 1931 for 65 years. Democracy is nothing new to them, it is part of their lifeblood. It is an integral element of their inheritance. We have recognised and established political parties in our country. The party system is very much a part and parcel of our political culture. We have a literacy rate of 96% in Sri Lanka compared with about 37% in some Asian countries. Our people have therefore, the capacity to understand, to reflect on, and to react to these issues. How is it then, that notwithstanding all these advantages which many other nations, particularly in the third world, would undeniably envy, how is it that despite these undisputed advantages, a solution to the ethnic problem

has eluded us for so long? It seems at first blush a most remarkable phenomenon. What is the explanation of it? In my view, the explanation is that we have never reflected in a rational and sensible way on this cancer eating deeper and deeper in our body politic. All discussion of this subject has been pervaded by a high degree of emotion. Very few people are able to analyse these issues in a dispassionate and objective manner. There is a rapid disappearance of the middle ground, a dramatic sense of polarisation and confrontation. Whoever is moderate is denounced as a traitor by both sides, the extremities of the political spectrum. Now that is the kind of situation that has militated against, and so powerfully inhibited, the emergence of a rational solution. So rationality I would identify as a fourth requirement. Now this is why I have consistently appealed to the media - when they deal with the ethnic problem in our country - by all means criticise. Criticism is a sign of life, nobody is objecting to criticism. Criticism is not a problem. But be responsible. Do not whip up emotions. Do not discuss these issues in a manner that makes any kind of rational assessment or evaluation excruciatingly painful or impossibly difficult. Subject to that condition, any degree of criticism is, I think, acceptable.

The final element, in my view, is compassion and goodwill. There is no other foundation on which we can build. Some people say that if you devolve power, do so carefully. Always protect your interests, use all kinds of stratagems, constitutional ingenuities, to make certain that when you want to interfere you have the levers at your disposal that would enable you to do so, with facility and impunity. If that is your approach, you may not as well do it at all. So these are tasks which, in my opinion, have to be approached with goodwill, with confidence and with the belief that those who are the recipients of the powers that are devolved, will justify the confidence that is placed in them. And that they will reciprocate the bona fides underpinning the efforts that are made by the government to achieve a genuine, substantial and spontaneous devolution of power.

And in my view, these five elements in combination, cumulatively will engender a political and cultural environment which will be conducive to the establishment and the strengthening of civil society

in our country. In the history of every country there are epochs which are fraught with particular significance. Every country goes through such periods. That is what Shakespeare meant, I think, when he said that "*there is a tide in the affairs of men which taken at the flood leads on to fortune*". And he went on to add "*upon such a full sea are we now afloat*". Upon such a full sea are we certainly afloat in Sri Lanka at the present time. There is so much happening around us; and our national destiny is very much in our hands, it is very much in our hands. What we do with our economy, how we handle the war, how we handle the political initiatives, these are crucial issues on which the future of our nation will depend. So the time has come for the people of Sri Lanka to make historic decisions which will certainly have a vital bearing upon the kind of future that our children and grandchildren will have in this country.

COMMENT

Savithri Goonasekera

Professor G.L Peiris is the architect of the new constitutional reforms to be introduced by the Government, and was responsible for the legislation establishing a Human Rights Commission in Sri Lanka. Dealing with a wide subject in a brief and pungent analysis, he has presented a viewpoint on the process involved in finalising this legislation, and spoken with eloquence on what he considers the irreducible minimum elements for creating a civil society in Sri Lanka. Professor Peiris is amongst the minority of public figures in this country who have advocated and supported consensus-building on key national issues. For a country that was familiar for centuries with conciliation in dispute settlement, we have indeed moved far from our traditional moorings. Civil society in Sri Lanka seems to link with our non-adversarial approach to dispute settlement in its capacity to tolerate intolerable conduct in public life, and be polite bystanders of the passing scene. However, fighting and bashing heads and reputations seems to be the norm for dispute settlement amongst those who are or desire to be in the seats of power. It is good to know that Parliament passed this important Human Rights Commission Bill in a novel environment of consensus, adopting what Professor Peiris referred to in his presentation as a "bipartisan approach, which is a sine qua non for effectiveness". It seems possible to hope that all parties will recognise the importance of the human rights agenda and programme both internationally and nationally. We need to give this agenda almost ecumenical importance if we are to internalise it as a living code of ethics in formulating, implementing and scrutinising public policy.

Professor Peiris referred to a statutory amendment to the Human Rights Commission Bill that will prevent the rule that an action for infringement of fundamental rights must be instituted within one month after the alleged infringement operating against a person who has taken a matter to the Commission. The Supreme Court of Sri Lanka has tried to interpret Art.126 of the constitution on the time bar of the

"one month rule" as flexibly as it can by recognising that time begins to run only when a person becomes aware of an infringement of rights and has access to lawyers while in detention or after release. If the amendment that Professor Peiris referred to had not been introduced, this particular principle could have operated against a person who addressed the Human Rights Commission. An action for infringement of fundamental rights can be brought in the Supreme Court without exhausting local remedies. This position must be reinforced in this new legislation, so that a person can address the Supreme Court without being required to proceed before the Human Rights Commission.

