



SLFI

**FRIEDRICH  
EBERT**   
**STIFTUNG**

# **“Rights and Right to Participate : Democracy, Development and Human Rights in Post Colonial Sri Lanka”**

**Annual Convention 2003**



**“Rights and Right to Participate :  
Democracy, Development and  
Human Rights in Post Colonial Sri Lanka”**

**SRILANKA FOUNDATION  
(SLF)**

**FRIEDRICH EBERT STIFTUNG  
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### **SLFI ANNUAL CONVENTION ON YOUTH ASPIRATIONS, DEMOCRACY AND DEVELOPMENT**

Editors : Sisira Pinnawela - Director,  
Hemali Karunaratne, Education Officer, SLF

Cover Design : Razaliya Nizahir

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## FOREWORD

The SLFI has been in the forefront of non-formal education in the country from as far back as mid 1970s. In accordance with its mandate, which is, *“the promotion of an understanding and belief in the democratic way of life and the protection of human rights”*, SLFI has identified three strategic areas as the focus of its activities. Namely – human rights, governance and industrial relations. Through its varied activities by way of short term courses, seminars, conferences and workshops on themes related to its core objectives, it has an on-going liaison with Sri Lankan society across a wide spectrum; from grassroots level to the elites.

It was in year 2001 that the Annual Convention was introduced to the SLFI calendar of activities on a theme relevant to its mandate, which would give an opportunity for sharing of knowledge, exchange of ideas and strategies on issues that are of urgent concern to the country. The Annual Convention has now become a key component of the SLFI agenda of activities.

The theme selected for the Annual Convention in 2003 was, “Youth Aspirations, Democracy and Development”. There were a large number of papers presented at the Convention on topics related to the broad theme. In this publication we have incorporated nine selected papers from the Convention under the title, “Rights and Right to Participate: Democracy, Development and Human Rights in Post Colonial Sri Lanka”.

The topics deal with a wide range of issues that challenges Sri Lankan polity, such as constitution making which is very much at the centre of political discourse; as it is the perception of all political parties that changes to the Constitution are necessary for a viable political

resolution of the ethnic conflict. Law and order issues are another vital problem that confronts Sri Lankan society. Education which is the pivotal point of youth aspirations and of development is the interconnecting strand between social and political stability. The papers also highlights the underlying dilemma of the concept of democracy and its practical applications in the governance of a modern State.

This collection of papers from the Annual Convention of 2003 deals with these complex issues which are at the very heart of the crises facing Sri Lankan polity. It would not only be thought provoking reading for those interested in the evolution of modern Sri Lanka but should also serve as a useful guide to policy makers in planning strategy for the future of Sri Lanka.

**Astrid Becker**

Resident Representative  
Friedrich-Ebert-Stiftung

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*Professor of Western Classics, Head, Dept. of Classical Language, University of Peradeniya.*



## Introduction

This book is a result of the 3<sup>rd</sup> Annual Convention of Sri Lanka Foundation Institute held on 14<sup>th</sup> and 15<sup>th</sup> November in 2003. The theme of the convention was “Youth Aspirations, Democracy and Development”. Revised and edited versions of nine papers that were presented at the Convention appear in this collection of articles. The phrase *Rights and Right to Participate*, which is the first part of the main title of the book, reflects one of the core problems in any Third World democracy. Democracy by definition is about citizens’ rights, namely, the right of all citizens to exercise their rights and take part in the decision - making process that deals with these rights, i.e., right to participate in political decision-making. Aspirations of citizens, whether they are young or old, are also about right to participation. Development in its true spirit is also not realized if there is no participation of those who are either benefited or affected by the development process. The problems faced by Third World democracies are many in this area. Some countries are struggling to either establish or re-establish these rights for their citizenry while some others face problems of deterioration of citizens’ rights in general. In some countries, Sri Lanka is a good example, both these developments may be present. While attempts to establish and improve the rights situation are gaining momentum in one area, circumstances may force the State actors to curb rights in several other areas. The nine authors, who are students of a range of disciplines as diverse as political science and law to western classical culture, try to examine some of the issues and developments from their respective disciplinary point of views.

In the first essay, Kamala Liyanage examines the citizens’ right to participate in constitutional making. The author examines the lessons Sri Lanka can learn from the practices of participatory constitutional making. She observes that constitutional making traditionally has been

an elite exercise and it is not therefore reflective of the wishes and aspirations of the citizens. Constitution making today is a part of a larger process of good governance, democracy and peace, thereby making both content and process of constitution making different. There are not only attempts to reach a consensus within and among all stakeholders (consensus not imposed from above) but also emphasis on focusing on a broader range of issues dealing with rights. What has happened as a result is that constitutional making which had been outside normal democratic activities has been brought into the fold of democratic process itself. Constitutional making has become participatory. Quoting from the UN Declaration of Human Rights the author argues that participation in constitution making is a basic right.

In an assessment of torture and human rights in the Police Force Kingsley Wickremasuriya attempts to place the status of human rights in the context of maintenance of law. He emphasizes the need to view the human rights issues in the broad socio-economic context and observes that protection of human rights is not just a technical matter. It is part of social responsibility and is founded on moral authority. He argues that though the modern systems of law enforcement are technically superior and are founded on equality and individual rights they cannot claim to be superior to the traditional systems in the area of social responsibility and moral authority. Further, the operation of modern systems in Third World countries like Sri Lanka are further weakened by institutionalized practices of torture and lack of appropriate safeguards and internal control systems.

There are two articles dealing directly with youth aspirations in the collection. Lakshman Wickremarathne discusses the role of youth and their aspirations in a democracy. The author being a lawyer chooses to examine the impact of law and order situation on youth aspirations. He sees that the problems are caused by increasing youth

aspirations and the limited opportunities available for the youth to play an active role in politics. Barriers to youth participation in politics are many. They include youth and crime, laws treatment of youth and their aspirations. This is an attempt to view the broad issue of youth participation, which is a political phenomenon, in the context of the existing law and order mechanism.

Youth Aspirations, Democracy and Development by Malin Elisson, is also an examination of youth aspirations. This is an analysis of a database of participants of the Democratic Youth Leadership Programme of the Sri Lanka Foundation. The article deals with the broad theme of democracy and development with a focus on civic engagement of youth leadership. The argument is that there is a positive relationship between stable democracies and citizen's behaviour and citizen's participation is a necessary ingredient of an effective democracy. Based on Almond and Verba, the author takes participation to be an indicator of civiness of society and says that it is therefore social capital. Though social capital is beneficial to democracy, the author does not forget the negative role of social capital where it can be bonding instead of bridging.

In its examination of youth engagement in political action in the country the article highlights some contradictions. According to the author, the three most important political movements in the recent history of the country, i.e., the two southern insurrections and the ethnic war, were youth led. Yet only 6% of youth are involved in the activities of voluntary organizations. There is a proliferation of voluntary organizations in the country but the leadership of many of these is not youth. Furthermore, the leadership of these organizations that come from the older generations is also authoritarian. The main reasons for the inadequate representation of youth in voluntary organizations according to the author are in the competitive education and the poor economy. Rejection of violence in general, yet justification of the use



of it as a last resort is another contradictory feature of youth involvement in politics.

Gamini Samaranayake examines Political Violence and Human Rights in Sri Lanka from 1970 to 2000. The period saw two insurrections and a civil war. Samaranayake's analysis, by placing human rights in the broad socio-political context, complements the previous article by Kingsley Wickremasuriya.

Though the focus of the analysis is broad socio-political roots of human rights violations the author does not forget to give an account of the constitutional status of human rights. The author argues that though the Constitution of the country provides far-reaching attention to protection of human rights, legal protections have not always being effective. Pointing to weaknesses in the constitutions, he argues that there are no constitutional remedies for breach of human rights and political discrimination is not covered by the constitutional protection of human rights. Further, the author also sees limited opportunities for protection of human rights within the legal system as another problem. He also highlights the inherent contradictory relationship between protection of human rights and the legal measures that deal with political violence as a serious problem. The situation is further complicated by the involvement of politicians and the State security machinery in violations of rights. The author hints that this has developed into a vicious circle of actions and reactions leading to escalation of violence and of corresponding deterioration of human rights standards in the country.

Higher Education, National Development and Youth Aspirations is the title of Indraratne's essay which is an account based on the classical economic approach to education. The underlying assumption is that demand driven and professionally managed education will promote

growth through increasing productivity. Indraratne argues that Higher Education should have vocational and professional bias but the present Sri Lankan system being a British legacy does not meet these essential requirements. Further, he claims that the output of our educational system is not a balanced product and does not supply what is needed by the market. However, his are not pure economic and technocratic views of education. He claims that Sri Lankan education should aim at achieving excellence and efficiency but without unduly compromising on equality.

Sisira Pinnawala in his essay entitled *Elite Rule to Regime Control; the Crippling of Democratic Institutions and Structures in Sri Lanka* examines the deterioration of democracy in the country. This may be seen as a sequel to Moore's work on the same theme a decade ago. His view is that democratic way of government, not being a natural product of Asian political development, could not have been expected to function effectively anyway in an alien environment.

He sees two contributory causes for the deterioration/failure of democracy in the country. One is activities of individual politicians who directly influenced the path of Sri Lanka's political development. The other and more important is the unique system of dependency based on political patronage. His argument is that Sri Lanka has never been a true democracy as democratic way of decision making in a true political sense never reached the masses any time during the post - independence period. The so - called democratic leaders who were elected into government immediately after independence were a group of elites, though with liberal orientation. The removal of this political group from political leadership, which is a result of a broad socio-political crisis, brought a new group of political leaders who use violence and a network of dependency relationships in the conduct of politics into power.

In his essay on *Democracy and Problem of Governance in Sri Lanka* Sivrajah examines non - democratic practices and the problem of

governance in Sri Lanka. In this essay, which is broadly related to the theme of the previous article by Pinnawala, the author takes the modernization perspective as basis of developing his argument for the failures of governance in the country. Failure of the political setup and politicians to accommodate social differentiation led to a crisis of governance in the country according to the author. The result was a breakup of Sri Lankan polity as manifested in the ethnic conflict and the civil war. The focus of the author is primarily the governance issues that are connected to the ethnic conflict.

The last essay in the collection is in somewhat of a new area. Weerakkody analyses blindness as a form of disability taking examples from pre - modern Asia. His point of departure is that disability affects expectations, as it is a phenomenon based on meanings and roles. By taking meanings and roles, he focuses on sociology of disability. He raises a very important point when he observes that in the ancient world the meaning of disability depended on the community's understanding of people's roles i.e., what they were supposed to do. Therefore, disability in the ancient world was a community phenomenon as its understanding of physical disability rested not only on one's ability to function as an individual but also on one's functional ability within a community.

The subject matter of rights is multi faceted and covers a range of issues that interface with many disciplinary areas. The theme of the workshop on which the book is based, though broad enough to include many issues and subject areas, confined itself to an examination of developments and achievements and their socio-economic causes on the general area of civil and political rights. This naturally has resulted in ignoring an important aspect of human rights, namely, socio-economic and cultural rights. In a country where ethnic conflict and poverty are the most pressing problems some critics may consider the lack of attention to socio-economic and cultural rights a



shortcoming. However, we believe that this collection has contributed to the understanding of the nature of some important human rights issues of post Independence Sri Lanka.

The contributions from individual authors show that the Sri Lanka has moved significantly forward in promoting human rights and fulfilling aspirations of its citizenry, though there have been some hiccups on the way. The constitutional and other legal structures have adequate support built into them in order to safeguard the rights of the citizenry. However, as the book demonstrates how much ordinary citizens have benefited from these technical support systems and to what extent they have improved the situation for the people is subject to debate. What is coming out clearly from the discussions in this book is, that the problem the nation is facing is not one of insufficient constitutional and legal structures guaranteeing rights but one of inadequate socio-political and other support systems to go with them.

Hemali Karunarathne  
Sisira Pinnawala

December 20, 2004

## Contributors

**Kamala Liyanage** - who holds a Ph. D. in Political Science from Japan is a gender specialist. Presently she is Professor of Political Science at the University of Peradeniya in Peradeniya.

**Kingsley Wickremasurirya** - is present Chairman of the National Police Commission. He is an Attorney at Law and has a Ph. D. in Criminology from the University of Sri Jayewardhenepura in Colombo.

**Lakshman Wickremaratne** – is a practising Attorney at Law. He is a graduate of the University of Peradeniya and has postgraduate qualifications in law from the University of Colombo.

**Malin Elisson** – is a specialist in capacity building and leadership development. She was consultant to the Democratic Youth Leadership Programme of Sri Lanka Foundation from 2001 - 2004.

**A.D.V. de S. Indraratne** – is Emeritus Professor of Economics of the University of Colombo. He also served as Director Planning of the University Grants Commission.

**Gamini Samaranayake** – Political Scientist with specialization in conflict studies and youth movements. He holds a Ph. D. from UK and is presently Head of the Department of Political Science of the University of Peradeniya.

**Sisira Pinnawala** – Presently Director of Sri Lanka Foundation. He has a Ph. D. in Sociology from the Australian National University in Canberra. His specializations are ethnic studies, poverty studies and social assessment.

**A. Sivaraja** - is Professor of Political Science at the University of Peradeniya. Professor Sivaraja is a specialist in constitutional issues, ethnic conflict and international relations.

**D. P. M. Weerakkody** – is Professor of Western Classical Culture of the University of Peradeniya. He is actively involved in the promotion of rights of the disabled.



# RIGHT TO PARTICIPATE IN CONSTITUTION MAKING: LESSONS FOR SRI LANKA

by

**Prof. Kamala Liyanage**  
*Dept. of Political Science*  
*University of Peradeniya*

The objective of this study is to explore the practice of participatory constitution making in many parts of the world and to find out whether these experiments with new structures and forms of participation are attempting to develop an open process that places initiative in the hands of citizens. Also this study attempts to examine what lessons Sri Lanka can learn from such practices.

## Constitution Making

“Constitution is a collection of written and unwritten principles and rules that identify the sources, purposes, uses and restraints of public power”.<sup>1</sup> A constitution is intended primarily to set up a framework of government. Generally there are two approaches to the constitution making: i. instrumental – the constitutional framework is designed for/by the political party/ies in power; ii. consensual – it is designed with wide support from the society.

“Constitutions, like any other creations, cannot be expected to endure in perpetuity, but if a constitution is enacted, as it should be, after a due process of discussion and exchange of views among both political parties and the people, it can secure, if not unanimity, a certain degree of national consensus which will ensure its stability, at least for a historical era”.<sup>2</sup> A constitution embodies agreement and consensus amongst different segments of society regarding political ideas, institutions, rules and processes through which they are going to resolve issues relating to the acquisition, exercise and distribution of political power.

<sup>1</sup> *The Blackwell Encyclopedia of Political Science*, ed. Vernon Bogdanor, Blackwell Publishers: Oxford, 1992.

<sup>2</sup> Coomaraswamy, Radhika, *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, ICES: Colombo, 1997.



“The making of a constitution and the amendment of an existing one are political processes which provide a means as well as an opportunity to the political elite of a society to arrive at broadly accepted compromises and accommodation on contentious issues. And as recent research on the processes of democratization highlights such agreements need not have the unanimous approval of all sectors of society, but should represent a strategically broad segment of the society.”<sup>3</sup>

If successfully carried out, these processes serve as a political resource to their sponsors, bestowing legitimacy on them as designers of renewed order in a society, and as laying the basis for better and improved governance in the future. If not, the result can be a decline of legitimacy which involves, a decline in the willingness of different segments of the populace to respect and obey the authorities. This result is loss of power which a regime in a ‘normal’ situation draws on to carry out the process of effective governance. Such a loss of power caused by the decline in popular consent leaves a political vacuum which the weakened regime attempt to fill by the use of coercion.

In 1787, The United States of America became the originator and model of traditional constitution making by a hand-picked elite group, and of the constitution as marking a settlement of conflict and inaugurating a new regime of powers and rights. American constitution has been generally considered as the fixed outcome of a period of nation building or a final settlement or social contract in which basic political definitions, principles and processes were agreed.

At present, constitution making has become a part of democracy, good governance and the peace process in many countries. Particularly new nations seeking the democratic credentials that are often a condition for recognition by other nations and by international political, financial, aid and trade organisations, make writing a constitution a priority. In many cases, the way in which constitutions are written and the ideas

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<sup>3</sup> Shastri, Amita, “Constitution Making as a Political Resource: Crisis of Legitimacy in Sri Lanka”, in *Legitimacy and Conflict in South Asia*, ed. S.M. Mitra and D.Rothermund; Manohar: New Delhi, 1997, pp. 173-193.



of sovereignty, citizenship and rights that are embodied in these foundational documents depart radically from the traditional way of constitution making.

