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**LANKA**

# **GUARDIAN**

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# Public opinion and the petrol bomb

Mervyn de Silva

The longer the ruling party's tenure, the greater the desire for change in a mature electorate where an impatient new generation votes at 18. The Sri Lankan electorate met most, if not all, of these basic requirements in late 1994. But the rather large percentage gap between the mid-August parliamentary polls and the November presidential election can be explained only in terms of a subjective factor — the personality of Chandrika Kumaratunga.

But this factor cannot outweigh the objective — mass pressure, of which the cutting edge is the generational, explosive youth expectations and aspirations. Of this large youth constituency, the most articulate and impatient is the student. The university student seizes the leadership to make the campus the first arena of confrontation. The outlook of the campus elite is neo-JVPist, with a Jatika Chintaya component, largely because the Eelam secessionist revolt dominates the current political debate, while claiming the time and energy of the Chandrika presidency. That fact is made obvious by the media, and the attention it gives to the "War and Peace" issue.

Consider next the objective-subjective factor. Chandrika the popularly elected president, has the charisma.... the charisma of Sirima, her mother, in 1960. But Sirima Bandaranaike has the experience and maturity which President Chandrika lacks. But Mrs. B. is ailing, feeble, and she is NOT a popularly elected premier. A working alliance may have provided an answer of sorts but evidently there is no such active liaison.

And then we have the media, much larger and freer than ever before, particularly the print media. (The state-run radio and Rupavahini cannot meet the challenge). This is one of the most highly literate electorates in the world. So the print media

have the greater impact. The print media is specialising in "exposure" — almost at the key-hole level. Each Sunday, the credibility of the Peoples Alliance is undermined.

The state-run media is either unable or unwilling to take on the critics head-on. Prof. G.L. Pieris, former Vice-Chancellor, who put on an impressive "One-Man-Show" in the first three months of the P.A., has quietly retreated from the RUPAVA-HINI studios.

But the communications media is only a mirror — not the reality.

## COALITION CONFUSION

Many a commentator is tempted to compare the present P.A., with the 1970 United Front led by Mrs. Bandaranaike. Her allies were the LSSP and the CP, parties that were older than the SLFP, and led by mature politicians like Dr. N.M. Perera, Dr. Colvin R de Silva, Mr. Leslie Goonewardena, Bernard Soysa, etc. (LSSP) and Dr. S.A. Wickremasingha and Mr. Pieter Keuneman (CP). Though it had to cope with the unprecedented challenge of the JVP insurgency, (and of course the rightwing UNP led by the wily J.R. Jayawardena) the United Front ran a credible administration for five years — until the debate, inevitable in a way, on "What Next?" produced fissures in the alliance that finally led to a Left-Centre/Right confrontation. Prime Minister Sirima and her ideologue-cum-strategist Felix decided it was time to disengage.

The 1994 Peoples Alliance (PA) is a different kettle of fish. To start with, few voters know how many allies are in the SLFP-led Alliance — 8 is the lowest figure given in the press, eleven the highest! But even within the SLFP we hear D.M. Jayaratne, a brave party loyalist with a fine record of anti-UNPism, speak out loud and clear..... disagreeing or censuring the

policy-makers. From the South, we have the equally powerful voice of Amarasiri Dodangoda.

The truth is that the Kumaratunga government as distinct from the Peoples Alliance, in Opposition and on the election front (Provincial, Parliament and Presidential in 1994) addressed the masses in a different language, and another voice. Today, the PA administration pursues policies which appear to be strongly influenced if not dictated to by the World Bank and the IMF.

The large five-rupee increase in the price of petrol has created a new climate of opinion.

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# Trouble with the 'Tigers'

The mass media, particularly the exercises in investigative journalism and Sunday political reportage, has become a major problem for the Kumaratunga administration. Even Prof. G.L. Pieris who "briefed" the voters every night on **Rupavahini**, supremely self-assured, and quick-on-the-draw, has found tactical retreat the wisest option. He certainly did not appear on TV to explain and/or justify the petrol price hike.

The government had its say for 2 or 3 months. Now the IMF and the Bank are having theirs.

The PA could have taken the consequences of this unpopular announcement if only things were moving well on the War-and-Peace Front since the two are closely related in PA strategy. The link is "the Peace Dividend" as Dr. Lal Jayawardena, the former director of the

Helsinki-based WIDER and now top Economic Adviser to the President, called it. A direct appeal to "the Peace Constituency" recognised as a growing vote-bank, would win the elections. It would then pave the way for a negotiated settlement with the LTTE, which in turn would release large funds, (estimated at one-and-half million dollars a day) that could be diverted to development and some welfare measures. That was the "grand strategy".

However, President Kumaratunga's *LE MONDE* interview and her much longer conversation with Malini Parthasarthy of the *HINDU*, suggest that Velupillai Prabhakaran, supreme commander of the Tamil Liberation Tigers is certainly NOT willing to accommodate the President either on the time-table or on the substantive issues.

The following 'quotes' reflect President Chandrika's thinking.

- "Today those people from the north want peace so passionately that even the most warlike leader cannot turn a deaf ear to that desire of the people. The request for peace is very loud and clear..."

- "Until her government had come in, the LTTE was insisting that it was the only player.... but now it is only saying that it is the major player"

- On a possible Indian demand for Prabhakaran's extradition, if required by the Indian courts and government in connection with the GANDHI ASSASSINATION TRIAL, the President said "To extradite him we have to catch him... and it is something that the Indian army could not do".

## TAMIL CONFERENCE

# Jayalalitha turns Tamil meet to advantage

V. R. Mani

The biggest beneficiary of the world Tamil conference which ended at Thanjavur was chief minister J Jayalalitha. Despite opposition from almost all the parties and several Tamil scholars, she went ahead with the multi-crore jamboree in an effort to give a further boost to her image.

But apparently she has come in for criticism only from urban centres. The opposition parties have been unable to mobilise the rural masses against her. Ms Jayalalitha has also been making deft moves on the political chessboard and is always one up on her opponents.

Whether it is the IAS officer V S Chandrasekhar, who refused to toe her line, or chief election commissioner T N Seshan or her rivals in the Congress or the DMK, all of them find themselves outsmarted by her. It was widely expected that the acid attack two years ago on Ms Chandrasekhar, who is now in the Janata Party, would

become a major political issue. But it failed to gain ground.

Mr Seshan is held in awe or even feared by several chief ministers, but Ms Jayalalitha has made it difficult for him to visit the state. Following a massive demonstration by volunteers of the ruling AIADMK recently at Madras airport, Mr Seshan was forced to spend seven hours in the air terminal. He subsequently checked into the Taj hotel which had to pay the price for hosting him. Goondas, allegedly enjoying the patronage of the ruling party, caused considerable damage to the hotel and to the cars of its patrons.

Ms Jayalalitha has also crossed swords with governor M Channa Reddy. On several occasions she has attempted to give him the short shrift. The latest was when she sent him an invitation for the Tamil conference by post.

The Opposition has been crying hoarse

about the "fascist" tendencies of the ruling party. However, it has not been able to put her on the defensive with regard to her various acts of omission and commission. The agitations launched by it on one issue or the other either fizzled out or never took off. The reason for this is that the opposition is hardly able to put up a united facade which gives rise to the feeling that Ms Jayalalitha is invincible.

While the DMK has split with Mr V Gopalasamy quitting the party and forming the Marumalarchi DMK (MDMK), the CPI-M, an ally of the DMK for about a decade, has switched its allegiance to the MDMK. The Congress has never been able to have an independent base, since it had tried to ride piggy-back on the DMK or the AIADMK. And now, the acute rivalry between the factions led by Mr G K Moopanar and state unit president of the party Vazhapady Ramamurthy has substantially weakened the organisation.

In sharp contrast, the AIADMK appears to be the only solid political force in the state which is completely under the control of Ms Jayalalitha. This does not mean that the AIADMK's popularity is undiminished. The party had won the by-elections in Perundurai, Ranipet and Mylapore only after putting in great effort. In fact, the party is seen shy of facing the electorate now and hence its reluctance to hold local body elections.

The ruling party seems to be banking more on the division in the opposition

ranks to emerge victorious rather than on its own performance. But in the event of the opposition parties coming together, things will become sticky for the AIADMK, according to observers. There are several issues on which the opposition can put it on the mat.

For example, there are serious charges of corruption against senior leaders of the ruling party. The police is accused of being partisan. There is no progress in almost all the politically-sensitive cases, including the one relating to the attack on Ms Cha-

ndralekha. Added to this is the spiralling prices of essential commodities.

However, the AIADMK seems to be working on the belief that the sops it offers to the people will fetch rich political dividends. The government is also assiduously trying to woo women, who account for nearly half the population of six crore, and still have fond memories of AIADMK founder M G Ramachandran. That apart, the party is also under the impression that grand shows like the Tamil conference will keep the people in good humour.

## Lankan Tamils to ignore IATR decisions

G. V. Krishnan

Sri Lankan Tamil scholars, who were kept away from the recent Tanjavur meet, have decided not to take cognisance of the decisions taken by the International Association of Tamil Research (IATR) at the eighth World Tamil conference. They have communicated their decision to IATR chairman Noboru Karashima.

The Sri Lankan unit of IATR has already announced its plan to hold a 'parallel' meeting of about 200 scholars, whose applications for participation at the Tanjavur conference were not entertained by the organisers. Four other Sri Lankan scholars, invited as delegates, were deported from Tanjavur 'for security reasons' hours before the conference started on January 1.

Padmanabha, Secretary-general of IATR's Sri Lanka unit, in a fax message received here, spoke of an attempt by some elements in Tamil Nadu to create misunderstanding with the Tamils in Sri Lanka.

He appealed to the Sri Lanka Tamils not to say and do anything that would result in worsening the relations between the Tamils in the two countries. Mr Padmanabha conveyed his country's good wishes for the Tanjavur conference, because it was held to promote Tamil at considerable government expense.

Sri Lanka vetoing the decisions taken at IATR general body meeting held during the Tanjavur conference is, however, quite another matter. The IATR general body

elected new office-bearers of the international body. It was proposed that the next global meeting of Tamil scholars be held either in the UK or the US or South Africa.

The IATR (Sri Lanka), however, is reported have written to Mr Karashima, suggesting Colombo as venue for the next conference. The Sri Lankan unit has also challenged the nomination of Professor K Sivathamby as IATR general secretary in place of A. Velupillai of Uppsala University in Sweden.

Mr Vellupillai, now on sabbatical in Sweden, is president of IATR (Sri Lanka). "His removal from the international executive committee requires our concurrence" said a spokesman of IATR's Sri Lanka unit, which was not represented at the general body meeting held in Tanjavur.

