

Pravāda

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Pravada in contemporary Sinhalese usage has a range of meanings which includes theses, concepts and Propositions.

MEDIA FREEDOM AND RESPONSIBILITY

Amidst a plethora of excessively uninspiring and fruitless political controversies, a positively encouraging issue has entered Sri Lanka's political debate. The question of the freedom of expression and consequently the freedom of the media have become matters of significant public interest.

These issues have traditionally occupied a rather strange place in Sri Lanka's political debate. Freedom of expression is a right guaranteed by the constitution; at a rhetorical level, it has been defended strenuously by all shades of political opinion. At a practical level, however, it has always been subject to an intolerance of dissent displayed by various parties in power at different times, as well as by political groupings such as the JVP and the LTTE.

The availability of media for the free and public expression of opinion has also been at the centre of the dilemma. Radio and television have always been government monopolies, a position not seriously affected even by the entry of private capital into television. The press was not, being in private ownership. However, in the sixties and seventies, statization of private newspaper establishments became the official doctrine of self-proclaimed socialist regimes. 'Freeing the media from private monopolistic control' was the catch-phrase at that time. The media, however, was not freed; rather, under state-ownership and control, that part of the press was turned into an agit-prop department of the ruling party, as radio and television were. The state itself became a media baron—inflexible in character, closed to dissenting opinion and unresponsive to public criticism. The situ-

ation was made much worse because the state also had both the will and the capacity to manipulate and control non-state media as well.

Thus the Sri Lankan media has constantly found its most articulate and evocative champions among politicians out of power. Just to cite one example, Mr. R. Premadasa's contribution to the parliamentary debate on the nationalization of the Lake House by the United Front government can still be read as one of the most energetic defenses of a free press. That was long before the opposition MP Mr. Premadasa became Prime Minister and later President. Champions of the free press when in opposition have not really freed the press when they came to power. Since you can politically utilize the press when you are in the government, your opposition is merely to its being used by someone else.

Several factors have recently combined to create a fresh interest in this issue. The rise of a tabloid press within the last two years, more specifically with the opening up of political space after the impeachment motion, has meant the existence of a press much less amenable to direct or indirect state influence. The growth of violence in the political process is another factor. The necessity to preserve a facade of democracy and human rights precludes open censorship and has led to the use (or rather abuse) of the normal law and, where it does not suffice, violence instruments to intimidate the media.

We publish elsewhere in this issue records of violence against the media and media-personnel in the pursuit of their work by state and government as well as by other forces.



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The killing of Richard de Zoysa two years ago and the abduction and 'disappearance' of Kugamoorthi were particularly shocking examples of journalistic experience under conditions of civil strife and state violence. The media community responded to the fate of Zoysa and Kugamoorthi in a somewhat 'private' manner, expressing grief and anger but not incorporating them into a general consideration of the theme of freedom of expression. However, the recent attacks on journalists and other media persons, have created a new awareness in the journalistic community; they have united in new organisations and have energetically taken the issue to the public in a widespread campaign for media freedom.

We welcome and support this campaign. Freedom of expression is, for us, a right of value in itself, essential for our well-being as citizens of a democratic polity. Censorship in any form is abhorrent; so are attempts to limit freedom of expression by violence. This does, however, give rise to some other considerations: first, the recognition of the many and various sources that threaten freedom of expression, second, the responsibility of the media in the exercise of that right and third, the

location of this right in a general project for enhancing and strengthening democratic rights.

Censorship, as all men and women who wield the pen would agree, is a pernicious practice that governments employ for purposes of securing power. The debate in Sri Lanka on censorship is however confined only to its exercise by the state. As recent experience shows, censorship by non-state agencies and politico-ideological groups, not only of the press but also of culture and arts, has also assumed devastating proportions. In the North-east, the press and other media of expression have come under severe attack and control by the LTTE. Writing books or poetry, critical of the LTTE, may bring the death penalty, as was the fate of Rajini Thiranagama who was courageous enough to criticise the LTTE. In the South, several radio and television personalities were killed by the JVP in a horrendous attempt to impose its own control on the media owned by the state. The JVP also went to the extent of banning the selling of newspapers branded as 'traitorous'; indeed, this ban applied to some opposition newspapers too. This is, of course, a new form of censorship—censorship by counter-state violence.

Another facet of this process is that some ideological forces in our society have used 'patriotic' pressure to impose outright censorship on artistic freedom of expression. Last year, the Sinhala nationalist press mounted a massive campaign to ban a film which was branded as anti-Sinhala-Buddhist. Similarly, a film crew was forcibly evicted from its film location for the simple reason that it went to a Southern coastal town to make a film on a fictional character who happened to be a Tamil. In both these instances, ideological groups that believe in ethno-cultural fundamentalism had become self-appointed cultural policemen and voluntary executioners of censorship.

The point we are making is that freedom of expression has been and can continue to be threatened by the state, non-state armed groups and non-armed ideological groups. Recognition of all such sources of threat is essential for building safeguards for free expression.

There is another factor that needs emphasis. The notion of free expression cannot be isolated from responsibility. We are emphasizing the concept of media responsibility because irresponsible exercise of that right can lead to the very negation of the goal of that freedom. The two articles on hate speech and the media and communalism that appear in this issue specifically highlight the question of media responsibility. Reckless and cavalier exercise of media freedom, guided by sectarian and communal commitments, can indeed turn the press into an agency of incitement, group hatred and even counter-democratic violence. In Sri Lanka, certain sections of the press, both in Sinhala and Tamil, as well as the radio, have shown a disturbing propensity towards incitement journalism. It is often difficult to draw a fine line between reporting, commentary and propaganda; yet when propagandist considerations take precedence over the commitment to objectivity, the press can become, as many examples of contemporary Sri Lankan journalism would testify, destructively provocative. This indeed calls for critical self-examination on the part of the Sri Lankan media community; the commitment to the freedom of expression could best be nourished by an equal commitment to responsibility.

In the final analysis, the violence against the media community cannot be separated and abstracted from the broader question of the authoritarianist use of violence in politics. We have witnessed over the past few years the emergence of a distinctly macabre political culture of violence, in association with a number of competing authoritarian projects. This is where the larger question of political democracy enters the picture. Media freedom and responsibility are essential to sustain such democratic values as tolerance, the right to dissent, plurality of views, and the free access to information. And these values have been threatened by people whose sole desire is not limited to a gagged and submissive media; their's are essentially authoritarian desires. The struggle for media freedom is also a struggle for strengthening the democratic foundations of a civilized civil society, a necessary component of the struggle against all forms of counter-democratic projects. **P**

NOTES AND COMMENTS

Discovering Detainees

According to a recent report in the Daily News entitled *Human Rights Task Force Makes Much Headway*, we are told that this body, headed by former Supreme Court Justice J.F.A Soza, has made "great strides in tracing missing persons....." After recounting the setting up of regional offices in Matara, Batticaloa and Kandy, Mr Soza is quoted as saying "we traced 50 missing persons in the Batticaloa area alone, and secured the release of 26 of them. We visited 21 police stations in the Kandy range, and found 18 persons said to be missing detained. In the Matara range, we found 42 such persons detained at 39 places we visited". The news item further recounts that the task force also visited all police stations and three army camps in the north central province, and that nineteen missing persons were traced at Welikanda alone.

The initiative of the Human Rights Task Force (HRTF) in making these visits and seeking out missing persons is commendable; we understand that this is largely due to the energy of the Chairman who makes such visits himself and succeeds by virtue of the force of his personality as well as his status as a former judge of the Supreme Court in obtaining the information sought.

However a larger issue arises from this news report. Why were these people being held in unacknowledged detention in the first place? And why should it have been necessary for a system of personal visits spearheaded by a retired Supreme Court judge to discover them? Can we be sure that this is not just the tip of an iceberg, and that there are not many other such persons languishing in places that the HRTF has been unable to visit or is unaware of?

One of the duties of the HRTF is to draw up a comprehensive register of detainees. One would have thought that the basic step to be taken in this regard would be for the government to compel, by law, every person in charge of any place of detention, to send the HRTF lists of those already in detention, and to inform the HRTF promptly of any (a) subsequently admitted detainees (b) releases and (c) transfers. Once these lists had come

in, the HRTF could make its unannounced visits and surprise checks, in order to verify the information and also to check on the condition of the detainees. For the HRTF to have had to collect this basic information by going round to army camps and police stations and compiling its own lists seems rather a curious way of proceeding.

An examination of the emergency regulation enabling the setting up of the HRTF reveals the following provision:-

"3. Where a person is, otherwise than by an order of a competent court, detained in custody under regulations made under the Public Security Ordinance or under the Prevention of Terrorism Act no 48 of 1979, the person having custody of such detained person shall cause a copy of the order under which such person is being detained to be served on the Human Rights Task Force...."

This provision is defective in several respects. It does not require the information to be provided within a specified time limit, or even "promptly". It does not require transfers and releases to be notified. Moreover it provides only for "a copy of the order of detention" to be served on the HRTF. This is all very well in respect of detention orders under the Prevention of Terrorism Act, or orders of detention made by the Secretary to the Ministry of Defence under emergency regulation 17. But the vast majority of persons held under emergency regulations are, we believe, arrested under Emergency Regulation 18, and in respect of such persons there is, so far as we can understand the regulations, no detention order. Such persons can be held in police custody for up to 90 days without being produced before a magistrate. The obligation to report to the HRTF does not seem to exist as regards such persons, as the regulation we have quoted above refers only to **detention orders**.

In any event it will be interesting to see to what extent, despite its inadequacies, this requirement of reporting to the HRTF has in fact been complied with by officers in charge of places of detention. For this we will have to await the Annual Report of the HRTF which we are told will be issued shortly.

P

COMMUNALISM AND THE ROLE OF THE PRESS

N. Ram

The response of the media - in the context of this article, the press - to the issue of secularism and the challenge of communalism has been extremely varied.

One striking feature of the response is the tendency towards superficiality. Regardless of one's perspective or standpoint on the question of secularism, the role of the media has been characterized by a great deal of froth, imprecision and dilettantism in relation to what is clearly the media's business—reporting, providing background, analysing and providing value judgements or assessments of the prevailing communal situation.

Historians have, over a period, done the intellectual and political community a distinct service by looking at the problem in rigorous social scientific terms. We in India thus have the advantage of a serious historical perspective on communalism. Unfortunately, journalists have not capitalised on this body of historical research.

To a contemporary journalist, it appears that the phenomenon of virulent, aggressive communalism—which impinges dangerously on the political process in the country—has something to do with a conservative reaction in society, a deep-seated attempt to preserve the *ancien regime* in a social sense, specifically the caste structure. Instant media analysis has linked, somewhat plausibly though not with real insight, the reaction to the Mandal development (increased quotas for backward castes) with the mobilisation of the Ram Janmabhoomi issue. Any political journalist recognises the connection but, probing deeper, it is possible to see in both these cases, an attempt by profoundly conservative forces to preserve their privileges, resources and power.

Communalism is not a fringe phenomenon; it does not belong only to the "wild guys". This is a reality we have begun to appreciate only recently. Thus far we have tended to treat it as an extremist attitude or activity, assuming that those in the so-called mainstream have been correct on their stand on secularism and communal harmony. Thus, we have tended to underestimate the challenge and the sources from which the phenomenon has sprung and developed over time.

The press was completely unprepared in the 1980s for the rise of such novel phenomena as Bhindranwale

and armed extremism in Punjab, although it had been aware that the mixing of religion and politics, a process to which successive Central governments had contributed with policies based on opportunism, was causing problems in the Punjab. Likewise, the press was not prepared for the chain of events in which Operation Bluestar, a tremendous tragedy from the standpoint of secularism and national identity, was a vital link.

The press was also not prepared at all for developments such as the events in May 1987 in Meerut, when (by all objective accounts) the Uttar Pradesh Provincial Armed Constabulary (PAC) killed scores of innocent Muslims in Hashimpura and Malliana. This prompted the columnist Nikhil Chakravarty, who is invariably one of the first to speak out on issues like this, to write in *The Times of India*:

Something has happened in Meerut which has never before happened in this country. It has now come to be known that in a certain place the PAC gangs suddenly descended, knocked and burst into the hutments of poor Muslims, picked up whomever they could grab (mainly the young), packed them off into PAC trucks and lined them up. They then shot them down and threw the dead bodies into the river.

Of course, communalists would contest the truth of this indictment. The press did, to some extent, expose the injustice—although its investigative reporters and analysts did not go deep into the phenomenon and its implications.

The press was also unprepared for what happened in Bhagalpur, as late as October 1989, close to the last general election, when a section of the Bihar police matched the behaviour of Uttar Pradesh's PAC.

In other words, although the phenomenon appeared in different nooks and corners of India, it was not easily recognised as part of a mainstream social and political process. The country was being overtaken by something deeply troubling, menacing and malignant. But the media, by failing to report, analyse and assess the phenomenon in an intelligent way, let the people down.

Communalism can be derived from various sources and appears in different communities but most of us who

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consider ourselves secular and fair are prepared to state that today it is Hindu chauvinism which poses the greater danger. This is a political reality which we should come to terms with.

In assessing the performance of the press in this context, we must note that some influential or experienced analysts have highlighted the political angle, not in a democratic spirit, but in a celebratory way—particularly Girilal Jain, an influential and well-known journalist and former editor of *The Times of India*. He has attributed much importance to the Visva Hindu Parishad and the Bharatiya Janata Party, describing as a stroke of genius their launching of the Ayodhya offensive and the *rath yatra* at that historical juncture. Citing *real politik* as his main justification, he has shown, in his columns, an insensitivity to social, political and moral consequences. Arun Shourie and several other notable journalists, (especially in the Hindi press), can also be criticised for their role in the issue of Ayodhya.

Indeed, the performance of the press in the most recent period, with respect to understanding and responding positively to the communal challenge, must be criticised and exposed. My deep disappointment with this coverage is not just an individual reaction; it appears to be fairly widely shared, even within the journalistic fraternity. For example, the press reported that in a seminar on “Communalism - A Challenge Before the Nation and The Role of the Press”, held recently in Delhi, almost everyone expressed disapproval of the press performance in relation to both Mandal and Ayodhya. People like Rajinder Mathur, Nihal Singh, B.G. Verghese, Kuldeep Nayar and Nikhil Chakravarty made the point that the press had disappointed the public with respect to these questions. Nihal Singh deplored, the fact that news had been devalued and the concept of news so altered as to sanction and legitimise, bringing in charged viewpoints into news reports.

For those seriously interested in such questions, there are two detailed and critical exercises which have come up with revealing findings. The first is the very useful investigation undertaken under the auspices of the Press Council of India. In the wake of the events in Ayodhya and elsewhere connected with the Ram Janmabhoomi-Babri Masjid crisis, the Press Council considered allegations regarding the conduct of certain sections of the press in reporting and commenting on the issue. On November 8, 1990, the Chairman set up a six-member Committee under the Press Council Act, 1978.

A majority and minority report, which did involve some overlap in the findings, expressed some basic differences in emphasis and standpoint on secularism and the roles of the press and the State Government. I regard the minority report as much the better document. (It became

a minority report only because the progressive writer, Raghubir Sahay, who participated in the exercise, died before the report could be completed).