## **Challenges to the Traditional Process**

There is no simple transition to a new way of constitution making. However, constitutional experimentation in many new nations challenges older constitutional democracies to rethink their own practice and to engage in a process of mutual learning about the contribution of constitution making to conflict transformation and sustainable peace.

A nation confident of a future of internal stability and agreed purpose is not the typical site for constitution making today. A changed world calls the utility of the traditional model of the constitution into question. The late 20<sup>th</sup> century has seen nations, old and young, that are deeply divided, often to the point of violence. Nation-states, defined by established boundaries and the sole possession of sovereignty, have been challenged from inside by claims for self-determination or secession, and from without by the proliferation of transnational political or economic treaties and powers with global reach. Meanwhile, around the world many marginalised groups – indigenous peoples; the poor; racial, ethnic, and language identity groups; and cutting across social categories; women – have demanded inclusion, political participation and power sharing.

Conflicts over the identities, powers and rights of groups seem almost endemic, and, as such conflicts reproduce themselves in the form of new identities and claims, are likely to be a permanent feature of 21<sup>st</sup> century polities. The nature of many modern conflicts makes a final resolution hard to reach. Traditional constitution making as a conclusion of conflict and codification of a settlement that intends permanence and stability can seem to threaten rather than reassure.

To imagine a constitutional settlement, under which diverse and disagreeing groups can live, while continuing to engage in a freely accessible debate about that settlement itself, is a challenging proposition. The tension between the security and stability offered by the traditional ideal of constitutionalism and the flexibility called for by

new circumstances is what places process at the heart of the new constitutionalism. A constitution was considered as a contract, negotiated by appropriate representatives, concluded, signed and observed. The constitution of new constitutionalism is, in contrast, a conversation, conducted by all concerned, open to new entrants and issues, seeking a workable formula that will be sustainable rather than assuredly stable.

It is in this environment that the issue of a right to participate in making a constitution has arisen. The idea is contested by those who argue that only elites in modern societies possess the moderation, technical expertise, negotiating skills, ability to maintain confidentiality, and above all rational incentives to compromise so as to maintain power that make for effective constitution making. However, it is hard to argue against democracy. The elite-made constitution, according to the new paradigm, will lack the crucial cultural element of legitimacy.

A democratic constitution is no longer simply one that establishes democratic governance. It is also a constitution that is made in a democratic process. A claim of necessity for participation is based on the belief that without the general sense of 'ownership' that comes from sharing authorship, today's public will not understand, respect, support and live within the constraints of constitutional government.

## **Right to Participate in Constitution Making**

Major international rights instruments and national constitutions do grant a general right to democratic participation. However, the extension of the right to participate in constitution making, breaching traditional assumptions that the constitution making process stands outside normal democratic activities, has been contested. For a long time, even general democratic participation has been considered at best to be an 'emerging right'. But recent developments have given participation in constitution making a textual authority in international law that greatly strengthens its status. These occur in a decision of the United Nations Committee on Human Rights (UNCHR) acting in its judicial capacity, and in a General Comment from the same source, both interpreting the right granted in the United Nations International Covenant on Civil and Political Rights (ICCPR) as extending to constitution making ([www.usip.org](http://www.usip.org)).

The right to participate in constitution making might logically be derived from the general meaning of 'democratic participation' in the UN Declaration of Human Rights (1948: Art. 21) and especially Article 25 of the ICCPR. The Article 25 establishes a right to participate in public affairs, to vote, and to have access to public service: 'Every citizen shall have the right and the opportunity ... without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality to public service in his country.'

Later UN conventions and declarations against race and gender discrimination and on the rights of minorities make similar promises. Regional and transnational declarations such as the African Charter on Human and People's Rights (1981: Article 13.1), the Asian Charter of Rights (1998: Article 5.2) and Inter-American Democratic Charter (2001), all declare a general right to political participation to be a fundamental principle. Moreover, two successive documents and judicial interpretations have gradually expanded the content of this right. First, in 1991, the UNCHR, acting in its judicial capacity to hear individual complaints under Optional Protocol 1 to ICCPR (Marshall v. Canada - Human Rights Committee, CCPR/C/43/D/205/1986, 3 Dec. 1991) first authorized a specific right to participate in constitution making as an undoubted part of public affairs. The Second, textual authority is found in its General Comment on Article 25 of the ICCPR, the right to participation, issued on July 12, 1996. Though they lack any specification of what a participatory constitution making process would look like, they expand the scope of democratic participation beyond the act of voting.<sup>4</sup>

## Experiences of Foreign Countries

Traditionally many democratic countries have participated in constitution making by electing constitutional assemblies or ratifying

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<sup>4</sup> Hart, V. "Democratic Constitution Making", *Special Report*, United States Institute of Peace: Washington, 2003, p. 5.



constitutional texts by referendums. Recently a few developed countries and some developing countries have practiced more open participatory methods in constitution making. Canada provides an example of groups from outside the closed circle demanding to join the constitution making process. In 1982, before ratifying the Charter of Rights and Freedoms, Canada had open-ended discussion mainly among different ethnic groups and women. However, more experiments in such public participation can be found from developing countries.

In 1988, the Nicaraguan National Assembly invited comments on the draft of a new constitution. Some 100,000 citizens took part in open town meetings, forwarding 4,300 suggestions. In 1988, constitution makers in Uganda and Brazil requested suggestions before, as well as comment after, the drafting process, with equally impressive levels of response. In 1994, the South African Constitutional Assembly encouraged a nation of first-time voters to participate in the constitution making process with the slogan: 'you have made your mark, now have your say'. Polls estimated that 73% of South Africans were reached by the assembly's campaign. The public made two million submissions. Between 1994 and 1997 Eritreans engaged in constitutional education and consultation, addressing a nation with markedly low literacy rates through songs, poems, stories, and plays in vernacular languages and using radio and mobile theatre to reach local communities. In 2002, members of the Rwanda Drafting Commission and thousands of trained assistants fanned out to spend six months in the provinces, so that constitutional education and discussion could become an integral part of community life. In 2003, the constitution review process in Kenya is operating under a statutory requirement that Kenyans have every opportunity to participate. The goal, as the Kenyan Commission claimed, is 'a people-driven review process whose final product will be a people-owned constitution'.

### **Challenges of Participatory Constitution Making**

The South African Constitution of 1996 is widely regarded as a model in constitutional context. Also, the process by which it was made has been considered as a key to the successful transition from the oppression of apartheid to a democratic society. However, the following features of that process illustrate the context and challenges

of participatory constitution making. It took seven years from 1989 to 1996, to achieve the final constitution. Almost five years elapsed between the first meeting of Nelson Mandela and Prime Minister P.W. Botha in 1989 and agreement on an interim constitution and the first non-racial election in 1994. Throughout these years, outbreaks of violence threatened the process.

In a key phase from 1990 to 1994, agreements with regard to the process were negotiated in private and public sessions between former adversaries. These included a 1990 agreement to negotiate about constitutional negotiations; prolonged arguments from 1991 through 1992 about the form the constitution making process should take; agreement in April 1993 on procedures; and in Dec. 1993 agreement on an interim constitution including principles and procedure binding on the final constitution making process. In April 1994, the first non-racial election for parliament was held with a voter turnout of about 86%. The following month, the new parliament met for the first time as the Constitutional Assembly.

From 1994 through 1996 the South African process became a full-scale demonstration of participatory constitution making. Until then, the public had had no direct role in constitution making. Then their elected representatives in the assembly reached out to educate them and invite their views. The educational effort included a media and advertising campaign using newspapers, radio and television, billboards, and the sides of buses; an assembled newspaper with a circulation of 160,000; cartoons; a web site; and public meetings; together with these efforts it reached an estimated 73% of the population. From 1994 through 1996 the Constitutional Assembly received two million submissions from individuals and many advocacy groups, professional associations, and other interests.

In the final phase from 1994 through 1996, in tandem with the participatory campaign, committees of the assembly drafted a new constitution within the parameters attached to the 1994 interim constitution; a first working draft was published in Nov. 1995, leaving aside 68 issues for further work; a revised draft was produced in April 1996; and a final text in May 1996. From July through Sept. 1996

the Constitutional Court reviewed the text; the court then returned the text to the assembly for amendments, which were made in October. In November, the court gave its final certification and in December, President Mandela ratified the constitution.

The South African process took time. It was phased. It benefited from an interim constitution that allowed the dialogue of transition to continue. Participation was invited at a chosen moment rather than throughout and then creativity and resources were committed to facilitation of a serious dialogue. Trust that the outcome would be consistent with the 1994 democratic principles was created by the continuation of the conversation between judicial certification and parliamentary confirmation. As in Canada, groups including women and traditional authorities found voice and access and made sure that their interests were taken into account. Also important was the fact that South Africa had a pre-existing civil society that could be drawn in as a counterweight to the entrenched racial and partisan divisions of politics. Other important factors that sustained the formal process include patience, especially in the face of violence; a willingness by all concerned to take some bold steps; and a combination of negotiation in private over some of the most difficult issues and unprecedented public involvement.

In Rwanda too, similar process was followed. According to the Arusha Peace Accord of 1999, the main phase of constitution making was implemented in 2002 and completed by a referendum in May 2003. The Action Plan of the Constitutional Commission elected by the National Assembly required, in sequence, in its own words: the training and sensitization of the population about the Constitution; the consultation of the population on the content of the Constitution; the writing and validation of the draft text of the Constitution and the referendum on the text of the Constitution as approved by the parliament.

The budget for these activities ran to about US \$7 million; the 12 Commissioners spent six months participating in local programmes and debates; and in the final referendum almost 90% of the electorate voted, with 93% of those voting approved the new constitution. Notable,



public participation was initiated even before a constitutional text was drafted. Again, the process was carefully planned, the commitment of time and resources was considerable, and participation was not simply structured on existing party lines.

The Rwandan process also suggests another characteristic of these creatively participatory processes. Constitutional re-visioning comes into play when the alternative is unsustainable or too dire to contemplate, whether that be dictatorial oppression, violence or genocide. A democratic constitution making process contributes to making peace because the prerequisite of any livable alternative to the horrors many nations have experienced is that all parties are willing to try to keep talking about their disagreements. Thus the quality of process as a means of conflict transformation lies in ensuring that all who have views and grievances have an effective voice, that participation is genuine and not a charade. In both South Africa and Rwanda, political elites initiated the process of constitutional change, provided the personnel for the key institutions and framed the educational campaigns.

With the constitutional drafting and consultation process underway, Afghanistan is also now engaged in a democratic process. Under the Bonn Agreement, the drafting and adoption of a new constitution is one of the major tasks to be organized under the leadership of the Transitional Administration in Afghanistan during its two-year tenure. Establishment of the Drafting Committee of the Constitutional Commission was announced in Oct. 2002. This nine-member committee included two women. This committee prepared a preliminary draft of the constitution, which was then passed on to the Constitutional Review Commission. The 35-member Commission includes seven women, and represents a rough cross-section of educated Afghans, including educators, lawyers, scholars, and religious leaders. In order to make the constitutional process more broadly inclusive, the Constitutional Commission carried out public consultations throughout Afghanistan on the issues people would like to see addressed in the new constitution. The 35 Commissioners fanned out across Afghanistan and conducted hundreds of small and large group meetings in all 32 provinces.

The Bonn Agreement stipulates that the new constitution will be adopted by a Constitutional Loya Jirga. It was originally planned to

adopt the new constitution in Sep. 2003; later it was decided to schedule it for in Dec. 2003, which will allow more time for preparations. President Karzai issued a decree on July 16, 2003, spelling out the mechanism by which the 500 delegates to this body will be selected.

### **Women's Participation in the Constitution Making Process**

Participatory constitution making is by definition inclusive. Yet in few nations do women, in the words of the ICCPR, 'take part in the conduct of public affairs' on an equal basis with men. Women are usually demographically a majority, the more so in some post-conflict nations where the loss of male lives or the flight of males has grossly skewed the ratio. As democratization and development have become linked in international programmes, women's education, social contribution and political participation have been identified as important to success. The institutionalization of an international women's movement and opportunities for networking and sharing experience through events such as the United Nations' World Conferences on Women have provided motivation and support to women to seek out the formative moment of constitution making in order to ensure gender fairness in any new regime. Furthermore, women's presence resolve disputes across otherwise sharp dividing lines, as the Northern Ireland Women's Coalition is credited with having done on several occasions, in the negotiation for and implementation of the Belfast Agreement of 1998.

The pressure to resolve conflict through constitutional conversation has often come from long-term disagreements, conflicts and wars over some combination of racial, ethnic and territorial boundaries. Where participatory constitution making has offered a forum for reconciling division and redressing grievances, it has often also provided an opportunity for women to gain representation in the process and outcome. Indeed, women have at times been instrumental in demanding such a constitutional opening, where governance or social conditions have previously made free entry difficult or silenced their voices.

In Nicaragua in 1986, as Andrew Reading observed, "The women stunned everyone. Hundreds of them took turns denouncing the



language of the first constitutional draft. This in spite of the fact that the draft was already strong on women's rights".<sup>5</sup> Ugandan women mobilized to participate in the 10-year constitution making process; the constitution that came into force in 1996 was described by Oliver Furely and James Katalikawe as outstanding in "the degree to which it attempts to promote and protect the rights of women". In 1992-93 Cambodia, in its constitution making process assisted by the United Nations as a way forward from a violent past, provided one of many examples of women's important role in the newly opened process. Women comprised 63% of the Cambodian population, and, Stephen Marks reported in a paper prepared in 2003 for the U.S. Institute of Peace Project on Constitution Making, Peace-building, and National Reconciliation, a women's movement emerged that demanded a role in making Cambodia's new constitution: "During a four-day National Women's Summit...109 women from eight provinces spoke out on this issue. One of the organizers...said, "We want to participate at all levels of policy-making, including drafting the new constitution". Thus South African women had precedents to follow when they called for and won a presence on the crucial drafting committees there, strong guarantees of gender equality and protections against discrimination. In Rwanda, as in Cambodia, in the wake of a destructive civil war, women again comprised a large majority of the population. Three of the twelve Commissioners in Rwanda were women, as were seven of twenty-nine Constitution Review Commissioners in Kenya.

In Afghanistan too, women's NGOs have been active on promoting public consultation, and have met with the Constitutions Commission Secretariat to ensure participation of women. The Ministry of Women's Affairs collected ideas from women, which were forwarded to the Constitutional Commission. They also held women's community meetings in groups of 30-60 to have them prepare statements on their ideas to submit to the Constitutional Commission. On July 9<sup>th</sup> the Ministry of Women's Affairs held a meeting in Kabul with over 500 women present, and invited Constitutional Commission members for discussion. They have established community radio and are going to villages raising awareness of women on the constitution.

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<sup>5</sup> Hart, V., "Democratic Constitution Making", *Special Report*, United States Institute of Peace: Washington, 2003, p.10.

Twenty per cent of seats of the Afghan Constitutional Assembly – Loya Jirga – is reserved for women. Out of its 500 members 64 women will represent 32 provinces, at least 6 women will represent the refugee population and another 25 women who will be directly appointed by the President, for a total of not less than 95 women plus any other women who may be directly elected as members through the general secret ballot process.<sup>6</sup>

### Constitution Making in Sri Lanka

The nature of the discussion on constitution making in Sri Lanka is clearly an elite-oriented political-constitutional one. The Soulbury Constitution of 1946, which became the independence constitution of 1948 was formed after restricted consultation between the departing colonial administration and the moderate conservative elite represented by D.S. Senanayake and his Board of Ministers in the 1940's. The draft proposal for constitution reform in 1944 were virtually drawn up by an all Sinhala 7-member Board of Ministers, which had been formed in 1936 to ensure unanimity on constitutional issues.<sup>7</sup> "Though D.S. Senanayake and his ministerial colleagues took the political responsibility for the draft constitution prepared in 1944, the draftsman was Sir Ivor Jennings."<sup>8</sup> A constitutional critique said that the Soulbury constitution though formally accepted by the Parliament in 1947, was not one in which the people were directly involved.<sup>9</sup>

"Though there were two more opportunities in Sri Lankan constitution making to follow democratic ways and come to a broad – based consensus by the major political parties, ethnic groups, religious and social groups it did not happen. Neither the 1972 nor the 1978 constitutional process was participatory. Each was, essentially, a creation of a governing party, making laws by the preponderant parliamentary majority it enjoyed. Each of these constitutions, moreover,

<sup>6</sup> *Fact Sheet*, Office of International Women's Issues, 2003, pp. 1-2.