The Sri Lankan unit plans to follow up its communication to IATR chairman with individual letters to all delegates who participated in the Tanjavur conference. "We would consult scholars in Tamil Nadu", said the spokesman of IATR (Sri Lanka).

The Sri Lankan move reflects a sense of disappointment among its scholars at the functioning of IATR, which was responsible for organising the global Tamil conference. IATR found itself marginalised at Tanjavur conference.

Sri Lankan scholars, who were left out of the Tanjavur meeting, expressed surprise at IATR's inaction in ensuring participation of many of its own members at the conference. When the four-member Sri Lankan delegation was packed off from

Tanjavur by the police, Mr Karashima was not even informed about it. His efforts to get an official explanation did not succeed. Eventually, Dr Karashima had to address a letter to the chief minister.

The IATR chairman felt so harassed that Mr Karashima, in a newspaper interview, expressed his intention to relinquish his post. The head of the Sri Lankan official delegation and minister S. Thondaman also had misgivings about the manner in which the conference was organised. "Adopting resolutions without proper follow-up action is a fruitless exercise", Mr Thondaman told newsmen. He stressed the need for revamping of the organising body, with a proper secretariat.

The Sri Lankan official delegation, led by Mr Thondaman, was sent to Tanjavur at the initiative of President Chandrika Kumaratunge. It is said that she was so keen on representation of Sri Lankan scholars that her government offered to charter a special aircraft to transport some 200 scholars who wanted to attend the Tanjavur meeting. But the organisers extended invitations to only four Sri Lankan Tamil scholars (who were all later deported).

### SEMINAR PAPERS

The articles by Prof. K. M. de Silva, K. N. O. Dharmadasa, and A. Sivanesaselvan on Lake House, Sinhala journals and Tamil press (LG. Jan. 15) were presented as papers at an ICES (Kandy) symposium.



# A milestone for South Asia

There is a tendency in certain sections in New Delhi to minimise the importance of the accord on ceasefire and cessation of hostilities the Sri Lankan Government under President Chandrika Bandaranaike-Kumaratunga has been able to work out with Velupillai Prabhakaran's Liberation Tigers of Tamil Eelam (LTTE). The agreement, which came into force in the midnight of January 7-8, has for the first time thrown up the distinct possibility of ending the ethnic strife in our neighbouring island-state. As such it needs to be unequivocally welcomed instead of unduly highlighting the prospects of it being torpedoed by resumption of hostilities.

Any move in the direction of restoring ethnic harmony in Sri Lanka is praiseworthy because the positive effect its fruition is likely to exert on regional peace, stability, cooperation and understanding can hardly be overemphasised. In fact there should be no hesitation on the part of New Delhi to greet Chandrika for her contribution in evolving such an agreement in the face of heavy odds. This has been made possible precisely because of her transparently honest dealings with the LTTE and unambiguous statement that what her government proposes to grant to the Tamils is "extensive devolution". She made it clear that the "constitutional reforms process would also deal with this" adding that she was more concerned about the "unified" country than the "unitary" Constitution. It is on the basis of this approach — which is indeed a striking departure from the stand of the previous administrations in Colombo stressing the unitary nature of the Sri Lankan Constitution — that a new chapter in ethnic relations is being unfolded in Sri Lanka. This could serve as a model for all countries in the region including our own as we too are beset with the problem of alienation as in Kashmir and the North-East.

No doubt what lies ahead is an arduous and uphill climb. For the LTTE's past record impinges on the confidence of success of any such endeavour as has

been undertaken by Chandrika. However, it needs to be underlined that along with her late husband — Vijaya — Chandrika has been most consistent in projecting a perspective of ethnic peace in Sri Lanka giving due weightage to the concerns, grievances and demands of the Tamil minority. She more than any other Sinhala leader is conscious of the bitter fact that the successive governments of the island-state — after her father's assassination in the fifties — had adopted measures (straying from the provisions of the Bandaranaike-Chelvanayagam pact) that not only alienated the Tamils but in effect helped the militants to take over from the moderate leaders in the northern part of the state. She is thus striving her very best to undo the wrongs and mistakes of the past by which she is reasonably hopeful of taking the wind out of the sails of militancy in Sri Lanka.

It would be, of course, difficult to weed out this militancy overnight. Not only are there many uncertainties but the future is

fraught with dangers as well. However, with infinite faith in the wisdom of the people at large a beginning has to be made. Without discarding caution one has to take the risk of adopting an accommodative approach. That is precisely what Chandrika has done. If she succeeds in her efforts not only Sri Lanka but the entire South Asian region will be the real beneficiary.

With that end in view one must hail her commendable move for recasting ethnic relations that would go a long way in the direction of ensuring both peace and harmony. What has been produced through purposeful negotiations is actually a path-breaking accord which holds the key to substantial progress in the days ahead. All right-thinking citizens of our country — indeed of South Asia as a whole — should congratulate her on this major step forward towards amity and tranquillity in Sri Lanka as well as this part of the world.

— Mainstream

## Waiting - 2 The Crossing

*Orion flares on the Meridian,  
The great silence of Space,  
Descends the night-curdled trees.*

*From other Decembers, I release,  
The remembered things we said  
Like, See, Orions overhead  
You know that means its mid night.*

*Midnights together when Space-Time held  
Our Paths entangled and the Stars Warm*

*But now Orion is remote and chill  
While a lone star shoots beyond the hill  
Breaking this life's tryst.*

U. Karunatilake

# Quest for peace

The guns are silent but Sri Lanka's on-again-off-again peace has run into difficulties. The ceasefire that came into effect in the second week of January is still holding. Army field commanders are in regular communication with their counter parts in the rebel movement, the Liberation Tigers of Tamil Eelam; and four peace committees, each chaired by a neutral foreigner, are monitoring what the government insists on calling a cessation of hostilities in the north and east. But despite the government's offer of \$ 800 m to help rebuild the rebel-held north, the Tigers are insisting on further concessions before beginning negotiations on a political settlement.

The talks about a permanent peace, which came to a temporary halt on January 14th, are deadlocked. The main problem is the military base of Poonareen, which lies astride one of the two land routes between the mainland and the Jaffna peninsula, held by the Tigers. At the moment, both land routes are closed to traffic. To reach the peninsula, civilian travellers have to make a perilous two-hour boat journey across the Jaffna lagoon, while bulk supplies can reach Jaffna only by ship.

Both sides have agreed in principle that a land route should be opened as soon as possible, mainly to bring in the materials and equipment needed for the reconstruction programme. The government is prepared to shift the perimeter of the camp so as to free the road from military control, but the rebels insist that Poonareen should be completely dismantled. Until agreement is reached on that, the rebels say that the peace talks cannot get under way.

The government, which has already made a string of concessions, cannot easily meet that demand. A rebel attack on Poonareen in November 1993 was barely beaten off, and led to the deaths of hundreds of government troops as well as Tigers. As a result, in the words of a senior officer, Poonareen is "dear to our hearts". The army agreed only with misgivings to a ceasefire — one of the rebels'

main demands. If President Chandrika Kumaratunga were to order Poonareen to be abandoned, after the shedding of so much blood in its defence, it would be widely considered a betrayal of common sense and of the army's honour.

The Tigers' intransigency puts Mrs Kumaratunga in a spot. She won the presidential election in November by a record margin, and chose to interpret the result as a mandate to continue her government's "quest for peace". But restarting the talks, which had been suspended after the assassination of the opposition leader, Gamini Dissanayake, on October 24th, has proved more difficult than she expected. In effect, the Tigers have been trying to impose new conditions on the peace talks that they previously said they were prepared to join unconditionally.

Meanwhile, ultra-nationalist student newspapers in the south are decrying what they call the "Chandrika-Prabakaran pact", thus linking the president's name with that of the Tigers' leader, and claiming (incorrectly) that she has in effect ceded the north to the Tamils. In fact, the government has not yet drawn up political proposals, but if negotiations proceed it is expected to offer some devolution of powers within a federal constitution.

Such proposals are not new. Indeed, when she opened Parliament on January 6th, the president deliberately linked her peace efforts with the 1958 Bandaranaike-Chelvanayakam pact, an agreement negotiated (and then abrogated) by her father. It was the first serious attempt to strike a fair political deal between the majority Sinhalese and minority Tamils. Over the intervening decades, other doomed attempts to end the ethnic fighting have also involved proposing the devolution of power to regional units.

The main difference this time is that Mrs Kumaratunga is widely considered to be that rare thing: a Sinhalese leader willing to defy the petty dictates of majority chauvinism. But the dividends of her presidential victory will not last indefinitely. Stung by criticisms of its handling of the first talks,

the government has made it clear that it will not allow negotiations to drag on for months on end, as happened in 1989-90, the last time a government tried to reach a negotiated settlement. So if the Tigers continue to play hard to get, Mrs Kumaratunga could eventually be forced to seek support for her political proposals from other Tamil groups, while giving approval for a renewed military onslaught against the rebels. Whether that would be any more decisive than previous onslaughts is another matter.

— *The Economist*

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# Why Sonia is Angry

*Withdrawal of SPG cover to Rajiv Gandhi without provision of a suitable alternative for his proximate security by the Central Government resulted in reducing the level of his protection without any reduction in the threat to him. — Justice J.S. Verma Commission report, June 15, 1992.*

*SPG cover provided to Shri Rajiv Gandhi, as prime minister, ceased to be available to him after he demitted the office as per the provisions of the SPG Act. The alternative security cover prescribed for Shri Rajiv Gandhi was comprehensive and adequate to meet the perceived high level of threat. —Government ATR in the Lok Sabha, December 23, 1992.*

*The non-availability of SPG cover to the late Shri Rajiv Gandhi had resulted in some dilution in the quality of his proximate security arrangements. —Government ATR in the Lok Sabha, April 28, 1993.*

This reversal 20 months ago of the Government's stand on Rajiv Gandhi's assassination followed vehement protests from Congress MPs. The result is that the government is again under pressure, this time to book those responsible for the withdrawal of the Special Protection Group (SPG) cover from Rajiv.

Just a fortnight before he resigned last month, Arjun Singh made a strong pitch for action against V.P. Singh, the prime minister at the time of the withdrawal of the cover, at a meeting of the Group of Ministers (GOM), a cabinet subcommittee formed to take follow-up action on the Justice J.S. Verma Commission's report. But the other ministers, led by S.B. Chavan, overruled him and referred the question of holding V.P. Singh to account to the Cabinet, saying the GOM's brief was confined to dealing with errant officials.