Professor Pieris elucidates his own "panchaseela" or five principles that can provide the foundation for a civil society. He considers people's participation and empowerment both as distinct and a single element. Rationality on the other hand is considered as a distinct dimension that must be combined with the separate components of good will and compassion.

And yet, people's participation and empowerment is precisely what has eluded Sri Lankans in almost fifty years' experience in choosing their own governments. People participate in electing governments and are disempowered by the very process by which our elected representatives exercise power and determine how people should participate in governance. Parliamentary democracy has created an environment in which the political agenda of the powerful can be realised during a long period without scrutiny and with intolerance for viewpoint difference, so that "people's" participation invariably refers to participation of the friends, family and acolytes of those in power. Addressing this reality and understanding the need for strategies to prevent this seem crucial to promote the kind of responsible governance that can be realised by people's participation and empowerment. For without a true understanding of the need for elected representatives to exercise power with a sense of awareness of the public responsibility and accountability of high office, devolution of power will not create an environment for people's participation in the development of their communities. It will only replicate the culture of irresponsibility and lead to accumulation of power at new levels of authority.

It is in this environment that values education on human rights and civic responsibilities that are the foundation of these rights seems

a vital dimension for creating a civil society. Professor Peiris's principles of rationality, compassion and goodwill suggest that a values foundation is essential for the creation and sustenance of civil society. The traditional religious values of compassion, goodwill and generosity, derived from four great religions, Buddhism, Hinduism, Islam and Christianity, have failed to create an ethos of either rationality or compassion and goodwill in the last few decades. What we see is a constant erosion of these values in the culture of politics and public life, in state action, and in the family and community. Perhaps we need today to strengthen those values by integrating them into the core standards on human rights that seem to have been legitimised by the establishment by consensus of a Commission to monitor human rights. The traditional local bodies or Panchayats of India that Professor Peiris refers to in his presentation, and our own local communities have sometimes administered summary justice in a revengeful and arbitrary manner, relying on traditional or customary norms. Do we now require a new ideology of justice based on tolerance for dissent and respect for individual dignity - something that transcends our personal definitions of compassion, goodwill and rationality? Sri Lankans often use the Sinhala words "Sadharana" and "Asadharana" to reflect a very personalised and subjective vision of justice and injustice. Professor Peiris's concept of "rationality" needs to be located in a human rights value base if it is to be creatively used to become a foundation for the development of civil society.

It has been rumoured that when the first Republican Constitution of Sri Lanka was introduced in 1972, the drafters of this instrument wanted the text inscribed in simulated "Ola leaf" made of copper. A wag is said to have commented that this would surely prevent it being torn up by future generations! We can only hope that the new constitution that is being drafted at perhaps the most crucial time in our history will create the institutions and structures that Professor Pieris believes will provide a crucial foundation of stability, and a sense of commitment in all our people to realise a common destiny. Our experience in the painful and anguishing years of ethnic and civil strife suggest that we need both stable and empowered government that can prevent a total breakdown of law and order, if we are to avoid the

anarchy that threatens life and personal security, and civil society. The challenge seems to be to create a civil society where the government is empowered to govern and the people empowered to demand accountability in governance. The realisation of Professor Peiris's "panchaseela" of good governance will require a commitment to democracy rather than populism.

LIMITING THE POWER OF THE STATE

Charles Abeysekera

I will take as the keynote of my brief remarks a comment made by Norberto Bobbio, the noted Italian political philosopher. Looking at the political picture in Italy a few years back, he saw it as a shambles. He concluded that what the Italian people needed to do was to *“create through its own agency a state apparatus which would be efficient without being oppressive”*. I think that this need approximates very much to our own need in these times.

In keeping with the subject we have been asked to discuss, I will refrain from speaking about the first part of this expression - that of an efficient or effective state - and speak only of what is meant by the need to keep the state from being oppressive and also of the role that we as citizens can and should play in ensuring this.

The question can be asked - why do you want to assume that the state is or will be oppressive? Is this a justified assumption? To answer this one needs only to say that the state is the arena of power, the supreme power in our societies, and that to judge from our experience and that of numerous other countries and societies, state power is very likely to be abused. A person or group vested with power will continue to exercise such power until they discover what are its limits. Therefore there is a necessity for setting limits, for controlling the use of power and for ensuring such control. If I may quote Bobbio again, *“power, when it is not controlled, can become corrupted, and to prevent the possible forms that this corruption can take, it is necessary to take preventive measures and to erect effective defenses such as democratic control, the protection of certain civil liberties - above all freedom of opinion and a plurality of social forces and their organizations in free competition”*.

The issue then is, how do we erect these defenses?

First, the question of democratic control. I assume that we all share the assumption that democracy, which is epitomized by the sharing of power among the people as a whole, is the best available

protection against the abuse of power. This was well demonstrated in Sri Lanka in 1994 when a government that had abused its power, that had become truly oppressive, was thrown out by the people.

If one were to attempt a minimal definition of democracy on this basis, one might say that it should have these features:

1. That all citizens who have reached the age of maturity, regardless of sex, race, creed or economic condition, possess political rights and can vote on collective issues or can elect some one to do so for them, and that every vote has equal weight.
2. That all citizens can make their own decisions on how they exercise their franchise: this implies a free competition between rival political groups which contest with each other in proposing different ways of aggregating social demands and implementing collective decisions.
3. That they are bound by the majority decision.
4. That no majority decision can limit the rights of the minority.