<sup>7</sup> Shastri, op.cit., p.177.

<sup>8</sup> De Silva, K.M. and Wriggins, H., *J.R. Jayewardene of Sri Lanka*, London, 1988, pp. 165-168.

<sup>9</sup> Perera, N.M., *Critical Analysis of the New Constitution of the Sri Lanka Government – Promulgated on 31.8.78*, Star Press Ltd: Colombo, 1978.



was founded on a governing idea to which every other consideration was sacrificed".<sup>10</sup> Both the processes of constitution making were expended through short-sighted attempts by the ruling group to ignoring opposing views and interests. In 1972, the United Front (UF) coalition, dominated by the Sri Lanka Freedom Party (SLFP) and including the two smaller left parties – Lanka Samasamaja Party and the Communist Party, who came to power with a two thirds majority in parliament in 1970, introduced a populist-socialist constitution. Though a Constitutional Assembly drafted this constitution, it did not seek any consensus from the main opposition party – United National Party (UNP) or any other ethnic minority parties. The UF claimed that it had received a "clear mandate at the general election of May 1970, "to draft, adopt and operate a new constitution" and that in the process it enacted a legal revolution by ignoring the procedures laid down in the 1947 Constitution.<sup>11</sup> Then the UNP leader, Dudley Senanayake, in a statement to the Constitutional Assembly on 22 May 1972, declared that while his party accepted the principle of a free, sovereign and independent republic, the political climate in the country had not been conducive to the task of constitution making, the people, he added, had not been provided adequate opportunities to participate in the operation (for full text of the statement see Ceylon Daily News, 22 May 1972). However, because the constitution was drafted without a consensus and because it was used in an instrumental manner, the constitution was also defeated by the election results of 1977.

The framing of the 1978 constitution followed a process that was more partisan and restricted than had been the framing of the 1972 constitution. In this opportunity, the UNP which obtained the 5/6 majority of the parliament too ignored the opposing views and interest of the SLFP, leftist parties and other ethnic minority parties. The UNP government adopted a resolution that a Select Committee and its chairman be appointed by the speaker of the legislature "to consider the revision of the constitution of the Republic of Sri Lanka and other written law as the committee may consider necessary." This committee,

<sup>10</sup> Coomaraswamy, op.cit., p. 2.

<sup>11</sup> Wilson, A.J. *The Gaullist system in Asia: The Constitution of Sri Lanka (1978)*, Macmillan Press Ltd: London, 1980, p. 24.

comprised all the communal groups, had 16 meetings in all and based its findings on a questionnaire that had been issued to the general public and the evidence, oral and written, it obtained from various political, economic, social and religious organizations. Only 281 responses to the questionnaire were received and 16 organisations and a Buddhist Chief Priest presented evidence before the committee.<sup>12</sup> However, it is a question how they were incorporated in the constitution. In reality, a selected group, mainly according to the ideas which President J.R. Jayewardene had in mind, drafted this constitution.<sup>13</sup> There have been arguments put forward that the constitution of 1978 did not pass through a constitutional assembly and therefore its legitimacy is questioned because it lacked 'consensual foundations' and was an imposition of the ruling party.<sup>14</sup> In answer it stated that a party which receives a 4/5 majority in parliament had the legitimacy to draft a new constitution.

The UNP government used a referendum at the inception of the 1978 constitution to legitimize it and to broaden the constitution making process and democracy. But unfortunately, it did not serve the purpose. Generally, a referendum has an inherent legitimacy. It involves direct participation of the people on a given issue. It is the instrument which more than anything else will safeguard the interests of the majority and the attributes of a majoritarian democracy. However, like all other constitutional institutions, if used in certain real life situations, it can actually be anti-democratic. The referendum can lead to the subversion of intermediary structures of democracy by a popular leader. It can also be an instrument for ethnic chauvinism to whip up frenzy against minorities and unpopular groups in society. The referendum in the Sri Lankan context has unfortunately been called upon to play both roles.<sup>15</sup>

<sup>12</sup> Wilson, op.cit., p. 32.

<sup>13</sup> See for details Perera, N.M. ibid., 1978 and Jupp, James, *Sri Lanka: Third World Democracy*, Franks Cass: London, 1978.

<sup>14</sup> Thiruchelvam, N. "The Making and Unmaking of Constitutions – Some Reflections on the Process", in the *Ceylon Journal of Historical and Social Studies*, Vol. 8, No. 2, Colombo, June 1977.

<sup>15</sup> Coomarasamy, Radhika, op. cit, p. 75.



Moreover several amendments to the 1978 constitution coupled with a repeated manipulation of the proclaimed law and democratic norms, as well as the use of emergency provisions and organized violence, all contributed to a declining legitimacy. It contributed to the growth of dissent, opposition and violence by non-ruling groups within the society.

In any of these occasions of constitution making, the people, groups, organizations, NGOs, and women's organizations were not given opportunities to share their interests or ideas and they were not sensitized regarding constitutional issues. In each round of constitution making, the interests that were ignored were not only those belonging to an ethnic or any other minority groups but included a significant segment of the majority community as well; the left, the UNP and the SLFP in the three constitutions respectively. This contributed to the growing crisis of legitimacy of the political system as a whole and posed the challenge of effective governance for the regime in power.

The Constitutional draft of 2000 was presented to the Parliament on 3<sup>rd</sup> Aug. 2000 by the Peoples' Alliance (PA) government. Regarding this the then Minister of Justice, Constitutional Affairs, Ethnic Affairs and National Integration, Prof G.L. Peiris mentioned that: "The Constitutional Bill is a result of nearly 6 years of discussion and dialogue between political parties and civil society. The Parliamentary select committee on the constitution held 77 meetings from 1994 -97. In 1999 it was decided to hold a series of discussions with political parties and these discussions, continued until July 2000. The views of political parties were fully considered and taken account of in the drafting of the new constitution".<sup>16</sup> Also the Deputy Minister of the same ministry, Mr. Dilan Perera took this opportunity to declare that "There were the refinements of draft proposals first made, as a discussion paper exactly 5 years ago, on 3<sup>rd</sup> Aug 1995, improved by the proposals of Jan, 1996 and further by the proposals of Oct. 1997. The proposals now made were the distillation after 5 years of all these proposals.<sup>16</sup> Though political leaders of the PA government emphasized on the nature of

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<sup>16</sup> Somasunderam, M. (ed.) *Constitution 2000: Parliamentary Debates*. Ethnic Affairs and National Integration Division: Colombo, 2000 p. 11.

the constitution making process in this way when the final draft was presented to the Parliament within a few days, the civil society was alarmed about it and there was a huge uproar. It was because the general public were not invited for any discussion on constitutional issues, not informed sufficiently about the drafting constitution or involved at any stages of the constitutional making processes. Therefore, one cannot label 2000 constitution making process also as a democratic one and the Sri Lankan society itself raised many questions about the legitimacy and the hasty nature of it.

## **Conclusion**

This study illustrates that there is a desire among many countries, particularly in new nations to follow democratic or participatory process in constitution making. Some of them see it as a way to resolve their prolonged ethnic, political and social conflicts. Also such societies recognize a majority accepted, recognized, democratic constitution as a legitimate end product which is owned by all the citizens. Similarly many countries are attempting to follow the process of genuine public participation in constitution making and in other governing and development activities mainly with the objective of achieving sustainable peace, development, good governance and international recognition.

## **Lessons for Sri Lanka**

A majority of the Sri Lankan population expects to resolve the ethnic conflict in Sri Lanka in a peaceful way. An acceptable resolution will depend mainly on a structural change of the government and it forces Sri Lanka to draft a new constitution or to amend the present constitution. Also, during the 25 years of its practice the 1978 constitution has demonstrated various weaknesses. Therefore, a constitutional change has become a timely necessity, but the country should not keep on jumping from one constitutional structure to another. Such rapid changes make for instability, insecurity and disloyalty. A constitution must evoke the unstinted loyalty of the people by its acceptability and its capacity to respond to the needs of the people. It is not the letter of law of the constitution that can earn the respect and evoke this loyalty. It is the spirit that animates its effective functioning.



Only time will test its soundness, its fairness and its impartiality to the diverse sections of the people. It must, therefore, evolve over periods of time.

Modes of participation in constitution making vary and therefore, no one model can be appropriate for all nations. However, a constitution should not be drafted only by a few elite at secret meetings. Constitutional framers, including political leaders and legal experts can draft a proposal in plain and simple language and in all languages used in the country. Then, the general public should be given enough information on values of constitutionalism, objectives of the draft constitution, how these should be achieved, contents and the constitutional procedure. Participation should be promoted as both a right and a necessity of the public. This right is established in international declarations and conventions adopted by Sri Lanka as well as in the 1978 constitution. This will ensure that the constitution making process is transparent and credible. By granting opportunities to the general public to have open discussions on these issues, an adequate level of trust and understanding between elites and the public can be built up. Also the process should be made receptive and open to the diverse views of the society. The process by which citizens can make contributions accessible in terms of physical proximity, languages used and planned within a reasonable period of time. Therefore, various ethnic, religious, social, political groups and women's groups should be included in this constitutional conversation and then only can they represent their views and can be satisfied. Moreover, ordinary people, particularly the disadvantaged and marginalized groups, should be empowered to make effective contributions by giving them the necessary information through media, popular culture and civic education. The creative media should play an important role and pay more attention to constitutional conversation by using music, drama, art and other conventional methods. Academic institutions also can play a special role by doing necessary research and organizing debates, conferences and seminars, etc. and supporting the constitution making process.

Genuine public participation requires social inclusion, personal security, and freedom of speech and assembly. A strong civil society,

civic education and good channels of communication between all levels of society further facilitate the process. Only a considerable commitment of time and resources makes genuine public participation possible. The highly successful case, South Africa took at least five years for constitution making. Therefore, Sri Lanka too should be very patient and must initiate raising awareness among the general public about the constitutional issues and needs of the country. Then only will the people in all groups, whether majority or minority, poor or rich, urban or rural, will understand the necessity of a constitutional change and the possible changes of the governmental structure. Also, mechanisms used for adopting or ratifying the constitution should be transparent and it should represent the genuine views of the people. There must be a clear method for amending the constitution and that will increase the trust and credibility of the people regarding the governance.

Despite the efforts by an external intervention, a democratic constitution cannot be written for a nation, nor can one be written in haste without breaching the requirements of democratic process. 'Interim' or 'transitional' constitution/ administration with guarantees for a continuing, open and inclusive process for the longer term offer one solution to urgent needs for a framework of governance in war-torn areas.

An independent commission with the necessary authority can be established to facilitate the constitution making process. The State should commit itself to grant adequate funding for this process. However, the State itself cannot take the sole responsibility for the democratic process of constitution making, the civil society – the political parties, NGOs, pressure groups, ethnic, religious or social groups, women's and youth groups, academics, journalists, media personnel and interested individuals should assist in various ways to facilitate the participatory constitution making process. Then only a democratic and legitimate constitution can be written by a nation for a nation. However, one should not forget that it is all easy to say, but still hard to fulfil this aspiration.

# POLICE, TORTURE AND HUMAN RIGHTS

by

Kingsley Wickremasuriya, *Ph.D.*

## Introduction

Incidents of inhuman and degrading treatment meted out to suspects in police custody are reported from around the country practically every day, according to the media.<sup>1</sup> This has resulted in a hue and cry being raised in recent times by civil society against the practice of torture by police. In fact, as to what happens at the hands of the police in the name of public security and the protection of the ordinary rights of the people was a subject of discussion as far back as thirty years or even more<sup>2</sup>. Repeated 'cell deaths' at police stations have sharpened the focus on the issue. 'Cell deaths' are nothing new. They have happened in the past, they are happening now, and are likely to take place in the future as well.

It is common knowledge that police use 'third degree' methods to solve crime. This is not something peculiar to our police. This methodology is practiced by the police the world over in various degrees depending on the country and the core values they have been brought up in the legal system and the law prevailing at the time. The practice was prevalent even in the United States. Starting from the 18<sup>th</sup> century and for a good part of the 20<sup>th</sup> century American Police depended mainly on confessions to solve crime. Police were free to use any method to extract confessions and they were usually obtained through applying physical pressure. It was a common practice with them during this period until the dawn of the 'due process revolution' in the early 1960s. It was after the Supreme Court extended the provisions of the Fourteenth Amendment in the Bill of Rights to criminal proceedings that the American Police were compelled to shift their methods of investigation using confessions to solve crime to that of using scientific

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<sup>1</sup> Editorial, *Daily Mirror*, 3<sup>rd</sup> Nov. 2003

<sup>2</sup> Sessional Paper XXI. (1970). p.27



evidence instead.<sup>3</sup> But in Sri Lanka, in spite of the guarantees in the Constitution against torture,<sup>4</sup> the practice of extracting information through degrading treatment of suspects continues unabated<sup>5</sup>. Why it is so can be explained only after a deep and a careful study. It is a multifaceted, complex behavioural problem that needs to be scientifically researched. This paper, however, will try to offer an explanation from a socio-historical standpoint and examine some of the aspects that are responsible for the persisting nature of this phenomenon.

### Collective Responsibility

In the times of the ancient kings in Sri Lanka, it was an accepted principle that the maintenance of law and order in an area was the collective responsibility of the local inhabitants as was the practice in India, and even in some parts of Europe, notably in England. Instances are known where a whole populace of an area was punished because of the misdeeds of a single member. This idea of collective responsibility was the bedrock of orderly society then. It was this idea, which was mainly responsible for the singular absence of crime, so to speak, during that period.<sup>6</sup>

Law and order in that era was maintained effectively not so much strictly through rigid formal legal procedure or punishment, but mostly by the use of informal methods that were by and large flexible. Collective responsibility, dispute resolution, restitution, compromise and ostracism were some of the informal social controls that obtained citizen compliance in those days. It is, therefore, evident that the social order during this period was maintained largely through informal social controls, and voluntary compliance. Being a part of the 'social contract' that existed in a monarchical society these social controls were binding and very effective.

<sup>3</sup> Swanson, Charles R., Neil C. Chamelin & Leonard Territo. (1996). *Criminal Investigation*; McGraw Hill. The now famous Mapp, Escobedo and Miranda cases can be cited in evidence.

<sup>4</sup> Article 11 of *The Constitution of the Democratic Socialist Republic of Sri Lanka, 1977* (as amended up to 20<sup>th</sup> December 1988)

<sup>5</sup> According to the records of the Special Investigation Unit of Police HQ, 97 cases referred to it under Article 11 of the Constitution up to the end of October 2003 were investigated as against 95 for the year 2002. During the same period 8 prosecutions were entered in 2003 as against 17 during 2002.

<sup>6</sup> De Silva, Osmund. (1971). *Special Supplement to the Police Gazette*, Part II. No. 6,099. Colombo: Department of Government Printing.



They had the sanction of moral authority and the force of legitimacy in the eyes of the people.

This was mainly due to the fact that the methods adopted in the administration of justice were simple, institutions set up for the purpose like *Gamsabhas* were democratic, system of control was decentralised and the checks and balances were there to ensure that there was justice and fair-play. Besides, it functioned purely for administering justice and that alone.<sup>7</sup> In addition, the system of collective responsibility had an element of power sharing, giving it legitimacy at the grass-roots level of operation. The administration of justice, therefore, was based on a system that was fully legitimised and operationally functional. Thus, the old order of society in the island neither required nor produced a police force in the modern sense of the word.

### Collapse of the Old Order

However, as society became more complex in character and subject to the stress of modern civilisation and the pressure of colonial rule, it resulted in the gradual break-up of the old way of traditional life. Furthermore, with the country coming more and more under Western influence with its emphasis on materialism over a period of time, the society came to experience a fundamental change in values. The gradual stifling of the democratic institutions like the *Gamsabha*, and the introduction of institutions like the Courts of Judicature with strict legal procedure and rigid rules of evidence, and a formally organised police alien to the traditional values resulted in contempt for the laws of an alien country. These and the maladjustment caused by impact with an alien culture, and a host of other factors like riots and lawlessness created conditions wherein it was felt by the British that it was no longer safe to allow the maintenance of law and order to continue to be the collective responsibility of the indigenous community. It was under these circumstances that a Police Force was first introduced to Ceylon in 1833 for watch and ward duties in Colombo.<sup>8</sup> Formal policing, therefore, is a concept of recent origin in the country.

From the very beginning the public rightly or wrongly began to regard the police as a semi-militarised unit of an alien government. The new

<sup>7</sup> Unlike the British Colonial Police who were assigned the task of protecting the Colonial Regime.