The Sonia Gandhi camp is convinced of V.P. Singh's culpability, particularly because of the commission's findings. When Rajiv left office in December 1989, the then Cabinet Secretary T.N. Seshan instructed that the cover should continue till a fresh assessment of the threat to his life was made. But Seshan's successor, V.C. Pande, withdrew the SPG barely two months later for what Verma calls "tenuous" reasons: lack of authority under the SPG Act, inadequate strength of the SPG and Rajiv's high visibility — none of

which were considered "insurmountable hurdles" when SPG cover was extended to all the former prime ministers and their families in the wake of Rajiv's assassination. Verma concluded that the decision had been "prompted more by lack of proper perception or the requisite will than the stated difficulties".

Sonia is said to be galled at why nobody has been penalised for such a calculated lapse aimed at distancing Rajiv from the public. The commission's assertion that the alternative security cover was inadequate, despite "the proposals of the IB from time to time to provide former SPG personnel or an NSG escort", questions the intentions of the V.P. Singh and Chandra Shekhar governments. The last such IB message was sent on May 20, 1991, just a day before his assassination. And Rajiv himself had expressed his dissatisfaction with his security through letters written to the Government on his behalf by former minister P. Chidambaram and his secretary, Vincent George. Though the Rao Government has obtained explanations from the officers involved, it is still unsure whether there is enough material to chargesheet anybody.

The fate of the other commission set up to unravel the conspiracy behind the assassination is even worse. Its chairman, retired chief justice of the Delhi High Court, M.C. Jain, is yet to start his inquiry as the Government is holding back key documents stating reasons of state security. At the last hearing on December 19, the commission ordered the Government to specify by February 2 the documents on which it proposed to claim privilege.

The irony is that the commission had ordered the production of these documents at the instance of the Congress(I) itself. "It is a shame that the Government is not cooperating. The judge has to be trusted with the documents for him to unearth the truth", says R.N. Mittal, counsel for the All India Congress(I) Committee. There can be no better testimonial of the Government's bungling in the investigation of Rajiv's assassination.

## Bofors

The Narasimha Rao Government was always as evasive as the Rajiv Gandhi regime on Bofors. That is why opposition leaders were surprised when Parliame-

ntary Affairs Minister V.C. Shukla invited them on December 8 for a briefing on the Bofors investigations. And since this coincided with the Congress(I) debacle in the south, the meeting inevitably acquired a heavy political connotation. It was seen as a bid to pre-empt Congress(I) dissidents from rallying around 10, Janpath, the bungalow opposite Shukla's where Sonia Gandhi lives.

This was a welcome opportunity for opposition leaders to air their allegations against Ottavio Quattrocchi, close friend of the Gandhis and erstwhile New Delhi representative of the Italian engineering company, Snam Progetti. His involvement in the Bofors kickbacks became public only in July 1993, when the Swiss Federal Court dismissed all appeals against the release of the relevant bank documents to India. The Swiss authorities named him as one of the three principal appellants. The other two, Win Chadha and the Hinduja brothers, had already been implicated in the FIR lodged by the CBI in January 1990 under the National Front government.

The December 8 meeting saw opposition stalwarts such as Jaswant Singh, Ram Vilas Paswan and Somnath Chatterjee attacking the CBI for not arresting Quattrocchi, who left the country eight days after his name was made public by the Swiss. But CBI joint director R.C. Sharma, also at the meeting, said their hands were tied till the bank account papers, currently being sorted out by a Swiss magistrate, were actually sent to India. The documents are expected to establish his link with the Bofors kickbacks, since under Swiss law he would otherwise have had no *locus standi* to appeal against the transfer of information.

Though Personnel Minister Margaret Alva had already confirmed Quattrocchi's identity as an appellant about a year earlier in Parliament, Shukla's briefing went further — it was as close as any Congress(I) Government could have come to validating the seven-year-old opposition charge of political bribery in the Bofors gun deal. The Government expects the papers in another six months, blaming the Swiss for the delay. Whether or not that happens, Shukla's unprecedented briefing has clearly not gone down well with at least one of his neighbours.



# A Role for Lawyers ?

Neelan Tiruchelvam

South Asia has witnessed momentous political transitions during the last few years. In Pakistan, following the assassination of President Zia-ul-Haq, democratic elections were held in 1988 under a competitive electoral process, a popular government was installed. Pro-democracy movement in Bangladesh led to the appointment of an interim government under whose auspices free and fair elections were conducted. These elections facilitated the replacement of military regimes by democratically constituted governments, and in Bangladesh to a transition to a parliamentary form of government. Nepal also underwent dramatic political transitions to establish a multi-party state headed by a constitutional monarch. At the center of the South Asian region is India, a federal polity with a long tradition of representative institutions which have survived the continuing challenges of religious fundamentalism and sectarian violence. Sri Lanka also has been able to hold multi party elections which have led to the alternation of power between the major political parties between being besieged by two insurgencies and the militarisation of civil society. The South Asian region therefore is one characterised by extra-ordinary geographical, political and socio-economic diversity. Despite this diversity and complexity, it remains a region which has the largest population ideologically committed to periodic elections to representative institutions, fundamental rights and democratic freedoms. It is therefore a region of considerable importance in terms of constitutional experimentation, institutional reappraisal and renewal. Issues of constitutionalism, democratic transition, political accountability and human rights are the center of the political and intellectual agenda. Nepal enacted a new constitution based on popular sovereignty, multiparty state and enforceable fundamental rights. Bangladesh amended its constitution to move from a presidential to the parliamentary system of governance. However the minimum concerns between the government and opposition to sustain demo-

cratic forms is being rapidly eroded. In India the secular foundations of the state and the federal character of the polity has faced challenges by revivalist and secessionist movements. Pakistan is struggling to reconcile the contradictions of a constitutional framework which sought to graft a Westminster style government into a highly centralised presidential system. Sri Lanka is in the threshold of a new programme of constitutional experimentation. It should involve the repeal and replacement of the existing constitution. This exercise is intended to strengthen the existing Bill of Rights, democratised remedies, to institutionalise a federal form of devolution and to revert to a parliamentary form of government.

The purpose of this paper is to focus on the role of the lawyers in the process of democratic transition, and in strengthening of the structures of political and democratic accountability. The paper will examine the role of the legal profession in ensuring the integrity of the electoral processes and in safeguarding the protecting the sanctity of the ballot. Democratic forms of governance, draw their legitimacy from the will of the electorate. This in turn revolves on whether electoral laws and procedures are intended to ensure that an election is a genuine expression of this will. In many of our countries, democracy is often being limited to opportunities to participate in periodic elections with very few structures for continuing public engagement in the processes of national decision making. The paper would therefore address the problems and challenges of popular involvements in the legislative process and in the review of maladministration. Finally we will examine the role of lawyers in facilitating political pluralism, ie in the strengthening of civil society and the forms of associational life outside the state.

## **Integrity of the electoral process**

The SAARC Non-Governmental Observer Group has pointed out that "elections are the most visible and symbolic form of

political participation. Periodic, genuine and free and fair election are essential for the achievement of effective participation". The right to franchise has been conceptualised by some Asian constitutions and by political commentators as an integral component of the sovereignty of the people and as a basic human right on which all other rights — civil and political are dependent.

The criteria for the assessment of free and fair election was procedural and substantive. The procedural factors relate to the manner and form of voting, counting and the declaration of results. The substantive factors relate to the context in which an election is conducted and include factors such as the open and competitive character of nominations, the fairness of electoral campaign, determination of the right to vote and the impartiality of the electoral administration. The legal profession has been active in defining the legal framework relating to the conduct of elections and in ensuring that the process is free and fair.

One of the critical factors in South Asian context is to ensure that the government which conducts an election acts in a neutral, fair and impartial manner. These concerns become particularly important in situations where there has been a dramatic transition from authoritarian or military form of government to a more participatory and democratic process. In Bangladesh, the pro democracy movement was able to negotiate for an interim caretaker government headed by the former Chief Justice and composed of impartial civil servants. The primary responsibility of interim government was to oversee the conduct of parliamentary elections and to ensure that international and domestic observer groups were invited to observe the electoral process. Similarly in Nepal an interim government headed by Prime Minister Krishna Prasad Bhattarai and consisting of representatives of the Nepali Congress, Communist Party and independent

groups presided over a process which involved the enactment of new constitution and conduct of parliamentary elections. In Pakistan, the caretaker government headed by Moeen Qureshi conducted itself with considerable acceptance and there were few complaints as regards to the measures relating to the conduct of elections. The issue does however arise as to whether it would be legitimate to require that all elections conducted should be supervised by a neutral caretaker government, representative of the major political formations in the country. This is one of the critical issues in the present political unrest in Bangladesh where the opposition is demanding the holding of general elections under the auspices of a multi-party caretaker government.

Amongst the matters which relates to the fairness of elections is the need for an up-to-date electoral register to avoid multiple voting and the disenfranchisement of the eligible voters. Other factors which had traditionally vitiated the fairness of the electoral process are violence, intimidation, undue influence and bribery. The electoral campaign must be one in which competing political parties and the supporters are able to freely and openly hold public meetings, distribute election materials and canvas the electorate within the framework of the electoral laws. There has been considerable debate with regard to equal access to the electronic media and to ensuring the state controlled print media does not confer an unfair advantage on the ruling party. Similar concerns relate to equality of access to public resources and facilities such as public transportation, state vehicles and helicopters and access to public grounds and meeting places. The Elections Commission, the Police and the bureaucracy also need to ensure that they would conduct themselves in an impartial and fair manner regarding the enforcement of electoral laws and procedures.

One of the more significant developments within South Asia has been the cooperation within civil society institutions in observing the elections in South Asia. During the last six years, SAARC Non-Governmental teams have observed the Pakistan elections in 1988, 1990, and 1993, the Sri Lanka Presidential elections in 1988, the Bangladesh elections in 1991,

the Parliamentary elections in Nepal in 1991 and the Lok Sabha elections in India in 1991. One of the unforeseen consequences of these developments is that governments have tended to appropriate and centralize such election observation exercises. These developments have taken place particularly in Sri Lanka and Nepal where the government and the Election Commission have constituted international observer missions and provided these groups with the facilities to observe the elections. There are difficulties when the authority which conducts an election is also called upon to coordinate the observation and evaluation of its fairness. Regional and international observation exercises are credible when they are undertaken by independent non-governmental and inter-governmental organisations and the exercise is not dependent on the resources and facilities of the state. These exercises have also helped focus on the reforms of the electoral laws and procedures. For example, the interim government in Pakistan prior to the last elections introduced a new concept of electoral disqualification. This included the preclusion of individuals from contesting elections if they have defaulted on their bank loans. A similar development is the role played by the Indian Elections Commissioner to exclude communal parties from the electoral process and to ensure that Chief Minister and other incumbents do not enjoy unfair electoral advantage on the use of state facilities.

