

BOOK LAUNCH

SENATOR TIRUCHELVAM'S LEGACY

Selected Speeches of and Tributes to Senator Murugeysen Tiruchelvam QC

**Edited by
R. Balasubramaniam**



**Tributes by
Justice C.V. Wigneswaran
Mr. K. Kanag-Isvaran
Dr. Devanesan Nesiiah**

**Sri Lanka Foundation Institute
February 1, 2008**

INTERNATIONAL CENTRE FOR ETHNIC STUDIES, COLOMBO

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edited by
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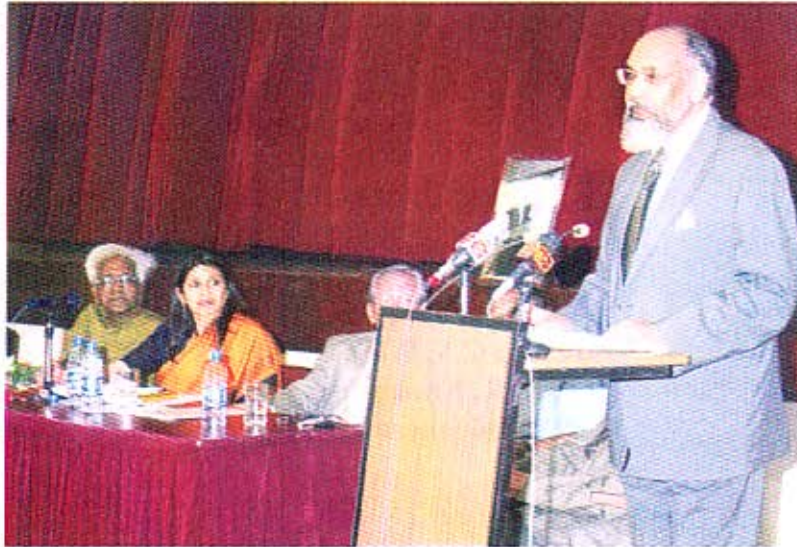
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Senator Tiruchelvam's Legacy

Justice C.V. Wigneswaran

*Akanda Mandalaakaaram Viyaaptham Yena Charaacharam
Tatpatham Dharshitham Yena Tasmai Shree Gurave Namaha.*



Closing in on the psalmist's age span of three score and ten, many of us are legacies. As a student and later even as a young legal practitioner at the time Senator Tiruchelvam was a Minister, I firmly believed that the future of this country was to be all rosy and happy. I thought tomorrow was going to be better than the today of those yesteryears. But alas! It became worse so that from a political perspective, those few years of Dudley Senanayake's stewardship as Prime Minister appear as an oasis in the midst of a long stretch of barren desert soil.

The release of "**Senator Tiruchelvam's Legacy**" is timely. It reflects the staid sobriety of a by-gone age in the midst of our own mundane human existence, quite out of step with the belligerent, blithering, bullying, barbaric and boorish approaches of today, boastfully though beguilingly, referring to itself, as benignant and beneficent, benevolent and even blessed. Those of us, bred in the Western public school traditions, yet having also imbibed the perennial virtues of our Eastern values, find it difficult to classify the negative norms and superficial standards of the present era, into anything worthwhile, Eastern or Western, traditional or modern, national or international. A hybrid new culture, alien to Western and traditional Eastern cultures though possibly borrowed from the seamier sides of those two cultures, appear to be taking root in this country. Naked selfishness, rank self interest and the spirit of self aggrandizement, and egotistic imperatives seem to motivate today's wielders of power and authority. Holding on to the reins of government at any cost has become the principal dogma and doctrine to be pursued. Destroying

one's opponents by using any means or modes, has become a cult. Dead men do not talk, has become the principal motto of their outlook.

Just forty years ago, it was not so. Democracy had a meaning. You could discuss your differences without despising your opponent. Today, even the Heads of Organs of State carry venom in their veins, however much they may camouflage their nakedness with high sounding patriotic and religious epithetic garbs.

It is amazing to see the change of values, norms and standards, since forty years ago. May be, we who were born during British times and bred after Independence, are considered today as anachronisms to be tolerated, since we will be no more in a few years' time.

I like to show the difference of perspectives between the time of Senator Tiruchelvam and the present era.

If you take today's Parliament, none seem to be interested in what is taking place there, except to the extent as to what benefits, attendance in Parliament, could bring upon them. Arguments in Parliament, in comparison to the earlier period, are puerile and often borders on vituperation.

The by gone era of Senator Tiruchelvam discussed in a dignified way, the most distressing political problem that beset them at that time. No white vans took valued relatives of Parliamentarians as hostages, to manipulate voting pattern in Parliament. Crossing the floor for Ministerial benefits was minimal.