<sup>8</sup> De Silva, Osmund (1971). *Special Supplement to the Police Gazette*, Part II. No. 6,099. Colombo: Department of Government Printing.

Force was treated with suspicion and fear.<sup>9</sup> From the standpoint of the colonial power, however, it was an institution for maintenance of law and order in the colony essential for the collection of revenue and good government. Riots, disturbances, and for that matter any opposition to the colonial government either arising from opposition to taxes or other administrative reforms or conditions had to be put down ruthlessly. Consequently, the police came to be used increasingly as an instrument of coercion against the population and they had to act with certain aggressiveness as a stamp of their authority. Being the main coercive instrument of the Colonial Government, it became the responsibility of the police to enforce laws that were distasteful and repugnant to the people. In obedience to their colonial masters the police performed their tasks with a ferocity and vigour that eventually gained them notoriety as being coercive and oppressive.

Speaking of the Dowbiggin period, the Soertz Police Commission (1947) appointed to go into the reasons for the dissatisfaction on the part of the public with the Police Force observed, "Perhaps within the last 50 years it was during the Dowbiggin period that the Ceylon Police, generally speaking, enjoyed its highest reputation. It most probably may have gone from strength to strength as a Police Force but for the unfortunate Riots of 1915".<sup>10</sup> The report said further, that the riots served to disturb the sense of proportion of that otherwise robust-minded Inspector-General. They obsessed him with what might be described as a 'Riot Complex'. Continuing, the Commission observed that from that time on the Force, which had been gradually emancipating itself from its undoubtedly military origin in this island and from its military traditions, began to go back to them. Parades and drills with band accompaniments, rifle practices, route marches, bayonet charges and similar military exercises about which there was so much complaint made to them in the course of their inquiry, occupied most of the time of the members of the Force. Lapses and defaults on the part of the men in respect of these matters were punished with fatigues, penalty drills, confinement to barracks, and similar army punishments.<sup>11</sup>

<sup>9</sup> *ibid.*

<sup>10</sup> *Sessional Paper VII - 1947*, p. 2, Colombo: Department of the Government Printer.  
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The Force was fast falling away from Blackstone's conception of what a Police Force ought to be; the 'legal custodians appointed to preserve the peace, to keep watch and ward in the districts, and to bring criminals to justice'. Instead, they were shaped and trained mainly to meet the emergency of riots. Commenting further the Commissioners said that this would not have mattered very much if it was only a brief episode in the history of the Force. But "Inspector-General Dowbiggin continued in the office of the Inspector-General of Police for more than twenty years after the riots and the militarization of the police went on much to the distaste, and even to the perturbation, of the public." The frequency with which cases of assault by police on the members of the public came to notice made the *Times* to remark that the effect of efforts to transform the Force on military lines must be to increase the pride of the constable in his position and corresponding increase in aggressiveness towards members of the public when he fails to command respect from them.<sup>12</sup> But in those days there was very little the public could do to alter that state of things, and also they endured what they thought could not be cured".<sup>13</sup>

Basnayake Police Commission (1970) said in their report that the newspapers and other organs of publicity have often focused public attention on police activity suggestive not only of inefficiency but also of corruption and excesses frequently bordering even on depravity.<sup>14</sup> Continuing they said that members of the public of different levels, not only persons who have themselves suffered at the hands of the police, but even public-spirited social workers, with no self-interest at all, have testified to many incidents within their personal knowledge which have raised grave concern in the Commissioners' minds as to what happens at the hands of the police in the name of public security and the protection of the ordinary rights of the people. Members of the Police Force appearing before the Commission, some as individuals and others as members of unions of officers, representative of a wide

<sup>11</sup> *Sessional Paper VII - 1947*, Colombo: Department of the Government Printer.

<sup>12</sup> Cited in Dep, A.C. (1969). "A History of the Ceylon Police." Colombo: *The Times of Ceylon*.

<sup>13</sup> *Sessional Paper VII - 1947*, p.2, Colombo: Department of the Government Printer.

<sup>14</sup> *Sessional Paper XXI, 1970*, Colombo: Department of the Government Printer.

cross-section, almost all the operative grades of the Force have themselves admitted to the existence of corruption and excesses which cause grave anxiety even to them.<sup>15</sup> Even after public attention had been focused on a number of incidents in which the police had used unnecessary force, reports of police violence continued to appear in the Press.<sup>16</sup> The fear of battery by the police is in every citizen. Several cases of torture have come to light in the Courts.

Furthermore, they said that the Police Service, which has so much to deal with the public, is free to act without the curb of an authority empowered to take immediate and effective cognisance of the abuse of its power. Every member of the public has not the means to expose oppressive action by the police. "Beside, the fear that there would be retaliation if a person tried to expose the abuse of authority by the police deters even persons with means from seeking to assert their rights. The consequence is that, the vast majority of people suffer in silence".<sup>17</sup> The *Times* (1982) commented that police brutality in the country is almost legendary. Whether guilty or innocent, a confrontation with the police is an exercise most people hesitate to embark on, however, great their need.

As for the people, "they resented any sort of interference with their rights. Police aggressiveness was met with aggressiveness. Sometimes people retaliated even legitimate police action. They often had recourse to legal process and even took the law into their own hands".<sup>18</sup> In a sense, the general disregard for the laws of the land stemmed from a sense of frustration that the people have experienced with the police in the enforcement of laws that were out of tune with the people. The police came to symbolise a system much resented by them.

<sup>15</sup> *Sessional Papers XXI, 1970*, Colombo: Department of the Government Printer p.27.

<sup>16</sup> *Sessional Papers XXI, 1970*, Colombo: Department of the Government Printer.

<sup>17</sup> *Sessional Papers XXI, 1970*, Colombo: Department of the Government Printer p.30.

<sup>18</sup> Dep. A.C. (1969). "A History of the Ceylon Police." Colombo, *The Times of Ceylon*.



In this colonial setting the police developed into an organization coercive in character and oppressive in reputation. They continued to expand and develop under an impetus unaffected by public opinion. "This system had the defect of maintaining a Police Force as a body alien to and above the heads of the people in their normal life".<sup>19</sup> There was neither power sharing nor community control, as it used to be under the monarchical system. "They were never 'citizens in uniform' under community control as they were in Britain proper".<sup>20</sup> It was an intrusion from a foreign soil, which in many ways was in conflict with the indigenous values of the people.

Thus the colonial police demonstrably were agents of the colonial regime. Their assigned task was the protection of that regime. Structurally, they were centrally organised and controlled. Functionally, they had an overtly political role of protecting the Colonial Regime. Not being accountable to the people, they drew their legitimacy from the centre.

### Colonial Legacy

If the police earned a reputation under the colonial regime as authoritarian, imposing, brutal, and uncivil, even after independence successive governments did nothing to change the police into a socially responsive organ. Instead they continued to use the police no differently than their predecessors to their own political advantage. The notoriety with which it was known during the British times as a coercive organisation continued even after independence.

The practice had also grown of employing the police as a force to strike terror into those who are required to vacate crown land, houses owned by the State, and unlawfully erected buildings, or fail to carry out orders made by various public officers in regard to duties with which they are entrusted. Even in the case of eviction of persons from crown land the

<sup>19</sup> *Sessional Paper VIII*. (1947) p.43. *Report of the Police Commission*. Colombo: Ceylon Government Press.

<sup>20</sup> Burger, Angela. (1987). "Policing a communal society, the case of Sri Lanka." *Asian Survey XXVII* (7). Pp822-833

police are introduced for the purpose of striking fear into the people. In fact, several cases of torture had come to light in the courts. Commenting on the practice, Basnayake Police Commission said that these are functions, which the police are not authorised by law to perform and should not perform. Not only it is illegal to do so, but it also tends to make the police appear in an unfavourable light as a terror-striking force. "In our view the police when performing such functions do not enjoy the protection of the law and lay themselves open to be sued in the Courts both civilly and criminally. The use of the Police Force in such a role as a force for striking terror into persons who would not otherwise meekly submit to the orders of Public Officers should, therefore, be forthwith discontinued".<sup>21</sup>

Further, it is a well-known fact that almost every government since Independence has had to rely for a good part of their term on the Public Security Act and the use of 'Emergency Regulations' to maintain political and social stability. Although the Constitution guaranteed fundamental rights it has been the general criticism that the Public Security Act provided many avenues to the Government, which could be used to stifle political dissent. This criticism, however, stands justified for the 'Emergency' was used to ban strikes, to disperse demonstrations, to prohibit political meetings, censor the press and even at times to keep them sealed. In the end it was the police who had to enforce these measures. The result was that the police came to be used liberally in the pursuit of these political objectives.<sup>22</sup>

As recently as 1995, a Committee headed by W. T. Jayasinghe was appointed by the Government to inquire into and report on the reorganisation of the Police Service.

The traditional duty of the police, they said is to ensure the safety of the State and extend the protection of the law to all the inhabitants. But in this process, the police saw their immediate role to be to safeguard what they perceived to be the interests of the Government in office. But unfortunately, they identified the interests of the

<sup>21</sup> *Sessional Papers XXI. (1970)*. Colombo: Department of the Government Printer p.26.

<sup>22</sup> Report of the Jayasinghe Committee, (1995). Unpublished.

Government in office with the interests of the Member of Parliament of the ruling party. With the frequent change of Government, he had to shift his 'loyalty' to the new Member, who was now a part of the Government in office. Often, this would involve some cooling of relations or even estrangement from erstwhile 'patron'. This trend came to establish a close nexus between the police officer and the Member of Parliament, often to the exclusion of the members of the public, although the protection of their interests is the prime responsibility of the police. The Committee said in their report that the situation has thus become even more acute with the Members of Parliament arrogating to themselves the powers of directing police operations.<sup>23</sup>

### New Challenges

In addition, the police had to face the challenge of two insurgencies in the early '70s and the late '80s launched by the Janatha Vimukthi Peramuna (JVP) in the South on the one hand and beginning in the '80s by the Liberation Tigers of Tamil Eelam (LTTE) in the North, on the other. These were entirely new situations that the police were unfamiliar with. The strong arm methods used to tackle crime in ordinary times was comparatively mild and totally ineffective in the face of the new challenges. The result was torture chambers and mass graves that came to be familiar features of the times. Torture came to be an established mode of treatment of persons suspected to be connected with insurgent movements, whether in the South or in the North. It had the implicit and explicit sanction of the State. For instance the Minister of State for Defence speaking in Parliament on the debate to extend the Emergency said "You cannot do these things under the normal law".<sup>24</sup> The Emergency Regulations were amended and indemnity laws were brought in together with the Prevention of Terrorism Act. (PTA) giving the police more powers to enable them to deal with the new situation more effectively.<sup>25</sup> But what happened in the name of protecting the rights of the public at large is vividly described in the *Report of the Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons*.<sup>26</sup>

<sup>23</sup> *ibid.*

<sup>24</sup> Sri Lanka: Disappearances and the collapse of the Police system, 1999, P26, Asian Human Rights Commission.

<sup>25</sup> *ibid.* See chapter IX.

<sup>26</sup> *ibid.*



## Results vs. Methods

There are other variables contributing to this trend. For instance, there is no specific policy framework in the Police Department laying down standards to be followed in crime investigation. Neither is there a conscious effort to promote the rights of persons in custody. True, that there are 24 Departmental Orders<sup>27</sup> governing the subject of crime. These orders deal with various aspects of dealing with crime investigations, reporting, etc. Taken as a whole they provide a basic framework for embryonic scientific crime investigation. The Departmental Orders<sup>28</sup> containing the Standard Operating Procedures (SOPs) were framed in 1960. It is the policy document or the 'Bible' of the Police Department. At least it used to be. But they deal with procedural aspects rather than ethical or human rights considerations. The absence of a document laying down ethical guidelines in investigative procedures and on the rule of law tend to promote a sense within the Department that what ultimately matters is the result and not so much the method.

The Rewards System – promotions and monetary rewards awarded for solving crime seems to reinforce this feeling further, that what matters finally is the result and not the method used to solve crime. Most senior officers would encourage the result and condone the method. Not only would they be ready to turn a blind eye to the methods used even if they are illegal, but even to safeguard the subordinates using such methods, if only it produces the desired result. They would promote such feeling or tolerate such investigative methods, most times in the genuine belief that it is being done in public interest. Such an acceptance in the Department seems almost to give licence for the subordinate ranks to carry on regardless, for they do not have to worry about the rule of law as long as the *esprit de corps* amongst the ranks that is a part of the sub-culture in the police will protect them from coming in conflict with the law. Use of illegal force purportedly for solving crime is looked on with favour not only by the senior officers in the Department, but also by the victims of crime.

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<sup>27</sup> Ceylon Police Departmental Order C – Crime 1-24, Colombo: Department of the Government Printer.

<sup>28</sup> Ceylon Police Departmental Orders (entrusted in confidence to Police Officers only). Colombo: Department of the Government Printer.

The victims expect the police to deliver quick justice and urge that the offender be given summary punishment. They are joined by others high up in the government of the day if it is to their political advantage. Such an environment creates an open playing field for the corrupt and the partisan in the Department. Illegal force can, therefore, be used for profit; to gain monetary benefit, or to obtain promotions and other perquisites one would not have access to otherwise.

Further, the widespread notion among people in the community was that the police were there to arrest the lawbreakers and to punish them. This was their concept of the role of the police. This role expectation was perhaps the result of generations of police officers repeatedly making physical assaults on the people taken into custody. The image of the police officers who use physical assaults on a suspect is firmly rooted in the minds of the people. It is indeed a role expectation that cannot be easily erased from the people's mind. The people, therefore, see the police as an instrument of coercion. On the other hand, the existence of such a public expectation had led the police themselves to believe that it was their role to dispense justice in a summary fashion and to punish miscreants. The trend is seen as mutually reinforcing.<sup>29</sup>

### Operation of the Rule of Law

However, conciliation and compromise were the important indigenous principles that carried official sanction in pre-British times. But they were not accommodated by the formal institutions set up by the British. In many parts of the Kandyan Kingdom both civil and criminal disputes could be taken to a *gamsabhava*, or village council (or Court), which attempted to bring about an amicable settlement. In the Low Country, headmen often played a similar role. Restitution could be required as a part of a punishment. Alternatively, it could be the result of negotiation between the complainant and defendant. In the Kandyan Kingdom, a man convicted for assault could be handed over to the complainant to be beaten; and thefts were often resolved by the return of the stolen property, plus further compensation. In 1829, a convicted prisoner petitioned that he should have been allowed to free himself from a charge of robbery by rendering compensation.

<sup>29</sup> Ratnapala, Nandasena. n.d. *Police Public Relations*. Colombo: Sarvodaya Research.