### Participation beyond representation

The process of law reform in most South Asian countries has not provided for the continuing engagement of non-governmental organizations and professional associations and other concerned members of the public in the legislative process. One of the important innovation in this regard has been the establishment of a law commission consisting of judges, lawyers and social scientists to undertake a systematic review of important branches of the law and to make recommendations for reform. In Sri Lanka the Law Commission was conceived as an independent entity and clothed with power of making recommendations directly to the Parliament. It was envisaged that in this process, the Commission would engage in extensive process of public consultation and discussions with concerned groups and individuals. This promise however

was not realised. The Law Commissions were primarily staffed by part-time persons who were unable to provide the sustained input which the tasks of reforms required. The Commission was also not supported by a team of researchers who were able to undertake interdisciplinary research on existing laws and their impacts.

The existing arrangement within South Asian legislatures to establish Select Committees with a mandate to examine proposals for reform and to consult the public on the desirability of such reforms has also proved to be ineffective. The Standing Orders of most South Asian legislature do not often provide for public sittings and public hearings. Concerned non-governmental organizations, academic and professional groups are also not adequately organised to intervene in the legislative process and to ensure that a range of opinion is placed before such Committees. There is an urgent and immediate need to rationalise and simplify parliamentary procedures with a view to ensuring that the deliberations of parliament are more open and accessible to the public. The public also need to enjoy access to draft legislation, reports and working papers on which legislative proposals are based. Registered non-governmental organizations and concerned groups should also be entitled to make written representations and submit material to legislative committees and ensure that such material are duly circulated. The Standing Orders of legislatures need to be amended to enable such concerned groups to also make oral representations to legislative committees and such representations should be given wide publicity. Facilities should also be provided for the electronic media to have access to legislative and committee proceedings.

A related concern linked to democratic accountability and public participation in representative institutions is the legal and policy framework relating to non-governmental organisations. Several South Asian countries have adopted a cautious and restrictive approach towards non-governmental organisations. They have generally viewed them with suspicion and introduced restrictive legislation relating to their registration, operation, their funding and financial reporting. Such restrictive legislation is found in Bangladesh and in



India. In Sri Lanka, a Presidential Commission on Non-Governmental Organisations has recommended a comprehensive scheme of regulation which includes mandatory registration and detailed and impractical financial reporting. Human rights organisations, environmental groups and developmental organisations projecting an alternative developmental vision have also faced other forms of harassment and intimidation by the state. The legal and constitutional framework of non-governmental organisations need to be strengthened with a view to protecting their freedom of operation and ability to recruit staff, mobilise domestic and external funding without state interference.

In countries such as Sri Lanka, the norms of democracy and constitutionality have long commanded a following among the Sri Lankan people despite the routine violation by the state. In South Asia in general the strong associational life of the urban middle class has provided a strong reservoir of resistance against authoritarianism. These associations have been ethnically heterogeneous and provided a base for political dissent and for a more dispersed civil rights movement. Similar counter state movement and social movements have successfully mobilised rural communities on environmental, developmental and human rights issues. The emergence of an independent civil society is therefore critical to the democratic development and lawyers have an important role to play in defining and protecting the autonomy of professional, civil, developmental and environmental organisation.

#### **Problems of transparency and accountability**

In addition to institutionalisation of a multi-party system protecting the integrity of the electoral process and strengthening popular participation in the legislative process, democratic developments call for more effective forms of accountability. Concerns of wide spread abuse of political power, maladministration and corruption have led to the need for new laws and institutions to combat corruption and correct maladministration.

Corruption erodes public confidence in the institutions of government, and breeds cynicism if there is a large scale of abuse of power at no cost or risk to those who abuse their powers. The co-existence of

private wealth amidst public squalour and deprivation erodes the legitimacy of the political system. The model of economic development which accords primacy to the market and to private sector development is one which is essentially driven by greed. Large scale corruption is not possible without the collusion between large private and often foreign corporations and public officials. Often the commissions are paid by foreign contractors, companies, and consultants who cynically view bribery as one of the costs of doing business in third world countries.

In approaching the task of reform we would ordinarily consult the best practice of countries which have successfully combated corruption. This practice would often reveal that sophisticated and strict legislation is along insufficient. There are many short term and long term measures necessary to complement such legislation. The first of such measures should include the review and reform of the laws and procedures relating to procurement and contracting standards. Similar review is required of disbursement procedures and audit requirements. These procurement procedures should wherever practicable be made applicable to private companies, public corporations and to privatised enterprises. These procedures need to be evaluated with respect to their transparency, the promotion of fair competition, the disclosure of objective and fair selection criteria, and the mechanisms for dispute settlement. In addition, we need to address the issues of civil service reform, which could enhance the professionalism, the remuneration, the morale, the motivation and accountability of the bureaucracy. We also need to encourage donors and recipient companies to exchange information on delinquent corporations and firms which engage in corrupt practices and to frame a black list which could serve as a deterrent to corrupt behaviour. There is a similar need to revise the professional and ethical standards and codes of conduct of professions; engineers, architects, accountants, lawyers to deter professional complicity with corrupt practices and to avoid situations where there is a conflict of interest. The Ministry of Justice must liaise with international watchdog bodies such as Transparency International. We need to encourage the creation of domestic watchdog bodies as vigiland and informed

domestic public opinion in the ultimate safeguard against the abuse of power.

In Sri Lanka's recent history of prosecution of bribery offences and investigation of abuse of power we have seen certain predictable cycles. In the early seventies we witnessed a vigorous if not overzealous enforcement of the Bribery Act, to be quickly followed by public disillusionment with the procedural excesses, in turn resulting in loss of confidence in the integrity of the judicial process. It was found during this period that deviations from the normal rules of evidence and procedure in respect of special cases such as bribery and foreign exchange violations, has a corrosive impact on judicial outlook in general, and inevitably affects public perception of the fairness and integrity of the judicial process. We saw a similar shift in public opinion when the Special Presidential Commissions of Inquiry Act was vigorously if not overzealously invoked in the late seventies to investigate abuse of power. Public concern quickly shifted from the issue of accountability of elective officials, to concern with issues of due process and fairness of these procedures.

The goal of creating an effective institution for the redress of administrative grievances has also eluded South Asia for many decades. From the mid fifties many South Asian students of public law have followed with great interest the office of the Ombudsman, an institution which originated in Sweden in 1809 for the purposes of receiving and investigating complaint from citizens against unjust administrative action. This institution was subsequently adopted by Finland in 1909 and spread to Denmark, Norway and New Zealand. Even the United Kingdom which had for many years resisted this institutional innovation established a Parliamentary Commissioner for Administration in 1967 and a Commissioner for Local Administration in 1974 to remedy injustices caused by maladministration. There was however an important conceptual difference between the institution of the Ombudsman as it operated in Scandinavia from that in Britain. In The Scandinavian model, the Ombudsman was conceptualised as an institution which was independent of existing political and administrative agencies while in the British model the Ombudsman was conceived as an adjunct to Parliament. The Sri Lankan experiment

with the institution has however floundered between these two models.

There are number of reasons as to why the Parliamentary Commissioner for Administration in Sri Lanka whose office was established in 1981 has failed during the last 13 years of fulfil the expectations of the public of an independent, impartial and informal watchdog against mal-administration. Firstly, the Office of the Ombudsman was essentially a very personal institution which derives its strength from the personality, the vision and vigorous commitment to the value of justice and fairness which are critical to the office. I do not think that governments have attached adequate importance to this office in the selection of the Parliamentary Commissioner of Administration and in the financial and human resources that have been placed at his disposal. Secondly, public understanding and confidence in the institution of the Ombudsman is limited. No meaningful program of public education has been undertaken and those who are aware of the institution have a negative view of its effectiveness. This is particularly marked in the case of the fundamental rights as for years the Ombudsman received no complaints of abuses of fundamental rights. Thirdly, the Ombudsman had an ambiguous relationship in a presidential parliamentary system. His appointment is made by the President and is accountable to Parliament. The principal Act now being amended envisaged a close link with Members of Parliament and the Public Petitions Committee. But this link has proved to be more formal than real. The Public Petitions Committee has not provided the legislative overview that the Select Committee on the Ombudsman has provided in the UK Parliament. In the circumstances, the authority of Parliament has not been invoked to give teeth to the Ombudsman, and there has been little legislative interest in the reports of the Parliamentary Commissioner and his recommendation. It is also significant that despite the explicit requirement of the law that the Ombudsman shall at least once in every calendar year send to the President and the Parliament a report of the work done, there were only two such reports which were presented. Fourthly, a very important aspect of the jurisdiction and powers of the Ombudsman related to administrative practices which were unreasonable, discriminatory

and oppressive. There has been no meaningful impact of the office of the Ombudsman on the review of such practices. In Sweden the penal system was reformed as a result of the work of the Ombudsman. In New Zealand, Ombudsman's recommendations had a significant impact on the reform of administrative systems.

### Conclusion

While being sensitive to the specificities of the national context, some general perspectives may be offered which distinguish the South Asian experience with democracy.

First in South Asia the strength and vibrancy of institutions such as the party system, the bureaucracy, the judiciary and the press is partly the result of long experience with universal adult franchise and competitive political processes. This tradition of political democracy enabled the legal constitutional order to withstand periodic challenges from insurrectionary movements, coup d'etat, or subversion of constitutional values and institutions by the ruling elite. This is probably less true of Pakistan and Bangladesh where there had been a break in constitutional continuity with forcible seizure of power by the military. However, even in these countries the institutional legacy and the legal and bureaucratic culture of the pre-authoritarian years retained some resilience and helped mediate the recent transition from authoritarian rule. In comparison the democratic has been more fragile and vulnerable in Africa, South-East Asia and even in parts of Latin America.

Secondly, despite the apparent resilience of political institutions and processes, South Asia is in the process of a major upheaval where there is a continuing effort towards redefining the nature of the polity, and the relationship between the different religious, ethnic communities, tribal and caste groups. The political compact which followed the transfer of political power provided a framework for the resolution of inter group tensions. This framework no longer seems to hold and the concepts which were at the centre of the compact are being rejected. In India, the balance between different communities differentiated by religion, ethnicity and caste were sustained by concepts such as fede-

ralism, secularism and affirmative equality. The political consensus on these issues soon became eroded, with the inability to agree on alternative arrangements causing social upheaval. Revivalist and fundamentalist forces have also called into questions the state's commitments to secular principles. The state is no longer viewed as the neutral arbiter between competing religious claims, and is being increasingly called upon to preferentially support the religious beliefs, institutions, and places of worship of a resurgent majority. There is a growing realization that there can be no finality in the resolution of these questions and that there would be constant need to renew and reconstruct societal arrangements for the resolution of inter-ethnic and inter-group conflicts. In South East Asia, Africa and Latin America there is less agonising reappraisal of the basic relationship between groups and the very nature of the polity. The question of inter-group conflict seems less central to the process of constitutional and democratic reconstructions in Latin America, East Asia and (with the exception of South Africa), even possibly Africa.