I like to quote the late Mr.J.R.Jayewardene, who later became the first Executive President of this country, when he paid tribute to Senator Tiruchelvam on his demise. Mr. J.R. Jayewardene was a contemporary of Mr.Tiruchelvam at the Ceylon Law College and a colleague of his in Dudley Senanayake's cabinet. Having said that Mr.Tiruchelvam was a Minister of great acceptance, he reiterated that "He never obtruded in our discussions .When he intervned, it was acceptable and civilized". This civility is missing today amidst our Parliamentarians. Each appears to be a bull in his own China Shop.

I sometimes wonder whether we could ever visit the earlier intellectually stimulating period of Parliamentary debates, as our

Parliamentarians in recent times, have tainted themselves with gross prejudices and pretensions.

Dr.Colvin R. de Silva had this to say about Senator Tiruchelvam. 'He had of course, even in political discussion, a certain tenacity in respect of decisions to which he had already come in that field and which decisions he was seeking to pursue. But he did even that in an extremely agreeable and pleasant manner, so that one could, after a discussion that might have turned heated, terminate the discussion as good friends, who had had a discussion on a matter of utmost difficulty.'

Such a quality was of prime necessity in the field of Parliamentary activity, where members had to face each other daily. However agitated the generation of Mr. Tiruchelvam and Dr.Colvin R.de Silva was, they never ever transgressed acceptable behavioural patterns of dignified Parliamentarians. One wonders whether, in today's Parliament, the atrocious behavioural practices are staged for the consumption of their TV watching constituencies. After their unacceptable despicable behaviour, we find Parliamentarians showing a rare camaraderie outside the Chamber. May be birds of the same feather but of different political hues, are cahoots in deals which give them each, personal benefits. The show in Chambers, may be a cover for their nefarious activities.

Another quality of Senator Tiruchelvam portrayed in the publication being launched today, was his conviction, that this country belongs to all its citizens. He was individualistic when wanting to uphold the rights and privileges of a particular ethnic group among the denizens of this Island of ours. But he was at the same time nationalistic and viewed the country's citizenry as one composite whole and therefore willing to co-operate and interact at the public and national level. In fact, he was resolutely in favour of a united and plural Sri Lanka and therefore opposed the 1976 Vaddukoddai Resolution that demanded a separate State of Thamil Eelam and advised Mr.Chelvanayagam against it. Obviously, he still had faith in the humaneness of those politicians among the Sinhalese, who drove the Tamils to pass that Resolution as a last resort, much against their innate wishes.

There is an unfortunate tendency today among many of our Sinhala Buddhist brethren, to view those who speak up for the rights of the Tamil speaking people as traitors and terrorists. What is amazing in this perspective is, that many of them believe in such illusions. When I made my acceptance speech, on being elevated to the Supreme Court in the year 2001, in all three languages including Sinhala, referring candidly to the problems of the Tamils of Sri Lanka, there were many of my colleagues who were otherwise well disposed towards me, who were shocked and looked upon me like a visitor from an alien planet. It took some time for them to realize that I was the same old Wigneswaran, because I showed no difference in my day to day behavioural patterns. If my right to express my views about the community to which I belong is considered traitorous and terroristic, I used to wonder how justice could be expected from some of our colleagues, in cases in which minorities were before the Courts. Did it not mean that these gentlemen had fallen prey to prejudices and predilections? They simply could not take the trouble to understand what I said and if necessary, vehemently argue with me, rather than being at once slanted in their views.

Mr. Tiruchelvam refers to a similar incident with regret, in his maiden speech in the Senate on the 30th of April, 1965. Speaking about the introduction of the Language of the Courts' Bill in Parliament, he said that unfortunately Mrs. Bandaranaike was out of the Island on that date and it fell upon the then Minister of Justice to introduce the document. Mr. Tiruchelvam then went on to say "I regret to say this but I have to say it for the purpose of record – Although he – the Minister of Justice at that time was the Minister in charge of the subject, that is the official language, (he) had not read the Bandaranaike – Chelvanayagam Pact. He did not know the principles enunciated by Mr. Bandaranaike on this matter. Indeed, even at a later stage during the Satyagraha movement, when we had negotiations for the purpose of settling matters, to my utter consternation and horror, I found that he had not read the Bandaranaike Chelvanayagam Pact. I thought to myself that the destinies of this country, the destinies of hundreds of thousands, nay, of millions of people are

entrusted to people of this type who did not have even the elementary responsibility of familiarizing themselves with that important document or at least one section of it ". May be the then Minister of Justice was an exception at that time. But today his prototypes are the order of the day. Prejudices, predilections, apathy and indifference affect most of our politicians today. A craving for power and money drives them. They seem to be saying "make hay while the sun shines". They seem to be thinking that what happens tomorrow is not their business.