As a result, the Press Council of India, at its meeting held at Thiruvananthapuram on January 21-22, 1991, issued a censure on four Hindi dailies, *Aaj*, *Dainik Jagran*, *Swatantra Chetna* and *Swatantra Bharat*. Its resolution stated: “There is little doubt that some influential sections of the Hindi Press in U.P. and Bihar were guilty of gross irresponsibility and impropriety, offending the canons of journalistic ethics in promoting mass hysteria on the basis of rumours and speculation, through exaggeration and distortion, all of this proclaimed under screaming, banner headlines. They were guilty, in a few instances, of doctoring pictures (such as drawing prison bars on the photograph of an arrested Mahant), fabricating casualty figures (adding 1 before 15 to make 115 deaths)’ incitement of violence and spreading disaffection among members of the armed forces and police, engendering communal hatred.” The Council also expressed “serious concern over the authorities taking recourse to punitive and preventive action in excess of the demands of the situation.” In some respects, it was a balancing job—although if you read the proceedings, the press comes out in an incomparably worse light than the State Government involved.

The Press Council’s resolution records the following verdict:

Whatever the default on the part of the Administration, nothing extenuates the conduct of that section of the press which threw all discretion and journalistic standards and norms to the winds through competitive sensationalism...It is to be strongly deplored that some errant newspapers showed scarce understanding of or regard for the higher values underlying the concept of freedom of the Press and misused this freedom for partisan ends at grievous cost to public order, tranquility and social harmony without thought to the consequences of their actions. In so doing, they gravely compromised the credibility of the media as a whole...

There is also a very useful study by Sukumaran Muralidharan of PTI of the coverage by certain national newspapers of the Mandal, Mandir and Masjid issues. It was published in *Mainstream*, *People’s Democracy*, *Social Scientist* and perhaps a few other publications— it has unfortunately been sidelined by the so-called mainstream press.

Looking at what happened during a very sensitive phase in 1990 and comparing it with the coverage of the communal violence in late 1989, the study establishes that



the press is clearly not objective; the columns devoted to the glorification of the anti-Mandal actions, especially the episodes of self-immolation — the visual coverage and space taken up on the front page as distinct from the inside pages and so on — make it very clear that the journalist is not at all playing a detached reporter's role. What stands out sharply in the content analysis is that when communal violence took place on a frightening scale in 1989, the press played it down and gave it very little detailed attention, although as many as 400 people died in that violence. The young journalist and scholar has even compiled a relative scale of values—the press' valuation of lives lost during the anti-Mandal stir compared with the lives lost during the 1989 communal violence. The findings are not at all flattering to the vaunted secularism of the national press.

There are no scholarly studies yet which rigorously go into the press coverage of late 1990 developments in Ayodhya. However, looking at the sample available, virtually every newspaper sinned— from my kind of standpoint — by publishing such headlines and stories as “Kar Sevaks Storm Ayodhya Complex” and “Security Forces Overwhelmed” in quite tendentious accounts.

One aspect of the journalists' dilemma is that in the old days they were told not to identify communities but to play communal tensions down, by featuring such news in a sanitised way and presumably neutralising the social mischief. Several people continue to advocate that approach, even though it has become rather difficult to sustain. News reports conveying the idea, in celebratory tones, that the mosque's structure had been damaged, if not destroyed (some Hindi papers suggested the latter), had nothing to do with such legitimate problems. They were inflammatory and seriously misleading. After the events of November 2, 1990, the numbers game that various newspapers played was truly horrifying. One newspaper described the police firing on November 2 as “a massacre bigger than the Jalianwala Bagh massacre.”

The point that comes out in all this reporting is that, with certain honourable exceptions, the press turned kar sevak in response to the crisis. Similarly, on the Mandal issue, it has been pointed out that it virtually boiled down to which caste the journalist (or for that matter, the intellectual) belonged. The positions people took on reservation tended to be more or less directly determined (though there are distinguished exceptions on both sides of the fence) by their social origins — it often appeared to be as crude as that.

Fortunately in the case of the communal challenge, it was not as bad as that. This is suggested by several analytical articles, editorials and feature reports published on the subject of Ayodhya. However, in the coverage of the

“storming of the Babri Masjid”, banner headlines, tremendous exaggeration, a high degree of sensationalism and, most of all, the breathless tone of the journalist kar sevak were injected into newscopy. One tendency was to depict the issue as some kind of freedom struggle — easily recognisable to the older generation and those who have studied history. The idea of sacrifice mixed up with spiritualism and revivalism, the idea of young people plunging into the struggle in a death-defying spirit, was reported in a celebratory way.

The end result was that the press, even respectable national newspapers, went horribly astray in presenting the Ram Janmabhoomi-Babri Masjid issue. Editorials in various newspapers, and columns written by several correspondents and well-recognised commentators did serious damage to the overall situation. This is not because there is any evidence that the press directly influences large masses of people (certainly the press does not have the power to do this in the Indian context) but because, unlike other institutions which have let us down in the post 1977 period, such as investigative agencies like the CBI, Parliament and, in some cases, opposition parties, the press had performed its democratic role rather effectively and commanded credibility.

Speaking individually as a journalist, but with some idea of what is happening in the institution of the press, I propose that we need to sort out our ideas relating to the basic character and future of our society. India is a pluralistic society in terms of social structures, religions, languages, ethnicity, nationalities, ideologies, politically outlooks, virtually everything. What is frequently described as a threat to national unity is the play of these various factors, including Centre-State relations. This is part of the challenge of holding India together and journalists, as citizens, surely have a responsibility in this respect.

We also have to be clear about India's secular future. The challenge that has been posed by the Advanis, the Singhals and various others (including mediapersons) has to be met frontally. They have challenged the whole basic structure of secularism — the very direction independent India attempted to take.

They say they do not advocate theocracy, but they want to reverse even the imperfect secular progress we have made. When Advani talks about “positive secularism” in India, we must remind ourselves of “guided democracy” in Pakistan under the generals. In both cases, the key concepts and practices have been so qualified, under the guise of doing justice to the cultural and spiritual particularism of the society, that virtually nothing is left of their integrity and credibility. The ideological crux of “positive secularism” is the demand for the recognition



of the hegemony of majoritarian Hindu religious sentiments and emotions by the state, by political parties and by intimidated minorities for the greater glory of "national unity".

There is an attempt also to reach out to those who want to preserve the caste system or, at least, not to do much about it. This is where the link between the anti-reservation movement and the Ayodhya campaign lies. On the one hand, there is an attempt to keep alive the divisive forces of a caste society, which is reprehensible from any progressive intellectual or moral standpoint. We may call it our *ancien regime* — because it is based on what has survived from feudal times, inequality, discrimination and a very insulting view of the rest of the world. At the same time, present-day conservatism or reaction wants to broaden its base and overcome barriers to communal mobilisation. It appeals aggressively to the urge for national unity, misusing and falsely interpreting history; the idea appeals to large sections of the electorate — or that is the assumption made by those who have resorted to this game plan. I think that unless this is understood, particularly by the media, we will miss a great deal of what is happening with respect to communalism.

The time has therefore come to look seriously at the concept and substance of secularism as applied to the Indian context. We are told by many a pundit that the Indian case is very different, that the secularism of Western societies does not belong here. This basically means that the idea that religion should not be mixed up with politics, the separation of church from state and state-funded education, is regarded as an alien view-point.

Over the years secularism has been devalued where it is not denied, and the time has come for every serious or honest intellectual to take a position. My position is that the basic propositions involved in the secular idea are the same everywhere. Indian secularism must be expressed in the universal propositions that there shall be no mixing up of religion and politics, no mixing up of church and state, and that there shall be equality for all before the law.

The point is that the battle for communal harmony and secularism must be understood as a just and democratic striving. India's history is characterized by a significant prevalence of communal and religious harmony; unfortunately there have been many breaches and violations over the centuries, which contradict the equation pressed by Hindu chauvinists: that Hindutva equals tolerance, always. Today, anybody who ruptures or threatens communal harmony in any way is committing a serious offence against humanity and national unity. Without communal harmony, there can be no civil society, no rule of law, no question of modern democracy, no pursuit

of social justice, no economic development, no stable politics.

Finally, to move to conceptual clarity, we must clear the confusion that often arises when Indians discuss and debate secularism, tolerance and harmony. I have already presented my irreducible definition of secularism as the separation of politics from religion, of state from church and of the assertion of the just principle that there shall be no 'preferred' religion under the Constitution. Now we must go beyond this.

In the first place, let us not confuse secularism and communal harmony. The latter relates to a project that has been a precious part of our history—but its violation has also been a part of it. It is (as I noted) a myth, an unhistorical claim, that Hinduism has always been characterized by tolerance; the historical experience of Jainism and Buddhism, particularly in South India, will bear testimony to a record of violent suppression by Hindu rulers and religious leaders. On the other hand, there have been several religious traditions and leaders — the Bhakti movement, the Sufis, the Tamil saints, Guru Nanak, various Hindu, Muslim, Jain, Buddhist and other leaders— who have promoted the project of communal harmony in our society. There were also great and wise rulers such as Akbar who valued, and consciously built, communal harmony as a project. They cannot be called "secular" in any modern sense and indeed, many of them were mystics. It was a very good thing that ideas of tolerance, brotherhood, compassion, human solidarity cutting across narrow differences were embraced at that point of time in Indian history. But secularism is something else.

Like the idea of a nation, secularism is of modern origin, Secularism is an arrangement — tied to reason and modern ideas of progress, law, science, and morality — which is precious in itself. It is also an instrumentality through which a modern society with a staggering range of problems can conduct its affairs and advance on a reasonable, democratic basis. Secularism also involves a fairness principle founded in ethics as much as in politics; it must be understood and handled as the oxygen without which India cannot survive as one nation.

Intellectuals, and those involved or interested in public life must be articulate on this issue—especially when there is a conscious political and mass-level attempt to lead us in a dangerous direction. People committed to secularism and communal harmony, with an understanding of the malignant communal problem, can do something to deepen public understanding and change the current reality in their own way. Surely journalists, who have a stake in democracy and in a progressive future, cannot stand aloof from this challenge. ■

HATE SPEECH

Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination is a book recently published by Article 19, the human rights organisation dedicated to the promotion of freedom of expression and the Human Rights Centre at the University of Essex; it deals with the dilemmas that arise at the point of intersection of two rights - the right to free expression and the right to be free from insult and harassment on racial, religious and other grounds.

In a note introducing this book in Index on Censorship, Helen Darbishire writes:

Hate speech causes psychological and moral harm to the individuals or groups against whom it is directed and it also threatens to damage the political and moral fabric of society as a whole. These injuries have led many policy makers to justify laws which curb expression of national, racial or religious hatred.

Might not endorsement of policies which firmly penalise hate speech and publication contribute to that first goal of the human rights movement, namely that all people should be treated as entitled to equal respect and dignity regardless of their religion or national or ethnic origin? Would legal constraints on the expression or display of bigotry and prejudice towards those who are the victims of discrimination make a difference? Is censorship justified if it muzzles hatred?

Having investigated the situation in many countries, Article 19 has come to this conclusion:

It is our assessment that hate speech laws in themselves cannot resolve the problem of religious, racial or national hatred. Hate speech may fan the flames of already existing hatreds, but the 'cure' of hate speech laws poses a greater threat to freedom of expression and the rights of oppressed groups than does the disease itself.

Article 19 believes that truly tolerant multicultural societies can only be achieved by exposing problems through freedom of expression. Words are powerful: they do cause mental injury; they are a potent weapon for bringing about change in society; they may for a time make fascism and racism acceptable. But equally, words and other forms of expression such as boycotts, demonstrations and public debate, form the best defence, at least over time, against intolerance, bigotry and ignorance.

There is no question that much speech may be offensive, but unless there is a very clear probability that speech will lead directly to violence or other unlawful action which is unavoidable by other means, the dangers of suppressing the speech outweigh the dangers of insult and hurt. A balance must be struck between equality, dignity and freedom of expression.

We reproduce below the article on Sri Lanka.

INCITEMENT TO INTER-ETHNIC HATRED IN SRI LANKA

Sunila Abeysekera and Kenneth L Cain

Introduction

The theoretical parameters of the debate over freedom of expression generally, and 'hate speech' specifically, are familiar, and indeed have formed an important chapter in the jurisprudence of liberalism. Analysis is traditionally bounded on the one hand by the notion that liberty is best guaranteed when society is exposed to a body politic of the debate that is, ultimately, its life's

blood. On the other hand, society is obligated to ensure its own survival, and free expression must, at the margins, be curtailed to ensure social order; in its classic formulation, liberty must concede to restraints in order to protect the very freedom guaranteed.

The challenge, of course is to draw the line - to define the threshold at which the fundamental freedom must be compromised, on the one hand, by society's interest in order and stability and on the other, by the rights of



individuals, especially those who belong to a disfavoured minority, to be physically secure and free from intimidation and harassment. Specifically, when do words exit the category of expression and enter the restricted category of, for example, incitement?

There is no dearth of learned attempts to articulate just such a threshold. Justice Holmes' formulation is one of the most frequently quoted:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.¹

THE CONTEXT OF THE DEBATE IN SRI LANKA

Limitations on Expression in the Interest of Public Order

In a society such as Sri Lanka the context of this dilemma, often quite literally a question of life and death, is of a substantially different character than the context of stability and security which produced the classic Anglo-American formulations. Indeed, as Lord Sumner himself understood:

The words, as well as the acts, which tend to endanger society differ from time to time [and, we would add, from place to place] in proportion as society is stable or insecure in fact, or is believed by its members to be open to assault.

In the unstable, violent and repressive context of Sri Lankan society, the question is profound and its appropriate resolution crucial to Sri Lanka's future. Freedom of expression is meaningless unless it includes the freedom to challenge and indeed to provoke. The right merely to agree and to conform is an empty freedom. However, it is just such challenges and provocations that in a divided society, not unreasonably, can and will be perceived as a direct threat to a tenuous public order. Inherent in the notion of public order in the Sri Lankan scenario of virtual ethnic civil war (between the majority Sinhalese government forces and militant minority Tamils, generally limited to the north and east of the country) is the suppression of militant minority aspirations is necessary for the preservation of "public order". The security forces of the Sinhala-dominated state engage in a military campaign against the Tamil militant group, the Liberation Tigers of Tamil Eelam (LTTE); the state must justify the war effort while purporting to seek a

political and democratic solution to the conflict. Opposition political groups and parties are vociferously critical of the state, alleging that it is granting concessions to the Tamil people; the birth of several Sinhala rights organizations in the past months is but one manifestation of this trend. The minority communities, Tamil and Muslim, direct their energies to the creation of groups and organizations that will protect and preserve their identity, which they see as being under attack by both the state and non-state entities.

Thus in the context of Sri Lanka's ethnic and social divisions, the right to dissent, the most fundamental democratic right, is as precious as it is under attack.

The Need to Safeguard the Rights of Vulnerable Minorities

A second even more complex and volatile tension exists between the need to guarantee freedom of expression and the need to safeguard the interests of minority ethnic and religious communities. It is of crucial importance to understand the manner in which this tension has been "resolved" in Sri Lanka: on the one hand, the state enjoys unfettered discretion to restrict expression which it determines is likely to inflame inter-ethnic tensions or violence; on the other hand, the government selectively invokes free expression values in order to justify its tolerance of provocative and unambiguously racist speech by militantly chauvinistic elements among the Sinhalese majority.

In the past fifteen years, we have witnessed the polarization of the Sri Lankan community on ethnic and religious lines. Given the militarization of the ethnic conflict into a virtual civil war in the past seven years, the question of freedom of expression, and the safety of vulnerable minorities, has become a crucial variable in the complex, contemporary, political constellation. The growing hostility between different ethnic and religious groups living on the island has led to justifiable fears that unrestricted freedom of expression of the majority is enabling chauvinists and those who would incite armed conflict to disseminate propaganda that negates the principles of pluralism and directly threatens several minority communities.