Third, there is a much greater extend the element of civic participation, through human rights groups, and social action organizations engaged in creative interactions with journalists and lawyers towards redefining the constitutional agenda and the nature of the discourse. In India the emphasis on socio-economic rights in the enforcement of fundamental rights was partly the result of this process. It is thus clear that constitutional imagination and innovation is no longer the sole monopoly of law professionals or party leaders, and that all elements within civil society can play a part in expanding the frontiers of fundamental rights. It is not clear whether such civic involvement in expanding the base of democratic legitimacy is as pronounced in other Asian, African or Latin American experience.

The legal profession in South Asia faces the dazzling and yet daunting prospects of reconciling the challenges of a reawakened civil society and the disintegrative process of ethnic and religious fratricide with the imperative of modern nation states. This is an opportunity which needs to be grasped.



# An 8 - Fold Path to Peace

## (A Memo on Peace-Making and Constitutional Reform)

— World Solidarity Forum Sri Lanka Group —

### PREAMBLE

#### Inter-related Process

In working for peace there are a number of factors that have to be considered together, as peace is an inter-related process involving diverse factors. Neglect of any of these factors will mean that there will be blocks in the way and no real progress towards peace.

For instance, a common mistake made by some of those concerned for peace is to stress only the problems of the Tamils, overlooking that the Sinhala people have problems too. Similarly, some Sinhala people protest that the Buddhist religion and the Sinhala language are in danger and must be protected at all costs and do not recognize the dangers faced by the Tamil people. Different sections of the people have to listen to each other's point of view and recognize each others' problems. Also they all have to recognize certain common needs and tasks.

#### Terrorist or Ethnic Problem?

Then, the complex nature of the cause of the conflict has to be recognized. It is often debated as to whether it is a terrorist or an ethnic problem. **Actually, it is first of all and, basically, a social and economic problem, secondly, an ethnic problem and thirdly a terrorist problem.**

There was a steady deterioration of social and economic conditions over a period, which reached a crisis at the end of the nineteen sixties, with the failure of the green revolution and the exhaustion of external financial reserves. From this time Sri Lanka started getting into debt. Unemployment, especially among the youth, reached serious proportions.

The attempt of leftist parties and progressive forces since the nineteen thirties and before to put forward an alternative path of development did not come to fruition, though there were important gains in many other ways. They were not able to obtain state power because of the strength of the forces ranged against them. These forces were backed by the violence, hidden and indirect, of the structures of the State system as a whole, which was also shown from time to time in open, direct acts of violence, as for instance in the repression of certain legitimate strikes and demonstrations. It was this context of state terrorism that gave rise to the counter-terrorism of the JVP, as certain of the youth could see no other alternative.

In the case of the minorities, especially in the north-east but also in other parts of the country, the social and economic crisis was accentuated by the ethnic factor. In a deteriorating economic situation, competition was intensified and the minorities having less numbers, less bargaining power, suffered most. In the spheres of education, employment opportunities, land and language rights, the minorities were considerably disadvantaged. **This is why the ethnic factor is an extremely important dimension in the conflict.** Attempts to gain their rights through substantially peaceful means such as satyagraha and civil disobedience campaigns met with violent repressive action from the state and so failed. This was the context in which Tamil militants took to arms. Once again it was state terrorism that gave rise to the terrorism of the militants. So the terrorist dimension also came into the conflict.

### Noble Eight-fold Path

We have called these eight musts for peace "a noble eight-fold path" because they emphasize the need for a combination of right thinking, right action and right contemplation. **It has to be a "middle path" between extremes of thought and action.** Then, the situation we are confronted with is one of extreme violence, break-down of law and order, collapse of moral standards and wide prevalence of corruption. **So the search for peace has to be nourished by the best traditions of ancient religion and culture as well as by the best traditions of modern secular philosophies:**

"We shall have to mobilise  
all our resources,  
resources of people,  
masses of people on both sides,  
manipulated and used by leaders  
for their own ends,  
but retaining despite the stresses and strains  
a basic humanity and compassion,  
we shall have to mobilise  
resources of true dharma,  
of temple, kovil, church and mosque,  
renewed and integrated  
in the context of modern aspirations  
for justice and liberation,  
acted out in understanding and love".

**From "Tell the People the Truth" A Collective Appeal**

\* Signatories: FULL LIST NEXT ISSUE

## 1 LEADERSHIP

### Need of the hour

The prime need of the hour is for far-sighted leadership. Not just one leader, though one leader may play a major role. In South Africa, the situation of violence in ethnic conflict was probably worse than anywhere else. The need of the hour produced Nelson Mandela. But that would not have been enough. On the other side there was F.W. De Klerk. In Sri Lanka, there are several power-centres, both secular and religious, involved in the conflict. **Let us hope that the desperate situation the people are in and the desperate need for peace will bring forth leaders on all sides who will respond positively to the need of the hour.**

## 2 THE MAJOR PARTIES MUST AGREE

### National Perspective

The UNP and the SLFP must agree on the peace settlement. S.W.R.D. Bandaranaike of the SLFP in 1957 and Dudley Senanayake of the UNP in 1965 put forward basically similar plans for devolution and autonomy within a unitary state and a united Sri Lanka, which were accepted by the minorities. On both occasions they were forced to withdraw them because the main opposition party at the time opposed it for reasons of political expediency. So the conflict has dragged on. **We must learn our lessons from that. We do not want a repetition of that folly.** Now both parties have almost equal representation in Parliament. It will not be sufficient to rely on the Tamil minority votes to achieve a settlement. **Both major parties must agree.** What is needed now is substantially the same as both Bandaranaike and Senanayake proposed. The vast majority of the people of Sri Lanka will support this, if it is properly explained to them. **If the leadership of both parties stand firm together, the small minority of extremists on both sides will be powerless to obstruct a settlement.**

**What is needed is not a national government but that all parties and groups should view the ethnic question from a national perspective. No party should seek partisan political advantage in the search for peace. The quality of leadership of the President or**

**Prime Minister will be seen in his or her ability to mobilise a collective leadership and a collective solution for peace.** There must be a readiness on all sides to make concessions as well as receive benefits. Different communities, parties and sectors can preserve their own distinctive identities and reserve the right to work for their own long-term social and political goals and yet be prepared to make real sacrifices and concessions in the present, in order to put a stop to the seemingly endless slaughter and destruction and enable progress towards development and peace.

## 3 ASSURANCE TO THE MAJORITY

### Essential Inheritance

No peace settlement will be effective if the Sinhala majority does not support it. So the Sinhala majority has to be assured that the essential character of Sri Lankan society, the essential inheritance of religion, language and culture, safeguarded through the centuries, is not diluted or diminished but preserved and developed.

For this there must be a special place in the Constitution for the Buddhist religion, as at present. **This is not a chauvinist position. This is a realistic recognition of a long, historical, special connection of Buddhism with the State.** What is chauvinist is to stress this without also stressing in practice as well as in theory the place due to other religions. This Memorandum on Peace clearly sees the need to resist chauvinism of what-

\* Chapter II Buddhism. 9. The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14 (1) (e).

Article 10. Every person is entitled to freedom of thought, conscience and religion including the freedom to have or to adopt a religion or belief of his choice.

Article 14 (1) (e). Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

Constitution of the Democratic Socialist Republic of Sri Lanka. 1978.

ever kind and stands firmly for the rights of the minorities. But though the principle of equality is important, its application involves taking into account the social realities outlined below. And giving a special place to a large section of the people for a just reason does not run counter to the principle of equality of persons, as long as the due or equal rights of other individuals in the country are respected. In fact, it is a part of respecting the due or equal rights of *all* individuals in the country.

It is said by those who oppose this that the Constitution should be a secular one, as in India, and it should be absolutely neutral on religion. This is said to be a necessary part of the important modern, secular principles or values of equality and non-discrimination. It is also questioned why there should be a need for a majority to have any special safeguards in the Constitution.

With regard to the Indian model, it was, of course, a secular constitution but its attitude to religion could not be said to be absolutely neutral, and the attitude of one of its protagonists, Jawaharlal Nehru, could not, by any means, be said to have been exclusively secular. It recognized the importance of religion and emphasized freedom to practice one's religion. However, the continuing religious conflicts in India are an indication that a secular constitution did not meet India's need and that a more positive recognition of the role of religion was needed.

**So it is essential that in Sri Lanka both religious and secular principles and values are positively enshrined in the constitution.** Outworn concepts and superstitions should, undoubtedly, be shed but the constitution should not only be based on the best modern egalitarian and libertarian principles and values but it should be firmly grounded in the true, national, indigenous religious and cultural traditions of the country.

### Signs of Oppression

With regard to the questioning of the need for a majority to have special safeguards in the Constitution, it must be pointed out that the Buddhist religion and the Sinhala language were not only severely oppressed for centuries under imperial rule. Independence has not brought substantial relief. There are still marked signs of oppression. One striking instance of this may be mentioned here. Even under a Sinhala majority dominated Gove-



ment, Sinhala youth in the South were decimated in two uprisings in 1971 and 1987. So the development of the Sinhala masses in the South cannot be taken for granted just because they are a majority.

The truth of the matter is that it is only an elite minority in all three communities, Sinhala, Tamil and Muslim, that enjoy special privileges and advantages. The masses of all three communities, despite certain advances since adult suffrage, and despite a certain national revival, have been basically underprivileged and deprived and the youth of all three communities have been specially under-privileged and deprived.

So it is not unreasonable or unfair that Buddhism be given a special position in the Constitution. What is unreasonable and unfair is that there has been a small vociferous minority within the Sinhala majority that has been advocating the case for the Sinhala majority in a belligerent manner, without due sensitivity and concern for the sufferings and needs of the minorities. And continuous undue prominence given to their views in certain sections of the media has spread wrong ideas fairly widely among the people and, on occasions, inflamed opinions to an inordinate extent, leading to violence and destruction.