How stupid would it be to think that militarily overcoming the LTTE or killing its head would solve the ethnic problem of Sri Lanka. The LTTE is the offspring of the ethnic problem created by the successive mono ethnic Parliamentary majority in Sri Lanka. It was State terrorism on their part which created the Liberation Tigers. The ethnic problem concerns the denizens of the Northern and Eastern Provinces, who had lived in their areas for centuries, from pre historic times. There were influxes of Tamils at various stages of our history. But the fact that right throughout history, the Dravidians had occupied the present Northern and Eastern Provinces and even more lands surrounding them, cannot be disputed. The Buddhist remains in the North, are the remnants left by the Demala Bauddhayo, not any body else. Buddhism flourished in South India too during that period of history. Even though students join a College like Royal College from Royal Primary or after passing the Scholarship exam or at the level of GCE Ordinary Level or even at some other grade, they are all called Royalists. You don't call them by any other name. Similarly whatever may have been the period at which Tamils may have arrived in Sri Lanka, we cannot dispute the fact that always the Northern and Eastern Provinces were occupied by Tamil speaking people including the Muslims. Whether the East came under the suzerainty of the Kandyan King was irrelevant. If it is relevant, then the fact that the Tamil King Elara wielded power over the entire Island would also become relevant.

From the time of Independence, a large majority of the people of these two provinces have shown their preference for a live and let live policy, by supporting parties which declared a federal

form of government as the best for this Island. When the concept of federalism was overtly rejected with the introduction of a Unitary Constitution by the so-called National Parties, then the Vaddukoddai Resolution was passed in 1976 despite opposition by Tamils like Mr. Tiruchelvam. From that time, emerged the military arm of the Tamils, however imperfect or perfect they may be. By destroying the military arm, one cannot destroy the aspirations of the people who had been deprived of their legitimate rights. We are dealing with Tamils whose literature and culture are as old as or older than the oldest civilization in this world. Once the civilization of the Lemurian Continent comes to light, much of the information about the antiquity of the Tamils, now shrouded in mystery, would be brought to light. I say this only to point out that you cannot trifle with people who are heirs to civilization and culture of such antiquity. Let us not forget that despite China forcibly annexing the land of the Tibetans, their problem is still kept alive by Dalai Lama and others. Killing Pararajasingham, Raviraj, Maheswaran or any other Tamil politician or political agitator or even Prabakaran, will not silence the Tamil people, whose whole existence as an ethnic and linguistic unit, from ancient times, is being jeopardized by successive, insensitive, Central Governments.

There are no terrorists who are born into this world. They are made largely by persons in power and authority, the mighty and the powerful, due to their selfishness and insensitivity, which give rise to resistance and reaction. These mighty, conveniently call those unable to accept their dictatorial dictates, by names. Earlier they were called Communists, then Fundamentalists and now Terrorists. It is the terror tactics of those in power and authority which create such antagonistic opposition and hostility. Those in authority who lack humanism or who have personal and selfish agendas of their own, take cover behind loaded terms such as Terrorism and Terrorists. The period of Tiruchelvam fortunately was devoid of such persons, though shortly afterwards, the 1971 JVP insurrection took place. There again it was the insensitivity of successive governments towards the needs and aspirations of the poor and the downtrodden people of the South, which gave rise to such an insurrection.

It needs to be said in favour of Dudley Senanayake, that he was prepared to discuss and adjust matters with those having opposite views, instead of taking cover behind such terms as Naxalites and terrorists. Yet, Mr. Tiruchelvam could not continue to be in the cabinet on account of certain disputes that cropped up with regard to the Koneswaram Temple in Trincomalee and also due to the chauvinistic attitudes of many in Dudley's party in power, who prevented the implementation of the Senanayake-Chelvanayagam Pact. Mr. Tiruchelvam resigned in September 1968.

His last months were spent in successfully defending Mr. A. Amirthalingam and three others charged with sedition, for peacefully defying the 1972 constitution. Two seniors led him in the Court - S.J.V. Chelvanayagam, K.C. and G.G. Ponnambalam, Q.C. the leaders of two opposing Tamil political parties. For a wonder Tamil birds of different feathers joined together. As expected they were successful. God made the Tamils disunited, for the same reason that he denied horns to horses. They could be invisible if united. But I doubt them ever uniting. The verdict at the Trial-at-Bar was a triumph for the Rule of Law as stated by Mr. Ram Balasubramaniam in his introduction to the book being launched today.