Incitement of Hatred Against Minorities

The above themes are illustrated by the hostile tone of press reports in the leading dailies that surfaced in February 1992, primarily in response to proposals for a resolution of the conflict put forward by Mr S Thondaman,



a senior Cabinet Minister in the present government and a trade union leader among the Tamil workers in the plantation sector. Responses to the proposals were couched in language that was hostile not only to Mr Thondaman as an individual (and as a Tamil) but also to the Tamil community in general. Statements of a Sinhala-Buddhist exclusivist nature triggered fears that an escalation of anti-Tamil sentiments could destroy not only all prospects for peace or devolution of power but, as has happened in the past, could threaten the very physical safety of Tamils throughout the country. Press reports of the various responses to the Thondaman proposals tended to portray the ethnic conflict as a military struggle between the state and the LTTE which could only be resolved militarily, rather than as a manifestation of justifiable demands of the Tamil minority for equal rights. Those who hold such views are engaged in an ongoing campaign of vilification of groups and organisations, both local and foreign, that are supportive of a peace process which includes a cease-fire, negotiations and devolution of power to the minority communities.

For example, a headline in the Sinhala daily newspaper, *Divayina*, which is probably the largest circulation daily in the country, said on 25 February of this year, "The only solution to the question of Tamil extremism is war." The next day the *Divayina* published an article which included this analysis: What we have in the north and east today is a Tamil racist uprising. It uses terrorist tactics. Their demands are racist and anti-Sinhala." In a frontal assault on pluralism, the *Divayina* of 20 February headlined a report on a public meeting thus: "It is a grave error to identify this country which has a Buddhist heritage as multi-religious or multi-ethnic."

These examples of the Sinhala press advocating war as the only possible means of resolving the ethnic conflict and promoting the idea of Sinhala-Buddhist exclusivity illustrate the complexities of developing an appropriate threshold of restraint on hate speech. These widely disseminated views must be understood in the context of war in the north and east and the profound vulnerability of minorities in the rest of the country.

Government Selectivity in Enforcing Anti-Incitement Laws.

The rights of all Sri Lankans, but most acutely of minorities, are constantly under attack on the grounds of "security" and "national interest", often motivated by logic exemplified by the above quoted passages of *Divayina*. Clearly, a convincing case could be made for the theoretical justification of restricting speech that incites racial animosity, such as that which appears almost daily in the mainstream Sinhala press. In practice however, the state

uses its restrictive powers selectively, and majority prejudices are widely disseminated, while minority expression is dramatically restricted particularly under the guise "national security" emergency legislation. Therefore, any theoretical justification for restraint of racist speech immediately loses its force in the face of the practical realities of utter and profound lack of good faith on the part of the government in enforcing the anti-censorship laws. The Sri Lankan government's unwillingness to undertake to protect all of its citizens, the tragedy of our society, on the one hand undermines legitimate principles of restrictions on hate-speech, and on the other hand permits majority-inspired incitement to be widely disseminated.

The Law and its Application

Article 14 (1) (a) of the Fundamental Rights chapter of the Sri Lankan Constitution provides: "Every citizen is entitled to the freedom of speech including publication." Article 15 (2) of the same chapter, however, broadly empowers the government to apply limits on the exercise of this freedom:

The exercise and operation of the Fundamental Right declared and recognized by Article 14 (1) (a) shall be subject to such restrictions as may be prescribed by law in the interest of racial and religious harmony or in relation to...incitement to an offence.

The restrictions set forth in Article 15 (2) are broader than those permitted by the ICCPR which states that fundamental rights may be restricted only if necessary to promote specific interests which are enumerated very clearly in the Covenant. Indeed, as the Sri Lankan Supreme Court stated in 1982;

the operation and exercise of the right to freedom of speech are made subject to restrictions of law not qualified by any test of reasonableness. Neither the validity nor the reasonableness of the law imposing restrictions is open to question.²

A number of Emergency Regulations have been issued under the broad authority conferred by Article 15 (2). For example, Article 14 (1) of the Emergency Regulations prohibits publication of any material which, in the view of a 'competent authority',

would or might be prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community or of matters inciting or encouraging persons to mutiny,



riot or civil commotion or to commit breach of any law.

Section 120 of the Sri Lankan Penal Code provides as follows:

Whoever by words, either spoken or intended to be read...excites or attempts to excite feelings of disaffection to the President or to the Government of the Republic, or excites or attempts to excite hatred to or contempt of the administration of justice...or attempts to raise discontent or disaffection amongst the people of Sri Lanka, or to promote feelings of ill will and hostility between different classes of such people, shall be punished with simple imprisonment which may extend to two years.

Emergency Regulation 26 expands the already restrictive language of Section 120 and broadens the scope of criminalised speech to the point that, in effect, dissent is outlawed. These comprehensive and draconian regulations are supplemented by a catch-all provision, 26(g), the overbreadth of which speaks for itself:

Any expression is an offence if the competent authorities determine that it excites or attempts to excite or incite the inhabitants of Sri Lanka or any section, class or group of them to do or omit to do any act or thing which constitutes a breach of any Emergency Regulation.

Furthermore, Regulation 26 intensifies the penalty for an offence to "rigorous imprisonment which shall not extend to more than 20 years."

Emergency Regulations have been in effect virtually continuous for 20 years, during which time the edifice of Sri Lankan civil liberties has crumbled before the ubiquitous powers of the 'competent authorities.' The Supreme Court has conspired in this tragic degeneration.

In the case of *Visvalingam v. Liyanage*, the competent authority, acting under the powers of the Emergency Regulations, ordered the closure of a Tamil newspaper, the *Saturday Review*, which had carried stories highlighting alleged brutality by the Sri Lankan police and army. The competent authority argued that the closure was reasonable because:

The *Saturday Review* is blatantly communalistic and constantly high-lighted grievances and injustices committed against the Tamil community which were capable of arousing communal feelings among this community and encouraged conduct prejudicial to the maintenance of public order and security.

The government's rationale for closing the newspaper illustrates the extent to which dissent has been restricted in Sri Lanka. If highlighting grievances and injustices is a cause for closing a newspaper, it is difficult to imagine what meaningful form of dissenting speech would fall outside the reach of the competent authority. In upholding the constitutionality of the *Saturday Review's* closure, Judge Soza wrote:

[A]t times when ethnic hatreds are mounting, curbs are necessary. At times of grave national emergency headline exposure of Army and Police atrocities will not help the cause of peace and public security. *It can cause deep resentment, fan passion, provoke defiance, It can set off a chain reaction of violence, and violence begets violence. It happened before our very eyes* (Emphasis added.)

These very words, though justifying restriction of free speech, in fact well state the process by which tension is heightened when a basic speech right, such as publishing an opposition newspaper, is restricted. Anger and frustration are surely better expressed on the pages of a newsweekly than on the streets or in the jungle.

The Dilemma

In theory, the notion of providing substantial restrictions on the recognised right of free speech is not necessarily pernicious. In a volatile society, in which vulnerable minorities can and have been brutalised by zealous opponents, a policy of vigilant regulation of hate speech is not, *prima facie*, meritless. In more stable democracies, laws and practices which allow unrestricted freedom of expression involve far lesser risks of creating an environment in which violence is likely to erupt suddenly. In this sense, a stable democracy can afford a highly expansive interpretation of the freedom, such as that propounded in this volume by the ACLU,³ because the threat that violence will ignite is in fact quite low. In contrast, it is clear that in Sri Lanka hate speech does indeed pose a substantial risk of instigating very real and very bloody upheaval.

However, while broad powers to restrict freedoms, such as those provided by Article 15 (2), may be theoretically justifiable, in practice, in the case of Sri Lanka, these powers ultimately defeat the stated purpose of protecting public order. Overly broad censorship of dissenting, provocative, challenging and even hate-filled expression in fact merely inflames the very passions and hatreds which sought a non-violent outlet in the censored speech.

In other words, granting unfettered discretion to the authorities to promote "harmony" is ultimately more



destabilizing than the hate speech itself. Inevitably, the very freedom to dissent will be prohibited and, in an unstable and violent society, censorship of dissent will only beget more instability and violence. It is axiomatic in our jurisprudence that freedom of speech does not extend to the right to yell "fire" in a crowded theatre and thereby instigate a panic. But what if the authorities distort that unassailably legitimate limitation to prevent, for example, a whole class of suspected "potential instigators" from entering the theatre at all? In the name of promoting calm inside the theatre, have not the authorities guaranteed upheaval on the street outside?

Our Position

Our position is not an abstract, civil libertarian view; indeed we recognise the theoretical justification for restraints on hate speech in a tense and violent society where members of a minority group are in constant danger of physical attack and deprivation of other rights. However, we have found that regulation of speech, in the unfettered hands of the "competent authority", particularly when empowered by sweeping Emergency Regulations and motivated by a majority bias, ultimately defeats the stated regulatory purpose of protecting public order. In these circumstances, therefore, we believe that only hate speech which clearly incites to imminent illegal action can justifiably be restricted. Dissent and indeed hate will eventually be expressed; sadly, in Sri Lanka, we have witnessed far too much evidence that censoring hate from public discourse only banishes it to more deadly fora.

We therefore would define these two categories of speech as "incitement" and thus as forms of discourse to be prohibited: (1) advocacy of group hatred calculated or likely to result in violence against a minority group or calculated or likely to result in an escalation of the threat of violence; and (2) advocacy of a solution to the ethnic problem which includes the destruction or elimination in any form or manner of the distinct identity of a minority group.

It is incumbent upon the legislature to ensure that the above forms of expression, and only the above or similarly

described forms of expression, are prohibited. Prohibition of such speech is necessary to ensure that basic protections are extended to all citizens.

Conclusion

Sri Lanka has a long history of violence directed at minorities. In an unhappy, recurring cycle, minority demands for the realization of aspirations such as language parity, federalism, constitutional recognition and a secular state have been received with rage and violence from belligerent elements within the majority. The majority characterizes these outbursts, which punctuate post-independence Sri Lankan history, as natural and understandable, if lamentable responses to "provocative" minority aspirations. The minorities' demands for protection and recognition as distinct entities are denounced, in the rhetoric of the rejectionist element within the majority, as an offence to the majority and indeed an affront calculated to inflame communal passions. This rhetoric not only rationalizes and excuses mob violence but, even more insidiously, it attributes the blame to the victims.

Thus, members of the minority perceive the state's failure to restrict speech which incites hatred against them as a *denial* by the state of the minority's legitimate group rights. That is, legislative inaction, in these circumstances, symbolizes the state's unwillingness to protect the minority's most basic rights to physical safety and, *a fortiori* the utter denial of more abstract collective identity rights. *Legislative inaction in restricting speech which incites the mob, or indeed which merely implies that the mob is at liberty to form and to take action, tragically, can be and has been a death sentence for vulnerable minorities.*

Achieving the balance, the tension of which has been manifest throughout this discussion, between protecting the victims of hate speech and permitting a legitimate forum for dissent and the expression of grievances is the profoundly difficult challenge which confronts all human rights activists committed both to equality rights and to the right to freedom of expression.

People who can be made to believe in absurdities can be made to commit atrocities.

Voltaire

MEDIA UNDER ATTACK

The following record of incidents of harassment and intimidation of the media and of journalists and other media personnel in 1992 has been compiled for PRAVADA by INFORM.

- *Lakdiva*, a Sinhala weekly which began publication on January 26, 1992, complained that the state-controlled press, radio and television had refused to accept advertisements announcing the release of their first issue;

- In February, two journalists from the Sinhala daily, *Dinamina*, complained that Policemen at the Police post at the Colombo South Hospital in Kalubowila had attempted to assault them when they went to investigate reports of an attack on detainees at the detention centre at Talawila, Ratmalana;

- On March 6, the Inspector General of Police issued an order prohibiting Police officers from giving information on any matters 'other than crimes and accidents' to journalists;

- **Sena Vidanagama**, a freelance photographer covering the Opposition protest march, 'Pada Yatra', and a freelance journalist, **Chitral Soysa**, were set upon by some persons during the march on March 31;

- The *Sunday Times* of April 5 and *The Island* of April 8 published statements by former DIG P. Udugampola; the Sinhala weeklies *Lakdiva* and *Ravaya* as well as the fortnightly *Yukthiya* carried similar reports. The offices of the *Sunday Times*, *Aththa*, *Yukthiya* and *Lakdiva* were visited by the C.I.D.; journalists, members of the editorial staff, printers, lay out artists and other members of the office staff were questioned as to the origin of the documents quoted by these newspapers in writing these reports.

- On April 10, the editor and publisher of *Aththa*, **L.B.Wanigasekera** and **W.Dharmadasa** were indicted in the High Court of Colombo under emergency regulation 26(a) and (e) on the charge that they had brought the government of Sri Lanka into hatred and contempt, and attempted to create dissension and/or ill feeling among citizens of Sri Lanka by publishing the Udugampola affidavits. The case came up in August and hearing was put off for September 21;

- **Meegala Mudiyanse**, the editor of the cinema Journal *Sakvithi* was stabbed at his office in Kohuwela, a Colombo suburb, by unidentified persons on 28th April 1992.

- In April, the Supreme Court awarded **N.K.M.Senanayake**, the owner of **Nawamaga Printers** the sum of Rs. 25,000 as compensation on finding that his fundamental rights had been violated by the closure of his press by the Mount Lavinia Police; he was also asked to seek redress in the district court for damage to his machinery and equipment caused during the period of police closure;

- On May 7, **Dharshana Pannagala**, an Assistant Producer at the state-controlled T.V. station, the Sri Lanka Rupavahini Corporation, complained that he had been assaulted by the Police on duty at the Sugathadasa Stadium in Colombo while on an official assignment;

- On May 16, **Athula Bandara**, a freelance journalist for the *Lankadeepa* in Anuradhapura, complained of having been assaulted by **Shantha Premaratna**, an Opposition Provincial Councillor;

- The *Sunday Times* of May 17 reported that the offices of a newly approved T.V. transmitting station, *East-West*, had been raided and 'immobilised' on a government directive on May 15;

- On May 19, **Sunanda Deshapriya**, editor of *Yukthiya* was indicted in the High Court of Colombo for criminal defamation of the Inspector General of Police and other Police officials by the publication of the Udugampola affidavits;

On July 10, Deshapriya was served with indictment under Section 480 of the Penal Code with regard to publication of affidavits said to be from former DIG Udugampola in the *Yukthiya* of April 12, 1992. He was allowed Rs. 50,000 personal bail; trial was fixed for October 19, 1992;

- On May 26, *Rajaliya* editor **Prem Landewela** was attacked by three men on Sir Ernest de Silva Mawatha, who stopped the car he was travelling in, pulled him out and assaulted him;

- On May 29, the editor of *Rajaliya*, Prem Landewela, was indicted before the High Court of Colombo on two counts, punishable under Section 20 of the Penal Code with regard to material appearing in the *Rajaliya* of April 30, under the heading 'Inhuman Killings by Black Cats in the Central Province': he is charged with 'attempting to excite feelings of disaffection, hatred and contempt of the Government of Sri Lanka' and of 'creating or attempting to create disaffection and discontent among different



sections of the people of Sri Lanka'. Mr. Landewela was allowed bail of Rs.5000; trial was fixed for August 28, and on that date hearings were put off for November 24; 24 persons including several high-ranking Police officers have been listed as witnesses;

- On May 29, journalists who visited the 'Demala Maha Seya' in Polonnaruwa, along with a fact-finding team of Buddhist monks, to investigate complaints regarding excavations presently being carried out there, said they had been debarred from entering the site;

- On June 10, the government announced that it had decided not to permit the opening of any further private T.V stations in Sri Lanka;

- On June 21, former President Jayawardena sent a letter of demand for Rs. 390 million to the Lake House group, Associated Newspapers of Ceylon Ltd., for publishing two defamatory articles in the issues of the *Sunday Observer* of May 10 and June 14, 1992, On July 5, The *Sunday Observer* published an apology, 'unreservedly withdrawing the false and defamatory statements' and tendering an 'unqualified apology' on behalf of the Associated Newspapers of Ceylon Ltd., the *Sunday Observer* and its editor, **H.L.D.Mahindapala**. The former President accepted this apology and said he would not proceed with legal action against the newspaper group or its Editor.