There is another distinguishing feature of democracy which is implicit in what I have said and concerns the way in which power is organized. There are societies where *“authority is transmitted from top to the bottom of the political or social hierarchy”* and where *“governmental authority and law-making competence descend from one supreme organ; power is distributed downwards so that whatever power is found down at the base of the pyramid is not an original power but is one derived from above”*. The words I have used are those of Gatineau Musca who called this system one of “descending” power and characterized it as non-democratic. He contrasted this with an ascending system where power is *“delegated from below to those who are above, from the governed to those who govern”* and where *“law-creating power may be ascribed to the community which makes laws through the appropriate machinery”*. This kind of system he called liberal or democratic.

If I were to apply some of these features of democracy to our situation, I might say that we have the trappings of democracy but not some of its essential features. We do abide by majority decision but do

not possess the essential corollary - that majority decisions cannot be used to deny rights to the minority.

This is certainly what has been done in the past and continues to be done with regard to the rights of ethnic minorities in this country. The Sinhala majority claims a right to decide the fundamental character of our polity simply on the basis that they are the majority. They define our polity as Sinhala Buddhist and require its acceptance by all other ethnic groups, who must live within its overarching ambit. This is very evident in their arguments for a constitutionally consecrated pre-eminent place for Buddhism and for the institutionalization of a role for the Buddhist clergy in the political process - arguments which have been, very unfortunately, accepted by this Government. In this context, the majority is being oppressive of other and smaller ethnic and religious groups. Naturally, these groups will fight back in the defense of their identities and rights, thereby perpetuating the cycle of competing nationalisms.

All efforts to settle this conflict by systems of power sharing also suffer from a characteristic that I have alluded to earlier. I fully support the political package that has been proposed by this Government to settle the conflict and whose rationale has been so ably set out by Prof. Peiris, though I also believe that it needs considerable improvement. But there is a basic problem. We talk of devolution, that is the passage of authority from the center to the periphery or to put it in other words, a descending system. We have still not got to the point of seeing the problem from below; that what is required is an ascending system, where the right of self-governance is accepted as an inalienable right and then power will flow upwards. I would guess that this is what the Tamil parties are saying when they speak of the right of Tamils to self-determination.

There is another perspective that might be useful here. The smaller ethnic groups are not asking directly for certain specific concessions or concrete gains; they are primarily asking for the right to share power which will enable them to achieve particular goals which they will collectively determine. The demand therefore concerns the way or form in which desired goals could be realized rather than the goals themselves; it is then a demand for formal democracy which our current system denies them.

Let me at this point get back to another characteristic of democracy - the free competition of political groups within which people form their opinion and exercise their right of franchise. This competition has always been skewed by the way in which the governing regime, that is a political party in the process of competition, uses the resources of the state at its command. This fact is well established and I do not need to belabor the point, but I might cite one recent and illustrative instance where the right to information and therefore the ability to form an opinion was affected.

Until about a year ago, the Sri Lanka Broadcasting Corporation ran a non-formal education programme as one of its regular features. Most of its programmes were concerned with current issues, political as well, and participatory in that listeners could telephone in their questions and comments, Ministers and officials of the government were also interviewed on the programs when relevant. The programmes had met with opposition from within the SLBC itself as being too critical sometimes of government. This attitude of the SLBC hierarchy was also shared with the listeners on a number of programs; the listeners appreciated the way in which these matters were discussed and made their feelings known. The channel was switched off in mid-air one morning during a programme on a strike at some factory; the Minister of Industries had just been interviewed and had pushed the responsibility of dealing with the strike to his colleague the Minister of Labor. It was at the point where the Minister of Labor was to participate that the programme was switched off.

A listener went to court on a fundamental rights plea. The Supreme Court held that his rights as participatory listener had been violated and awarded him damages. However, what is interesting about the judgement is that this abrupt closure of the service affected not so much the listener's right to information but his freedom of thought, that is ability to form an opinion. Freedom of thought demands exposure to varied and conflicting ideas; it is only in that context that the citizen can make up his or her mind. I do not address other issues that may arise from state ownership of the media here, but I would like to point out that it may act to hinder a very important aspect of the democratic process.

This can lead me usefully to the second aspect that Bobbio talked of as necessary to prevent the state from becoming oppressive - the protection of civil liberties. I would of course expand this idea to include all the rights that are now accepted as human rights and enshrined in a number of international covenants and agreements. These guarantee to all humans certain rights and also seek to protect the rights of hitherto marginalized groups like women and children. It is the duty of the state to guarantee to all persons living within their jurisdiction all these rights. But it is also true that the state itself is a violator of many of these rights. And it is here that citizens and groups of citizens need to mobilize themselves to protect these rights. Human rights advocacy groups generally perform this task on behalf of the citizenry.

Such groups often find themselves in an adversarial position with the state, as was the case during the last regime. It was a happy experience with this Government that these groups were consulted in matters affecting human rights and were listened to. Some of them were included in various advisory and consultative groups. But increasingly we find to our distress an ambivalent attitude creeping into government actions. The Minister of Social Services wants to control all NOGS in his field; he wants the power to appoint his own nominees to run these organizations when there is evidence of malpractice or corruption in them. He of course claims to be acting in the interests of the people who are the ultimate beneficiaries, but he is also intruding the state into what are non-state agencies. However laudable his intentions may be, he is interfering with the right of citizens to organize themselves in their own interest. He can, within the existing legal framework, find other means of dealing with the problem of corruption where it actually exists without putting the autonomy of all NOGS into jeopardy.