Even before the 1972 constitution was enacted, Mr. Tiruchelvam had warned with regard to its legality. In the course of his speech on the 30th of June 1970, after the new United Front Government under Mrs. Sirimavo Bandaranaike was sworn in, he pointed out that the Constituent Assembly which was due to be set up by the newly elected Government was illegal. He said - "There was not one single speech, not one single talk indulged in the election campaign, that there was going to be a Constitutional Assembly. How can there be a Constituent Assembly when the Government Parliamentary Group does not have a single Tamil elected representative to represent them and carve out a constitution?" Continuing he asked "How can you talk of a Constituent Assembly formed by a mere Resolution of the House? By a mere Resolution how can you make it a Constituent Assembly?" On page 281 of this book, he pointed out that sovereignty was vested with the people. Therefore, unless

those elected, were people who were elected or selected ad hoc for that purpose, such Constituent Assemblies would lack the necessary legal authority. He pointed out that the Constituent Assembly in India was an ad hoc body. He said it was specifically elected to exercise the sovereignty of the people and to create a constitution. But here, what they are seeking to do, he said, was rather an amusing piece of effrontery- that is for the other House to arrogate to itself the power to frame a constitution and to make that constitution work. He pointed out as given on page 285 of the book to be launched today, that we cannot adopt and operate a constitution unless we have it as a legal document, unless we are vested with the legal power. He said that legal power can only be vested in us by an Act of Parliament, may be with a two thirds majority.

I was in Court when the late inimitable C. Suntharalingam brought an action before the Supreme Court, stating that Section 29 of the then Constitution was in danger of being done away with. Chief Justice H.N.G. Fernando said that it may or may not happen. Mr. Suntharalingam said it would be too late to come into Court if the entrenched Section 29 was arbitrarily done away with. The Chief Justice was impassive. The section was done away with. Again Mr. C. Suntharalingam was before Court. The Chief Justice said that we were working now under the new Constitution. We cannot, under it, question the legality or otherwise of any provision. That was the end of the political journey for Mr. C. Suntharalingam. The 1972 Constitution lacked legality.

Similar dramas are being enacted in the North and East today. Without the consent of the people affected, without the consent of persons lawfully elected by the people, certain institutions are being set up. State thuggery seems to be the name of the game. Men and institutions remain free only when freedom is founded upon respect for the Rule of Law and if grievances are redressed by constitutional methods. But if all constitutional methods fail to redress grievances of sections of society who have been subjected to innumerable hardships due to callousness and indifference and may be, even partiality of successive Governments in power, how are they to redress their grievances

by constitutional methods? Let us not forget that East Pakistan became Bangladesh on account of the indifference of West Pakistan to the real grievances of the people of East Pakistan.

It is to be said in favour of Mr. Murugeysen Tiruchelvam that until he breathed his last, he believed in the goodness of all men. I wonder whether the pendulum would have swung to the other extreme if he was living today.



The Tiruchelvam I Knew

Kanaganayagam Kanag-Isvaran
President's Counsel

The year was 1973. I had moved into my residence at Barnes Place. Shortly after, my father visited me, and as was usual, he commenced his peregrinations in Colombo, visiting his old friends and having them visit him in return.

One day, he came home and announced, "There, Tiruchelvam wants to meet you".

An appointment was made and I went to see Senator Tiruchelvam on a Saturday at 10.30 a.m., at his residence in Rosmead Place.

I had heard about Mr. M. Tiruchelvam, but had never met him. From what I have heard, I knew that he was a Senator, a former Minister, a Queen's Counsel, the principal political advisor to Mr. S. J. V. Chelvanayagam, a political strategist and a cunning man – cunning, in the sense of being ingenious and skilful..

I was therefore, somewhat daunted and apprehensive, when I entered his home.

He was seated on a low sofa, in his lounge, which was lined with bookshelves filled with scores of books. He was clad in a white verti and a white short sleeved shirt – (I've never seen him in a long sleeved shirt), looking very cultured, flashing that infectious smile, filled with charm and quiet dignity.

I was immediately immersed in a sense of well being, in his presence. I knew I was going to like this man – and much later, to believe that he too became rather fond of me.

There was another gentleman with him that day. He was Mr. R. S. Wanasundara, the then Solicitor-General and later, a Justice of the Supreme Court.

After a little banter, I was told, "We are looking for a young man like you. Why don't you join the Crown Counsels' Department?"

Though it was a great honour, I told him that my heart was set on the Private Bar.

A week later, Mr. Tiruchelvam communicated to me that he had nominated me as his Junior, in an appeal case from Batticaloa. That is how I came to work in his Chambers – a very short time though – until his untimely demise on the 22nd of November 1976.

Nevertheless, during the three and a half year period that I had worked with him, he enriched me with knowledge, beyond my wildest dreams.

Soft spoken and charming, he had humane and lovable ways. He had the humility to listen to you, even if you were a junior lawyer. He was an educationist – keen to teach not only law, but also social and political history.

Quick to sense, that I was ignorant of the political developments in the country during the period 1960 to 1965, when I was in the United Kingdom, he took it upon himself to educate me on the "Struggles of the Tamil People" as he called it.

When we used to travel by air to Trincomalee and Batticaloa for legal work, I would be given a lecture on the history of the place, of its ancient glories and of its peoples. Often, he used to speak to me about a quaint Hindu village in the Chilaw District called Uddappu – a stronghold of his political party.