Instead, he complained that he had been brought to court, fined, whipped and sentenced to two months imprisonment. Unfortunately, from the British viewpoint at any rate, the dispute-solving model adopted by the Sinhalese had little to do with British conceptions of justice.<sup>30</sup>

A more important difference between British and indigenous judicial norms lay in the means of determining guilt or innocence. In colonial courts evidence had to be presented according to set procedures. Otherwise it was declared invalid. In contrast, the Sinhalese did not separate crime from either the social setting within which the action had taken place, or from the social setting of the court itself. Decisions by judges in the Kandyan Kingdom took into account all the available evidence, including the personal knowledge of the judge and others in attendance, which was likely to be extensive. Sinhalese law was unwritten; and there was great flexibility both in its application and in judicial procedure. When the evidence was inconclusive, trials by oath or ordeal were legitimate options. Though the refusal of one of the parties to a dispute to make an oath was admissible as evidence in British courts, these other ways of trying cases were generally ignored or disapproved of by the colonial authorities.<sup>31</sup>

Thus, the administration of law and order generated little moral authority because colonial court procedure had few roots in local conceptions of justice. Cases were decided only upon evidence presented in accordance with strictly defined regulations. According to indigenous values, these restrictions on the type of evidence to be considered were meaningless, and cases should have been decided on the basis of all known information including the personal knowledge of the judge. From the Sri Lankan point of view British judicial procedure needlessly hampered justice. Besides, Sinhalese law being unwritten popular conceptions of morality emphasised the specific situation in which the alleged offence had taken place and the social positions of the persons involved.<sup>32</sup>

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<sup>30</sup> Rogers, John, D. (1987). *Crime, Justice and Society in Colonial Sri Lanka*, London: Curzon Press.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*



In the early nineteenth century British officials hoped that the superiority of the colonial system would become evident to Sri Lankans, and that popular attitudes would change. There was, however, little in the actual workings of the courts which propagated the moral assumptions which had led to their establishment. This failure was partly because the middle and lower levels of the colonial bureaucracy were staffed with persons who had little sympathy with the principle of rule by law, which court procedure was meant to reflect. Besides, there was corruption amongst the lower level officials, from the court staff to the police who were paid low salaries. Most headmen received no salaries at all. This situation saved money for the colonial government and reinforced the British sense of moral superiority, which served as a justification for colonial rule. It also ensured that the principle of rule by law, which the judicial system was meant to enforce, could not put down deep social roots. Instead the courts were treated as an amoral source of power, which could be used by those skilful enough to manipulate them.<sup>33</sup>

The widespread perjury, especially on the part of the complainants, demonstrated that government institutions enjoyed little moral authority. Aided by court officials, lawyers and unofficial legal advisers, Sri Lankans used courts as they used spirits and demons of popular Buddhism. Both were perceived as amoral sources of power, which responded more or less predictably to specific modes of address. That the new system generated little moral authority was less important than the fact that it gave many Ceylonese access to the power of the State. Although some British officials hoped that the judicial system would gradually gain acceptance and function as intended, there was little opportunity for Ceylonese to observe the principles, which lay behind the rule of law. Thus, a resilient indigenous legal culture grew up around the courts and attempts by government to change this culture were unsuccessful.<sup>34</sup>

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<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

In spite of the severity of punishments, litigation continued to be a thriving trade. A member of the junior civil service commenting on the state of affairs observed, that "corporal punishment was inflicted for all kinds of real or supposed offences, with the utmost liberality and goodwill".<sup>35</sup> But disorder continued unabated, so much so, that more crimes came to be committed in one year than what had been experienced in twenty years previously, a situation similar to that which prevailed in contemporary Europe.<sup>36</sup>

This lawlessness was perhaps the result of both the expansion of the market economy and the imposition of colonial institutions that took place in the context of long established and complex cultures, which shaped the form of the new social arrangements that appeared during the colonial period. Further, the colonial judicial system was established on principles alien to Sri Lanka. Government institutions, therefore, lacked popular backing and consequently lacked moral authority. Thus the government machinery for law and order administration came to be perceived by the large majority of the people as something alien to their value system and lacking in moral authority and deep roots in local conceptions of justice.<sup>37</sup>

## Historical Impact

Moreover, history bears witness to a tradition of cruel treatment of offenders during the times of the ancient kings. Judicial punishment during this period as they were in other parts of the world in those days was harsh and inhuman, when measured by modern standards. The *Panakadu* inscription grades punishments in the following order: (1) verbal reprimand, (2) fines, (3) imprisonment (4) confiscation of

<sup>35</sup> Pippet, G.K. (N.D). *A History of Ceylon Police, 1795 – 1870*, Vol I. p.5. Colombo: Times of Ceylon Co. Ltd.

<sup>36</sup> Hayward, Arthur L.(ed.). (1927). *Lives of the Most Remarkable Criminals* (2<sup>nd</sup> ed.). New York: Dodd, Mead and Company.

<sup>37</sup> Samarawecera, Vijaya. (1981). British Justice and 'Oriental Peasantry': The working of the Colonial Legal System in Nineteenth Century Sri Lanka. Robert I. Crane & N. Gerald Barrier (Eds.), *British Imperial Policy in India and Sri Lanka 1858 – 1912: a Reassessment*. 107 – 41. New Delhi.

property, and (5) capital punishment. The theory of punishment prevailing at the time as revealed from this document appears to be that, it was a penalty imposed on offender to free him from the guilt that he had incurred. Thus, once the offender has suffered the punishment appropriate to his crime no social stigma should be attached to him.<sup>38</sup>

In addition, we read of various forms of punishment and torture inflicted in the process of carrying out justice. The punishments were at times so severe that it is difficult to say they quite fitted the crime. From the evidence available the forms of punishment in existence in India seem to have been practised here too. They were of various kinds, such as fines, imprisonment, mutilation, banishment and death.<sup>39</sup>

Treason was considered one of the worst crimes and was punished with death, mutilation, or banishment. The severest punishments were reserved for those convicted of treason against the king.<sup>40</sup> The *Saddharmaratnavaliya*<sup>41</sup> refers to these different forms of punishment meted out to traitors. Nissankamalla in one of his inscriptions enlarges on the terrible consequences of treason against the king.<sup>42</sup> Parakramabahu I had hundreds of rebels impaled and several hanged on the gallows and burnt to ashes.<sup>43</sup> The *Mahavamsa*<sup>44</sup> refers to Ilanaga, who ordered that the Lambakarnas who had opposed him be yoked two and two behind one another to his car and bade his soldiers then to strike the heads off. Later being admonished by his mother, he recalled the order to behead and instead commanded that their noses and toes be cut off. Jetthatissa commanded that "the treasonous ministers be slain and (their bodies) be impaled on stakes round about his father's pyre".<sup>45</sup> The *Saddharmaratnavaliya*<sup>46</sup> also refers to other instances when ministers were banished or imprisoned for conspiring against the king.

<sup>38</sup> Attygalle, Sir Nicholas, W. J. F. Labrooy et al. (eds.). (1960). *History of Ceylon, I, II* Colombo University Press.

<sup>39</sup> Ariyapala, M. B. (1968). *Society in Medieval Ceylon*. Colombo: The Ceylon Government Press.

<sup>40</sup> *ibid*

<sup>41</sup> Jayatileka, D. B. (Ed.). (1936). *Saddharmaratnavaliya*. Colombo: Lankhinavavisruta Press

<sup>42</sup> Ariyapala, M. B. (1968). *Society in Medieval Ceylon*. Colombo: The Ceylon Government Press.

<sup>43</sup> Geiger, W. (Ed.). (1925). *Chulavamsa* (Vols. I & II). P.T.S.: Humphrey Milford.

<sup>44</sup> Geiger, W. (Ed.). (1908). *Mahavamsa*. London: Oxford University Press.

<sup>45</sup> Geiger, W. (Ed.). (1908). *Mahavamsa*. London: Oxford University Press. p.36.

<sup>46</sup> Jayatileka, D. B. (Ed.). (1936). *Saddharmaratnavaliya*. Colombo: Lankhinavavisruta Press.



Severe punishments were meted out even to monks who were proved guilty of high treason. King Kanirajanutissa is said to have taken sixty monks captive with all their belongings and flung them into caves called Kanira.<sup>47</sup> But going by the evidence available in the chronicles and inscriptions, we can assume without hesitation that these were the punishments meted out to traitors.

We also have evidence to show that whole families were put to death for the treachery of one member. An inscription of Nissañka Malla boldly declares that “those who pay obeisance to persons of the same class (*govī*) as themselves and render them the honours due to kings, and those who accept from them offices and titles, shall indeed be called traitors — such people with their families and their worldly possessions will be rooted out as soon as a royal prince appears”.<sup>48</sup> It further states, that those who have committed an evil act such as destruction of life, and also those who have taken poison destroy themselves alone, while treason destroys those who have committed it together with their families and their associates. Therefore, they are admonished not to harbour thoughts of treason.<sup>49</sup>

The fifteenth century slab-inscription of Bhuvanekabāhu (VI) refers to similar punishments meted out to rebels. It shows that these were in force even prior to the fifteenth century for it is unlikely that the monarchs changed their codes of law frequently. However, “To anyone behaving in submission, neither loss of property, nor loss of limb, nor loss of life shall be inflicted”.<sup>50</sup> We may, therefore, conclude that the kings may have resorted to these types of punishments from the earliest times.

Knox (1958) portrayed the Kandyan kings as naturally cruel. According to Knox “He seems to be naturally disposed to Cruelty: For

<sup>47</sup> Geiger, W. (Ed.). (1908). *Mahavamsa*, London: Oxford University Press

<sup>48</sup> Wickremasinghe, D.M.De Silva (Ed.) (1928). *Epigraphia Zeylanica*. Vol.(II). London: Oxford University Press. p.164.

<sup>49</sup> *ibid.*

<sup>50</sup> Paranavitana, 1933, p.281

he sheds a great deal of blood, and gives no reason for it. His cruelty appears both in the Tortures and Painful deaths he inflicts, and in the extent of his punishments, viz, upon whole Families for the miscarriage of one of them. For when the King is displeased with any, he does not always command to kill them outright, but first to torment them, which is done by Cutting and pulling away their flesh by Pincers, burning them with hot Irons clapped to them to make them confess of their Confederates and this they do, to rid themselves of their Torments, confessing far more than ever they saw or knew. After their confession sometimes he commands to hang their two Hands about their Neck ... and so to lead them through the City in public view to terrify all unto the place of Execution ... At the place of Execution they are always seine sticking upon Poles, others hanging up in quarter upon Trees, besides what lies killed by Elephants on the ground or by other ways”<sup>51</sup>

Execution by cutting off the head with an axe is also referred to. Mention is also often made of the executioners themselves who were no doubt in the permanent employment of the State.<sup>52</sup> The execution block is referred to as the *damgediya*.<sup>53</sup> Knox (1958) provides some evidence to show that elephants served the Kandyan king for executing malefactors. “The King makes use of them for Executioners, they will run their Teeth through the body, and the tear it in pieces, and throw it limb from limb. They have sharp Iron with a socket with three edges, which they put on their Teeth at such times”<sup>54</sup>

The island’s long history has known occasions when death under torture was inflicted. For example, we have the well-known story of Kelanitissa, who burnt a monk in a cauldron of boiling oil.<sup>55</sup> The Vévālketiya slab inscription of Mahinda IV of the eleventh century records that those who effaced brand-marks shall be made to stand

<sup>51</sup> Knox, Robert. (1958). *An Historical Relation of Ceylon*. The Ceylon Historical Journal. VI. July 1956 – April 1957, (1-4). Ceylon: Saman Press. p 63

<sup>52</sup> Dharamaratna M. (Ed.). (1888). *Visuddhi marga- Sannaya*. Colombo: Lakmini Phana Press: Colombo.

<sup>53</sup> Jayatileka, 1936

<sup>54</sup> Knox, Robert. (1958). *op.cit.* p. 36

<sup>55</sup> Gnanesvara Nayaka Thera. (Ed.). 1914). *Saddharmalankaraya*. Colombo: Granthaprakasa Press

on red-hot iron sandals.<sup>56</sup> The tenth century Badulla Pillar Inscription also records that should one causing trouble not fall into the hands of the officers, such unusual punishments as beating with clubs and punishments by torture may be inflicted.<sup>57</sup> Another inscription of the eleventh century records the punishments meted out to cattle lifters, "Those who have slaughtered buffaloes, oxen, and goats shall be punished with death. Should cattle be stolen and not slaughtered, they must be branded under the armpit. If the nature of the offence cannot be determined, they shall be beaten".<sup>58</sup> *Saddharmalankaraya*<sup>59</sup> also refers to the tearing of the jaws in cases when royal orders were transgressed.<sup>60</sup>

*Saddharmalankaraya* speaks of the confiscation of all property and wealth of those guilty of thieving and the destruction of generations of families for stealing treasures or property belonging to the royal princes. Another offence against which Nissankamalla particularly warned his officers was misappropriation of funds of the treasury. Hurling of thieves from mountain tops and getting elephants to trample them are mentioned. But we have no other corroborative evidence to establish these practices as being in vogue in Sri Lanka during these times. It is, therefore, difficult to conclude that this was a punishment common at this time.<sup>61</sup>

Cases of theft are the most discussed in the *Saddharmaratnavaliya*<sup>62</sup> where the stories show that the punishments meted out in cases of theft and robbery were very severe. The stories record instances of execution and impaling in cases of robbery. Impaling was

<sup>56</sup> Wickremasinghe, D.M.De Silva (Ed.) (1912). *Epigraphia Zeylanica*. Vol.(I). London: Oxford University Press.

<sup>57</sup> Paranavitana, S. (1933). *Epigraphia Zeylanica*, III. London: Oxford University Press.

<sup>58</sup> Wickremasinghe, D.M.De Silva (Ed.) (1912). *op.cit.* p.250.

<sup>59</sup> Gnanesvara Nayaka Thera. (Ed.).1914). *Saddharmalamkaraya*. Colombo: Granthapra kasa Press

<sup>60</sup> Ariyapala, M.B., (1968), *Society in Medieval Ceylon*, The Ceylon Government Press: Colombo.

<sup>61</sup> *ibid.*

<sup>62</sup> Jayatileka, D.B. (Ed.). (1936). *Saddharmaratnavaliya*. Colombo: Lankbhinavavisruta Press.



intended to inflict torture on criminals. *Saddharmaratnavaliya* says, “without killing him at once, he was impaled so that he may suffer and die”.<sup>63</sup> Another common form of torture was the tying of the hands behind the back and marching the robber to the place of execution while beating him with thorny whips.<sup>64</sup> These forms of punishment are also recorded in the *Saddharmalankaraya*<sup>65</sup> and by Parakramabahu himself in his *Visuddhimargasannaya*.<sup>66</sup> where we have first-hand information coming from a king himself. That the thieves had to suffer very great torture is shown by *Saddharmalankaraya*. According to the description in the *Saddharmalankaraya*, “the royal officers tied their hands behind their backs, applied powdered tile-dust on their bodies, put garlands of *ratmal* (red flowers) round their necks, tied their hair in five knots, marched them through the streets of the city, beating them with thorny whips on their backs at every junction, thus inflicting diverse torture, they were made to march carrying a spike, to the accompaniment of the execution drum”<sup>67</sup> This no doubt directly refers to what took place in India from the most ancient times, but we have to presume that something of this nature was known in Sri Lanka too. *Vissuddhimargasannaya* refers to the mutilation of hands and feet of thieves. As further proof it also refers to the same type of torture, and adds that the people who had gathered to see the procession “gave the criminals various kinds of food, such as rice-cakes and betel, and also incense and flowers”<sup>68</sup>

Thus, the profound Indian influence on various aspects of Sri Lankan life, whether political, social or religious, is unmistakable. No important change in Indian civilisation has failed to leave its impress on the island. <sup>69</sup> Right throughout its history India has left a deep impression on Sri Lanka, the India of the Buddha, Asokan India, and

<sup>63</sup> Jayatileka, D.B. (Ed.). (1936). *Saddharma ratnavaliya*. Colombo: Lankbhinavavisruta Press, p. 852

<sup>64</sup> *ibid.*

<sup>65</sup> Gñanesvara Nayaka Thera. (Ed.). (1914). *Saddharmalankaraya*. Colombo: Granthaparakasa Press.

<sup>66</sup> Dharamaratna M. (Ed.). (1888). *Visuddhimargasannaya*. Colombo: Lakmini Phana Press.

<sup>67</sup> Gñanesvara Nayaka Thera. (Ed.). (1914). *Saddharmalankaraya*. (p.242). Colombo: Granthaparakasa Press.

<sup>68</sup> Dharamaratna M. (Ed.). (1888). *Visuddhimargasannaya*. Colombo: Lakmini Phana Press, p. 64.

<sup>69</sup> Ariyapala, M.B. (1968). *Society in Medieval Ceylon*. Colombo: The Ceylon Government Press.

the India of the Guptas, and much nearer home British India too. The various peoples who make up the Sri Lankans, with their background of thoughts, beliefs, passions, the languages they speak and the way they have lived, have been people connected with India. The British no less than Cholas and Pandiyans came to Sri Lanka from India.<sup>70</sup> Therefore, it is no wonder that our social norms go deep into Indian roots.

## Conclusions

Police perform a vital democratic function in a free society. However, in most States, the great instrument of coercion is the police. The nature of its work and the manner in which it is controlled will vary from State to State depending on the politics, culture, and tradition of each State. The manner in which the police perform their duties depends on the degree of respect for human rights, which a given society has developed. Therefore the degree and intensity of the quality of service will vary in a situational context from community to community and country to country, depending on historical and cultural factors as the major variables.<sup>71</sup>

Police system of each and every country reflects the society it serves, its strengths and its weaknesses. The element of social control and social support is a result of historical, social and other situational developments in the evolution of the police function.<sup>72</sup> If society is violent, so are the police. If society is corrupt, so are the police. But if the society is tolerant, literate and humane, police will also act accordingly. It is the anvil of the society that beats out the likes of its problems and abrasions of social inequality, racial prejudice, weak laws and ineffective legislation. Each society determines how it should organize its police and the powers with which it is to be entrusted.

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<sup>70</sup> Ludowyk, E.F.C. (1962). *The Story of Ceylon*. London: Faber & Faber.

<sup>71</sup> Shane, P.G. (1980). *Police and Public: A Comparison of Five Countries*. St. Louis. Miss.: Mosby.