#### Desire for peace

But, by and large, the masses of the people are not war-mongers. They undergo suffering and are sensitive to the sufferings of others. They want peace and a reasonable settlement. Under-privileged and deprived people are, basically, ready to recognize the needs and rights of other under-privileged and deprived people. Further, the experiences of 1983, and even before that, and, especially the bitter experiences and disastrous effects of the war during the past ten years have taught people to mistrust chauvinistic leaders and they are no longer so susceptible to be manipulated by them. Some Tamil intellectuals have been heard to say that the Sinhala masses no longer attack the Tamils because they are afraid of Tiger reprisals. We don't think that such views are held by Tamils as a whole. They are an unworthy slander on ordinary people, whether Sinhala or Tamil. They show an abysmal ignorance of the strength and depth of character of the Sinhala people. In our WSF/SL house-to-house peace walk in the Sinhala village of Divuldamana

on the Sinhala side of the Polonnaruwa-Trincomalee border, within sight of the Thoppigala Tiger Camp, we came across peasant families, members of which had been killed or maimed. They were homes that no politician had ever visited. The families were able to discuss the problems of war and peace with us without any bitterness or rancour. They did not ask for revenge. They asked that the leaders of both sides come to a peace settlement as soon as possible, so that they can work their fields in peace. In our dialogue with Tamils, who had suffered in different circumstances on the other side of the border, we found the same attitude, the same desire for peace.

So the minorities, too, must be given their due place. Not, of course, as a concession but as a clear, unequivocal right. The minorities must recognize the true situation of the majority and the majority must recognize the true situation of the minorities. Then mutual trust can be built. **It is only when mutual trust is built that fair constitutional arrangements can be made and peace becomes workable.**

## 4

### ASSURANCE TO THE MINORITIES

#### Just Rights

The minorities must be assured of their due place, their just rights both in the constitution and in actual practice in Sri Lanka. Their identities, their religious, language and culture must have their due place and just rights.

#### Misunderstandings

There are certain misunderstandings current about the minorities among certain sections of the Sinhala people. It is said that the idea that Tamils do not have their just rights is a fiction. As evidence of this they point out that Tamils have had a share in education, business, land, employment in public service, diplomatic missions, etc., far out of proportion to their numbers. This was true, to a certain extent, because of the imperialist policy of divide and rule and concentrated missionary educational effort but, after Independence, there has been clear discrimination and the proportions have been drastically reduced, in certain areas for below due proportions. Even now, no doubt, certain Tamils are in privileged

positions but as it has been already pointed out it is the elite minority in all three communities that have special privileges and advantages and the masses of all three communities are basically underprivileged and deprived. And, it must be added, that the minorities by the fact of being minorities and thus having less bargaining power are even more underprivileged and deprived.

Then it is said that the Tamils can live freely and own land anywhere in the country but the Sinhala people cannot live or own land in the North. But this is true only to a very limited extent. Large numbers of Tamils are displaced and live as refugees in the North and East, in the rest of the country and in foreign countries. Many of them have to undergo extreme hardship. In the North, ordinary citizens live under hard conditions of war. In the East, it is a condition between war and peace. Even in the South, large numbers of Tamils, especially the youth, live in conditions of great insecurity and many of them are subject to harassment in police operations of cordon and search, etc.

The Sinhala people were able to live freely in the North and it was possible for them to continue to live in the North even as late as towards the end of 1984. The Thesawalamai Law is commonly misunderstood to preclude ownership of land in the North. But this is not so. It is a personal law which has a bearing on a restricted aspect of civil law. There were Sinhala people who lived and owned land in the North. But the escalation of the conflict over a period of time as a result of the basic problems not being solved led to a situation where it was no longer possible for Sinhala people to live in the North. Successive Sinhala-dominated Governments must be held responsible for this. There were basic discriminatory legislative enactments and actions such as the 1948 and 1949 Citizenship and Election Amendment Acts (disenfranchising up-country Tamils), the 1956 Official Language (Sinhala only) Act, abrogation of the pacts with the Tamils of 1957 and 1965, the adoption of media-wise standardisation and the district quota system in university admissions in 1971 and 1974, the 1972 and 1978 Constitutions which omitted special legal safeguards that were in the Constitution of 1948 and accorded a special place to Buddhism without a due recognition of minority rights in practice. Attempts by the Tamils to protest against

such discrimination by satyagraha and civil disobedience campaigns were met by violent repression. There were repressive measures and pogroms (attacks) against the Tamils in 1956, 1958, 1961, 1966, 1972 - 1977 (Tamil areas in the North - East placed under military rule leading to arbitrary arrests, detentions without trial and harassment of the civilian population), 1974, 1977, 1979 and 1983. In the face of these continuous onslaughts the non-violent satyagraha option failed. The younger elements took over and violent militant action was adopted. State terrorism was met by the terrorism of the militants. A state of war resulted. Terrorism cannot be condoned, whichever side indulges in it. Looking back, it is possible to see adoption of wrong strategy and methods at various points on both sides, but successive Governments have to accept primary responsibility for the continuing conflict.

Further, the majority community, on the whole, have had little understanding of or have closed their eyes to the desperate plight of the people living in a state of war in the North. Normal civilised life is severely disrupted. The transport system completely paralyzed. Telephones have not been operating for over eight years. There has been no electricity for over four years. Food and medicines have been extremely scarce and prices have risen several-fold. At one time a reliable official source disclosed that Jaffna was getting only 1/3 of its essential food needs. For some considerable time now over 40 essential items of various kinds, such as kerosene, matches, torch batteries, have been banned. Worst of all is the fear under which people live. There is no real government there. The people are alienated and neglected. But, nevertheless, of course, life has gone on. Stories of heroic responses in many varied ways, which have enabled the people to survive, will one day be told. Now, the Government, after the Election, has begun to make positive moves for peace and there is much hope.

It has been necessary to put down the above facts in some detail in order to clear certain common misconceptions and make it possible to show what is involved in giving Tamils their due place and just rights. It is also said that whatever rights the Tamils may have lacked in the past, certain concessions in the recent past have set it right. Tamil has been made a national language. Quotas and percentages are said to have been worked out for university admissions and jobs. There are

special departments for Hindu and Islam affairs. All that is necessary is for the war to stop and everything will be alright. However, this cannot be said to be sufficient remedy. **Implementation of rights and concessions lags far behind reasonable expectations and needs. Hand-outs from the Sinhala majority to the minorities will not suffice. The Tamils must have a system and a structure that will accord with their self-respect and be effective. The Tamil community will need a contiguous and viable unit of devolution to develop itself. It should be an autonomous unit within co-existence and inter-dependence.** The Sinhala and Muslim communities must be realistic and accept this. The history of the last four and a half decades since Independence has shown that a rigid unitary system cannot accommodate the just demands of the Tamil people. At immense cost and sacrifice the Tamils have fought for their right to a separate existence with self-respect. History cannot be turned back. They cannot be expected to renounce all that they have gained that is, a certain de facto achievement of separation and a fairly strong bargaining position, and passively fit in once more to a rigid unitary system, with hand-outs to the minorities at the will of the majority.

On the other hand, the Tamils should understand that Sri Lanka is a small country very different to the case of India, where division took place. The Tamils cannot expect the Sinhala people to consent to its dismemberment. Geo-political realities of the Indian subcontinent would also stand in the way of this. Further, neither Tamil nor Sinhala people would gain by the division of such a small country but on the contrary stand to gain by being united.

Fears that devolution would lead to division or separation are unreasonable. The reality that has to be faced is that there is a very considerable de-facto division now because of the war and only a fair devolution in a spirit of mutual confidence can restore peace and unity.

### Creative Alternative

There is a dead-lock on the question of devolution in the north-east. Should it be merger or demerger? What is needed is a creative alternative, a new perspective, a new approach that can achieve a break-through. The concept of a unit in the north-east and not of the

north-east, with negotiation as to its size and boundaries and other problems involved, could point the way forward.

Special provision would have to be made for the Sinhala and Muslim communities to ensure their rights. Zonal Councils (sub-units) within the unit of devolution could be set up. Fears have been expressed that the minorities in this unit would be oppressed and that this would be a continuing sore in the body politic. But just as minority Tamils and Muslims have to be assured of their rights in the south so Sinhala and Muslims can be assured of their rights in the north-east. Mutual confidence and a spirit of give and take can be built that will make possible a reasonable settlement which is acceptable to all parties. The present approach of the Government which is making certain peace moves step by step seems to be the right approach. It will not be easy, but if there is the political will on both sides, real progress can be made.

The present demarcation of provincial boundaries is a British legacy and therefore out-dated. This would be an opportunity for a fresh demarcation of boundaries which would enable a more equitable and realistic distribution of coast-line, water and other resources, as well as taking into account the ethnic factor. The number of units could be reduced from nine to five to ensure greater viability of the units. Certain areas in the East, where Tamils predominate, could be included in the re-demarcated north-east unit and areas where the Sinhala people predominate (Amparai) could be included in one or more of the other units. The needs of the Plantation Community must be considered too and, may be, a special Zonal Council (sub-unit) designed for them. It must be emphasized here that devolution of power is intended for the development of all the peoples of this country both in the north-east and in the south, the majority as well as the minority communities.

### Eelam

A word may be said here about what is referred to as the "Traditional homeland of the Tamils or Eelam" and the question of "Self-determination". This is sometimes discussed in the abstract and exaggerated figures are quoted, resulting in unnecessary controversy. No doubt, the Tamils should have the right of determining their own future but in so far as that relates to matters that concern both the Sinhala and Tamil peoples, especially with regard to



the question of land, it would be fair to both sides to decide on such matters by negotiation. All could accept that, whatever the position in certain periods of history, in the perspective of the history of Sri Lanka taken as a whole, Sri Lanka belongs to all the peoples who inhabit it. What the Tamil people need, as pointed out earlier, is a contiguous and viable unit of devolution to develop themselves. This will involve a reasonable extent of land, which could be negotiated with the Sinhala people, within co-existence and interdependence. So there need not be any controversy over "traditional homelands" or "Eelam" or "Self-determination".

### Peace Proposals

What has been said under 3. Assurance to the Majority and 4. Assurance to the Minorities is summarized in the following extract from the Peace Proposals of the World Solidarity Forum for Justice and Peace in Sri Lanka, Sri Lanka Group (WSF/SL):

"All parties and groups and all the peoples in this country support reasonable and effective devolution of power and autonomy, with co-existence and mutual interdependence, which will:

- (a) Preserve the unity, sovereignty and territorial integrity of Sri Lanka.
- (b) Enable revision of the Sri Lankan Constitution to make devolution of power and autonomy central features of it.
- (c) Recognize the democratic and pluralistic character of Sri Lankan Society and enshrine core values, both religious and secular, in the Constitution. The Constitution should have a Bill of Rights that is justiciable.
- (d) Meet the basic demand of the Tamils for a contiguous and viable unit of devolution in the North-East, with negotiation as to its size and other problems involved.
- (e) Assure the Sinhala people that the essential character of Sri Lankan Society, the essential inheritance of religion and culture, safeguarded through the centuries, is not diluted or diminished, but preserved and developed.
- (f) Assure the Muslims that their rights will be protected in whatever part of the country they reside. Such assurance may include special provision

such as a Zonal Council within the unit of development in the North-East. The rest of the peoples of this country need to take more seriously the recent catastrophic suffering of the Muslims in the North and East.