Another example might be drawn from the government proposal to set up a Human Rights Commission. I do not want to go into its history but I do want to make the point that it makes an unfortunate distinction between rights as stipulated in the Constitution and rights internationally accepted. It is as if the government is arrogating to itself the right to accept certain rights and deny others.

The next case I want to cite is at a slight remove from the Government. Mr Bryn Wolfe, the executive secretary of the NGO Forum on Sri Lanka, an association of non-governmental agencies in Europe who assist local NOGS, was castigated in the press, particularly the Government-owned press, as a supporter and funder of the LTTE, merely because he was exercising his fundamental right to attend a meeting in Canberra and listen to certain views on peace in Sri Lanka. The LTTE was present at this meeting and no one can deny the importance of finding out their views on the current situation. But nevertheless his attendance was viewed with great displeasure.

The ICES has called this meeting a Symposium on Civil Society. I am afraid that I have not so far used the phrase Civil Society but what I have been referring to so far are actual activities which are broadly within the compass of that phrase. I do not want to discuss what civil society is or to trace the history of that concept; this is a much debated subject. But let me only say that my work is governed by a simple understanding - the state is the arena of the political process; it therefore comprises all the state apparatus - administrative, security and judicial. All else comprises civil society. This will include within civil society economic relations and the social forms controlling them.

However, this differentiation is not all that clear. State and civil society have, in the modern economic, social and political system, become increasingly intertwined. The state has come under greater democratic control; paradoxically, this in turn has also led to a greater intervention by the state in society. Indeed certain groups like women ask for greater state intervention in the creation and protection of rights which they consider vital to their interests. This very process strengthens the state which one wishes to control. State and society are thus become separate but interdependent instances in the modern society.

There is another complicating factor. The management of a modern society requires an administrative bureaucracy; this bureaucracy has, with recent technological advances, also become technocratic. The administrative state is theoretically subordinate to the political but it may operate on a different logic. Its operations are less transparent, because it operates not in public but generally in secret. In our case, it is a matter of debate whether the political state has proved successful

in subordinating it. Major decisions that effect economic development may therefore be made without consulting representative bodies or in bodies where the vast majority of sovereign citizens have no power whatever.

Another complicating factor is that the parliamentary system was imposed on a centralized bureaucratic apparatus which has never proved itself amenable to decentralization. This has bred in our society a state-centered mentality that looks to the state for every conceivable activity -from jobs, education, health to religion and culture. Dr Sarachchandra was attacked by Government-sent goons and thrown into a ditch; that did not prevent him from calling upon the same Government to take the initiative to establish a state drama troupe.

We are still a modernizing society. Some aspects of our social structure are still positively feudal. This has affected the development of a civil society, which is fundamentally a feature of a modern democratic society. In these circumstances, it is necessary that the state recognizes the importance of civil society and does nothing to hinder its development.

I leave for the last the most important feature of civil society. The ethical life of the community, the values that govern it, its aesthetic life, are all derived from the norms and customs arising from the experiences and practices of civil society.

COMMENT

Vijaya Samaraweera

I

The starting point of Charles Abeysekera's remarks on "Civil Society in Sri Lanka" is Norberto Bobbio's argument about the need to control power vested in a person or group — read the "state" in this case — through the erection of "effective defenses" — read "democratic" institutions — lest power becomes corrupted. Abeysekera proceeds to examine the situation in Sri Lanka, and then makes a persuasive case for the defenses which need to be constructed by the Sri Lankan people through their "own agency" so that, to use Bobbio as cited, the "state apparatus which [is created] would be efficient without being oppressive".

The dangers inherent in power of course have concerned political philosophers for long — recall Dicey's well-known dictum that power corrupts, absolute power corrupts absolutely — and the imperatives of democracy — recall James Mill's meditation on liberty — have become the idealized cornerstones of the modern state. On the other hand, the distinction between the state and civil society was not always categorical in western political philosophy. Aristotle, as is well known, identified the state with the civil society, and the social contract theorists — whose contribution to the formation of the modern state was crucial — saw distinctive steps in the establishment of the state and civil society respectively, yet did not think that this recognition necessitated a careful distinction between the two entities. To Hegel belongs the honor of first juxtaposing the state and civil society, and it was only in the nineteenth century that the "anatomy" of the state and civil society respectively began to be scrutinized closely by thinkers (Schmidt 1995). Some of the best known formulations emerged in this century — the most influential of course being that of Marx — and in the period since then multifarious explorations have emerged not only from political philosophers but also from social scientists such as anthropologists (Cohen and Arato 1992). Despite this scholarship

there is considerable ambiguity which exists with respect to the respective anatomies of the state and civil society. The resolution of this ambiguity is fundamentally tied to answering the question: what are the boundaries between them ?