However since the columnist referred to in Mr.Jayawardena's letter had not responded to the earlier letter, the former President sent on July 10 a letter of demand for Rs.100 million to Dayan Jayatilaka as the author of a defamatory article published by the *Sunday Observer* under the pen name Anuruddha Tilakasiri. Up to the end of July, the letter of demand could not be served as Jayatilaka's whereabouts were not known. On August 30, the *Sunday Times* reported that the former President had informed Mr. Jayatilaka's mother that he would not be proceeding with the case as Mr.Jayatilaka had been the victim of assault at the altercations which broke out at the Kobbekaduwa funeral.

- On July 1, a few hours before the Opposition 'Sound Protest' (Jana Ghosha) *Reuter* photographer **Anurudhdha Lokuhapuarachchi** was manhandled by a gang of thugs while he was taking photographs of the President's House in the Colombo Fort; his camera was grabbed and the film roll taken away from him.

- *Lankadeepa* journalists **Arundel Wijeratna** and **Indraratna Balasuriya** were assaulted by Police officers while covering the Opposition 'Jana Ghosha' campaign in Colombo;

- *Ravaya* photographer **Sudath Malaweera** had his camera grabbed by security officials while covering a meeting ; his film roll was taken away and destroyed.

- On July 21, three newspapers, the *Lankadeepa*, the *Divayina* and *Yukthiya* published an interview with Udugampola; subsequently, the three journalists concerned, **Chulawansa Sirilal**, **Sunanda Deshapriya** and **Daya Lankapura** were questioned by the CID as to the venue of the interview and the whereabouts of Udugampola.

- On July 26, *Lankadeepa* journalist Chulawansa Sirilal said he had been threatened and assaulted by some persons at Nittambuwa during the public meeting held to felicitate Mrs Sirimavo Bandaranaike on the 32nd anniversary of her election as Prime Minister;

- On August 4, American journalist **John Colmey**, correspondent for *Asiaweek*, was questioned by the CID in connection with some 'illustrated material' found in his possession. According to the government spokesman Bradman Weerakoon, this material, 'if published, could have brought the government into disrepute and caused disaffection'. Mr Colmey left the island soon after this incident.

- On August 7, a group of journalists covering the launching of the DUNF petition campaign calling for the resignation of the President were set upon by a gang of thugs armed with knives and pistols near the Railway Station in Fort, Colombo.

Srilal Gomes, photographer for *The Island* said he had been threatened and prevented from taking photographs of the event; *Visnews* correspondent **Varuna Karunatilaka** was hit on the head with a pistol and his video recorder was damaged: the camera flash gun of Associated Press correspondent **Dexter Cruz** was snatched away by the attackers; *Reuter* photographer **Sudath Malaweera** had his camera flash gun taken away from him.

In a complaint made to the Fort Police, DUNF leader Athulathmudali named Colombo Municipal Councillor U.L. Seneviratne as having been present at the railway station on that occasion; on August 10, Mr Seneviratne denied this story.

The attack was condemned by many groups including the journalists' associations; on August 20, members of the Foreign Correspondents' Association walked out of the weekly Cabinet press briefing as a gesture of protest against what they

termed 'the failure to take action against those responsible for the attacks on journalists'.

On August 28, five suspects in the attack were remanded and on the 29th, the For Police held an identification parade in which one person, **K.H. Gamini Sandanayake Peiris** was identified by eye witnesses to the incident. All five persons were granted bail.

On August 11, restive crowds at the funeral of Major General Kobbekaduwa in Colombo attacked government personalities; among those injured in the attack was **Dayan Jayatilaka**, Associate Editor of the *Lanka Guardian*.

- A vehicle belonging to *The Island* was also set upon and attacked during the melee outside the cemetery on August 13, at the funeral of Brigadier Wimalaratne.

- On August 17, **Jiffry Yunoos**, cartoonist for the Communist Party paper *Aththa*, was threatened by a gang of about fifteen persons who entered his house while he was watching television in the evening; the gang broke some windows of the house and also damaged a trishaw that belonged to Yunoos' son.

On August 18, as he was walking home in the evening, Yunoos' was attacked by three persons, one of whom had a razor knife in his hand; Yunoos suffered injuries as a result of the attack, and had to receive medical care in hospital.

Yunoos identified some of those who came to his home as well as two of the persons involved in the attack on the 19th.

On August 20, the Borella Police, to whom Yunoos had addressed his complaints regarding both incidents, produced one of those suspected of the second attack, Justin Jayaratna; he was granted bail. On August 24, a second suspect, Sunil Siriwardena, was arrested.

On August 25, Yunoos was once again threatened at his home, while he was photographing the premises in order to have a record of the damage. On August 27, while waiting for an identification parade for the second suspect, in the premises of the Chief Magistrate's Court in Colombo, the first suspect Jayaratna threatened Police officials, Prisons officials and Yunoos himself. Both suspects were remanded until September 2.

- In a letter addressed to the Inspector General of Police and dated 18 August, Yunoos set out the incident of the 18th including the gist of the threats addressed to him. On August 20, *The Island* published a piece quoting from the letter, titled 'Gang threatened death if I drew cartoons of President'; the editorial staff of *The Island* was questioned by the CID with regard to the publication of this piece and told that investigations regarding the possibility of a criminal defamation procedure were under way.

On September 9, the editor of *Raavaya*, was noticed to appear before the Parliamentary Privileges Committee with regard to a news story concerning Mr. Choksy, M.P. The inquiry is scheduled for September 24. *Raavaya* has since then been served with three other summons before the PPC. ■

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We reproduce below extracts from Issue No. 14 of *Censorship News*, a bulletin published by Article 19, the International Centre Against Censorship, listing examples of the violation of the right to free expression by the LTTE in the territories under their control.

SRI LANKA: FREEDOM OF EXPRESSION CASES IN THE NORTH

This Censorship News documents the cases of individuals who have been killed or abducted by the Liberation Tigers of Tamil Eelam (LTTE) in recent years as a result of having peacefully exercised their right to freedom of opinion and expression.

The three individuals whose cases follow were abducted by the LTTE on 30 August 1991. They were all involved either in the cast or in the production team of a play which was to have been staged on the day following the abductions. The play dealt with the Palestinian liberation struggle and focused on the role of women.

Thiagarajah Selvanithy (Selvi) - University Student

Selvi was a writer, poet and dramatist studying at the University of Jaffna and was a member of the cast of the play. She worked as a volunteer at Poorani Illam, a home for traumatised women which Rajani Thiranagama co-founded. During the devastating bombing raids on Jaffna by the Sri Lankan air force she stayed with the residents of the Poorani Centre to reassure them. She had been a member of the women's wing of the People's Liberation Organisation of Tamil Eelam (PLOTE) and edited its paper *Sister*, but had left in protest at its human rights violations.

The LTTE went to her house on 30 August and said they wanted to take her away for questioning, and they would return her home shortly afterwards. The fellow residents of her house tried to intervene but she was forcibly taken away. The LTTE has reportedly stated that Selvi is being held because of her links with Christian funding agencies, and claimed that her life was not in danger. It is known that she had no direct links with fundraising for local projects; Christian charitable organisations had links with many local organisations and churches, and so the full implications of such charges are not clear.

Manoharan - University Student

A final year student at the University of Jaffna, Manoharan was a leading member of the local Pax Christi group and was a member of the cast of the play. Manoharan was

active in humanitarian work with the victims of recurrent violence, bringing people together in fasts, Bible studies and prayer meetings, where emphasis was placed on non-violent action. Manoharan was a declared pacifist who had spoken out against the abduction of the "Theepori" dissidents three months earlier (see below).

Thillainathan - Dramatist

Thillainathan, a dramatist and school teacher who was involved in the staging of the play, was also abducted by the LTTE on 30 August.

V Senthana - Engineer

Senthana was abducted by the LTTE in mid-April 1992. He was a mechanical engineer who had worked in France, Canada and the Persian Gulf and had established a co-operative workshop in Jaffna. A poet both in English and Tamil, he was known for his socialist beliefs and for his active concern for the welfare of civilians. He was one of the few practising engineers remaining in Jaffna and at the time of his disappearance was about to begin making boats for use by the Red Cross to transport emergency food supplies to Jaffna, from larger boats anchored at sea.

Senthana is a victim of the general crackdown by the LTTE on individuals known to have dissenting beliefs, but the major reason for his abduction is believed to be that his brother-in-law, Dr K Sritharan, is a key figure in the University Teachers for Human Rights (Jaffna) group.

Maniam - Bookseller

Maniam, the owner of a popular Jaffna bookshop, was detained by the LTTE in December 1991. It is widely believed that the reason for his abduction was his close association with many university students and intellectuals who frequented his shop.

The "Theepori" Group

The "Theepori" or "Sparks" group was made up of dissidents from PLOTE who left that organisation in early 1985 in protest against the growing totalitarian direction



of the movement which had extended to violent repression within the group. At considerable risk they published their accounts of torture and killings carried out by PLOTE in their book, *A New Kind of World*, and consequently faced persecution by PLOTE. The group continued as a literary society and a voice of conscience but essentially had to stop operating from mid 1986 under the increasingly repressive control imposed by the LTTE.

Norbert, a Tamil writer and a leading member of the "Sparks" group, was abducted by the LTTE around 20 May 1991. Although he had left Jaffna for Colombo the previous October, he had returned a few days before his disappearance to provide support for other members of the group who were threatened with violence.

Three University of Jaffna students who were linked with the "Sparks" group were also abducted in the days following Norbert's disappearance, two of whom are understood to have been released after several months.

Dr Rajani Thiranagama - Human Rights Activist

Rajani Thiranagama was a leading activist in the University Teachers for Human Rights (Jaffna) group and co-author of their book *The Broken Palmyrah*, which documents the human rights violations inflicted on the Tamil people by the Sri Lankan government, the LTTE

and the Indian Peace Keeping Force in the years from 1983-1990. She was Head of the Department of Anatomy at the University of Jaffna, a feminist, counsellor to traumatised women and a leading figure in the University's democratic and humanitarian activities. Dr Thiranagama was murdered by the LTTE on 21 September 1989 when she was cycling home from the university. Her murder is also believed to have been an attempt to curb dissent both within the University of Jaffna, where she was particularly influential, and in the wider community.

Shanmugalingam - Journalist

Shanmugalingam was a Jaffna-based journalist who had worked as reporter at different times during the period 1986-1989 for the newspapers *Eelanadu*, *Eelamurasu*, *Murasoli* and *Viduthlai*. He had expressed views which were contrary to those of the LTTE who are known to have successfully pressurised the management of *Eelanadu* in 1986 to have him sacked.

He subsequently joined the staff of *Eelamurasu*. In 1987, when that newspaper came under LTTE control, the established LTTE spy "Jawan" was also a journalist on the paper. On 6 November 1989 an LTTE group led by Jawan came to Shanmugalingam's home and dragged him away from his wife and children. He is presumed to have been killed around mid-November 1989, possibly as a result of torture.

The PEN Freedom to write - Award for 1992 has been given to Selvanithy Thiagarajah.

These awards are given annually to two writers who have shown remarkable courage in exercising or defending freedom of expression and who have suffered as a result. The awards have been presented each year since 1987.

The recipient of the other award for 1992 was Haitian journalist Jean Mario Paul; he was also in prison, but was released two weeks after the awards were announced at PEN's annual ceremony.

In a statement released in New York on 2 September 1992, The President of PEN, Edmund Keeley says of the award to Selvanithy:

It had to be kept quiet at first. Selvi was in a precarious position and her friends advised us not to publicise her name or nationality in an-

nouncing the award. However, last week as the anniversary of her detention approached without there being any firm news of Selvi's whereabouts, her friends decided that the time had come to reveal that she had received this award. Now we are doing the same in an effort to persuade her Tamil captors to free her.

Precisely a year has gone by since Selvi's arrest. It is time for the Tigers to demonstrate that peaceful, well-intentioned criticism from within their community is not only tolerated but encouraged. If they want to gain respect from the international community, they should show themselves to be committed to safe-guarding internationally respected rights. They can only do this by releasing Selvi and others like her. **P**

The main points of a speech made by **Lucien Rajakarunanayake**, journalist and member of the Action Committee of the Free Media Movement, at several public meetings organised by the movement in Colombo and at other centers is reproduced below.

THE CASE FOR A FREE MEDIA IN SRI LANKA

What is the Media Freedom that we are concerned with? It is a wrong notion that media freedom means merely the right to publish newspapers. It is more than that. It is not the ability to publish news. That is only one aspect of it, as the news can also be totally one sided.

The media freedom that we seek today is a much wider concept. It is, firstly, the right of the people of this country to be informed of the truth about matters that affect their day to day lives, the truth about the pressing and significant developments and crises in our society. It is about politics, about war, about education, about AIDS, about the environment.

Media freedom is inextricably involved with the defence and growth of democracy. A society that has no access to information about the events that affect it most will be in no position to take the democratic decisions needed to provide solutions to the problems facing it.

Take the situation in Sri Lanka today. In my view there are two key issues facing our society. The first is the war of separation in the North and East, the other is the future of democracy.

What do our people know about the war that is taking such a toll of lives of Sinhala, Tamil and Muslim citizens? Do we really know how many Tamils, call them Tigers or plain Tamils, have been killed in the past two years since the fighting resumed? Can we not see that official sources of information about the battlefield have fallen victim to the Westmoreland Syndrome which was seen in the Vietnam war? If 10 US soldiers died in action, the dispatches added that at least 50 to 100 Vietcong were killed. Are our official reports not doing the same? When 3 soldiers are killed, we are told that three times three Tigers were also killed. Fancy estimates of Tiger deaths are given which can never be verified. Journalists have often noted that the casualty rates for Tigers given by official sources tend to make it five to ten times the government casualty rate in major operations.

Should not the people know why Sinhalese and Tamil youth are dying in such numbers? Is there a need for such killing? Do they not have a right to be informed of these things? Should not the people know how much is spent on the purchase of a single tank? Should this be kept a secret from the public of this country? If an aircraft crashes, should not

the public, who paid for it, know how it happened? Are these military secrets? Why did an aircraft which carried explosives also carry fuel and 13 airmen? Is it democracy to deny this information to the people?

Isn't this the principle of accountability which flows from the financial burdens the people are called upon to bear for the prosecution of this war? This is what we seek when we ask for the right to information. This is the essence of democracy.

The FMM demands that the constitution of Sri Lanka should be suitably amended to include the right to information as a justiciable right of the people in addition to the existing clauses ensuring freedom of expression, which should also be strengthened. Isn't it significant that our country that subscribes to the UN Declaration of Human Rights, includes freedom of expression in its constitution but not the right to information?