His knowledge of the history of this island from ancient times, of Tamil civilization and culture, of the Hindu religion and of other

religions, religious architecture, iconography and a variety of subjects was prolific and came in very useful when he was leading me in a case, relating to a Hindu temple and its temporalities and succession to trusteeship in Chilaw.

In law, his forte was Constitutional Law, Administrative Law (now called Public Law) and the Law of Trusts. He initiated me in these areas of law, for which I owe him a deep debt of gratitude.

The crowning moment in my career, as his Junior, came when he invited me to work with him closely, as a Counsel, at the trial of Appathurai Amirthalingam, when he with three others, namely M. Sivasithamparam, K. P. Ratnam and K. Thurairatnam were arraigned at a Trial-at-Bar on the 18th of June 1976, charged with sedition.

It was then, whilst working with him, that I was introduced to world renowned authorities on constitutional theory and law, such as Dr. K. C. Wheare, Sir Kenneth Roberts-Wray, Prof. S. A. de Smith and to A. Rubinstein's seminal works on Jurisdiction and Illegality and to jurisprudence on the subject, in decisions from Uganda, Southern Rhodesia, Cyprus, Pakistan and India.

We had to work on tomes of material, in preparation for the submissions Mr. Tiruchelvam had to make on the constitutional aspects of the case, on behalf of the defence.

The Trial-at-Bar was before J. F. A. Soza, H. A. G. de Silva and Siva Selliah, Judges of the High Court, with Mr. Shiva Pasupathi, Attorney General. prosecuting, and Messrs S. J. V. Chelvanayagam Q.C., G. G. Ponnampalam Q.C., Mr. M. Tiruchelvam Q.C. and some seventy five other Tamil Counsel appearing for the accused.

In a lighter vein, I remember that in the preparation for the Trial-at-Bar, I had to run between the Chambers of Mr. G. G. Ponnambalam and Mr. Tiruchelvam, as they were not inclined to visit each other's Chambers! And when it came to seating

arrangements in Court, Mr. Tiruchelvam told me “Sonna, you must sit between G.G. and me”! Thereby, I earned a place in history, which is attested by a photograph on page 320 in the book that is being launched today.

I believe this is the occasion when we should know something of the background that led to this indictment. I recount from memory what I learnt from Mr. Tiruchelvam.

The Tamil people’s relationship with the Sri Lankan State, after we achieved independence on the 4th of February 1948 – the 60th Anniversary of which we are supposed to celebrate this year, has gone through distinct periods.

From independence, till the enactment of the Official Languages Act of 1956, the two major linguistic groups would appear to have co-operated and co-habited to ensure that the newly independent state remained a viable democracy.

Since the Official Languages Act, the old camaraderie appears to have become a little strained, with the result, that the Tamils were seeking autonomy, as articulated by the Elangai Thamil Arasu Kadchchi – The Federal Party.

Aversion to the 1972 Constitution, which is quite evident from the speeches made in the Senate by Mr. Tiruchelvam, reproduced in the book “Senator Tiruchelvam’s Legacy” show that the Tamils had lost confidence in the ability of the Sinhala Governments to redress their grievances and it would appear to have influenced the call for separatism – or an ethnic divorce, culminating in the Vaddukkodai Resolution of 14th May 1976.

On that day, the Sri Lankan Tamils, the Indian Tamils and the Tamil speaking Muslims – the leaders of the Tamil United Front (TUF) met at Vaddukkodai, (which incidentally is also the village of my father and of Mr. Tiruchelvam) and reconstituted themselves as the Tamil United Liberation Front (TULF), and presided over by Mr. S. J. V. Chelvanayagam, resolved to restore and establish a Tamil State, a political reality, that had previously existed.

I quote below the resolution

“The first National Convention of the Tamil United Liberation Front meeting at Pannakam (Vaddukoddai Constituency) on the 14th day of May, 1976 hereby declares that the Tamils of Ceylon by virtue of their great language, their religions, their separate culture and heritage, their history of independent existence as a separate state over a distinct territory for several centuries till they were conquered by the armed might of the European invaders and above all by their will to exist as a separate entity ruling themselves in their own territory, are a nation distinct and apart from Sinhalese and this Convention announces to the world that the Republican Constitution of 1972 has made the Tamils a slave nation ruled by the new colonial masters the Sinhalese who are using the power they have wrongly usurped to deprive the Tamil Nation of its territory, language, citizenship, economic life, opportunities of employment and education thereby destroying all the attributes of nationhood of the Tamil people.

And therefore, while taking note of the reservations in relation to its commitment to the setting up of a separated state of TAMIL EELAM expressed by the Ceylon Workers Congress as a Trade Union of the Plantation Workers, the majority of whom live and work outside the Northern and Eastern areas,

This convention resolves that restoration and reconstitution of the Free, Sovereign, Secular Socialist State of Tamil Eelam based on the right of self determination inherent to every nation has become inevitable in order to safeguard the very existence of the Tamil Nation in this Country.”