II

Abeysekera takes the position that the state is the arena of the political process and civil society comprises the rest. However, he adds that this differentiation is not all that clear in modern times, for the two have become increasingly intertwined. I would contest both propositions. The neat distinction between the political and the other sectors cannot be documented in any modern state. Equally, the "intertwining" argument is suspect. "Intertwine" suggests a certain symmetry or balancing of the entities entwined. I, for one, do not know of a single situation where this particular model can be validated in modern times.

It is more fruitful to look at two polar opposites, with a continuum between them in which the great bulk of the cases would be located. One polar is where the state is autonomous from the civil society. In essence, this means that the state is not dependent upon the civil society either for its continued legitimacy or for the material resources necessary for its functioning. The other polar is where a social class (or, classes) is so structurally placed that it exerts control over the state, effectively making the state subservient to it. In either case — and certainly with respect to those in the continuum as well — there are boundaries between the state and the civil society, and it is imperative that the nature and form of each and the margins where they meet are sought out. The nature and form of the boundaries between the state and civil society are just as much the function of the makeup of the respective entities as the nature and form of the state and civil society are the function of the boundaries between them. It is in this sense, more than in any other, that it could be said that the relationship between the state and civil society is dialectical.

The exploration of the boundaries between the state and civil society has been vigorously debated by theorists in the recent times. In these brief comments, I would not be able to explore this debate in any

meaningful way. My purpose here is to look at some of the *structural* signposts which point to the make up of the respective entities, which in turn will point to the boundary markers between the two. I do so in the hope that such an exercise will provide some illumination of the situation in Sri Lanka and perhaps add a dimension to the argument of Abeysekera..

III

Leaving aside the viability of the exercise, initially the question should be raised whether it is wise to sharply delineate the boundary between the state and civil society. It has been argued that a sharp delineation has great dangers because it would destroy the elusiveness which is integral to the nature of both entities (Mitchell 1991). This argument is framed as a theoretical consideration but it is easy to see that it has important statist ideological dimensions. As far as Sri Lanka is concerned, if there is an elusiveness respectively in the state and civil society, it can be posited that the exposure of that feature could only strengthen the democratic framework within which both are placed and not cause the debilitation of the entities or the weakening of that framework. Indeed, it is possible even to go as far as to state that there is in fact an elusiveness in the Sri Lankan context, and it is precisely this elusiveness which has permitted certain social classes in the civil society to manipulate the state.

To state the obvious, both the nature of the state and of the civil society are fundamental to the understanding of the boundaries between the two. First, on the nature of the state. There are several critical signposts to look for (Hamilton 1982). The historical origin of the state is one. Most importantly, this is so because the historical origins determine whether there is a merging of national identity with the state itself, which, above all, provides the crucial ideological legitimization of the state. The historical origins will also provide an explanation of its relationship to the civil society in many other respects as well. The structural arrangements of the state are equally important. This leads to a series of questions. For example: what are the institutional arrangements and what kind of checks and balances are structured into

place? How cohesive are the various state institutions? How cohesive are the various state coercive apparatuses? In the main, the integrity of the institutional arrangements and the nature of balancing between these institutions will provide an understanding of the inherent strengths of the state. The cohesiveness of the state institutions will determine how effectively the state can forestall the inroads made upon it by the civil society, while the cohesiveness of the coercive apparatuses will determine how effective the state would be in controlling the civil society. Finally — the importance of this should not be underestimated — there is the question, from what sources are the state's material needs drawn? In many cases, the economic needs of the state are primarily met through taxation arrangements. If this is the case, there is clearly a dependence of the state upon the civil society. There are also those states which do not depend on taxation but rather upon external rents — these are the states that have been identified as “rentier states” (Mahdavy 1970). The Middle Eastern states which function primarily on the basis of oil revenues exemplify this category in contemporary times. In these cases, the state is removed from the civil society and tends to be more autonomous.

How classes are formed in the civil society would be structurally determined by the nature of the economic arrangements in society (Hamilton 1982). The capitalist mode of production would produce its own, whereas a pre-capitalist would have its distinctive social formation. Yet again, where there is mediation between the capitalist and the pre-capitalist mode through a new stratum, what emerges would be quite different. Typically this new stratum could be identified as the product of migration from rural to urban areas, the migration itself being the function of the articulation of the capitalist with the pre-capitalist mode. Once the gross nature of the class arrangements is determined, there are several other issues which need to be explored. Thus, is the dominant class (or, classes) cohesive? What is the relationship of foreign capital to the dominant class? What is the relationship of the subordinate classes to the dominant class? What is the nature of the relationship between the subordinate classes? How cohesive are the subordinate classes? The answers to these questions would provide a picture of the relative strengths of the different classes within the civil

society as well as in relation to the state. Most importantly, they will reveal whether there is indeed a dominantly placed social formation which is capable of making both the subordinate classes and the state itself subservient to it.

Determining the nature of the civil society by analyses of social classes does not provide a true understanding of the entity particularly in the “new” nation states. In new nation states “horizontal” differentiations along class lines could become fractured by “vertical fault lines” formed by groups whose organizational principles are based upon ethnicity or religion (Kazemzadeh 1996). Thus, it is imperative that there be a scrutiny of the “ethno-sectarian geography” of the civil society as well.