<sup>72</sup> *ibid.*

Police, therefore, are the best reflection of a society.<sup>73</sup> Every police system reflects not only the spirit and quality of its Government and civil administration but the very society itself. Sri Lanka is no exception.

Sri Lankan society, however, like that in the Indian mainland has been nurtured over several centuries in simple forms of administration of justice derived at the grassroots level that were fully legitimised. These are norms deep rooted in society. The rule of law, institutions like the Courts of Judicature with strict legal procedure and rigid rules of evidence and a formally organised police are concepts that are alien to the traditional values of the people. They, therefore, lacked moral authority and popular backing. In addition, with police being under pressure from all sides, the victim, the politician and the senior officers look for quick results, regardless of the methods used, and the police obsession that crime can be solved by using physical pressure and not so much the 'scientific method', there is little chance for the rule of law to reign supreme. In such an environment the rule of law necessarily has to succumb to the deep rooted local conceptions of 'Justice'. In the circumstances it is difficult to expect the police in Sri Lanka to make a contribution to that higher calling of service to liberty, equality, fraternity and to human rights.<sup>74</sup> As such, police torture and cell deaths are likely to continue to be familiar features of our society for many more decades to come.

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<sup>73</sup> Mark, Whitaker. 1977. cited in Farmer & Kowalewski, 1976.

<sup>74</sup> Alderson John, (1979). *Policing Freedom*, Plymouth: McDonalds & Evans.



# THE LAW AND ORDER ISSUES RELATING TO ROLE OF YOUTH AND THEIR ASPIRATIONS IN A DEMOCRACY

by

**Lakshman Wickramaratne,**

*B.A. (Cey), M.A. (International Relations)*

*University of Colombo, Attorney-at-Law.*

## Introduction

Some special reasons led me to select this topic for discussion at this SLFI Convention on Youth Aspirations, Democracy and Development. First, youth aspirations are no longer a mere popular subject for deliberation. It has now become a collective force of opinion that is capable of directing the society in which we are living today. Secondly, it is important to mention here that the world youth report 2003 was discussed recently at the third committee of the 58<sup>th</sup> session of the UN general assembly. The committee discussed important global youth issues including the recommendations contained in the summary (advance version of the full report) of the *World Youth Report 2003*.<sup>1</sup> The United Nations aim is to enhance awareness of the global situation of youth and of the rights and aspirations of young people. It works towards encouraging greater participation of youth in social and economic development. (*UN World Youth Report 2003*). The UN Population Fund (UNFPA) reports that the world's 1.2 billion adolescents are the key to growth and international stability but poverty and poor health care are threatening their lives. Globally, youth represents 18 per cent of the world population.<sup>2</sup>

With this background, this paper focuses on the Sri Lankan situation, especially in relation to the law and order issues relating to role of youth and their aspirations in a democracy. Sri Lanka became an independent nation in 1948 with the legacy of the impact of colonialism on 150 years of British rule. This country celebrated recently its 55<sup>th</sup> anniversary of independence. It is indisputable, that being a third world country in terms of international rating of economies,

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<sup>1</sup> Priorities for Global Youth Policy/ *World Youth Report ,2003* (Advance version) UN.

<sup>2</sup> *United Nations Population Fund Report, 2002* (UNFPA).

Sri Lanka has achieved certain goals, especially in literacy rate, irrespective of its quality in the context of current needs.

## Historical Perspective

The theme of this paper finds that it is important to give a historical perspective to the subject matter in a nutshell. With this brief prelude to the objective the paper intends to approach the topic by taking into consideration many areas of social issues, and the global movement of children and youth, which has created an impact on youth behaviour and democratic political structures during the last two decades.

It is appropriate here, in this Sri Lankan case study to briefly review the economic, political and social advancement in the recent past, in order to provide a historical perspective for the issues, which are undoubtedly interrelated and have led to the current social crisis. It is important to mention that young people, today are possessed with no memories of the British period of Sri Lanka or that of the other foreign invaders or occupiers except that of a newspaper headline and photograph appearing on the day of independence which is being celebrated as an annual event. It is important to note that in our current system of education the learning of history has no place in which it could contribute by way of historical perspective or analysis on the stability or development of society.

The history for the young people of Sri Lanka is only the current history of society inundated with so much of political, economic and social problems. No plural society or multi-ethnic society, which sought to establish unity amidst its diversity faced this problem of flicking away the learning opportunities of historical perspectives on social and political issues.

During the British period, the governor's (29 governors from 1798 to 1948) attitude was considerably important in shaping the growth of economy, education, social and cultural attainments. The knowledge, understanding and the commitment of governors and the colonial office, primarily decided the 150 years of history of British rule until its

termination in 1948. The divisions between expatriates and inhabitants, again subdivided into caste, race and religion were techniques adopted during the time of the governors, especially from Gordon to Manning. This heritage of independent Sri Lanka was part of the political, social and economic culture that we intensely followed for the last five decades. The nature and pattern of Sri Lankan politics and the way it was subsequently developed, strengthened this inheritance of divisions by adding language issues and political loyalties. The Sri Lankan politicians, like the British governors, represented the star democracy in the world, which created models for Dominions.

The British policy, particularly in the education and in economic sphere, which was designed to release a powerful affluent, ambitious middle class, was continued except for the policy of creating free education concentrated on literacy rate, free health care and food subsidies.

The bureaucracy in administration was trained and moulded by British tradition. Ceylon National Congress, the British system of administration and the newly formed political parties incorporated the radical educated youth movement and the youth aspirations in this early stage. But this may be viewed as a representative of a narrow group of the society. The political institutions, in the fragmentation of society, without a broad based far-reaching policy, became liable to fission and were holders of office subjected to pressure from kinsmen.

The first two decades after independence, parliamentary elections were the most prominent and attractive, but there could not be seen any significant shift in emphasis of economic and social policy, except in contrast to the detriment of the emerging ethnic clashes and the crisis in internal party politics. The economic and social problems with increasing levels of poverty and unemployment of young people were undoubtedly capable of defeating all successive governments at the elections.

### **Youth as a Role Player**

The unprecedented landmark in the recent history of politics of Sri Lanka is that young people took the initiative in changing the political



and social culture in 1970. The formation of groups in participation and their collective behaviour created new dimensions in our society since 1970s. Youth experiences are seen as two-dimensional and identified by private and social concerns. It is observed that today's youth rarely experience their difficulties and sufferings as individuals but often share them as they came to know each other by way of social relations. In Sri Lanka, one fifth of the present population figures contribute to the category of adolescence. But poverty, diminishing quality of education, presence of a threat of war, foreign influence in trade, industry and commerce, degrading level of party politics, low level of achievement motivation and a host of other conditions have become barriers to future progress, endangering the aspirations of youth. It is reported that 87% of adolescents are in developing countries. At present, almost 60 per cent of the world's youth live in the developing countries of Asia. More than 150 million are illiterate and one in four lives in extreme poverty (UNFPA).

Every country in the third world is concerned with the safety and well being of its children and young people. They represent our future and our potential but are also extremely vulnerable. For instance, the young people of the 1970s have now gone into reports as elders of today. Young people are more likely to be victimized, as they are frequently involved in delinquent behaviour and breaking law and order than all other age groups in society. It does not mean that every young man becomes involved in delinquent behaviour, but it is a rite of passage for many. The majority outgrows it, but for some it is the beginning of a long and most serious career.

## **Youth and Justice**

Social and economic changes in many countries over the past two decades, as well as the civil wars, poverty and health problems have had a marked impact on the lives of children and youth.<sup>3</sup> The Sri Lankan society began to experience this new trend three decades ago. There appeared to be growing youth unemployment, changes in

<sup>3</sup> The other side of the development: Social Psychological Implications by K.S. Shukla, 1987.

family patterns, increasing income disparities between the rich and the poor. Many young people selected the path of revolutionary politics. Many students in the higher educational institutes got seriously involved in politics. In 1971 the first insurrection after independence created a serious threat to the democratic establishment and 17,000 young people were taken into custody and kept in remand. In the 1980s the situation further deteriorated with the ethnic conflict and the civil war. The recruitment of child soldiers and the military training given to youth and the threat of war virtually diverted the young people from society, in which even the day to day living turns to be a risky experience.

The increasing migration of family members, especially of parents kept children and young people of many families in darkness. In the past ten years as in many other developing countries, this country, especially in urban areas has experienced a significant increase in population, in crime and in the prison population. There have been large increases in the number of street children and refugee camps, in the incidence of youth gangs, in alcohol and drug use and in school dropout rates and in physical and sexual violence by and towards children and young people.

There is no consensus on the causes of escalating youth crime and violence but inequality, social exclusion and group behaviour have been identified as some of the most significant factors.

Group participation and collective behaviour, however, originates with emerging opportunities for free movement of youth in society and as a source of reinforcement of participation have led to collective excitement, social unrest, riots, public revolts, revolutionary movements and disapproved public behaviour. Whenever such groups are oppressed by the rules or by the actions of the State the youth as a collective group tend to exercise a right to disobey such commands. They seem to rebel and even seek to replace such rules and laws.

The recent experience in Sri Lanka is that collective youth behaviour in society is viewed differently from that of their individual behaviour in the family unit. The violence in educational institutions and in other public places, organized crimes, child abuse and crimes against women has created much public concern and open social

dialogue. The increasing crime rate, militant group influence in politics, unauthorized armed militant participation in politics at elections are threatening the basic rights of individuals and democratic values. A careful analysis of statistics and reports indicate that young people have become very often victims of these destabilizing forces in society.

The law and order which is first taught in the form of morals in the family unit by the parents seem to be now outmoded and in contrast collective behaviour and group participation are important sources of influence on individual behaviour. Aspirations of youth tend to clash with orderly behaviour and norms of society. There is no gene for violence. Violence is a learned behaviour, and it is often learned in the home or the community from the parents, family members, or friends. Children who are more aggressive as they grow up, are more likely to become involved in violence - either as a victimizer or as victim - if they witness violent acts.

The home is the most fertile breeding place for this situation. A major example is a child who sees a parent or other family member abused, is more likely to see violence as a way to solve problems and subsequently be more likely to abuse others.

However, studies suggest that there is a connection between violent behaviour and some inherited traits. Research has shown that impulsiveness, learning difficulties; low IQ or fearlessness can make someone prone to violence. It recognizes that the rate of violence vary in all groups but are highest among males.<sup>4</sup>

The law is arbitrarily divided into categories of public law and private law. Public law is concerned with relationship of members of the community and the State. Public law further involves constitutional law, administrative law and criminal law. The private law is derived from relationships of the community *inter se*. The violation of criminal law, the wrongs committed against society, physical violence, crimes committed against person and property are dealt with on the initiative

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<sup>4</sup> Report of International Conference held in Port Elizabeth, South Africa, June, 2002.



of the State on the basis of police investigations. A crime is an unlawful act or default, which is an offence against the public and renders the person guilty of the act and liable for legal punishment. The crime is an act of commission or omission resulting from human conduct which is considered in itself or in its outcome to be harmful and which the State wishes to prevent in order to maintain law and order and safeguard the ideals of the democratic society.

### **Crime and Society**

From the point of view of a sociologist, crime is a violation of social norms that has been codified in law and is backed by the power and authority of the State. The social scientists analyze crime by identifying four areas of violation of law, morals and norms.<sup>5</sup>

1. Violent crime (Crime against person and property).
2. White-collar crimes (Conduct of business by illegal means, false advertising, bribery, tax evasion, artificial price fixing and unsafe dumping of toxic waste, etc).
3. Organized crime (Deliver forbidden goods and services such as drugs, illegal arms by making individuals victims of crime).
4. Crimes without victims (They offend public morals and leads to organized crimes. Public drunkenness, illegal gambling, etc. Anyone may become a victim of a drunken driver).

The sociologists are of the view that any form of behaviour offending public morals and violation of norms can lead subsequently to endanger law and order and the social structures. Rule of law requires the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts or it means equality before the law.

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<sup>5</sup> *Behaviour, Influence and Personality* by Leonard Krasner and Leonard P. Ullmann.

The role of youth in modern society, whether they behave individually or collectively, need to be shaped within the framework of the ideals of democracy and law and order. It is accepted that any improvement or development should be made within the framework of democratic ideals. Youth participation in social dialogue is indispensable. Their learning to respect individual rights and participation in peaceful engagement and commitment to social programmes may guarantee the durability of democratic social culture. The group participation of youth and their collective behaviour may be constructively directed towards the understanding of the causes of destabilizing factors of a democratic society.

The social values such as honesty, trust, transparency in management, cordial, genuine human relations are often beaten by changes in power politics, abuse of authority and mass corruption. Better competitor, in whatever the form it is used, is considered more likely to survive. Social norms are not meant to be market-oriented product selling facilitators for competitive advantage. Youth aspirations are backed by intelligence and they are wide open to global thinking. They are possessed with creative thinking, ability and desire to achieve the goals. But lack of hope and opportunity create barriers for them.

The youth represent a powerful majority with their controlling arm in the family unit. The youth aspirations have not been much looked into from their point of view.

Alienation from the family unit, lack of care and attention, fewer opportunities for social dialogues, requirement of participatory role in the family unit as well as in society need more consideration of all social partners. Use of young talents and their energetic approach cannot be ignored as such, the growing abilities of youth could be naturally diverted to where it is acceptable and encouraged.

## **Youth and Crimes**

Statistics on victims of violent crimes show that juveniles between the ages of 12 and 17 are more likely to encounter violence than any other age group except young adults age 18-24. Youth victimization is not only threatening to the victim but also the experience of being

victimized by crime has been found to increase certain people's inclinations for perpetrating violence.

It may be interesting to look into prisons statistics of Sri Lanka.<sup>6</sup> The report, volume 21 for the year 2002, gives some important figures for consideration and deliberation. The report indicates direct admissions of unconvicted prisoners according to age group and literacy. These figures reflect certain factors in relation to how the youth stands in relation to crimes.

### **Direct Admissions of Unconvicted Prisoners According to Age Groups-Year 2001.**

#### **Age Group**

	Male	Female	Total
Under 16 years	1,413	278	1,691
16 and under 22 years	10,400	535	10,935
22 and under 30 years	23,031	1,081	24,112
30 and under 40 years	19,674	1,061	20,735
40 and under 50 years	9,452	594	10,046
50 and 60 years	4,075	356	4,431
60 years and above	1,403	133	1,536
			73,486

### **Direct Admissions of Unconvicted Prisoners according to Literacy-Year 2001**

#### **Literacy**

	Male	Female	Total
No schooling	12,338	477	12,815
Grade 1 to 5	20,862	1055	21,917
Passed Grade 5	15,973	1368	17,341
Passed Grade 8	12,605	932	13,737

<sup>6</sup> Report - Department of Prisons - Year 2002.



Passed G.C.E. (O/L)	5,928	167	6,095
Passed G.C.E. (A/L)	1,358	37	1,395
Graduate	124	2	126
Others	60	—	60
			73,486

These figures on literacy indicate that 65,810 direct admissions of unconvicted prisoners out of 73,486 (89.5%) could not receive their education beyond Grade 8. No schooling and up to Grade 5, the admissions of unconvicted prisoners figure is 34,732 and percentage is 47.2%. G. C. E. (O/L) and (A/L) and others the figure is 7,616 and percentage is 10.3%.

### Youth Aspirations and Education

When the law and order issues relating to role of youth and their aspirations is viewed under these circumstances, it could be observed that in the context of crime and literacy ratio analysis the free education has not been able to contribute to equal opportunities to all young people. The population of convicted prisoners by literacy for the year 2001 indicates 92.4% of male are literate and 88.2% of female are literate. These figures indicate that improvement of quality of literacy is a deciding factor in reducing the rate of crime and managing destabilizing factors of democratic values. It is accepted that youth education and long-term stability of democratic ideals and institutions are interrelated. Education is the single most important factor for young people to lead productive and responsible lives.

The participation in primary education and secondary education is apparently considered to be important in this respect. It may be that participation rate is very high in the situation of Sri Lanka but the standard, quality and continuation of such participation in education need to be carefully analyzed. Gender discrimination, social inequalities in educational opportunities, poverty, language issues and ethnicity still make noticeable differences to educational opportunities and completion rate in secondary education.

It needs to be considered whether the ideals of meritocracy and offering of equal opportunities are acceptable to those who are responsible for good governance. The concept of transparency in management is not acceptable to young people unless it appears to be done. In these matters the majority experience is more vital than that of advertising of a policy to be implemented.

Giving opportunities for young people to get a good education, and developing programmes to commit young people to development and to keep them off the street by attracting them to social dialogue may be necessary.