It is the lack of information that prevents our people from discussing the realities of this war. Why cannot our people openly discuss the possibility of separation as a solution to the ethnic conflict? Are we to wait till separation is imposed upon us as the only solution to end this slaughter of youth on both sides, this senseless killing of civilians?

Second, there is the question of the freedom of the media in the context of democracy. This involves the freedom of newspapers to publish what they wish without fear of threats from the State or any other quarter.

While the press was involved with the freedom movement in the pre-independence period, in the immediate aftermath of independence there was some degree of freedom of the press, due to the liberal attitudes of the leaders of that time. This freedom was also the result of prevailing economic conditions; there was the relative economic prosperity of the post-war period. And the social tensions of the post-colonial period had not yet surfaced. But as the economy worsened, and social tensions emerged, the freedom of the press began to diminish. This has happened under every government, under every political party or coalition which held power since the early 1950's.

The press was muzzled to deal with the Hartal of 1953. The left-wing 'Trine' was tried for sedition. Emergency powers used to curb the reporting of trade union news during



strikes. The first SLFP government of Mrs Bandaranaike, supported by the Left, sought to establish a Press Commission in order to regulate the press. The subsequent UNP Government, under the so-called liberal Dudley Senanayake, did not hesitate to place restrictions on the transport of opposition newspapers. State advertising was always denied to newspapers critical of government policy.

The United Front Government of the SLFP, LSSP and CP took over the largest newspaper group - Lake House - and helped create an even worse monster, with full State patronage and authority. Mrs. Bandaranaike's government sealed the Sun Group of newspapers.

The UNP which defeated the SLFP and came to power in 1977 with a pledge to undo the take-over of Lake House was no better. It retained control of Lake House. In addition it took over the Times Group as well. That was during the Jayawardena government. The Premadasa UNP government which followed continues to retain Lake House. Several of these governments also imposed restrictions on the 'Aththa' and other organs of the opposition.

In Jaffna, the LTTE has banned the only regional newspaper in the island - 'Eelanadu'. The JVP not only enforced a boycott of certain newspapers but even killed those who sold or read newspapers which it did not like. Today's leaders of the DUNF, when they were in power in the UNP, did not oppose the curbs on press freedom and the blatant use of Lake House and radio and TV for government and party propaganda. There is no political party which has held even a modicum of power through legal means or through terror that has not acted against the freedom of expression, the freedom of information and the freedom of the press. They are all rightly tarnished with the same brush, as far as media freedom is concerned.

What do we have today? The media remains curbed in many ways. The most obvious is the control of government advertising. How is it that a government which claims to believe in a liberal economy decides, at Cabinet level, the newspapers to which departmental and state corporation advertising should be given? Is that not a means of controlling newspapers? Why should the organisation that sells State Lotteries not be given the power to decide which newspapers it should advertise in, on the basis of the target market among lottery buyers? It is hardly a secret that the government exercises some control over private newspapers through the State-owned banks from which these newspapers seek loan facilities.

Why does a government which has liberalised the import of almost everything from luxury cars to kiddies' toys continue a licensing system for the import of newsprint, the most important raw material for a newspaper? Isn't it curious that a country which claims to have a fully liberalised economy with complete market orientation, and a Free Press, has three very significant items imported under licence? They are explosives, narcotics and newsprint.

Of late there is also the regular use of the laws governing the Powers and Privileges of Parliament to curb the freedom of journalists. Privilege issues are becoming a common feature of parliamentary business, in a system where, under the existing law, Parliament is both prosecutor and judge on matters of privilege, unless it decides to refer a matter to the Courts.

There is also the new use of the principle of sub judice to curb publication and discussion of matters of public interest and importance, and the recourse to the laws of sedition, available under Emergency Regulations, again to curb the publication of news important matters which affect the public and democracy and so stifle information and discussion.

There are other means of curbing the press, too. There are the overt and covert threats to newspaper proprietors and journalists. The whole system of unseen threats is intended to create a mood of self-censorship among newspapers and journalists. Not satisfied with that, there are the more direct threats too—threatening phone calls, the recent open attack on journalists covering an opposition political event in the city, the stabbing of cartoonist Yunoos; attacks on journalists by the police, government politicians and their supporters are also becoming a regular feature.

What is even more tragic is that attacks on journalists are now being perpetrated by politicians and their supporters in Opposition ranks as well. The fact is that all our politicians see the journalist as a threat to their freedom to mislead the public for political gain.

The FMM demand for a Free Press does not end with newspapers that are free of state control. Radio and television have never had freedom of any sort in this country, under any government. They have always been controlled and have always been the mouth-piece of the party in power. There can be no media freedom in a country where the largest newspaper publishing organisation—Lake House—, the only radio station, and two of the three TV channels are under state control. Even the one private TV channel, which began operation recently, is not permitted to air local news. While the two state-owned TV channels dish out the same news bulletin, the private channel broadcasts the BBC-TV news which is pre-recorded; however, if the news of the day has a reference to Sri Lanka, the telecast is not shown due to sudden 'unfavourable atmospheric conditions.'

None of this is the condition of a healthy democracy. It is worse when we live in a society, which, although used to the ballot, still has some regard for feudal, authoritarian values, is easily intimidated by power, and where free elections have not taken place for over a decade, although several polls have been held.

It is now even worse in a situation where there are only a few agencies of the state ready to strengthen democracy. Recent experience has shown the people that they cannot



depend solely on parliament to safeguard democracy. We cannot depend solely on the Courts to defend democracy, either.

That is why the Free Media Movement was launched by a group of journalists from several newspapers—the mainstream press and what is conveniently referred to as the Alternative Press—journalists with varying political views and positions, to bring to the public the truth about the media in Sri Lanka, and to create a public opinion which we hope will force all political parties to place the question of media freedom high on the agenda of their political programmes.

Our struggle is not for higher wages, although it is a fact that journalism is among the worst paid professions in the country. Our demand is not for special favours such as houses or pensions, although journalists do have these needs, just like other sections with fixed incomes.

Journalists in Sri Lanka have for too long isolated themselves from the public, mainly due to false elitist attitudes, and because they did not fully realise the threat to the broader freedoms of society through the threats to the right to free expression. We now realise the time for such separate existence is over, because the freedom of the citizen is necessarily linked with the freedom of the journalist. The right to information of the citizen is dependent on the freedom of the journalist to inform. In short the absence of a truly free media means the absence of democracy.

We are not a political organisation in the sense that we have no affiliation with any political party. But what we discuss is certainly the stuff of politics, for which we make no apology. We do not ask for the overthrow or the defeat of the government. We hope that the government in power will remedy the wrongs we draw attention to. However, if as a result of what we say and explain, the public is helped to make up its mind and to act politically in any particular way, then that is the right of the public.

We are aware of the threats faced by those who demand greater democracy in our society. If we were to be curbed by such fears, we would then be content to write only the weather reports. We believe that our task and action has relevance to the prevailing social condition. The FMM is ready to go among the public to create public opinion for the following demands, and call upon all political parties of the right and left, or even the middle, to state their position clearly on these issues. We demand such statements well ahead of the next election, because the public has a right to know what their policies are on these issues.

- Free Lake House from government control. As an initial measure, implement the existing legislation which provides for broadbasing the ownership of Lake House. It has been ignored by the SLFP

Government which took over Lake House, and the subsequent government which was elected on a pledge that it would undo the take-over. Give the public a time frame by when this would be done.

- Free Radio and TV from State ownership and control. If the State needs a channel for Radio and TV information or even propaganda, keep it, but allow private radio and TV stations to compete freely, vying for licence fees, advertisements with the right to the free broadcast of news.
- Introduce an amendment to the Constitution to ensure the Right to Information in keeping with the UN Declarations and the International Covenants on the subject.
- Repeal the present Parliamentary Powers and Privileges Act which is used to curb and intimidate journalists, and remove from parliament judiciary powers in deciding on matters of privilege.
- Stop the use of laws against sedition to harass and threaten journalists and newspapers, thereby preventing discussion on matters of urgent public interest.
- Stop resorting to the principle of sub judice to prevent debate and public discussion of matters of public interest, which are before the Courts, which can in no way influence or affect the findings of a learned Court of Law. Stop the new habit of running to the courts with a plaint to obstruct discussion of public issues in the Press and Parliament.
- Stop the control of Government advertising in a manner detrimental to the freedom of expression.
- Allow the Free Import of newsprint.
- Make a public declaration condemning attacks on journalists by the Police and political thugs, and explain what measures your political party would take to prevent such attacks in the future.

These are the minimum demands of the Free Media Movement. We call upon all political parties to state their position on them, and enter into a dialogue with us and the public on these issues.

This is only the beginning of this campaign. We will take this message to the people in every part of the country. We call on the public to discuss these matters in their political parties, youth organisations, trade unions, social and community groups. We assure the public that the Free Media Movement will carry on this campaign whatever political party is in power, in the larger interests of democracy in Sri Lanka. ■

IN MEMORY OF THE INDO-LANKA ACCORD

Jayadeva Uyangoda

July 27, 1992 marked the fifth anniversary of signing the Indo-Lanka Peace Accord in Colombo. Even before it marked its fifth year, the Accord had relegated itself to the realm of remembered things of the past. For some, the Accord is dead and buried; for some, it is still alive and around us. Such competing claims notwithstanding, Sri Lankans will continue to find themselves, at least for the foreseeable future, living under the colossal shadow of the Accord.

The Jayewardene-Gandhi initiative of July 27, 1987 has turned out to be one of the most controversial inter-state agreements in the recent history of South Asia. Haste, undue optimism, unrealistic calculations of risk-management and fundamental misconceptions concerning ethnic conflict-resolution entertained by its architects made the Accord the target of a range of hostile forces in India and Sri Lanka.

In Sri Lanka, the Accord brought to the surface considerable dissension within the ruling United National Party (UNP). It was also seized by the underground *Janatha Vimukthi Peramuna* (JVP) as a new springboard to emerge as a formidable counter-state force. The Provincial Councils and the Indian Peace Keeping Forces (IPKF) were turned into major anti-UNP propaganda planks by the Sri Lanka Freedom Party (SLFP) and other Sinhalese opposition parties too. For all Sinhalese nationalist forces, both in and outside the government, the signing of the Accord by Jayewardene was a betrayal of unpardonable magnitude.

When Mr. Jayewardene decided in mid-1988 to hand over the reigns of the UNP to the then Prime Minister Premadasa, who had opposed the Accord, the political fate of the July '87 initiative also took an unmistakably new turn. If Jayewardene had outsmarted Gandhi by handing over to India the responsibility of North-east war, President Premadasa, in his first six months in office, thwarted any further Indian assertion in Sri Lanka's ethnic politics. Indeed, Premadasa's peace initiative with the LTTE in April 1989 was a major signal that New Delhi had absolutely no political role in Sri Lanka, as envisaged and conceptualized in the Accord.

This is not to say that Premadasa was single-mindedly determined to invalidate the Accord. Even if he wanted to let the Accord continue in force, he could not have kept it alive. The point is that the very circumstances under

which the Accord was signed had made imperative for its implementation, the presence in power of both Jayewardene and Gandhi. However, the Accord was signed during the last year of Jayewardene's constitutionally mandated second term. Moreover, he had signed this most controversial document without canvassing support for it even within his own party, let alone in the country at large. With a non-supporter of the Accord in office in Colombo, India's only guarantee for its operation was to continue to station its troops, euphemistically called Peace Keeping Forces, in Sri Lanka's territory. But, the Premadasa administration, the SLFP, the JVP and even the LTTE—in short all the major political actors in Sri Lanka—were unanimous on the immediate and unconditional withdrawal of the IPKF. When the last IPKF soldier boarded the ship at Trincomalee harbour in March 1990, New Delhi's direct role—military as well as mediatory—in the North-East conflict came to an effective end.

However, the Accord is not yet a mere archival document. With all the chaos which it led to both in India and in Sri Lanka, with all the hatred and denunciation it attracted, the Accord enabled the Sri Lankan Tamil community to secure one significant gain—Provincial Councils. The 13th Amendment would never have been made possible but for the Accord. The 13th Amendment, by the way, is the most, if not the only, progressive and democratic piece of constitutional legislation that the Sri Lankan parliament has passed since independence. It offered the Tamils a workable, albeit with some limitations, constitutional basis for autonomy. It also envisaged a radical re-structuring of the post-colonial state in Sri Lanka in the direction of devolutionary democracy.

Herein lies the political failure of the Accord as well. The Accord, due to a variety of reasons, signified a sudden willingness on the part of some ruling sections of both India and Sri Lanka to attempt jointly a political solution. For Rajiv Gandhi, Jayewardene's change of mind perhaps meant a rare and surprising moment of accommodation which could also secure a continuous diplomatic and military role for India in the affairs of Sri Lanka. For Jayewardene, as he later admitted, it was a Napoleonesque moment, a strategic opportunity that would not come every day. Hence the haste and optimism of both Jayewardene and Gandhi. Yet, the crux of the matter was that neither Sinhalese society nor the Tamil



knew exactly what a 'political solution' would entail. For the LTTE, the package offered the Tamils in the Accord was too little, too late. For Sinhalese nationalist forces, it was too much and too early. For the EPRLF, which accepted the Accord and attempted to implement it, it was a political experiment to be constantly supported and guaranteed by India. Many other Tamil militant groups decided to watch events, while taking a rest in Colombo. And finally, for the Premadasa administration, survival amidst a Southern rebellion was too urgent a matter to be disregarded.

The Southern opposition to the Accord in a way changed Southern politics too. Resistance emerged from a range of sources; the underground JVP organized and led violent protests with the active support of many other Sinhalese nationalist parties. The entire South swiftly became a battle ground in which contending claims of patriotic allegiance to the 'Motherland' were tested, with increasing ferocity, till the end of 1989. Indeed, the entire spectrum of Sinhalese opposition political parties, except those of the Left, swiftly and willingly capitulated before the JVP's anti-Indian mobilization.

The JVP's demise in the latter part of 1989 marked the end of militant Southern opposition to the Accord. Yet, the Accord and its consequences continued to dominate political debate in Sri Lanka. The Provincial Councils and devolution, which were written into the Constitution of the Republic and constitute a central theme in the political debate, are direct political results of the Accord. Still lacking in much political support and even legitimacy, devolution, nevertheless, is a real fact of post-87 Sri Lankan politics. One may hate and forget the Accord as a bad dream; yet, in being oblivious to the 13th Amendment which has set the parameters for the political debate concerning Sri Lanka's ethnic relations, for today as well as for tomorrow, one can only be foolish.

Looking back at the Sri Lankan Tamil response to the Accord and the political ambience which surrounded it, we are confronted with a seemingly inexplicable question: What made Prabhakaran and the LTTE reject the political package offered through the Accord?

Many reasons have been adduced by commentators for the LTTE's enigmatic behaviour. A somewhat consensus view is that a primarily military and militaristic organization, which had consistently lacked a clear political charter, had to act the way it did. Political and military blunders in Colombo and Delhi enabled the LTTE leadership to justify its own political delinquency. And all this in turn compelled the Sri Lankan Tamil people to bear yet another era of senseless war. The LTTE-IPKF confrontation was immensely destructive as far as the civilian populace was concerned. So has been the second phase of the war with the Sri Lankan state since July

1990. In the course of the post-Accord war, Tamil nationalism too has come to be hegemonized by a phenomenon called 'Tigerism'— an intransigent militarism which, though couched in the rhetoric of the nation, is fascistic in essence.