Thereafter the TULF issued its Manifesto demanding the creation of an independent Tamil State. It read,

“.....What is the alternative now left to the nation that has lost its rights to its language, rights to its citizenship, rights to its religions and continues day by day to lose its traditional homeland to Sinhalese colonization? What is the alternative now left to a nation that has lost its opportunities to higher education through “standardization” and its equality in opportunities in the sphere of employment? What is the alternative to a nation that lies helpless as it is being assaulted, looted and killed by hooligans instigated by the ruling race and by the security forces of the state? Where else is an alternative to the Tamil nation that gropes in the dark for its identity and finds itself driven to the brink of devastation?”

There is only one alternative and that is to proclaim with the stamp of finality and fortitude that we alone shall rule over our land that our fore fathers ruled.....Hence the Tamil United Liberation Front seeks in the General Election the mandate of the Tamil nation to establish an independent, sovereign, secular, socialist state of Tamil Eelam that includes all the geographically contiguous areas that have been the traditional homeland of the Tamil-speaking people in the country.”

The TULF Manifesto also stated that Eelam would be ultimately established “either by peaceful means or by direct action or struggle.” However, despite this vow, TULF members, for the most part, continued to negotiate with the government in the hope of finding a solution to the ethnic problem.

It is in this background that Mr. A. Amirthalingam was indicted on five counts of contravening the Emergency Regulations, framed under the Public Security Ordinance of possessing and disseminating subversive literature, to wit the document “Resolution adopted at the first Annual Convention of the Tamil United Front”.

Counts 1, and 2 relate to the possession and distribution of the document, Vaddukoddai Resolution which is likely to incite persons to defy or act in derogation of the Constitution of Sri Lanka.

Count 3, accused him of distributing it to the public without the permission of the Inspector General of Police.

Count 4, charged the accused of reading out the document in an attempt to incite the Tamil Speaking public to procure otherwise than by lawful means, alterations of the Unitary State of the Republic of Sri Lanka.

Count 5, the accused was charged with attempting to create discontent by reading out this pamphlet. The date of the alleged offence was 22nd May 1976.

When the indictment was read out, Mr. Amirthalingam stated as follows –

“I humbly state that I am not pleading guilty or not guilty because this Court is not properly constituted and it is not valid and there is no jurisdiction and therefore I am not pleading guilty or not guilty to the charge.”

Consequently, two preliminary objections were raised against the ruling of Court.

Firstly, that the 1972 Constitution of Sri Lanka is invalid and Consequently..... this Court itself is a nullity.

Secondly, that the Emergency Regulations under which the accused had been indicted, were invalid and in so far as they relate to the constitution of the Court.

The Attorney General, Mr. Shiva Pasupathi, on behalf of the Republic, raised the question of “justiciability” to counter the contentions of the defence. In other words, the contention was, that the preliminary objections were not “suitable questions for a court of law; it is not judicially examinable”. Meaning thereby, that it had to be resolved by some other way – e.g. political.

Mr. Tiruchelvam brilliantly argued the constitutional aspects of the case, as to why the 1972 Constitution was invalid. You would see the basic framework for the argument, in his speeches in the Senate on the 30th of June and 1st of July 1970. These are reproduced in the book that is being launched today. They appear from page 279 et seq under the caption “The Looming Dangers of the United Front Government”..

The Court however, having heard submissions throughout the month of July 1976, determined on September 10th 1976,

“In these circumstances the time honoured and judicially settled principle of justiciability, that a court or tribunal which owes its creation to a particular Constitution, cannot embark upon an inquiry into the validity of that Constitution, demands to be accepted. We therefore hold that the validity of the Constitution is not justiciable by us.”

On the validity of the Emergency Regulation, the Court held –

“We hold that there has been no valid declaration of a state of emergency by the President as set out in Section 134 (2) of the Constitution and that there has been no delegation of the legislative power by the National State Assembly to the President as envisaged in Section 45 (4) of the

Constitution. Consequently Regulation 59 of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 5 of 1976 published in Gazette No. 213/5 of May 17, 1976 as amended by Regulation 59 (1A) published in Gazette No. 214/16 of May 28, 1976 can have no sanction or validity in law. We cannot therefore continue to exercise any further jurisdiction in this case to try this accused for the offence for which he has been indicted. We accordingly discharge the accused from these proceedings.”

There was an electrifying silence when the verdict was given, followed by an explosion of jubilation. The historic picture of the triumvirate – Mr. Chelvanayagam, Mr. Ponnampalam and Mr. Tiruchelvam – all smiles, that is reproduced in the book, was taken immediately, outside the Court House.

Strangely in six months time from the date of this photograph being taken, all three had passed away - Mr. Tiruchelvam in November 1976, Mr. Ponnampalam in February 1977 and Mr. Chelvanayagam in March 1977!