IV

What is the contemporary Sri Lankan situation with respect to the nature of the state and civil society respectively? Surprisingly, there are no scholarly studies devoted to either of these subjects. It is true that there are some studies which have looked at the state and society in Sri Lanka, but none of them have raised the kind of questions of theoretical import which were posed previously, questions which surely ought to be raised if we are to have any true understanding of these entities. It is certainly beyond my capacity to fill the void. What I can offer are the barest outlines of possible answers.

The contemporary state is far removed from the legacy Sri Lanka received at independence in 1948. Changes in the state of course date back to independence itself, but there were also symbolically and substantively important departures with the autochthonous constitutions of 1972 and 1978. Above everything else, the constitutional reformulations provided for greater facility in reformatting the state machinery. Yet, it is arguable that there has not been a radical break with the colonial past; to name an obvious feature, the state continues to wear the paternalist mantle, albeit at a different angle. On the other hand, it can also be argued that the net consequence of the changes that have taken place is that both the integrity and the cohesiveness of the state — which were the undoubted hallmarks of the British colonial

state — have been lost, perhaps irretrievably. Undoubtedly, the most dramatic assaults have come through the political control of the state machinery and from the proliferation of state and quasi-state agencies. The result of developments such as these, in turn, is visible to all: the state as an institution has been so debilitated that it has been exposed to the inroads made upon it willy-nilly by certain elements in the civil society. This has also meant that those aspects of the state which had retained some modicum of cohesiveness have not been able to withstand the assaults; they have, in fact, become instruments of the controlling classes — perhaps, the best examples are the coercive apparatuses of the state.

Sri Lanka is a mixed economy: the capitalist mode, located in the industrial, service and plantation agriculture sectors, and the pre-capitalist, located in the agricultural. There is no dichotomy between the two. In fact, what has been on-going, the articulation of the capitalist with the pre-capitalist, has been escalating in recent times. The result of this has been, on the one hand, the gradual fading away of the agricultural sector's truly "traditional" features. On the other, there has been a marked increase in rural to urban migration (whether the "temporary" migration to the Middle East and to countries such as Italy should be deemed a part of this phenomenon is debatable). The social formations produced by the economic arrangements are clearly identifiable, capitalist, middle and proletarian classes, and the peasantry. Yet, the class formation is still developing (if not in terms of categories, certainly with respect to their respective forms and shapes), a reflection of the uncertain foundations of the economy's modern sector. Upon the horizontal differentiation of classes in the civil society should be placed the vertical fault lines springing from the ethnic divisions in the society; the role of other sources of vertical fault lines — for example, caste, which was once crucial —, is less clear cut at this time. The saliency of the ethnic divisions cannot be doubted, but it is legitimate to question whether it cuts across *all* classes. It is well worth remembering that when Sri Lankan interests began to enter the emerging capitalist mode in the first half of the twentieth century, deep divisions were to be found along sectarian grounds — caste, religion, race — but these did not preclude close cooperation across the

sectarian divides economically as well as in defense of the common economic interests politically (Samaraweera 1981). The state is clearly under the assault of the dominant class in the civil society, the capitalists; the role of the middle class, whether on its own or as a co-opted element of the dominant class, cannot be determined with precision as yet. The dominance of the capitalists is not simply based upon its economic position; it is also reflective of the divided nature of the subordinate classes — it is here that fissures brought about by the ethnic faults are at their deepest. On the other hand, in accounting for its strength it is also important to note the place of the capitalists in the taxation structure of the state in Sri Lanka. With no possibility of extracting external rents (who will forget the excitement that the state generated some time back with what quickly proved to be false, the "discovery" of oil reserves off the coast of Sri Lanka?), little other prospects (other than foreign aid of course), and the exclusion of the state administrative cadres from taxation, the state has been forced to crucially depend upon the capitalist class for the material resources required for its functioning.

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AN ALLIANCE OF INSIDERS AND OUTSIDERS

Bradman Weerakoon

I have about fifteen minutes in which to set out my own thoughts based on my experience as an insider in government; looking at civil society from the inside, of what I understand about this concept of civil society, and to link it with democracy and human rights.

I expect to do it in three parts. First, to try and explore a little further the contours of civil society - perhaps to give you some insights as to how others may look at civil society; secondly, to recall how civil society made a difference in a period of national trauma in which I happened to be on the inside, with a few examples of what was possible through a coalition that emerged between the insider who was sensitive to what was going on and the civil society activities and activists outside; and lastly, to say one or two words about the Human Rights Commission itself, because the idea of the Human Rights Commission really originated many years ago in 1991, when the All-Party Conference of that time, which consisted of about 20 political parties sat together trying to deliberate and evolve some kind of a mechanism which would be able to deal with the great number of violations of human rights which were then emerging.

First, on the concept of civil society. I thought the concept would become clearer if it might be compared with a situation where there was in fact an incivil society or an uncivil society. What were the precise elements then that people in civil society were looking at, as they faced the part of society that was incivil? I felt that perhaps one could look at three basic elements of society that could become incivil. They were the state - to which the ordinary people submit themselves voluntarily, and which then takes over and acts on behalf of all the people. There was also another institution that was very strong, which was legitimate and an essential part of civil society, but which could become, in the use of its power, excessive, and that was the market or the corporate economy. The third major institution that was relevant

was the political party system itself. Political parties which represent people and which exhibit political will - the idea being that they will be able to deliver and make come alive the aspirations of the people. Ordinary people, and I think here mainly of the life of the ordinary citizen, the disenchantment that he feels and the discomfort he experiences in his daily life. The kind of problems that ordinary people in civil society feel as they face up to the incivility in society which manifests itself mainly through the three major institutions I was talking about.