- (g) Assure Sinhala and Tamil people also of their rights in whatever part of the country they reside. This may include special provision such as Zonal Councils within the unit of devolution in the North-East.
- (h) Make clear that plurality is not a disadvantage that leads to dilution or diminution but an asset that leads to greater richness and unity in diversity".

### Models for Constitutional Reform

As regards the type of constitutions which would enable effective devolution of power, there appears to be two alternatives.

1. A Unitary Constitution, with special arrangements for effective devolution of power to regional units on the lines of the 1987 model, would be most acceptable to the majority because a Unitary Constitution would seem to be the most likely to ensure the unity, sovereignty and territorial integrity of Sri Lanka, which the majority is most anxious to preserve.
2. A Federal Constitution would have most chance of acceptance by the minorities, because the whole concept of devolution of power is integral to a Federal Constitution and that is what the minorities need most.

It is worth mentioning here that when the Tamils put forward their plan for federalism, their leader, S.J.V. Chelvanayagam, made a notable statement (1.6.1960). The following are 2 extracts from this:

"What the Federal Party looks forward to under federalism is a United Lankan State. So the Federal Party hopes for full solidarity, fellowship and unity among the Sinhala and Tamil speaking people."

"What the Federal Party says is that a reasonable portion of their traditional homeland be given to the Tamil-speaking people. And even in this only for purpose of education, health, local government, land development, irrigation

etc. which are important for these areas."

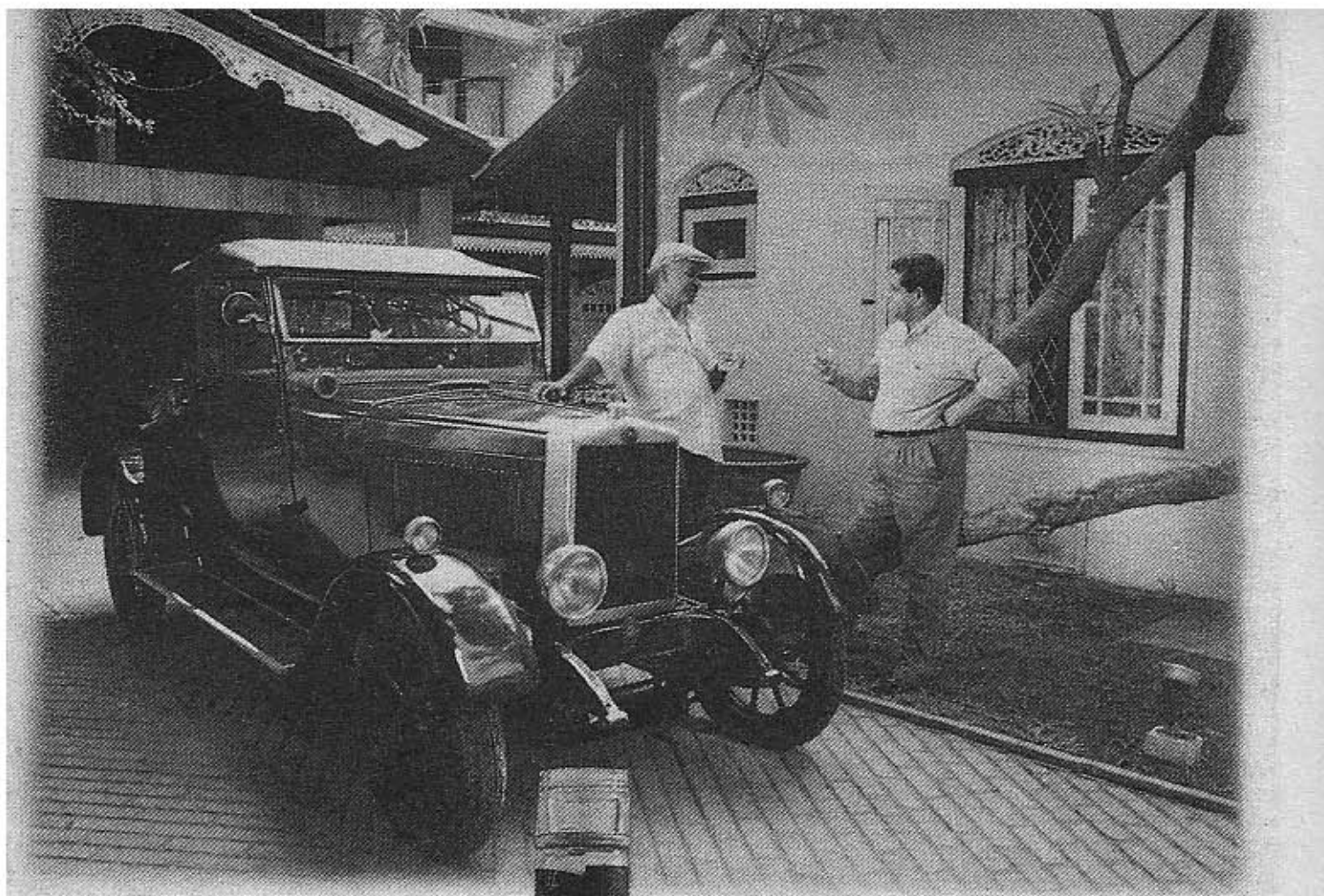
That was the Federal Party plan. The vision was a United Sri Lanka. But racist elements among the Sinhala leadership and certain powerful sections of the national press persisted in continually branding it as a demand for division and separation. So no progress could be made towards peace and the word federalism came to be looked upon as a dirty word among many Sinhala people. But in many countries of the world, both large and small, it has been found to be a good form of government, especially useful solving the problems of minorities within a united state.

Whether it should be a United or Federal Constitution should be the subject of negotiation between the Government and the minorities. Will the minorities appreciate the practical difficulty of the Government in adopting a Federal Constitution because of the strength of racist prejudice and propaganda among certain sections of the Sinhala people and agree to accept a Unitary Constitution, which assures them the reality of devolution of power? Is the Government sure enough of the support of reasonable and moderate opinion among the generality of the Sinhala people to agree to adopt a Federal Constitution? These will be the issues at stake.

Whatever the type of constitution, it is essential that there should be substantial support from parties and groups and peoples in this country for reasonable and effective devolution of power and autonomy, with co-existence and mutual interdependence. 1987 and all efforts before that were nowhere near adequate. There must be the reality of devolution of power to the unit in the north-east, as well as to other regional units which would enable autonomous development of resources.

The effectiveness of devolution of power as well as the preservation of the unity, sovereignty and territorial integrity of Sri Lanka would depend on a well thought-out division of power between the Central Government and the Unit in the North-East as well as the other Regional Units, that is, devolution of power to the Units and reservation of powers with the Central Government. This also would have to be subject to negotiation. Subjects such as Trincomalee Port and Land Settlement would need special negotiation.

(To be Continued)



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# The law and racism: the Australian experience

Laksiri Jayasuriya

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## Introduction — an overview of 'race' and racism

Racism in Australian society is not something new and surprising. For a variety of historical and socio-political reasons it has existed from the earliest days of colonisation, and there have been a variety of strategies tried over the years to deal with racism as a social problem. One strategy most frequently resorted to, especially in recent years, has been to use the law as a means of combating racism. Before considering the questions of law and racism, we need first to clarify what we mean by the term racism.

Definitions of racism abound, some are helpful, and others less so. 'Race' and Racism are in short highly contested issues. What the term 'race' does is to provide a unit of classification for categorising the world's population in terms of inheritable characteristics (e.g., physical features, descent, blood type etc.) and these in turn are presumed to determine human abilities and other aspects of group culture. These accord with the popular view that human beings are separable into racial types which are permanent and enduring, and that human abilities are determined by 'race'.

The concept of 'race' itself has undergone many changes in scientific theorizing and the current state of informed opinion is best expressed in a UNESCO statement (quoted in Jayasuriya 1991). This statement is quite critical of attaching too great a biological meaning to the concept mainly because the difference in genetic structures within a population group are as greater or even greater than those between two population groups. Therefore, whatever the differences observed, the science of human biology affords little justification for establishing a hierarchy

between individuals or population groups, since no group possesses a consistent genetic inheritance.

What this UNESCO statement does is to assert the basic biological unity of humanity. So what we end up with is the view that 'race' like ethnicity is a 'social construction' which subsumes a set of beliefs and resulting social practices such as negative attitudes, prejudice, discrimination and criteria for inclusion/exclusion in a given society. Consequently, what we have are racial ideologies; in short, as Miles puts it in, in the popular consciousness this construction is basically a process by which the 'Other' is constructed. According to Miles (1982), racism is the 'process of "racial" categorisation, whereby distinct cultural or ethnic groups are racially categorised by being presented as phenotypically different'. Thus, from the earliest days in Australia, according to Humphrey McQueen, the notion of 'race' came to mean any cultural or linguistic group which was popularly labelled in this manner. As a result, we had an Irish 'race', a German 'race', and even an 'Anglo-Celtic race' (!) depending on the location and politics of the speaker.

Whatever it is, or however we use the term, the distinctive feature of racism as an ideology lies in the notion of racial inequalities: the view that some races are superior/inferior in terms of a hierarchic ordering. To be more precise, what the doctrine of racism does is to characterise groups that are essentially the result of social and historical processes as biological or pseudo biological groupings. Furthermore, racism as an ideology ascribes negatively evaluated characteristics in a deterministic manner to these biological groups that abilities and other cultural features are determined by 'race'. These

perceptions as inaccurate and derogatory stereotypes have an effect on our behaviour and the way in which we view the world; and the net result of this is that we engage in advocating or espousing racist belief and indulge in racist behaviour such as: incitement to hostility and hatred on account of one's 'race'. In other words it leads to a *racism* which advocates the dogma that some 'races' will always be inferior/superior for biological or pseudo biological reasons.