It may not be a direct result of the Accord that fascistic nationalisms appeared simultaneously in both Sinhala and Tamil societies. Rather, the Accord was the catalyst for the crystallization of these forces. While the LTTE largely succeeded in annihilating, or rendering ineffective, all its rivals in the Tamil political spectrum, the JVP, ironically, paid the heaviest price for its own sudden spurt generated by the post-Accord crisis. At a crucial moment of the JVP's ascendancy, President Premadasa stripped the JVP of its sole claim to anti-Indian patriotism by leading a concerted anti-IPKF propaganda drive. When Premadasa effectively broke the JVP's monopoly of anti-Indian discourse in mid-1989, the job of dealing with the JVP became a mere military task. Thus, the story of the rise and fall of the second JVP insurrection is closely interwoven with the zig-zag course of post-Accord politics.

The story, however, of the LTTE and the Tamil ethnic question has not ended in the same fashion. Again and again, events have proved that it is the most intractable question in twentieth century Sri Lankan politics. Developments since July 1987 have not made the task of ethnic accommodation less insurmountable. India's role as a mediator has now effectively ended and to the utter jubilation of chauvinistic forces in the South, there is hardly space for any other third party mediator, within or outside the South Asian region. Tamil-Muslim conflicts in the East have not only terminated the validity of the old formulation of the ethnic homogeneity of 'Tamil-speaking people,' but have also made sharing of power between Tamil and Muslim communities in the East immensely problematic. In Sinhalese society, the sheer inability of political and ideological leaders to come to grips with the basics of the ethnic question has paralyzed its soul, if it had any. So, despite efforts made by the affable Mr. Mangala Moonesinghe of the Select Committee, the carnage may go on and on.

This is not to argue that the Accord has lost its significance for Sri Lankan politics. Even with its inability to assert a politico-diplomatic validity, it has paradoxically provided a discourse within which political debate concerning some workable solution to the ethnic question can even be conceived. The multi-ethnic character of Sri Lankan society, devolution and provincial councils, and merger of North-East provinces are the key formulations that are inscribed in the Accord and that have found their way into political and constitutional debate. For that alone, long live the memory of the Indo-Lanka Accord!

The following is an extract from the Third Annual Chandra H. Soysa Memorial Lecture delivered on 30 May 1992 in Colombo.

CRISIS OF CONSTITUTIONALISM IN SOUTH ASIA

Neelan Tiruchelvam

At no other moment in recent history have the questions of constitution making and constitutional reform been of such importance to central focus in political discourse. The dramatic transitions in Eastern Europe compelled all of these nations to reconstitute the state and the institutions of the state. The critical elements in this reconstruction were the institutionalisation of a multi-party system, a competitive electoral process, an enforceable bill of rights and an independent judiciary as the custodian of the new constitutional values.

In Hungary almost the entirety of the Constitution was rewritten before the transfer of political power to a popularly elected government. In the Czechoslovakian federation the task of constitutional change became more complex, and reopened the wounds of Slovakian resentment against decades of Czech dominance. In Yugoslavia, even a bold attempt to transcend the conventional federal model through sovereignty-associations came too late to save the federation from disintegration. The dissolution of the Soviet Union has caused a myriad of problems to the framers of the constitutions of the individual Republics, and the loose association, the Commonwealth of Independent States. In Southern Africa we have the most complex and daring effort to reconcile Black nationalism and Afrikaan nationalism which have been in opposition to each other for centuries. South Africa faces the awesome challenge of facilitating black-majority rule, while establishing political institutions which uphold the rule of law, racial equality, and respect for the universal principles of human rights.

Even in the more established democracies like Canada the future of the nation state rests on questions of constitutional reform. With the collapse of the Meech Lake Accord, Canada is engaged in a widespread process of public consultation, with a view to accommodating Quebec's aspiration to be recognised as a distinct society, and the increasingly strident assertion by native Canadians of their collective identity and of their group rights. In the United Kingdom, until the middle of this century scholars firmly believed that the British constitution was a glorious achievement, worthy of emulation by less fortunate nations. But this complacency has given way

to the realisation that the unitary and centralised Parliamentary system of government has alienated Northern Ireland, failed to accommodate the autonomy demands of Scottish nationalists, and has failed to adequately secure individual human rights. There is, therefore, pressure in Britain to break out of its constitutional isolation and to adopt arrangements including a bill of rights which are more consistent with its membership of the European Community.

These examples point to two contradictory trends. The first trend is characterised by an intense faith in the capacity of modern constitutions to enthrone popular sovereignty, to empower disadvantaged groups and individuals and to fashion institutions of democratic accountability. This intense faith in the triumph of constitutionalism is accompanied by an equally intense skepticism about the efficacy of constitutional arrangements to deal with the horrors of ethnic fratricide, political violence, religious bigotry, and the crude and cynical manipulation of electoral and political processes. It is this skepticism which leads to the view that the constitutional arrangements are impermanent and indeterminate, often needing to be reconstituted and reconstructed to cope with new complexities and realities. The crisis of constitutionalism is to reconcile this passionate faith in the normative power of constitutionalism, with intense skepticism and even cynicism arising from the failure of constitutions in many societies to uphold human rights or democratic values, and the appalling disparity between constitutional theory and constitutional practices.

Comparative constitutionalism is a hazardous enterprise. Baxi has somewhat contemptuously described it as 'a hazardous occupation of the upwardly mobile Asian academic, all too keen to share the high table with the Master.' What I hope to do in this presentation is to disaggregate the concept of constitutionalism and to focus on the need for constitutional theory and thought to respond more imaginatively to some of pressing social and political issues of our time. I will then endeavour to highlight some commonalities which distinguish constitutionalism of South Asia, from that of East Asia, Latin America and Africa.



We may now proceed to contrast three distinct ways in which the idea of constitutionalism has been perceived.

Constitutionalism as a Discourse

Firstly Constitutionalism is viewed as a form of discourse, as a means by which issues relating to the construction of the institutions of the state, questions relating to legal and political legitimacy, democratic accountability, and the limits of political freedom, are conceptualised and articulated within a society. Baxi has in a recent essay emphasised that the dominant mode of constitutionalism is Euro-centric. He adds:

The dominant mode, overall insists that Asian constitutions be assimilated to Euro-centric discourse and its languages. For, after all is not constitutionalism and aren't constitutions either gifts of colonial history or marks of modernity, lying outside the historical grasp of Asian societies.

No doubt Asian constitutional theorists firmly reject this approach and contend that Asian constitutional theory and practice richly antedates by millennia the western tradition.

However the discourse of constitutionalism raises several issues which are central to the present crisis. Is constitutionalism a project of an elite minority, and is it morally legitimate for this small elite to impose ideals and values on those who do not share them? In any event, is it realistic to expect those who remain outside this discourse to work political and institutional forms which are otherwise unintelligible to them?

Several Indian scholars including Nandy, Kothari, Madan and more recently Kaviraj have grappled with these issues. In this regard although the constitutional experience of India, Pakistan, Bangladesh and Sri Lanka were shaped by a common colonial experience, the impact of the nationalist movement in the Indian sub-continent on this experience was different from our own. Throughout the Indian colonial experience there was a difference between the modernist discourse of the Indian elite and the more traditional discourse of the lower orders of society. One of the crucial contributions of Mahatma Gandhi was to bridge the gulf between these two sides, and to keep the values, objectives, and conceptions of the political world of each side intelligible to the other. Kaviraj also makes the point that the process of political mobilisation during the nationalist movement was such as to create an implicit trust by the masses in the initiatives of their political leaders. There was therefore no dialogue between these conflicting discourses on equal

terms. Nonetheless the Constituent Assembly was able to enact a Constitution which was not seriously contested. Kaviraj sees this as a consensus of discourse rather than of ideological positions. The constitutional frame and the institutional pattern that had been put into place came up for serious ideological criticism from the left, but there were commonalities at a different level. Looked at from the outside there were underlying unities based on common ways of arguing about structures, purposes, and ideals.

In the second phase of constitutional development, we see the falling apart of the Gandhian language, and a growing gap between elite discourse and popular consciousness. One of glaring failures of this period was the inability to take the conceptual vocabulary of rights, institutions and impersonal power into the everyday vernacular discourse of village or small town India. As a result, the ideals of modern nationalism, industrial modernity, democracy, and minority rights came to be regarded not as achievements of a common nationalist movement, but as ideals intelligible to and pursued by a modern elite which inherited powers from the British.

The expansion of the state resulted in the recruitment of personnel from groups who speak and interpret the world in terms of the other discourse. At the point of implementation these personnel reinterpret government programs beyond recognition, and there is a slide into a style of power which is irresponsible and unaccountable. Institutional forms come under more pressure as more common people enter party politics. There is a conflict between the institutional logic of democratic forms and the logic of popular mobilisation. The more one part of the democratic ideal is realised, the more the other part in terms of a secular polity, protection of minority rights, is undermined. This leads to the loss of the moral and legal legitimacy of the constitutional frame that was put into place by the modernising post independent elite.

Loss of Legitimacy

A similar conclusion is reached with regard to the erosion of the legitimacy of political institutions in Sri Lanka by the Youth Commission in March 1990. The Youth Commission reached this conclusion through a process of political diagnosis which emphasised ideology as opposed to the structure of discourse. I shall, however, deal with this analysis here, as it would facilitate an assessment of the constitutional and institutional prescriptions which flow from such a diagnosis.

According to the Commission, the erosion of Youth confidence in existing political and social institutions is due to two broad reasons. Firstly, the institutions have been



so eroded or reduced to atrophy due to excessive politicisation or institutional paralysis that they do not seem to perform any significant societal function. Secondly, youth grievances are not accorded any importance in these institutions and they remain unresponsive to the changing nuances and priorities in youth aspirations. These two explanations give rise to somewhat contradictory responses. The first is said to have given rise to ideologies with a strong anti-institutional bias, while the second gives rise to the demand for larger youth representation within the very institutions which have been so repudiated.

The agenda for constitutional and institutional reform include strengthening of the Public Accounts Committee, the Consultative Committee system and its extension to the district level, and the provision of legislative interns. Similarly with regard to youth disenchantment with regard to the legal processes, the Commission recommended procedural reforms to strengthen individual and group access to the Supreme Court, including the provision of judicial interns to strengthen the technical and institutional capacity of the apex court. One of the more ambitious proposals with regard to reform of representative institutions was, that relating to the creation of separate constituencies to ensure that youth constitute 40% of the representation in Provincial Councils and local bodies. However, fearing a range of constitutional and more pragmatic objections to such a proposal, the Commission proposed more modestly that political parties be mandated to nominate 40% of candidates from within the age group of 18-30. The Commission also urged political parties to engage in a process of self reflection on the lack of active involvement of youth in their organisational structures.

The Commission also made several other recommendations for institutional reform. These included a Nominations Commission to screen appointments to public institutions; a Media Commission to oversee both the print and the electronic media; a National Commission on Education to address long-term educational needs; and a Task Force on caste and caste related issues. With regard to Youth grievances the Commission recommended the creation of a Youth Ombudsman with powers to address grievances both at the national and village level.

The Commission's agenda for re-democratisation is a remarkable example of pragmatic empiricism or procedural constitutionalism of the British constitutional tradition. It is grounded on an intense faith in the normative power of constitutions, and in the capacity of reformers to revitalise democratic institutions through procedural and representational changes. The Commission's faith was unshaken by youth alienation, 'the intensity and ramifications of which are without parallel in regard to

any other problem which besets society.' It is an approach grounded in the dominant mode of constitutional discourse, and presumes without critical examination that the ideological critique is located within that discourse. The loss of institutional legitimacy could be recovered if youth could be actively engaged in the formal institutions of democratic governance and of adjudication. No doubt, the Commission had to evolve pragmatic solutions, and was handicapped by the lack of an institutional agenda which was explicit or implicit in the youth's ideological critique.

The Commission's report was by and large very well received, and it appeared that a national consensus could evolve around its principal recommendations. An All Party Conference was convened and mandated to implement one of the most ambitious programs of constitutional and political reform envisaged for decades. The objectives of this exercise included a fundamental reappraisal of all the institutions of governance including the legislature, the executive and the judiciary, and the induction of forces who remained outside the political mainstream. At one stage, all the major political formations were represented within the Conference including the principal opposition in the South, the Sri Lanka Freedom Party, and the political-military formation dominant in the North-East, the LTTE. But, with the collapse of the Southern insurgency, the Conference soon lost its sense of urgency, and part of its legitimacy, as both the SLFP and the LTTE progressively withdrew from this exercise. The remaining political parties plodded along with diminishing enthusiasm.

The only significant legislative reform was the requirement relating to a youth quota in nominations to local bodies, A National Education Commission was established, but its deliberations have yet to elicit any serious public interest. The Media Commission ran into serious opposition within the journalist community who remain unconvinced that it is a progressive measure. Nonetheless concerns relating to the liberalisation of the media have partly contributed towards the relaxation of the rigid state monopoly of the electronic media. The centre piece in the Youth Commission's reform package was the Nominations Commission. A truncated Nominations Commission bill was not pursued due to reservations by the Supreme Court relating to its constitutionality. However, there is an acknowledgment by the state that recruitment to the public service should be free of interference by the political party in power. Credit for this significant shift in policy must go to the Youth Commission.

The All Party Conference also devoted enormous time and effort to the revision of the chapter on Fundamental Rights and to the establishment of a Human Rights Commission. The government assured both the U. N.



Human Rights Committee last year, and the Human Rights Commission in February that the enactment of these laws would be part of its new resolve to protect human rights. But the prospect of an early passage of the 17th Amendment seems unlikely given the growing polarisation within Parliament. As we review these events, we must sadly conclude that despite some modest gains the program of constitutional reform envisaged by the Youth Commission is largely in a state of disarray. The All Party Conference continues to drift without clear political direction. To some elements within the ruling party, the very process seems more important than the substantive outcome, as it serves the immediate need of improving the human rights profile of the government. Some recent studies seem to confirm that disillusionment of the youth in universities, and the higher forms within secondary schools remains intense.

Crisis of Ethnicity

We must now move on to an equally complex issue: how did the dominant mode of constitutional discourse respond to the crisis of ethnicity and of nationalism? In exploring this issue, I must initially emphasise the fluidity of the concepts and ideas which form the core of this discourse. As we have emphasised in this lecture, most countries in South Asia share a common colonial experience. The colonial constitutional discourse dealt with questions of 'limited government', and the struggle for progressive transfer of power to hybrid legislatures with nominated and popular representatives. With the advent of political independence, this discourse shifted to questions of legislative supremacy and the distribution of power between the different organs of government. Such a discourse presupposed that the post-colonial constitutional arrangements were primarily intended to give effect to the majoritarian principle.

A politically and culturally resurgent majority deployed legislative and executive power to deny equal treatment to ethnic and cultural minorities. A vote in the hands of an intolerant majority was soon viewed as 'an instrument of oppression.' The focus of constitutional discourses began to shift to the need for restraints on the majoritarian principle and limitations on the exercise of state power.

More recently, the discourse has more sharply focussed on the constitutional arrangements necessary to preserve the multi-ethnic character of the polity. These issues relate to power sharing arrangements, pluralism, secularism and equalisation of opportunities, through the removal of historic and regional disparities. Within this discourse there are those who challenge the hegemony of the constitutional ideas associated with the modern state and inherited political institutions. Their argument is

that this form of discourse is no more than an extension of the colonial discourse, and does not offer any concepts, or categories of analysis which are capable of comprehending the experience of South Asian societies. They contend that this discourse must be extended to accommodate the forces of ethnicity and of nationalism.