The youth cannot be alienated from the influence of the global socio - cultural system. Human passions, as a powerful independent force will continue to influence social behaviour of youth but social controls and participatory dialogues with organized youth groups may provide the preventive approaches. Internationally there is a developing consensus on giving greater priority to investing in and supporting young people and their families through preventive approaches rather than excluding, punishing or incarcerating them.

In a number of countries, now there are national strategies, which include the development of preventive programmes for children and young people.<sup>7</sup> These place considerable emphasis on the development of partnerships at the local and community level, to plan, implement and evaluate programmes. There is growing evidence internationally of the cost effectiveness and cost benefits of preventive approaches for young people. The circumstances, which place young people at risk either as victims or as offenders or which excludes them from the main stream of society, are now widely recognized and appear to be similar across both North and South. These include the links between poverty, physical and mental ill health, parental and educational problems of offenders and victims among young people. These are also considered as points for intervention and protection.

Many programmes developed in other countries now attempt to take account of gender and diversity of the different needs and

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<sup>7</sup> YFA (Youth and Family Assistance) Crisis Intervention and Suicide Prevention Center, USA.

experiences of girls, boys, young women and young men, and those who belong to minority groups in their society. It is important to note that approaches, which recognize young people's rights in the planning and delivery of programmes have become much more prominent. Preventive practices, which are grounded in restorative approaches in some countries have multiplied, and there is an increased understanding of the potential for dealing with young victims and offenders. (International Centre for the Prevention of Crime, Montreal).

But there are other trends that should also be acknowledged. The past ten years, in many countries, have seen some extreme attempts to deal with increasing youth crime, some with serious and costly side effects. Some countries, faced with what seems to be increasing incidence of violent crime involving young people, have responded to public and media calls for increasing security and deterrent measures, with tougher responses and zero-tolerance policies.

This paper considers alternative responses, and is concerned with the long-and the short- term benefits of investing in young people and developing programmes, which help to build safe and healthy communities for all citizens. The investing in youth for long-term benefits is based on the recommendations made by many researchers. Psychological research has not only demonstrated that violence is learned. It has also identified the factors that put children at the greatest risk of perpetrating or being victimized by violence, along with the prevention and intervention programmes that work.<sup>8</sup>

Aggression is often learned at an early age. In fact, according to the 1994 report by the APA (American Psychological Association) Commission on violence and youth, it is possible to predict from an eight-year-old's aggressive behaviour in school how that aggressive child will be in adolescence and adulthood-including whether he or she will exhibit criminal and anti social behaviour. This is why prevention programmes that start early in childhood and continue throughout adolescence have the best chance for success. The report recommends ideally, that the prevention programme should even begin before birth;

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<sup>8</sup> *Violence Prevention in Youth*, Eron, Leonard D., Ph.D. , University of Michigan.



proper pre-and post-natal care can reduce the risk of birth defects that could cause learning difficulties, one reason a child may be susceptible to violent behaviour.

In some prevention plans, the programmes encompass components of the child's environment including family members, teachers, peer groups and media.

### **National Youth Policy**

Some countries have developed an integrated national youth policy aimed at empowering the youth and affording them to realize their full potential through optimal access to opportunities.<sup>9</sup> The Council of Europe's youth directorate reported how national youth policies of certain countries have developed the following institutional structures and laws:

- Government body responsible for youth affairs.
- Government policy in the youth sector parliamentary committee on youth.
- Legislative provisions relating to youth affairs.
- Laws relating specifically to young people (government fosters the development of young people through a broad dialogue opened to all interested parties).
- Associative life of young people (offering young people the chance to meet together in sporting, cultural, recreational or humanitarian organizations).
- International co-operation in the youth sector.
- Criteria for the recognition and funding of youth associations and initiatives.

### **Parent Projects**

Some programmes developed for the parent projects indicate features of a variety of learning formats including group discussions,

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<sup>9</sup> National Youth Policy – Country Profiles on the Situation of Youth – UN.

role-playing and video presentations. During the programme parents learn how to: -

- ♦ prevent their child from using drugs and alcohol.
- ♦ put a stop to parent-child arguments.
- ♦ improve a child's grades and school attendance.
- ♦ recognize and prevent gang involvement.
- ♦ create a home discipline structure that works.

American Psychological Association suggests parents play a valuable role in reducing violence by raising children in safe and loving homes.<sup>10</sup> It recommends: -

- Give your children consistence, love and attention. (behaviour problems and delinquency are less likely to develop in children whose parents are involved in their lives, specially at early age).
- Make sure your children are supervised. (Children depend on their parents and family members for encouragement and protection. Studies report that unsupervised children often have behaviour problems).

Show your children appropriate behaviours by the way you act. (Children often learn by example. Values of respect, honesty and pride in your family and heritage can be important sources of strength for children, specially if they are confronted with negative peer pressure, live in violent neighborhoods or attend a rough school).

- Do not hit your children (non - physical methods of discipline help children deal with their emotions and teach them no violent ways to solve problems).
- Make sure children do not have access to guns.
- Try to keep your children from seeing violence in the home or community.

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<sup>10</sup> Report - 2002- American Psychological Association - USA.

- Try to keep your children from seeing too much violence in the media.
- Teach your children ways to avoid becoming victims of violence.
- Help your children stand up against violence.
- Be consistent about rules and discipline.

### **World Programme-UN**

The world programme of action for youth the year 2000 and beyond contains the primary set of guidelines for youth policies to be carried out by member States of the United Nations. It covers priority areas for national youth policies and provides a framework to measure and evaluate achievements.

Programmes have been developed in some countries to meet the needs of young offenders. Three important ways of preventing greater stigmatization, exclusion and the escalation of offending behaviour include -

- Decriminalizing minor offences.
- Increasing the use and availability of diversion projects for young first offenders, and
- Using community- based sentencing options, including restorative options.

### **Youth with Self-esteem in Democracy**

Educating children and youth at risk, including first offenders on the values of citizenship is an important way of helping them to find a better place in society and to recognize the value of their own contribution. One of the key ingredients, increasingly found in a number of countries is that of focusing on the strengths and abilities of young people, not solely on their problems or risky behaviours. A policy and a motivation to work with young people, including them in the planning, development and implementation of projects is a priority. This will lead to setting clear objectives and goals, expecting problems, but having



strategies for dealing with them. There may be an emphasis on self-help in order to enhance their self-esteem and decision making skills. Tackling youth crime prevention and youth in conflict with the law requires much more than the selection of a programme or project. Good, effective prevention depends on using a careful and strategic approach in a partnership with all the local actors such as schools, social services, police and business institutions. It is important to address youth crime and violence through an integrated local policy.

## **Conclusion**

Youth participation in the local development process is necessary to engender a feeling of community belonging and citizenship and with an eye to breeding a new type of leadership for a participatory democracy. Therefor, it may be observed that the change in lifestyles and behaviour continually occur in any society. The fact to be considered is the attention for investment to be made in youth development and creating and increasing levels of high achieving motivation in order to achieve goals. This basic requirement cannot be delayed any more as such an emphasis in policy changes would be expressed in terms of respected values of democracy and national economic growth and peace.

# ***Youth Aspiration, Democracy and Development***

by

**Malin L. Elisson**

## **Introduction**

This contribution on 'Youth Aspiration, Democracy and Development' will pay attention to youth, their engagement and the importance for a democratic society. The first part of the paper will examine civil engagement in general, within the scope of *social capital* and *democratic culture*. These concepts are chosen because it is frequently used in support of civil society, often in a wide context which can lead to oversimplification and implies determinism. Subsequently, I will look at the parameters of social capital and democratic culture. The second part of the paper will try to test how youth engagement in Sri Lanka relates to these concepts and parameters. Here I will present a forecast of some findings of a research which has been conducted in the Democratic Youth Leadership Programme, DYLP - a good governance project to be implemented from 2002-2005 by the Sri Lanka Foundation Institute (SLFI) in collaboration with National Council of Swedish Youth Organisations, (LSU) and financially supported by Sida.

## **From Civic Culture to Social Capital**

The concept of social capital has been given considerable attention in the last five to ten years within the political science discourse. It acknowledges that democratic institutions, such as electoral systems, forms of governance and bureaucracy, alone cannot explain a high or low degree of democratic performance in a country. The focus is instead on the interaction between the citizens and the citizen's interaction with the institutions, giving increased importance to the *cultural aspect*.

The origin of giving attention to cultural aspect of democratic performance started in mid 19<sup>th</sup> century. Alexis de Toqueville, a French philosopher visited United States and observed that the ideals both the

French and the Americans embraced, were indeed applied in America as opposed to the failures in France. Toqueville drew attention to free associations and saw some interesting features. In France, the ideals were only theoretical, the associations were hierarchal and led by the *bourgeoisie* (upper-class) who also had the control over the State, whereas in America differences between higher and lower classes were not important when it came to collaboration. He draws the conclusion that the *trust* and *equality* produced by this civic participation in the United States actually accounted for a stable democratic environment, in contrast to the undemocratic and unstable situation in France.<sup>1</sup>

Sweden has one of the highest figures of membership in associations per capita and known to be one of the most stable democracies in the world. In Sweden, the popular movements emerged from the grassroots as a response to the need for moral reconstruction and to influence the State during the 19<sup>th</sup> century. Some of the movements were *value-oriented* whereas some were based on *interest*, i.e., workers' or farmers' interest. The rise of the civil movements often started as a reaction to State oppression that its function was as much an emergence of a new society as much as a defeat of the old. A number of these movements were later transformed into political parties.<sup>2</sup>

In the modern discourse on democracy, Almond and Verba were the first to try to measure whether there was any relationship between stable democracies and citizen's behaviour. They measured the level of *civicness* in an empirical cross-country study with five democratic countries; Germany, Italy, United Kingdoms, Mexico and USA. The findings showed that civic culture emerged in the West as a result of gradual political development, relatively unforced, without crises. The outcome showed that a successful democracy requires that its citizens must be involved and active in politics – informed about and influential

<sup>1</sup> Gibbon, R. Some Reflections on 'Civil Society' and Political Change. (eds.) Rudebeck L. Tornquist O. and Rojas V. in *Democratization in Third World: Concrete Cases in Comparative and Theoretical Perspectives*, Uppsala: The Seminar for Development Studies, Uppsala, 1996.

<sup>2</sup> Daun, Holger. *Education, Civil Society and Communitarianism*, Institute of International Education, 1998.



in politics. Their most striking conclusion was that not only political culture is needed but also a civic culture, including active engagement in civic organisations. If the civic culture contains contradictory political attitudes, it seemed particularly appropriate for democratic political system. It is a culture that is characterized by its consistency and the way it balances opposite aims. Another important component of civic culture is the set of attitudes concerning confidence in other people.

*Civicness* is the term for mix of close ties to primary relations, passive political orientation and activity of the citizens – in short the general trust and confidence in ones social culture and interpersonal trust. Civic culture develops by fusion; new patterns of attitudes do not replace old ones, but merge with them. A more differentiated pattern of political orientation and a more active role of the participants do replace the more passive. Civic culture transmits into a complex process and includes training in many social institutions; family, peer group, school, work place as well as the political system itself. Almond and Verba stated that individuals learn political orientation through intentional teaching, like *civic education* or *social studies*. They also proclaimed that individuals learn political orientation through overtly political experiences that are not intentional, for example, overhearing parent's discussion.

It was found that formal education, together with activity in civic organisations were to be the most determining factors for creating this civic culture. Formal schooling could contribute to some of the components of civic culture - but not the underlying social attitudes like trust and cooperation.<sup>3</sup>

Twenty five years later, Almond and Verba, repeated their study *Revisit Civic Culture*. In this study they found that the relationship to education had lost its credibility in respect of promoting democratic values but the engagement in associations were still valid. In fact, unless the school system made considerable changes, they thought it was unlikely that it will provide democratic development. This prediction was

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<sup>3</sup> Almond, G. & Verba, S. *The Civic Culture – Political Attitudes and Democracy in Five Countries*, Boston: Little Brown and Company, 1963.

especially regarding the education system of the developing countries which often inherited alien structures from the colonial period.<sup>4</sup>

In the late 1980s others also had started to pay attention to the same area but instead of giving a cultural explanation they used terms from economy, *social capital*. In 2003 it has almost become a buzzword and to large extent popular within the development cooperation and foreign aid discourse. The volume of titles on social capital have exploded over the last three to four years. There are a handful competing definitions, some wider than others. This paper will not critically examine the competing ones but rather elaborate little bit of the meaning and implications of the same.

Pierre Bourdieu, (1980) was one of the first to introduce the term as a matter of *social linkages* primarily used as a metaphor for *power*. Social capital was just one of a series of capitals: financial, human, cultural and symbolic.

James Coleman (1988) describes social capital of *social relations*. He belongs to the *school rational choice* (people are always acting in what is best for them and society) – saw social capital as the outcome of individuals choice to interact with each other. Coleman includes vertical associations, in the sense of hierarchical and unequal distribution of power and is not one entity but a variety of different entities, that all consist of same social structures that facilitate actions. In that respect he explains why social capital, like other forms of capital, is productive.

Fukuyama (2001) regards the concept of trust as the key factor of social capital bringing prosperity, competition and democratic development. Social capital can only emerge when a society is characterised as networks of cooperation and when a society shed a

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<sup>4</sup> Almond, G. & Verba, S. *The Civic Culture Revisited*, Sage Publications on Professional Science, Newbury Park, UK, 1989.

set of moral values in such a way that create expectations of regular and honest behaviour.

Woolcock's (1998) idea of social capital incorporates four dimensions; strong ties between family members and neighbours; weak ties with outside community and between communities; formal institutions (laws and norms); and State-community interactions. The strong ties would function for basic survival where as the weak ties are links in associations and networks and often bridges different religions, ethnicity and kinship. The two latter dimensions function on vertical and the synergy effects between leaders' ability to interact with community.

Uphoff (2000) differentiates between *structural* and *cognitive* components of social capital. The structural would refer to the actual relationship, networks, associations and institutional structures both vertical and horizontal. The cognitive on the other hand is rather the 'fuel', which includes values, norms, civic responsibility, expected reciprocity, altruism and trust.<sup>5</sup>

The first breakthrough in social capital theory was Putnam's findings in 1993 on Italy, and its regional differences as an effect of the democratic system. Financial capital, natural capital, human capital, which all contribute to development, cannot alone explain why some countries are stable and some are not. Northern Italy has good, effective institutional performance, whereas southern regions have recorded really poor institutional performance. Sicily, the island south of the Italian boot, is notorious because of the breakdown of democratic institutions which instead are controlled by Mafia.

The Italian regions were found to be more or less civic. The determining factor was found to be the citizens, ability to accept the democratic institutions - and the institutions ability to perform democratically. Socio-economic factors could not alone explain the differences between high and low civicness, nor could several other possible explanations such

<sup>5</sup> Coletta, Nat J & Cullen Michelle. *Violent Conflict and the Transformation of Social Capital. Lessons from Cambodia, Rwanda, Guatemala and Somalia*, World Bank: New York, 2000. and Stirrat, R.I. *The Concept of Social Capital in Poverty Issues in Sri Lanka. Towards New Empirical Insights*, CEPA/IMCAP/SLAAS.



as social stability, urbanism, personal stability, the Italian communist party or education. Citizens with higher education did not feel more apt to promote or more committed to the democratic structures. Instead *civiness* or *social capital* produced by civil society actually explained the differences.<sup>6</sup>

### **Why would Voluntary Activity be Instrumental to Social Capital?**

The civic organisations are characterised by:

- political equality, where all participants have equal rights and obligations, not as patrons and clients;
- solidarity, trust and tolerance – will be produced when they are embedded in social networks that foster mutual trust;
- the members of associations displayed a more political sophistication; social trust, political participation and subjective competence. Membership in associations includes skills in cooperation, sense of shared responsibility, and cross cutting groups also produces moderate attitudes.

According to the findings, voluntary activities produced trust and cooperation, which indeed had a positive influence on democratic and responsible performance. Union membership is more common in regions with high social capital than elsewhere. Citizens in less active civic regions feel more exploited, alienated and powerless than citizens in other regions. One of the best example of voluntary organisations producing social capital is rotating credit associations. It comprises regular meetings, and represent more than social entertainment and altruism. Social networks allow trust to spread: *"I trust you because I trust her and she assures me that she trust you."*

The greater the level of trust within a community, the greater are the chances of cooperation; in turn, cooperation itself breeds trust. The foundation of interpersonal trust is a belief that other persons are inherently good and can be trusted. There are at least two forms of social trust; *thin* and *thick* trust as Putnam labels them. Woolcock

<sup>6</sup> Putnam, Robert D. "Making Democracy Work – Civic Transitions" in *Modern Italy*, New Jersey: Princeton University Press, 1993.

uses *weak* and *strong ties*; *bridging* and *bonding* social capital, to explain the same. Thick trust is embedded in strong, frequent personal relations nested in wider networks. Thin trust is trust in people that are merely acquainted; it also rests on shared social networks and expectation of reciprocity. The usefulness of thin trust is that it extends the scope of trust to include people we do not know personally.