Sometimes the term 'vulgar racism' is used to characterise these extreme forms of racism, involving the dissemination of violent propaganda with a view to inciting racial hatred and violence (Radis). It is these 'public acts' of racism, such as racial harassment, vilification and violence, that have been matters of public concern in several countries as warranting social interventions at various levels e.g., preventative strategies, protection of victims and imposition of sanctions against perpetrators of violence and discrimination.

It may be asked why racism in whatever form it is manifest, e.g. as racial vilification or 'hate speech' and incitement to racial hatred is considered to be an issue of social and legal concern. An obvious and direct answer is that in a free and democratic society which guarantees basic individual rights and freedoms one needs to invoke the protection of the law to safeguard the inherent dignity of the human person as well to maintain public order. In this regard, one could argue against the need for special legislation or 'dedicated legislation' covering racial hatred or group hostility by subsuming these kinds of conduct under existing laws such as the law of defamation or law of sedition, blasphemy, assault, spreading falsehood etc. However, as Melinda Jones (1993)

explains, these strategies which endeavour to use existing laws or to bolster existing laws, are fraught with difficulty. For instance, in the case of invoking a charge of seditious libel making racial vilification a punishable criminal offence, one needs to be able to show that the offensive language or utterance was 'calculated to promote public disorder'. Another possibility is to extend the law relating to defamation to cover groups; but this becomes problematic because it involves invoking some notion of 'group rights' to cover defamation of an individual as a member of a group.

While these legal strategies, whether through the criminal or civil law, are still available, significant developments in international law — such as the enactment of international conventions relating to human rights and the wide community acceptance of the values and principles of a multicultural society, such as equality of respect, tolerance and understanding, have led to the introduction of 'dedicated legislation' dealing with racial discrimination harassment and violence as a special category of law. As the recent Human rights and Equal Opportunity Commission (HREOC) Report on Racist Violence (1993) points out, existing common law remedies 'do not provide a definite enough remedy for the harm caused by words and actions of a racist nature' (p. 278). Hence the need for 'dedicated legislation'.

This paper examines the way in which Australian society has responded with legislative safeguards to deal with the harmful manifestations of racism such as disharmony, hatred, conflict discrimination and in its extreme, forms of racial violence. In the first part, the paper considers Federal and State based legislation up to 1990; the second part reviews briefly some more recent initiatives, and concludes with an overview of the role of the law in dealing with racism.

## **Federal legislation relating to racism**

### *The Racial Discrimination Act of 1975*

The history of the Australian experience in dealing with racism as a social issue

and a matter of public concern goes back a long way but its recent history dates mainly from the time of the introduction of the **Racial Discrimination Act** in 1975 (RD Act). This was a sequel to the fact that Australia was a signatory to the **International Convention for the Elimination of All Forms of Racial Discrimination** in 1975 (CERD). In fulfilment of our treaty obligations we placed on the statute book the Racial Discrimination Act of 1975 — a landmark piece of Australian legislation. This Act which was destined to have a seminal influence on Australia's social and political life was also binding on all governments.

Thus, state Governments were expected to bring their laws and practices into conformity with this Act as part of Australia's commitment to meeting its international treaty obligations. In fact, in satisfying this Convention an obligation was cast upon the Commonwealth Government to ensure that the provisions of this Act were implemented throughout the country and this task was entrusted to the Human Rights Commission (HRC) (1948-1986). Currently, following an amendment to the RD act in 1980, these are performed by the restructured Human Rights and Equal Opportunity Commission (HREOC) which replaced the HRC in 1986.

Ever since the passage of the RD Act (1975) there has been in informed circles considerable degree of concern about the reluctance of Federal and State governments to act on the specific issues of incitement to racial hatred and defamation of racial groups. Much of the difficulty, as we know it today, has arisen because the RD Act, as passed in 1975, was subject to several amendments in order to gain its successful passage through Parliament. The strong opposition expressed by the Liberal/National Parties to two Clauses of the Draft Racial Discrimination Bill in 1973, viz Clause 28 & 29 (one dealing with incitement and the other with dissemination) was a key element in the 1975 debate surrounding the racial discrimination legislation. Eventually, this opposition led to the Australian Government entering a reservation on Article 4 (a) of CERD.

This Article, i.e. Article 4(a), states that the dissemination of ideas based on racial superiority, hatred or incitement to racial hatred, as well as all acts of racial violence or incitement to racial hatred are offences punishable by law. In other words, these provisions pertain to offences relating to racial vilification (hate speech) and incitement to racial hatred. Australia opted to delete the provisions of this Article from the provisions of the Racial Discrimination Act, preferring instead to deal with these acts (e.g. unlawful dissemination of 'race' — hate material) simply as civil wrongs, which are subject to conciliation. At the same time, Australia agreed that it would consider enacting suitable legislation at 'the first suitable moment'. (This moment may have arrived after nearly two decades!).

In an early review of the operation of RD Act of 1975, Trlin observed 'that the most serious defect of the Act is the absence of provisions to deal with the publication and dissemination of racist material and ideas. Nor does the Act include the provisions prohibiting discrimination by private voluntary associations on the use of derogatory terms'. The opposition to Article 4(a) of the International Convention was largely on grounds of the need to uphold the priority of the right to free speech as against other competing claims; any restriction on this right, and right to freedom of expression, has been a recurring theme in the continuing opposition to this particular provision.

Whilst other countries have established laws to deal with the dissemination, or the purveying, of race hatred in official circles, Australia has tended until very recently to reject any such move on the civil libertarian grounds of not wanting to interfere with the sacrosanct right to freedom of speech and expression. In this debate the right of individuals (the victims of racism) and groups to freedom from discrimination and racist abuse are often overlooked. But, even if we were to agree that such a law was needed, there remain some complex issues of principle that need to be examined before embarking on a practical model of legal intervention.



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# Satyajit Ray has earned international applause as a fiction writer

Jerry Pinto

"The raw material of the cinema is life itself. It is incredible that a country which has inspired so much painting and poetry should fail to move the film maker. He has only to keep his eyes open, and his ears. Let him do so". — *Satyajit Ray in 1948.*

Ray took his own advice, kept his eyes and ears open to the sounds and sights of rural Bengal and made *Pather Panchali*, a film that defies description. We revere him for the Apu trilogy, for *Jalsaghar* for *Charulata*, for *Aranyer Din Ratri* It's likely that we read him for those reasons of reverence too.

That's not to say that Ray was a bad writer. On cinema he could write perceptively, and *Our Films, Their Films* (Orient Longman, reissued in 1992) is still an important book. His fiction is another matter altogether.

It's a pity that he didn't finish *My Years With Apu* (Viking), his posthumously published work. In her introduction-cum-apologia his wife Bijoya Ray says that the final draft was stolen when her husband was fighting for his life in a nursing home. So what we have here is a rewrite, written from a draft that consisted of "sentences, half-sentences, thoughts and ideas and incidents jotted down in such a hurry that many letters were not even properly formed!"

Now that Satyajit Ray is no more, one can't even ask him to reconcile the two versions of his first day of filming. In *Our Films Their Films*, he wrote, "The children behaved naturally which was a bit of luck because I had not tested them".

In *My Years With Apu*, he tells a different story. In the first shot, Subir, the boy who plays Apu, had to walk aimlessly through the field of *kaash-phool*, having lost sight of his sister Durga. All he could manage was "a stiff zombie-like walk". Finally, Ray hit upon the solution:

"I planted Anil, Bansi and Ashish at varying distances from each other. They were asked to call out 'Subir' at certain

intervals and Subir was to react to each call by turning his head in the direction it came from, though never stopping his walk. Then I put twigs on the path at irregular intervals for him to step across".

Maybe Mrs Ray could have pointed out the contradiction. Or someone could have worked on her draft, fleshing it out with the essays on the trilogy which have already appeared in *Our Films, Their Films* It's not as though she's been that very careful to prevent any overlap. For instance, parts of *Extracts from a Banaras Diary* have been used. The three essays there, pertaining to the trilogy and *My Years With Apu* must be read together, for the earlier book has some interesting statements from the *Oracle of Tollygunge*.

In *Some Aspects of My Craft*, Ray writes, "The trilogy was one work of mine which was made entirely without reference to available acting material. As a result most of the parts had to be filled by newcomers". And later states categorically, *Patheer Panchali* could never be made now because Chunibala is no longer there".

*Twenty Stories* (Penguin India), published three years ago, contains the best of Ray's fiction. His short stories belong to the sub-Roald Dahl school: obviously platted, with stereotypical characters and a surprise ending. But his stories of the supernatural are well-constructed, and leave behind a pleasurable frisson of fear mingled with disbelief.

As for the rest, his fiction is never very satisfying. His detective Feluda is a poor imitation of Sherlock Holmes, with the darker shades painted out. No seven percent solution for Felu, just a sweet tooth. Feluda's companion, Topshe, however, is an improvement on the original. He makes a better Watson because he is an adolescent; his hero-worship is not as jarring as Watson's.

*The Adventures of Feluda* (Penguin India), the first to be translated, were fun. One could conjure up images from Sonar

Kela to complement the story *Golden Fort* but thereafter the stories went downhill. *The Emperor's Ring* (Penguin India) suffered from terminal transparency. Any reasonably sophisticated reader could see through the plots.

Similarly, Professor Shonku is indebted to another Conan Doyle creation, Professor Challenger. *The Incredible Adventures of Professor Shonku* (Penguin India) is the latest of Ray's stories to be published. In her introduction, the translator Surabhi Bannerjee says, "One is apt to compare Satyajit Ray's Professor Shonku with the science fiction of Jules Verne and H.G. Wells. As a school boy, Ray was fascinated by both. 'Professor Shonku, the scientist-inventor', he himself writes... 'may be said to be a mildmannered version of Professor Challenger, where the love of adventure takes him to the remote corners of the globe'".

Unfortunately, Ms Bannerjee is not really a very skilful translator. "The deaf could get back his hearing and the blind his eyesight", she writes; and "He was winning in agony". Shonku hasn't been given a fair deal.

But armed with his *Miracure-All*, his *Remembrance* and his *Annihilin*, Shonku rides a time machine, chats with extraterrestrials, finds a Sumerian kinematoscope, looks upon a wonder animal, meets a primitive man, 'homo afarensis', and injects him with evolution... It's impossible not to be charmed by the sheer naivete of the stories. It is equally impossible to take them seriously as science fiction, not after John Campbell, the charismatic editor of *Astounding Science Fiction*, shifted the emphasis from fiction to science, way back in the '20s. Not the slightest attention is paid to the principle of extrapolating from the known or the proven, but who cares?

Ray's fiction is the verbal equivalent of Einstein playing his violin which he did to reverential applause. The same kind of reverence is needed if we are to believe that Ray's fiction as good fiction.



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