These concerns further point to the need for new concepts and principles designed to protect ethnic, linguistic and religious minorities. The protection of such minorities must form a fundamental component of any bill of rights. Such protection should primarily be directed towards insulating minorities from any activity capable of threatening their very identity or existence. Such activities range from genocidal violence or pogroms directed against specific minorities, to policies of assimilation including state aided settlement schemes intended to alter the demographic profile of regions where a minority predominates. States need also to be mandated to actively foster and protect the linguistic, cultural and educational rights of minorities.

At the centre of this exercise is the effort to reconcile the protection of individual rights with the protection of group rights. Important and preliminary work in this direction is being undertaken both within the CSCE (Conference on Security and Cooperation in Europe) process and within the European Community. Constitutional theorists in South Asia need to be more attentive to these developments.

Unitary State and Sovereignty

The discourse of constitutionalism and international human rights jurisprudence have yet to imaginatively respond to challenges which place in jeopardy not merely the nation state, but the very foundations of a constitutional order. These concerns compel reappraisal of the very nature of the nation state and the concept of national sovereignty. The entrenchment of the unitary state in constitutional texts often leads to the absurd contradiction of imposing a mono-ethnic state on a multi-ethnic polity. The very definition of the state must increasingly reflect the ethnic diversity of the polity, and acknowledge that the state is an aggregation of ethnically and linguistically distinct regions and sometimes several distinct nationalities.

Colvin R. de Silva who played a part in the introduction of the concept of a unitary state into the first Republican Constitution (but not its subsequent entrenchment in the Second Republican Constitution) viewed it as no more than an intellectual construct. In later years he feared that the idea might become so embedded in legal consciousness so as to inhibit innovative constitutional ex-



perimentation. Dr. de Silva argued that there was no ideal type unitary constitution locked up in some mythical vault. He believed that unitary and federal constitutional arrangements formed part of a continuum, with the former being compatible with the most extensive forms of devolutionary and quasi-federal arrangements.

Recent judicial practice in the interpretation of this clause point to some of the difficulties of constitutional adjudication. The apex judiciary's self perception in constitutional adjudication is not that of a neutral arbiter between the centre and the province, but more of the custodian authority and power of the centralized state. This approach has contributed to the progressive erosion of the devolutionary arrangements. But there is even more serious danger to the very integrity of constitutional discourse and to constitutional adjudication.

The dissenting judgements in the 13th amendment case, (and some subsequent legal commentary) point to the danger of deep popular prejudices being elevated and rearticulated in the form of rational constitutional discourse. The transparency of this process, seems to undermine the very rationale of constitutional adjudication as a process with techniques of reasoning, recourse to neutral principles and in the very style of argumentation, which is distinct and independent of the discourse of the political arena.

Beyond Rhetoric of Rights

Another area in which the discourse of constitutionalism needs to be enriched is in the enforcement of fundamental rights. The rhetoric of basic rights and freedoms is based on statist and individualistic conceptions. The base of support for fundamental rights can be expanded if it is linked to belief systems which have given content and meaning to the social and religious experiences of the people within South Asia. These indigenous, cultural and religious traditions emphasise communitarian conceptions of justice, and conciliatory and consensual approaches to the resolution of conflicts.

Obligations of reciprocity within a family facilitate attitudes and values supportive of the right of the child and the needs of the elderly. Such an approach leads to more effective protection of social rights, than what could be available in a legal culture which views these issues exclusively in terms of an individual's claim against the state.

There are other ideas such as *dharma* which are central to the Hindu-Buddhist theory of justice and define the moral limits which rulers may not transgress if they are

to command the allegiance of their subjects. Very little effort has been made to imaginatively build on such concepts to articulate principles of governance and democratic accountability which draw on the language and idioms which form part of the Hindu-Buddhist tradition. Similar attempts need to be made to draw the linkages between constitutional values and the rhetoric of rights on the one hand, and the concepts, ideas and institutions which are central to the belief systems and the world view of Islam, on the other.

This point is perhaps illustrated by the recent intercession of the Thai monarch in the constitutional confrontation between pre-democracy forces and the military. It is significant that most comparative constitutional lawyers have often commented on the transient and evanescent nature of Thai constitutions. Between June 27, 1932 and January 29, 1959, Thailand had as many as seven constitutions of which two were described as provisional, (1932, 1947) and one as interim (1950). One scholar described this process as the practice of factional constitutionalism, which is the "process of drafting a new constitution to match and protect each major shift in factional dominance." But the more perceptive observation is that Thailand had two constitutions, the written constitution which is ephemeral and the more enduring substantial structure of law and custom which have remained as the fountain upon which government rests.' Tambiah points to the Theravada doctrine of Kingship (the king as *Boddhisatva* - the cosmic liberator - and as *Chakkravarti* - the terrestrial emperor) as being resilient throughout Thai history, and legitimating changing forms of state power.

Tambiah refers to a remarkable myth which leads to the assimilation of Manu's *Dharmasastra* and indigenous customs in the Theravada Buddhist countries of Burma and Thailand. This process of reincorporation required the creation of a new Manu to legitimise his code. The myth described him as a cow herd who, because of his flair for adjudicating disputes, was made the King's minister, while he was a child. Dissatisfied with one of the decisions involving the ownership of cucumber, he decided to retreat, practice meditation and to endure severe austerities. Eventually, he ascended to heaven, where he found the "*dhammadhat* laws engraved on the boundary wall of the solar system." He brought these laws back to the King, who is reconstructed as 'the embryo Buddha and an embodiment of justice.' In the Thai tradition of kingship, this leads directly to the "amalgamation of *Rajastham* (the individual acts and applications of law by the king) with *Dhammastham* (absolute moral law).



Democratic Ideal

The second meaning that is accorded to constitutionalism is to view it as an ideal of liberal democratic governance, accountable and answerable to popular will. It is in this symbolic and idealistic meaning that constitutionalism has been invoked as a rallying flag in the struggle against authoritarianism. During the Emergency in India and the struggle for the restoration of democracy in Pakistan, Bangladesh and Nepal and in the movements against constitutional authoritarianism in Sri Lanka, it is this conception of constitutionalism which gained ascendancy.

Mick Moore in a recent essay has expressed optimism that strong forces in Sri Lanka would remain supportive of the democratic ideal. Firstly, he refers to the norms of democracy and constitutionality having long commanded a following amongst the Sri Lankan electorate, even though the self-interest of politicians have led to their routine violation. He sees no weakening in that commitment despite the political violence, and chaos of recent years.

Similarly, he believes that the associational life of the Colombo bound middle classes provides a strong reservoir of resistance against authoritarianism. He sees that middle class as being ethnically heterogeneous and having overseas links and providing for a base for political dissent and for a more dispersed civil rights movement. He also sees the changing international environment leading to the more direct articulation of international concern about democratic and human rights abuses; through an emphasis on a link between aid and developmental assistance. Critical to this analysis is state-civil society relations, and the relative autonomy of private business, professional, welfare and developmental organisations. Although there has been no explicit articulation of an ideology of comprehensive state control of private associational life, recent developments cause concern with regard to the continuity of the existing legal, and policy framework on state-civil society relations.

Political Culture

The third meaning accorded to constitutionalism is related to the realisation that constitutionalism requires much more than a constitution. Constitutionalism requires a legal and political culture on which durable institutions could be firmly grounded. We have already noted that constitutional concepts are fluid, with old meanings giving way to new interpretations and even new concepts assuming the centre stage. In addition to the fluidity of concepts, constitutional arrangements are also of a transient nature. It was Ivor Jennings - the

framer of many defunct constitutions - who cautioned us that "constitutions come like water, and if they don't go like the wind, strange things happen to them which were beyond the contemplation of their framers." It is in this sense that the equation of constitutionalism with the process of value formation assumes importance. This is where our failure seems to be so glaring, and no imaginative project has as yet been designed to build democratic values, civic virtues, and communitarian attitudes.

The Italian social theorist Bobbio has argued that the democratisation project must go beyond the state and even make the institutions of civil society democratically accountable. This does not necessarily mean constitutions must always be based on a shared culture between the rulers and ruled. Bolivar Lamounier has argued that a Constitution must evolve out of a process of self reflection, rather than appear to emerge organically from social roots. A constitution ought to be more enlightened than the prejudices of the population at large. It is accordingly argued that constitutionalism can remain the project of a minority - a middle class elite which acquires legitimacy because of either its role in bringing about political transformation, or by subsequently acquiring legitimacy through electoral politics.

While being sensitive to the specificities of the national context within which constitutional experiences must be assessed, some general perspectives may be offered which distinguish the South Asian experience with constitutionalism.

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 experiences 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, *coups 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 enterprise of constitutionalism 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 com-



munities, 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 federalism, 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 question 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 reconstruction in Latin America, East Asia and (with the exception of South Africa), even possibly Africa.

Thirdly, there is to a much greater extent 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 legitimacy of constitutionalism is as pronounced in other Asian, African or Latin American experiences.

South Asia faces the dazzling and yet daunting prospect of expanding the frontiers of constitutionalism to reconcile the challenges of a reawakened civil society and the disintegrative process of ethnic and religious fratricide

with the imperatives of modern nation states. This is an opportunity which needs to be grasped.

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MOB-VIOLENCE IN POLITICS

August, usually, is the month of religious rituals and mass spectacles in Sinhalese society. This year's August was different; the spectacle was that of mob violence re-entering the political conduct of pro- and anti-government forces in the South.

Traditionally, politically-motivated mob violence on a large scale has occurred in three main areas; in ethnic relations, electoral mobilization and against student and working class struggles. Anti-Tamil violence in 1958, 1978, 1979 and 1983 and the anti-Accord riots in 1987 are examples of the mob entering the arena of ethnic relations, even succeeding in orienting the political agenda of the country in an exceedingly disastrous direction. Election-related mob behaviour, meanwhile, had demonstrated how partisan political passions and enmities, exacerbated in a context of regime manipulation of the election process, could turn civilized political competition into revengeful hatred. Targeting of student and trade union struggles by regime-affiliated storm-troopers had at the same time highlighted the sheer intolerance displayed by governments towards unorthodox centres of dissent and opposition.

The mob-violence this August is qualitatively different from its previous manifestations. Although still not assuming the character of a mass phenomenon—so far it has been sporadic—it appears to enjoy the blessings of all major political parties in that it is presently resorted to by both the ruling party and opposition groups to harass, to assault and to intimidate their opponents.

Media individuals appear to be a prime target of recent mob attacks. Dayan Jayatilake, an unrepentant Premadasa propagandist, and *Aththa's* Jeffrey Yoonus, the foremost political cartoonist of the opposition, suffered injuries at the hand of mobs within the space of two weeks. When these attacks took place, another major mob assault on a group of foreign correspondents had already aroused public anger. It occurred in front of the Fort Railway station while these journalists were covering an anti-UNP signature campaign, launched by the DUNF of Messrs. Athulathmudali and Dissanayake. Beating up of a *Divaina* journalist at an SLFP rally held in Attanagalla, reportedly by a section of the opposition SLFP itself, also signalled this dangerous trend of violent intolerance towards dissenting journalism.

While all these mob attacks in themselves are truly reprehensible and do warrant unqualified condemnation, still more appalling is the way in which political

responses to them have become partisan, selective and in the last analysis vindictive. The Prime Minister's reply in Parliament to the question raised by an opposition MP about the violence against foreign correspondents at the Fort railway station is eminently representative of the arrogance and stupidity, if not complicit of the government's stand on this issue. According to the PM, some railway commuters, angered by an obstructing crowd, had merely reacted spontaneously. This highly surrealistic explanation—if the prime Minister's explanation was true, the workers travelling by train have had the bizarre habit of carrying knives and pistols hidden in their lunch packets!—was given by the Prime Minister despite statements made to the police by DUNF leaders identifying the assailants. It was only after a lot of pressure was mounted on the government that an inquiry was instituted and suspects arrested. Still, if the Prime Minister's initial statement is a clue to anything, it amply demonstrates the political will of the regime—all regimes are generously endowed with that will—to camouflage culpability, to distort events and to ride on self-delusions.

The opposition too, meanwhile, has not fared well on this front. Take the Dayan Jayatilake episode. Jayatilake was mercilessly beaten up by a gang at the funeral of General Kobbekaduwa. Not satisfied with letting his blood out, he was subjected to the ultimate humiliation of being stripped. True enough, Dayan Jayatilake has been an ardent propagandist for Mr. Premadasa and a venomous critic of the entire opposition. One may even think that the pen identified with him carries more poison than ink. Jayatilake too is a politically motivated propagandist journalist in the same way as Yoonus, the political cartoonist of *Aththa*. The point is that opposition politicians as well as the press did not hide their glee over Jayatilake's predicament while Yoonus, quite understandably, became overnight a symbol of press freedom. Incidentally, a leader of Sinhala chauvinist chinthanaya is reported to have even expressed his dismay over Jayatilake's not being killed on the spot.

A juxtaposition of political responses to the Jayatilake-Yoonus episodes would point to an alarming trend in the tension-ridden political debate in the South today. 'It is o.k. to beat up the guy in my rival camp' seems to be a governing principal of the current debate on violence against media individuals. This is nothing but partisan monopolization of the freedom of expression in political journalism. Incidentally, one peculiarity of po-



litical journalism as it is practiced in Sri Lanka, in both pro- and anti-government varieties, is that there is in it a lot of half-truths, innuendos, hatred and even malice intended for the glorification and/or vilification of personalities. Consequently, concerns over political issues have become subsumed by excessive personalization of politics. Collision of ideas is then substituted by cracking of heads.

To return to the question of mob-violence, it also occurs in the context of a decline in the efficacy of our party system to channel the political energies of the people in a constructive direction. One does not have to be an expert in politics to realise that there is tremendous accumulated political anger among the people, particularly against the UNP government. The sheer arrogance and hypocrisy of politicians of the ruling party, coupled with their dreadful will to stay in power, has made fifteen years of UNP rule the target of acute public resentment. Meanwhile, the Sinhala chauvinistic hysteria, propagated by some opposition parties and the press alike, has also created in the Southern mind a state of frenzy. Take, for example, the anti-Tamil mobilization in Hikkaduwa last year when a foreign film crew started shooting a film called 'Ganesh.' Amidst the Sinhalese chauvinistic delirium created against Thondaman and his proposals, Sinhalese mobs, incidentally supported by a self-proclaimed Marxist party too, are reported to have threatened the film crew with harm unless the filming was immediately stopped. The argument of the politically organized mob was that turning Hikkaduwa into a Tamil village, even as a film location, was a part of a larger Tamil expansionist conspiracy. Intimidated by the mob, the film crew withdrew. This is a classic example of non-state censorship and control of art by means of deploying politically-(mis)guided mobs.

Political hysteria, deliberately built by the Sinhalese political press and some opposition groups, is in a way symptomatic of the intellectual bankruptcy of today's opposition politics. A case in point is the furor spread by the press, including that of the Left, about so-called abductions of virgin women for sacrificial rituals. For several weeks in July-August, rumors and stories about 'virgin-abductions', attributed to the demonic desires of Mr. Premadasa, had gripped the imagination of the public. It had created tremendous confusion in society and the opposition press generously contributed to this state of turmoil by publishing as news stories highly exaggerated and often-unverified rumor. Determined to utilise any opportunity to discredit Premadasa and his ministerial cohorts—to be fair by the UNP politicians, one must note that there is very little credit that these men and women in power have earned for themselves—and unable to formulate an effective political alternative

to the UNP rule, some opposition groups may even opt for political mayhem.