A new period of “ethnic conflict” was soon to begin in the years following.

The five year state of emergency of the United Front Government and its attendant repression brought new issues – the need for guarantees of personal liberties, the freedom from arbitrary arrest and detention, the curbing of police excesses, the rule of law, the independence of the judiciary, the repeal of the ex post facto penal laws etc. Because of the Tamils’ demand for separation, the need to find a solution to the problem became important in Sinhala politics.

J. R. Jayewardene offered a “Dharmista” government. He issued commitments on constitutional reform, a package of protection for minority rights and decentralization.

The 1977 UNP election manifesto contained three major commitments relating to the Tamil question. The first stated –

“We will ensure.....that every citizen, whether he belongs to a majority or minority, racial, religious or caste group enjoys equal and basic human rights and opportunities. The decisions of an All Party Conference (APC) will be summoned to consider the problems of non-Sinhala people and will be included in the constitution.”

All possible steps to remedy the grievances of the Tamil people were said to be through the All Party Conference.

The second was a proposal to decentralize administration by the creation of District Development Councils (DDCs) down to village levels.

The third, and more significantly, was the section on the ‘Problems of the Tamil speaking People’, which listed four areas of concern –

- (a) Education;
- (b) Colonization;
- (c) The use of the Tamil language;
- (d) Public and semi-public employment.

It resulted in a massive landslide victory for the UNP, winning a 5/6th majority or 83% of the seats in Parliament. The Tamil people were hopeful of solutions to their problems, because of the UNP’s pledges in its Manifesto.

But that was not to be.

Within a month of the UNP government taking office, the anti-Tamil riots of August 1977 engulfed the country. The UNP had in

its Manifesto accepted that there were numerous problems confronting the Tamil peoples and had pledged to solve them. But once in power, it adopted a position no different from previous governments.

But that is another story, to be recounted on another occasion, but not fitting for discussion today.

As Dr. Neelan Tiruchelvam was to observe, years later in 1984, the Vaddukoddai Resolution “represented a shift from the struggle for equality to an assertion of freedom, from the demand for fundamental rights to the assertion of self-determination, from the acceptance of pluralistic experiment to the surfacing of a new corporate identity.”

Senator Tiruchelvam stood for a pluralistic society. In his speech in the Senate on the Address of Thanks for the Throne Speech (1970) he said,

“That in a plural society minorities can only be satisfied by federalism or some form of regionalism is a well-recognized political solution, a solution accepted not at the point of the bayonet.....but voluntarily.....

For a minority people there are three solutions available in a country. The first is assimilation. That is, giving up being a Tamil.....

The second course is more abhorrent, and that is the course of separation, to go our different ways, to fight it out and reach a different status.....

Then, the third course is national integration. That can arise only by a recognition of the mutuality of our rights and obligations, by recognition of the

fact that we exist as a people who have lived in this country for 2500 years; that we exist as a people who have a language of our own, with traditions of our own and a way of life of our own."

Then he went on to say –

"We will get it one day, if not from this Government, then from the next; if not from the next Government, then may be 25 years hence; if not 25 years hence, then 100 years hence. I want to say here and now, for all time, that the cry for federalism will never be given up....."

Nearly thirty eight years have gone by since these words were spoken. Thirty two years, since his death. A new generation has come into being. We live in difficult times. A great transformation has and is taking place, since his time.

A Sinhala Buddhist nationalist ideology has been institutionalized as state policy, perpetuating its supremacy within a unitary state and attacking as traitors those who disagree. Traducing the Tamils has become a way of life.

Tamil nationalism – a reactive phenomenon to ethnocentric policies embraced by successive Sri Lankan governments, champions the separatist cause and struggles.

If Mr. Tiruchelvam was alive today, what would he have said? Would he accept that the second choice open to a minority – the abhorrent choice of separatism - is the way forward or would he still believe in a credible autonomy proposal as a sine qua non for future Sinhala – Tamil co-existence?

We would never know!

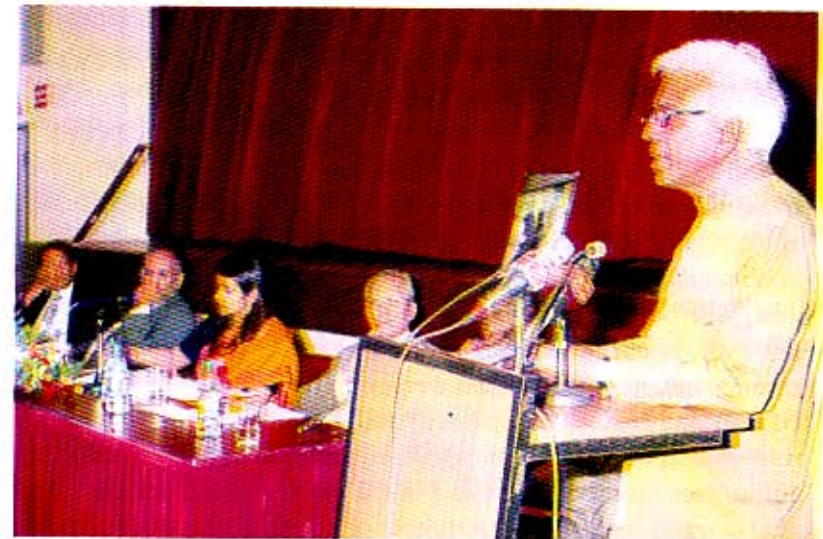
What lies ahead is any body's guess!