Now what kind of response is civil society capable of putting up in the face of abuse of power, either by the state, the market economy - in which case instead of delivering services, they adulterate goods or become people who are anti-consumer - or a political party which promises so much, and then finally breaks its promises. My thoughts in this particular area are that there is the need then for some kind of social activism which can keep those major institutions in line with what they intended to do when they were given the power to become what they are. That is what I thought civil society does. It is a way of action, in which you keep pressing, perhaps in a small way, on the political parties to be true to what they have promised, on the market economy to deliver and not do the anti-social things they are doing, and on the state to try and get the state to behave, particularly those elements of the state which have punitive power - especially the military and the police and the excesses that the state can get into. Occasionally those three major institutions can combine. Then you have a combination of the market, the political process and the state, or combinations of either of those, which can lead to tyranny, to oppression and to the denial of human rights. Civil society I see as the countervailing power. The power that comes through trade unions that stand up against incivil employers, the power that comes through the media, and the whole panoply of NGOs which are concerned with social activism - human rights organisations and all those people who belong to the group that can be called the social activists. That is my conception of the civil society. A truly civil society that can come into being if all of those checks and balances on the arbitrary use of power get into place. So I would think that in civil society, one has to try and

engender a spirit of public awareness, a spirit of knowledge about one's rights which can resist the encroachment of mainly these three major players in society. They - the three major institutions - are very important; they can be very positive, they can be benevolent. But the chances of them being malevolent are also great. And the value of civil society through all of its agencies will be to see that this does not happen, that the level of incivility is manageable. That is my concept of civil society.

I believe that civil society, from the outside, can work best when it has contact with sensitive people inside these various institutions I was talking about. Of course inside every government there are sensitive, concerned people. But the value of civil society from outside is when it manages to interact sensitively with those agents who are inside the establishment. I can see a very clear example of this in India under what is called "*Social Action Litigation*". There, the Supreme Court through some brilliant advocacy by people like Justice Bhagwati and other Supreme Court judges, arrogated to themselves powers even greater than what was entrusted through the Indian Constitution, by creative interpretation. By doing so, they were able to set in trail a process which is called social action litigation which enables the poor, the defenceless, the vulnerable, the groups that are outside the pale, the ones who don't have, as it is said, "*long purses to go to court*," to also get justice. I think that was a remarkable achievement in the Indian legal system and I am sure in our own judicial system here too judges of the Supreme Court have been able to do something as creative.

That leads me to my second point which is, what can insiders do? Are there examples of "*establishment persons*" working with the social activists outside? In my experience, over those very traumatic years there were some instances which are worth talking about. The emergency as you know was on for many years. Emergencies derogate from the human rights of the individual. In that period, we had some very draconian emergency regulations to start with, but with the active participation of people outside the government system, people in the universities looking at those emergency regulations, telling the government what was wrong, what was not tenable in the regulations, those regulations, over time, got amended so that at least in two areas

- arrest of people and detention and visits to detainees and so on - there was a fair improvement in the situation. That was one good example where something happened through the strategic alliance between those inside and those outside the establishment.

The second example I can quote is of the Human Rights Task Force. There, due to a very courageous individual who was chosen to head it - Justice Soza - who risked his life on many occasions, it was possible for that Task Force to do much more than what it was entrusted with. Some of you may have seen the two Annual Reports of 1991 and 1992 published by the Human Rights Task Force of that time. They were remarkable. Remarkable in the openness that they displayed, remarkable in the specificity of the cases that they had gone into. In fact it was Justice Soza who first initiated the Embilipitiya inquiry though it had nothing to do with him. His job was to look after those who were called detainees, people who were in detention. But Justice Soza decided that he would follow through with some detainees who had disappeared, and he initiated the first inquiries into the Embilipitiya murders. That too was possible because of the links between those inside and those outside.

And finally on the Human Rights Commission which has finally come into being. I would just like to ponder one thought about the Human Rights Commission, or any commission, having been an insider myself, having seen what happens when commissions are appointed, but are not adequately resourced. If they are not adequately financed and resourced, they cannot do their job, however elaborate, however beautiful in conception they are, however wide their mandate is. If you have the Government handling the organizational, or the funding aspects of any Commission, I think you are in for some kind of a difficulty because at any one time the Treasury could tell you the funds are over. So I would really urge the Hon. Minister who is here, that if it is at all possible, the resources for the Human Rights Commission should be made independent of Government. Its resources should be determined by Parliament. The National Human Rights Commission should be outside the constraints and the restraints of Treasury regulation in so far as what they can do. Otherwise you limit them before they can even begin their work. That is all I want to say on the Commission which we all greatly welcome.

COMMENT

Radhika Coomaraswamy

Mr. Bradman Weerakoon in his speech on civil society articulates many of the reasons why civil society has emerged as an important concept in post-colonial societies. Neera Chandhoke in her book on the state and civil society argues that "civil society is the site for the production of critical rational discourse which possesses the potential to interrogate the state". She sees it as a vital precondition for the existence of democracy.