The UNP too has shown in the past its capacity to mobilize under-world elements against political opponents. The beating up of workers and students, and critics of the regime in the late seventies and early eighties was the handy work of suspected criminal elements who, as the public perception goes, enjoyed the patronage of powerful politicians. Even the chief spokesperson of the present regime is now admitting to this practice of political thuggery in the pre-88 years of the UNP rule. It is a public secret in Sri Lanka that certain individual UNP politicians have their own storm troopers, recruited from urban lumpen elements. Maintaining mini-private armies, ready to be deployed against opponents, would not be all that strange for many a man in power, particularly against the backdrop of subterranean politics the spread of which we have watched during the past few years with horrendous concern. The recent attack, in broad daylight, on Lalith Athulathmudali and his supporters is hopefully not a pointer to the things to come.

There is another major reason why mob violence in politics should be abhorred and condemned; that it can give rise to the criminalization of competitive party politics. At a time like today when the political temperature is rising quite high, if mobs are unleashed by one group, the others are very likely to respond in kind, thereby creating a chain reaction from all sides. Mr. Ossie Abeygunasekera of the SLMP, the leader of a previously opposition group which is now aligned with the Premadasa regime, has been candid enough to state in public that those who throw stones at others should expect stones thrown back at them. If competitive stone-throwing—stone can be the metaphor for many a deadly instrument of death—becomes a shared political practice among political opponents, then, the summoning of mobs to settle political accounts and to administer instant political justice would invariably open the doors for a new political under-world. From Third world standards, Sri Lankan politics still remains relatively un-criminalized. In the Philippines, Bangladesh, India and Pakistan, to cite just a few examples, criminalization of intra-party competition has already reached frightful proportions. In those countries, there are petty war-lords ready to serve any political patron. There are also politicians who are by themselves war lords. The danger in competitive political mob-violence is that it generates political-war lordism as well. As a *Ravaya* editorial recently warned, there is still time for Sri Lankan political parties to prevent the degeneration of democratic party politics into mayhem governed by criminal elements.

J.U.

A statement by the Civil Rights Movement on incidents of recent violence and their implications for the democratic issued on 28 August 1992 is reproduced below.

RECENT VIOLENCE

A Grave Threat to the Democratic Process

*Freedom of expression.....is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock and disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society' "*¹

*"We have seen men enjoying positions of responsibility conniving with hoodlums and rowdies, in some cases actively inciting violence.....The law, to be respected, must be enforced without fear or favour. There are people, probably, who fancy that they have the wit to flirt with thugs and thuggery, take what they want out of them, as one might of people of easy virtue, and then maintain a firm hand over them. To be so deluded is to ignore the lessons of history."*²

The Civil Rights Movement of Sri Lanka is appalled at the new dimension of violence that is disfiguring our society. This is a most serious portent for the future of peace and democracy in Sri Lanka. We wish to underline the grave implications of this development.

First, let us recapitulate some manifestations of this phenomenon. The following is a quick compilation of complaints and allegations of violence based mainly on press reports. It includes allegations, even though not necessarily proven, because they illustrate the climate of violence that is our concern. A fuller account of the news reports together with their sources is given in Annex A to this document.

Recent incidents and complaints of violence include:-

- Destruction, while under police guard, of the Navamaga press which was printing a leaflet containing material allegedly embarrassing to the government, and was also the printer of Yukthiya, the newspaper of the Movement for Inter Racial Justice and Equality (MIRJE). (The Supreme Court in holding that the fundamental right of the printer to pursue his trade had been infringed said, of the police version, " We have outgrown the age of believing fairy tales but can

recognise them for what they are." (October 1991)

- Threats to press which subsequently undertook printing of Yukthiya (October 1991)
- Repeated death threats to an elected member of a local government body that he should quit politics or he will be killed (October 1991)
- Grenade attack, injuring several persons, on meeting held at Pannala by dissident members of the ruling UNP who attempted to impeach the President (November 1991)
- Shooting and killing in the Attanagalle court house of one of the accused police officers in the Wewulkele murder case, and his father- in-law (December 1991)
- Abduction of a person who attended a meeting of the UNP rebels (subsequently released) (December 1991)
- Intimidation of University Grants Chairman Dr Arjuna Aluvihare by students at Colombo University (January 1992)
- Intimidation of participants at inaugural ceremony of new opposition party (DUNF) at Anuradhapura (February 1992)
- "Roughing up" of two Dinamina journalists by police while following up on a story at Kalubowila hospital (February 1992)
- Assault on attorney-at-law and Chairman Pradeshiya Sabha at Udugama police station (March 1992)
- Threats by police of baton charge/shooting of persons participating in Kandalama Satyagraha (March 1992)
- Violence used on a journalist, and on a press photographer allegedly taking pictures of participants consuming alcohol while on an opposition protest march (the pada yatra) to Katarama (April 1992)



- Smashing up of house of an organiser of the DUNF by an armed gang, assault on his wife, and subsequent destruction of a stage put up for a DUNF meeting at Dehiwala (April 1992)
- Police assault on Asst Producer of Rupavahini TV, while on duty at the Sugathadasa stadium (May 1992)
- Death threats to Buddhist monks in connection with the protest against the Kandalama hotel project (May and June 1992)
- Abduction of SLFP politician by a gang who assaulted him and warned him to stop supporting C.V. Gooneratne (May 1992)
- Attacks on estate workers at Bandarawela (May 1992)
- Abduction of candidate for presidency of Colombo University Law Faculty Students Union (subsequently released) (May 1992)
- Attack on editor "Rajaliya" naming bodyguard of his own party leaders as assailant (May 1992)
- Shooting of Tyre Corporation employee (May 1992)
- Death threats to Lawyers for Human Rights and Development (LHRD) which has taken up many legal cases against the police and other state authorities (July 1992)
- Threats to the press that prints LHRD's journal (July 1992)
- Assault on opposition members of Provincial Council of NCP (July 1992)
- Attack on SLFP members by thugs in the chamber of the Mt. Lavinia Municipal Council, and subsequent attack on SLFP Councillors picketing outside (July 1992)
- Attack on a journalist at a meeting of the opposition Sri Lanka Freedom Party at Attanagalle (July 1992)
- Attack and confiscation by police of leaflets, and attempt to take away cameras of press photographers, when opposition members were distributing leaflets on Galle Road in the Dehiwala-Mt. Lavinia Municipal Council area (August 1992)
- Attack by armed thugs on journalists and photographers covering a DUNF signature gathering exercise to a petition calling for the Presi-

dent's resignation outside the Colombo Fort railway station (August 1992)

- Attack at the funerals of leading armed forces personnel at the Colombo Kanatte cemetery on Government Ministers and on a person believed by some to be a political columnist in a state controlled newspaper (August 1992)
- Attack by a volley of stones and other missiles on speakers at the opposition meeting in Colombo held to commemorate the 1953 hartal (August 1992)
- Physical assault on Yunoos of the opposition paper Aththa by persons who broke into his home at night, accompanied by threats that he should cease drawing political cartoons, followed by vandalising his house, and knifing him on his way home the next day (August 1992)

The particular dimension of this violence

The past ten years have seen large scale massacres, thousands of violent deaths (both arbitrary killings and targeted assassinations), and thousands of "disappearances". Agencies of the state, violent opposition groups, bands of marauders, and shadowy "vigilante" forces apparently acting with official condonation, have all been guilty of the most gruesome crimes. Uninvolved, peaceable citizens have been the victims just as much as active participants in the ethnic and political conflicts. To this day, civil war continues in the North and East with its daily toll of death and mutilation of combatants and non-combatants alike, and untold suffering and massive displacement of civilians. CRM has always been gravely concerned about these horrors, which have been the subject of numerous earlier statements, and its concern today is in no way diminished.

The violence on which the present statement focusses, however, is of a different kind, with its own extremely ominous implications. It has the following characteristics.

- It takes place well after the ending of a period of exceptional bloodshed and terror
- It takes place in the so-called "peaceful" part of the country where there is currently no civil war or insurgency to serve as an "excuse" or "explanation"
- Its perpetrators include both pro government and anti government elements as well as members of state agencies



- Its victims are persons whose politics or other activities, views or utterances are unpalatable to the perpetrators
- Members of the press and allied occupations (eg. printers) in particular have been targeted.

Thuggery in politics in "peaceful" times is not new to the Sri Lankan scene. As far back as 1981 CRM compiled a fifteen page document listing complaints of the use of thuggery in a political context and the failure of the authorities to take appropriate action.³ Two years later CRM pointed to a whole series of events which contributed to the rampaging anti Tamil mob violence of July 1983.⁴ 1983 (E01/8/83). As CRM has pointed out, officially sanctioned or condoned lawlessness existed under previous governments as well, and all parties that have exercised governmental power since independence must in some measure bear the blame for the results of allowing their own supporters to break the law with impunity.⁵

What is intolerable today is that we do not appear to have learnt anything from the lessons of the past. After a period of appalling bloodshed, and while violent conflict continues to plague the North and East, we in the rest of the country have reverted to what appears to have become a "normal" pastime of bashing the guy we hate. Where, then, is the "democracy" that the government sought to "restore" in suppressing the insurgency at so much cost? Where is the peaceful democratic state from which the Eelamists are asked not to try to secede? For what is democracy other than being able to speak ones mind without being hit on the head for it.

However infuriated some might feel at actions of the government, this is no excuse for physically attacking Ministers or others at a funeral. There is no justification for setting upon Dayan Jayatilleke, any more than there can be any excuse for the assault and stabbing of Yoonus for the avowed purpose of deterring him from drawing political cartoons.

Nor is there any justification for indifference, or a "serve them right" attitude, to violence against the DUNF (or, for that matter, any other party) because its leaders in their time, while safe in the seats of power, participated in the denial of the human rights of others. Perhaps the most dangerous threat comes from the pervasive tendency to gloat when one's enemy is attacked, while being indignant when one's friends are at the receiving end. It is always easy to speak up for the human rights of those with whom one agrees. But the real test is whether we are prepared to stand up for the rights of those whom we differ from and even detest. Do we really believe in the freedom of expression as formulated by the prestigious

international tribunal quoted at the beginning of this statement, or do we not? This is the question that all actors on the political stage, as well as all responsible members of society, need to ask themselves, and need answer correctly, if we are to hope for a civilised future.

Having said that, the special responsibility of the government of the day needs to be stressed. It is particularly important that a government - any government - jealously protects its moral right, as well as its practical ability, to demand respect for the law from all including its opponents. It can do this only by changing the climate of impunity that has been allowed to reign for so long, and by taking proper investigative and preventive steps when it appears that thuggery is resorted to by members or supporters of those in power. It also needs to ensure the dismantling of what has been described as "subterranean structures", which may have come into being as a counter to insurgency, and which appear to survive with a life of their own, coming into action to abduct people, and to threaten lawyers and litigants in cases against agencies of the state. If people cannot voice their views, if they cannot pursue legal remedies in the courts or participate in elected bodies of government at all levels without being subjected to violence or threats of violence, then what is this but **itself an incitement to violence?** From such acts comes the message "Legal remedies are not for you, participation in the democratic process is not for you". From this does not the equally clear message follow, "If you want redress you must take the law into your own hands, if you want to participate in government then you have to look for other means of achieving it" ?

The responsibility of the government goes further than protecting people from physical violence and intimidation. In addition to seeking respect for the law, it must take positive action to ensure that dissident views are given legitimate means of peaceful expression. **Freedom of speech is not merely a right but also a crucial safety valve.** An obvious step that must be taken without delay is to open the radio and television to opposing views, and to make them a vehicle for reflecting public debate on political and other controversial matters.

The government needs to take clear, resolute and forceful steps to ensure that persons are able to speak and publish their views in however outspoken or displeasing a manner, and to otherwise participate in the democratic process, and that they are protected from violence when they do so. If the government convinces its opponents of its sincerity in so doing, and matches this with actual performance, there may be fresh hope for the survival of democracy in Sri Lanka, and a possibility of isolating any elements wedded to violence for ruthless and self seeking ends.



UPDATE 30 AUGUST 1992

DUNF leader and former Minister of National Security Lalith Athulathmudali and his supporters while engaged in house to house canvassing in the Dehiwala area were attacked by a gang armed with guns and iron rods on Saturday 29 August 1992

Notes

1. The European Court of Human Rights in *Handyside vs United Kingdom*, 1976. E.H.H.R. 737. In a later case the same court, in endorsing these principles, also said that "Freedom of the press furthermore affords the public one of the best means of discovering and informing an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society.... The limits of acceptable criticism are accordingly wider as regards a politician

than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. *Lingens vs Austria* 1986. 8 E.H.H.R. 407.

2. Editorial, *Daily News* 20 August 1983.
3. *CRM Catalogues complaints of thuggery* (CRM ref. E05/10/81)
4. *Communal Violence July 1983*
5. *The June 5th Protest and Counter Protest July 1980* (CRM ref. E02/7/80)

To obtain CRM documents please **write to CRM 16/1, Don Carolis Road, Colombo 5, or call over at No 31, Charles Place, Colombo 3 between 9.30 am and 4.30 pm on weekdays, or telephone 573887 during working hours.**

For fear of losing his job, the school teacher teaches things he does not believe; fearing for his future, the pupil repeats after him; for fear of not being allowed to continue his studies, the young man joins the Youth League Fear of the consequences of refusal leads people to take part in elections, to vote for the proposed candidates, and to pretend that they regard such ceremonies as genuine elections; out of fear for their livelihood, position, or prospects they go to meetings, vote for every resolution they have to, or at least keep silent fear that someone might inform against them prevents them from giving public, and often private, expression to their true opinions Fear causes people to attend all those official celebrations, demonstrations, and marches. Fear of being prevented from continuing their work leads many scientists and artists to give allegiance to ideas they do not in fact accept, to write things they do not agree with or know to be false, to join official organisations In the effort to save themselves, many even report others for doing to them what they themselves have been doing to the people they report.

The fear I'm speaking about is not, of course, to be taken in the ordinary psychological sense as a definite, precise emotion. Most of those we see around us are not quaking like aspen leaves: they wear the faces of confident self-satisfied citizens. We are concerned with fear in a deeper sense, an ethical sense if you will, namely the more or less conscious participation in the collective awareness of a permanent and ubiquitous danger; anxiety about what is being, or might be, threatened; becoming gradually used to this threat as a substantive part of the actual world; the increasing degree to which, in an ever more skillful and matter-of-fact way, we go in for various kinds of external adaptation as the only effective method of self-defense.

Vaclav Havel

GROWING UP

After the politicians
have left with signed copies
of the bilateral agreement
and the assurance of
a constituency for cash
the tycoons will come
it does not matter
at whose invitation
provided someone has
signed off the rationing
and the state of emergency

Tell them we have
anticipated their coming
and our best hospitality
awaits them...

We have repealed old laws
if they insist we shall
make new ones, it wont take
more than a stroke of pen
or maybe a gunshot or two

As long as they come
with money and machines
they could count on our goodwill
they could bring along
cash registers the freedom
to count in earnest
and if that suits them
a myth or two to keep up
an image or save a face

but please tell them not to
bother how to profess love
for our people or faith in us
all that old fashioned stuff
for the sincerity of words
doesn't matter any more
since our last economic crisis

- Richard Afari Baafour -
(Courtesy *Harper's Magazine* - October 1991)

Richard Afari Baafour is a Civil Servant in Accra, Ghana.

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help in bringing out this issue.