Senator Tiruchelvam's Legacy

Devanesan Nesiah

I had known Senator Tiruchelvam and his wife Punitham, a cousin of my mother, for several decades. Senator Tiruchelvam left his imprint in the law courts, in our legislative history and in the Senate. Punitham left her own distinctive imprint in the cultural field. Senator Tiruchelvam's brother, M. Rajendra, was widely respected as pre-eminent even among the many distinguished civil servants of his time. The Senator's son Neelan not only embodied his father's legacy but also made his own unique contributions to this country. His ideals are continuing to be worked out through the institutions that were founded by him and now sustained by his wife Sithie and many others.

Though I kept in touch with Senator Tiruchelvam from the time he was in the Attorney General's Department, had many conversations with him over the decades on a range of public



issues and read many of his speeches, I feel more can be gained reading his speeches contained in this volume to be launched today. In this book, there is a transcript of a fascinating newspaper interview given by Neelan, on his father, 15 years after the Senator passed away. These speeches will be widely treasured as sources of reference not only on the political developments at that time but also on some of the subjects on which Senator Tiruchelvam had spoken in the Upper House.

Senator Tiruchelvam was a Sri Lankan nationalist who consistently stood for an undivided Sri Lanka under a federal Constitution. He passionately championed the rights of all Tamil speaking peoples, including Muslims and Indian Tamils, while recognizing their distinct identities and interests. He was an astute political strategist whose short term objectives were firmly grounded in the hard realities of his time. There is a unique quality of his contributions in the Senate on diverse subjects, outside his special fields of interest. He could more than hold his own in any debate, in the Senate or elsewhere, on subjects such as language rights, federalism and other constitutional issues. He also outshone his distinguished fellow Senators, who possessed special expertise relating to subjects such as "Reforming Ceylon's Universities" and "Is there a Right to Strike?"

Senator Tiruchelvam was able to achieve this not merely because of his broad general knowledge and keen analytical skills but also because he exhaustively studied a subject before he ventured to speak on it. His speeches in the Upper House were frequently interrupted by opponents with recognized expertise, who challenged him on what he said, and was even heckled by opponents with little expertise. He unhesitatingly and effectively dealt with both kinds of interruptions. He seldom lost his cool even when the heckling had malicious or racist undertones. He took care to come into any debate well equipped with facts and figures, current and historical, national and global. He also brought in relevant documents and books by internationally recognized authorities on the subject and in the course of the debate, would read extracts from these documents or books as and when required.

For example, on "Reforming Ceylon's Universities" Senator Tiruchelvam set out some relevant national and global data to establish the need for University Reform in Sri Lanka. He also outlined the development of Higher Education in our island, starting with American Missionary initiatives in establishing the Vaddukoddai Seminary in 1823 and the Green Memorial Teaching Hospital in 1848, the latter leading to the establishment by the colonial government of a Medical College in Colombo in 1870 and beyond to the University College in 1921 and the University of Ceylon in 1942. He proceeded to classify universities, state and non-state, and to analyse different kinds of management structures and different kinds of state control as appropriate to each category. He was armed with relevant scholarly books, university catalogues and other documents to back whatever he said in favour of the proposed National Council of Higher Education, charged with assessing and providing for the collective manpower needs of the island, more appropriate to the Sri Lankan situation than a University Grants Commission, which traditionally focuses on the individual needs of each university.

Throughout his distinguished legal and political career, Senator Tiruchelvam remained unassuming and readily accessible. I remember when he was a cabinet minister, he spurned the many luxuries to which that office entitled him and went about in a little four seater without prescribed security. In fact, his income dropped sharply on his assuming office because he had to abandon his previously lucrative legal practice. His speeches, professional achievements and his entire public life are models to be emulated by professionals and politicians, although I suspect, some of the Members of Parliament today will not wish to do so.

S.C. Opatha's cover page cartoon captures his impish smile and gangling gait – by which he is instantly recognizable. Senator Tiruchelvam and equally so, his son Neelan, have made distinctive and enduring contribution to public life in this country. Today more than ever before, we need leaders of their calibre – but, that is a rare commodity and an even rarer find.

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