The concept of civil society has been reimagined today as a result of specific experiences from around the world. In Eastern Europe civil society emerged as a basic framework for understanding the development of anti-state movements. The excesses of the socialist state led to resistance and defiance in the rest of society. This defiance is regarded as a civil society response to the totalitarian posture and composition of Eastern European states..

In addition to the developments in Eastern Europe, the growth of the "developmental state" in many third world countries, with its stranglehold of bureaucratic procedures and the repressive apparatus, led to movements which began to act as watchdogs to ensure that the state conforms to the values and ideals set out in national constitutions and international documents of human rights law. The growth of the developmental state and its control over every aspect of political, social and economic life led to disillusionment and confrontation with state hierarchies. This post-colonial development is also seen as another historical experience which highlighted the importance of civil society in its role as the watchdog of the state.

The concept of civil society did not always enjoy the privileged position it enjoys today in political discourse and social action. For many years it was seen as a fall-out of liberal political theory. Drawing from the discussion of liberal thinkers, especially de Tocqueville, civil society was seen as the natural result of political liberty. Civil society was a product of the voluntary associations which are created by an

individual's pursuit of rational self-interest. These associations, imbued with notions of rights, became the precondition for the evolution of representative democracy. They were distinguished from organisations of church and state. Thinkers such as Hegel further developed the concept to include a pedagogic aspect, seeing civil society as the representation of the social individual in between the family and the state. It included the institutions of economic production as well as those of legal and social association.

Though liberal theory has vested a great deal of faith in civil society and the notion of individuals and groups animated by rights discourse, Marxists have always been skeptical of the actual independence and impartiality of civil society institutions. Marx dismissed civil society as a product of bourgeois dominance and as a natural outreach of the capitalist state. Gramsci, while accepting civil society as a site for contestation, claimed that civil society is organically linked to the state and is a reflection of the "invisible", intangible and subtle power of the state. The more sophisticated the capitalist state, the more complicated was the relationship of state and society.

These earlier debates on civil society have given way to new thinking. Coming out of what Gail Omvedt calls the "new social movements", emerging from an innovative engagement with human rights, the new appeal to civil society attempts to police and refashion the post-colonial state. Three decades of state-directed activity, especially in South Asia, have witnessed the growth of a repressive apparatus and a near monopoly on decision-making with regard to political and economic power. This bureaucratic, post-colonial state is engaged in activity which often challenges the political and civil liberties set out in the Universal Declaration of Human Rights as well as in the constitutions of newly independent states. In South Asia especially, the challenge to military rule in Pakistan and Bangladesh, the Indira Gandhi emergency in the 1970s and two decades of emergency rule and insurrection in Sri Lanka have led to important civil society movements which attempt to rein in the runaway, post-colonial state. This mobilisation against repressive state power has been heralded as a victory for civil society. The growth of human rights movements, women's movements, social class and caste movements

as well as ethnic movements have led to what Athul Kohlie has called the "crisis of governability", or in Naipaul's words "a million mutinies". These movements create a dense network of associational forms which have led to the privileging of civil society in South Asian political discourse. Mr Bradman Weerakoon succinctly points to the role that this civil society has played in the Sri Lankan context and how it has led to monitoring and policing the negative aspect of the post-colonial state, especially in the 1980s.

In South Asia in general and Sri Lanka in particular, civil society is linked to a rights-oriented discourse aimed at curbing the excesses of the state. But there are also other movements in society. Unfortunately Mr. Weerakoon does not analyse their implications for the understanding of the processes of civil society. Ethnic, religious and nationalist movements have been able to galvanise votes in all parts of South Asia. Are these also movements of civil society? Many scholars argue, no. For them, civil society is a concept which comes from the liberal Marxist traditions and is endowed with a notion of "rational discourse" separating state from church, and aimed at fostering a "rights consciousness". In this world-view civil society concepts do not embrace ideologies based on the privileging of religious and ethnic identities. In fact Indian writers dismiss these movements and refer to them as "counter-civil society" movements.

While many scholars working with rights discourse jettison any notion of a civil society that is responsive to nationalist and religious fundamentalism, a more broader reading of civil society may require us to come to terms with the threat posed by these movements. They too are a watchdog on the state but fostering values which are inimical to rights-based organisations. Civil society cannot be seen as only a positive, liberal democratic construct. Increasingly, associational forms, such as the BJP institutions in India, are acquiring an ethnic and religious dimension. These associational forms are also products of civil society though they struggle for values and ideals which are inimical to the liberal-left tradition. Once we acknowledge that these movements are creatures of civil society, then we can engage with civil society as a site for contestation and struggle. The real task before rights-based civil society organisations is to prevent the appropriation

of the space created for civil society by ethnic and religious mobilisation. In addition these groups are acquiring the type of strategies and discourse which once mobilised liberal and left movements against the state. Their appropriation of civil society space is the greatest threat to democracy in all South Asian societies. It is necessary to tailor the construct of civil society to meet the reality of South Asian societies so that one is aware of the complex contours of the positive as well as negative aspects of the concept as it operates in our societies. It is important that human rights groups work together to ensure that the space created for civil society activism is not taken over by groups and associations which do not subscribe to the democratic, pluralist values which have animated the democratic version of civil society from the late seventeenth century.

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