Norms are sustained by socialization including modelling, sanctions and civic education. Networks of civic engagement, neighbourhood associations, sport clubs and mass based parties represent an intense horizontal interaction between various groups. This forms an essential component of social capital, and foster robust norms of reciprocity. Norms and trust develop cooperation and coordination in achievement of mutual aims.<sup>7</sup>and<sup>8</sup>

There is also a positive link between engagement and tolerance especially strong in respect of gender equality and racial integration. The link is even more clear when you come to the local level. However, engagement based on religious ground is an exception because, here there is no connection to the social capital based on religious engagement which will increase tolerance.<sup>9</sup>

Social capital increases with use and diminish with disuse. The only differences from other forms of capital is that they are public rather than private goods and could only be achieved together with others. Social capital can improve the efficiency of society and its productive achievements<sup>10</sup> (Putnam: 1996). Some would go as far as stating '*Without social capital, the other forms of capital cannot be maintained or used properly.*'<sup>11</sup>

<sup>7</sup> Putnam, Robert D, op.cit., 1993.

<sup>8</sup> Coletta, op. cit., 2000.

<sup>9</sup> Rigo, Annika. *Social Capital, Democratic Attitudes and Students at the University of Colombo*, (essay), Uppasala University, 2003.

<sup>10</sup> Putnam, Robert D. *Social Capital and Public Politics*. Translation ed. Von Sydow et al in *Politikens Vasen – Ideer Och Institutaioner I den moderna staten*, Tidens Forlag, 1996.

<sup>11</sup> Ugglä, Fredrik. *Support for Civil Society – Possibilities and Pitfalls for Donor Agents and Northern NGOs*, Department for Cooperation with Non-Governmental Organisations and Humanitarian Assistance: Sida, Stockholm, 1997.

## Social Capital and Negative Effects

However, it is important to note that, collaboration, networks, trust, norms, reciprocity which we know as positive words are to be filled with a set of values. Social capital is proved to be conducive to democratic attitudes but it is not democratic culture itself. Too often it is presumed that social capital only has positive impact and, norms and values are names of intrinsic good. If norms are not in correlation with human rights and basic democratic principles, and if the networks are exclusive – there is no evidence that networking which breeds trust and reciprocity actually produce democratic attitudes and behaviour, in short, democratic culture.<sup>12</sup>

Putnam brings up the problem of collective actions and the ‘dilemma of prisoners’, when people ought to act collectively to achieve the best, but in most cases do not. In a study on USA, he saw the problematic situation when leisure time is getting less and less. The result is less contact with others in the community and therefore the result is that many of us are less willing to cooperate for common goals. This feature is affecting both the close trust relationship of the family as well as the life of the associations.<sup>13</sup>

It is important to highlight that social capital can also be misused. Certain social networks can foster non-democratic norms and the networks themselves can be an obstacle for others, especially if the norms are discriminating or the networks are socially segregated. Certain forms of social capital can decrease the freedom of other individuals.<sup>14</sup> Even Coleman (1988) saw that social capital can be beneficial to some and useless or harmful to others. Social capital is not a substitute for an effective public politic but rather a precondition for it and an effect at the same time. Social capital is functioning through market and State, not in place of the same.

<sup>12</sup> Elisson, Malin. *The Role of Education in the Democratic Process – Socialization of Political Culture?* Master thesis, Institute of International Education, Stockholm: Stockholm University, 1999.

<sup>13</sup> Putnam, Robert D. “Bowling Alone: Democracy in America at the End of the Twentieth Century,” *Journal of Democracy*, Vol. 6, No 1, 1995, pp. 65-78.

<sup>14</sup> Putnam, Robert D. op. cit., 1996.



In the study of Colletta and Cullen<sup>15</sup> (2000) on *Violent Conflict and Social Capital* based on research from Cambodia, Rwanda, Guatemala and Somalia, it was clear that elements of social capital were used as fuel to the conflict rather than the opposite and social capital indeed could be perverted. The risk of outbreak of violent conflict increases when these conditions exist concurrently or are intensified by manipulation of ethnicity, religion, culture and language.

Colletta and Cullen try to prove that same parameters of social capital enabled the conflict to be distorted and shift into genocides. The foundation for the eruption of violence is social and economic phenomena; exclusion, inequality and indignity. Whereas negatively social capital could explain why some conflicts get so devastating. In Cambodia the Khmer Rouge employed an advanced system of collaboration, information network, norms and trust with the purpose of weakening the other group. The same feature was seen in Rwanda where identity was used to mobilize and pervert social capital. In all these examples it is clear that a strong exclusionary social capital was created and nourished in the conflict which hinders horizontal relations between the groups, cross creating links between different groups. In Rwanda, it led to the outrages figures of 800,000 deaths in a three months period. The genocide was only possible through creating strong ties, bonding social capital providing effective networks of information, collective action, and imposing the killing as a civic duty.

When social capital theory has been tested in Sri Lanka, same features appear of bonding social capital, the exclusionary type which has destructed the bridging social capital.

R.L Stirrat is critical to use the social capital theory in Sri Lanka which he finds a 'catch all label' and cannot see the additional contribution to what could be explained by caste, class and ethnicity. He also objects to the ties of trust. What is bridging for some is bonding for others.

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<sup>15</sup> Colletta Nat J. & Cullen Michelle, op.cit., 2000.

*"LTTE for example increase the interactions with other sorts of Tamils, they would call it a way of bridging social capital whereas from a Sinhala perspective would find it to be bounding."*<sup>16</sup>

In my opinion, the concept of social capital is inadequate if it is used as an *explain all*. My understanding of the reviews of social capital is that neither trust, collaboration, norms, networks, coordination in itself are intrinsically *good* or promote a positive peaceful development. According to my understanding, social capital using the terminology is interesting if making the correlations with the output such as democratic culture which then can explain a peaceful or conflict driven society.

### Democratic Culture

*'In our country the people do not have a good education, therefore, we cannot have democracy.'*

Often it is claimed that citizens need to be competent or educated. There is an inevitable relationship between literacy and democracy, but there is little proof that higher the degree of education, the individuals would be better equipped to act as responsible citizens. Instead political scientists agree that citizens' norms and values matter a lot. Since most ordinary citizens may not be politically active and may not possess significant political resources, the importance of attitudes, norms, values and beliefs of the public are potentially relevant to the stability of the regime over the long term.<sup>17</sup>

Countries with popular beliefs, attitudes and expectations supportive of democracy will be the stable ones. It is likely to be a product of existing democratic institutions than their cause. There are theories that claim some religions are incompatible with democratic sustainability. A belief that claims that the final truth for society lies in the superior, esoteric or mysterious knowledge that is beyond question by the uninitiated, and to which political authority must be subject. Such an interpretation will always be incompatible with democracy.<sup>18</sup>

<sup>16</sup> Stirrat, R.I. op. cit., 2003, p. 11,

<sup>17</sup> Gunther, R. et al. *The Politics of Democratic Consolidation. Southern Europe in Comparative Perspective*, The Johns Hopkins University Press: Baltimore, USA, 1995.

<sup>18</sup> Beetham, David, *Democracy and Human Rights*, Polity Press: UK, 1994 & 1999.

What are democratic attitudes and what comprises democratic culture?

According to Dahl, a democracy needs citizens to have political competence which is divided into -

- i) *moral competence*; the fundamental sense of right and wrong, and
- ii) *instrumental competence*; knowledge of the areas of common interest ranging from health care to tax reform.<sup>19</sup>

Diamond insists that democracy requires a distinctive set of political values and orientation for its citizens:

- moderation
- tolerance
- civility
- efficacy
- knowledge
- effective participation.

Political culture matters independently of other variables; and that the development of a democratic culture cannot be taken for granted as a natural by-product of democratic practice or institutional design. However, institutions heavily shape choices and behaviour, and the habitual practice of those choices and behaviour in turn may become embedded in the intrinsic culture and norms.<sup>20</sup>

In the Asian context, it is sometimes argued that democracy is a solely western concept and not valid in the region. It is said that *discipline* rather than *rights*, *loyalty* and *entitlement* is the foundation of Asian ethics. Amartya Sen, Nobel Prize winner of Economics, is critical of this argument and claims it is used to justify authoritarian political arrangements. It is seldom that these justifications come from independent historians but rather from authorities themselves such as

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<sup>19</sup> Dahl, Robert A. *Democracy and its Critics*. Yale University Press: New haven, USA, 1989.

<sup>20</sup> Diamond L. (ed) *Political Culture and Democracy: Causes and Effect*, 1994.



governmental officers. *"The so - called 'Asian values' are a selection of arbitrary interpretation."*

Islamic culture is often described as intolerant and objecting to freedom of individuals. Whereas in history Islamic leaders have been more tolerant than, for instance, European leaders. Going back to historical sources both Buddhism and Hinduism puts great importance on freedom, free choice, tolerance and equality. According to the monuments of Asoka (300 BC.) the scripture of edict at Erragudi *".... a man must not do reverence to his own sect or disparage that of another man without reason. Depreciation should be for special reason only, because the sects of other people all deserve reverence for one reason or another. By thus acting, a man exalts his own sect, and at the same time does service to the sect of the other people. By acting contrariwise, a man hurt his own sect, and does disservices to the sects of other people. For those who do reverence to his own sect while disparaging the sects of others, wholly from attachment to his own, with the intent to enhance the splendour of his own sect, in reality by such conduct inflicts the severest injury on his won sect."*

Sen makes a distinction between the *value* of freedom and tolerance and the *equality* of freedom and tolerance. *Freedom* is tested and claimed to consist of the value of personal freedom; that the (1) value personal freedom is important and should be guaranteed for those who 'matter' in society, and (2) equality of freedom; everyone matters and the freedom that is guaranteed must be guaranteed for all. In a society where inherent differences such as caste and class exist, freedom will be of great value for the privileged few as much as it is for those at the grass root level.

Similarly, is the distinction between value of toleration: that there must be a toleration of diverse beliefs; commitments and actions of different people; and (2) equality of tolerance: the tolerance that is offered to some must be reasonably offered to all – except when tolerance of some will lead to intolerance for others.<sup>21</sup>

<sup>21</sup> Sen, Amartya, *Development as Freedom*, Oxford University Press, Oxford, 1999.

## Youth Engagement in Sri Lanka

In the context of Sri Lanka having singled out one population cohort applying the variables of social capital and democratic culture, what are the findings? What are the characteristics of youth engagement in Sri Lanka? Putting Sri Lanka and youth into the context of civic action is a complex exercise. Primarily, you cannot escape history. It is well known that both the armed social conflicts in the North by the LTTE and in the South by the JVP were youth led. The JVP youth insurrections constituted of 80% young people between the ages of 15 and 29 who embraced the total opposite of democratic culture.<sup>22</sup>

Research, commissions and analyses on youth affairs have a fairly high recognition, whereas policy implementation is non - impressive. Within that scope of interest there seem to be a gap in the research field, when it comes to youth and civil society. As a result, this paper will rely on its own findings and observations from the contact of some 450 youth leaders under 15 years.

National Youth Survey 2000 presented that approximately 6 % of the youth are engaged in voluntary organisations. Poor economy, competitive education, insensitivity to gender expectations were reasons given why youth are not organised to a larger extent. The implications of the insurrection period is still negatively influencing civil engagement in the South. Extra curricular activity in NGOs or GOs is generally seen as something fairly useless or even threatening instead of being useful and qualifying. Parents do not encourage their adolescents to join a voluntary organisation due to the fear that it could bring political interference and trouble.

However, civil society organisations have mushroomed in the last decade. The exact number of NGOs and CBOs cannot be certified due to lack of data. In an article in 1997, some 25,000 to 30,000 grass root organisations were estimated. Only 4,000 of these are registered

<sup>22</sup> Fernando, Laksiri. Why Youth Rebel. (eds.) Hettige, S.T. & Mayer, M., in *Sri Lankan Youth: Challenges and Responses*, Friedrich Ebert Stiftung Publication 50: Sri Lanka, 2002, p. 119.

in the Ministry of Social Services.<sup>23</sup> Sarvodaya is the biggest of them all whereas the National Youth Services Council, (governmental) is the largest organisation solely focusing on youth. After the Cease-fire Agreement in 2002, number of NGOs and CBOs in the North and the East have increased rapidly.

It is difficult to overview how many out of these 30.000 organisations are youth organisations. Democratic youth leadership programme, DYLP has been in contact with 431 youth organisations. Many of these have either a very small member base (less than 30 members), whereas the more substantial ones incorporate 20.000-30,000 members but on the other hand are not youth led.

In 1993 a NGO Commission Report was published and found that NGOs and the State were confronting each other. Wickremesinghe argues that this was only typical of the period and there are very few conflicts between NGOs and the State except with the Sinhala nationalist movements and some radical NGOs. The only elements of healthy conflict that could be found is between the State and human rights NGOs, who are the only watch dogs of State excess. There are few networks of NGOs of substantial significance except the National Peace Council, Environmental Council, NGP Committee of the Children's Secretariat. Regarding youth, the National Youth Services Council is the largest, but does not include independent youth NGOs. Sri Lanka does not have a National Youth Council as other countries in the region. Momentum generated by a coalition of a broad variety of youth organisations may see the light of day before the end of the year.<sup>24</sup>

According to the experience of DYLP, many youth organisations have several deficits when it comes to democratic performance. From DYLP we have learnt that authoritarian leadership style, lack of financial resources and communication barriers hinders effective participation of organisations to fully function democratically. Furthermore, poverty and political interference are known as external

<sup>23</sup> Wickramasinghe, Nira, *Civil Society in Sri Lanka: New Circles of Power*, Sage Publications: India, 2001, pp. 82-98.

<sup>24</sup> *ibid.*



factors for limiting democratic functioning of the organisations. The inter-generational gap is another problem where youth – in the youth organisations – are not given the opportunity to influence and participate in decision - making to the fullest extent.

In conflict affected areas like Jaffna, many youth stated that the socio-cultural attitudes towards youth disabled them from fully participating in development efforts and development activities. It is a perception that competence arises from experience. Youth may be part of the development initiatives, but is often excluded from the decision - making processes.<sup>25</sup>

### **Youth, Youth Leaders and Attitudes**

In 1999/2000 National Youth Survey was implemented and 2892 households were covered to update data on opinions, values, perceptions, and aspirations. I have used some of the comparative data to compare if there are differences between organised and non - organised data.

DYLP has a research component in the programme. The youth leaders are assessed for their attitudes through a questionnaire before training and three to four months after the training at the follow up meeting. The findings presented here is just a forecast of the quantitative data based on 203 questionnaires. The leadership trainings are offered to youth organisations known to the project throughout the island. The youth leaders are nominated by their organisation, where they should already function as leaders. The questionnaire data provides us with data from all over the island, gender and ethnic balance, between the ages 19-27. Most of the leaders have an A-level formal educational background, even if university student unions are over represented, according to their proportion of the population. Unlike what is sometimes assumed, youth leaders in Sri Lanka do not come from the upper socio-economic segments of society. Nearly to 70 % represents the poorer segments of society. We also know that half of them have attended non-educational trainings before and half of them have not.

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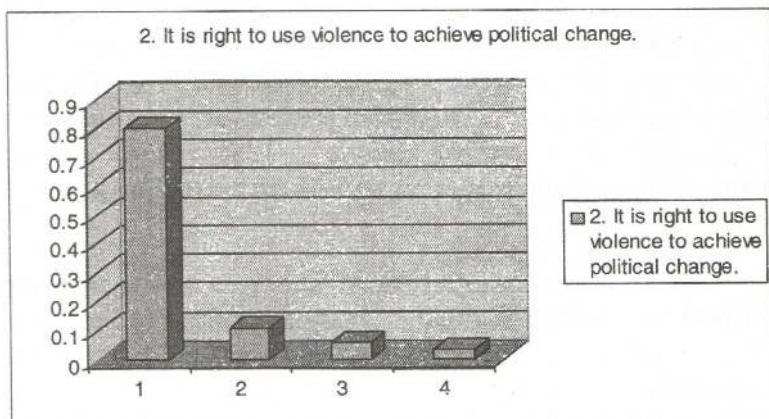
<sup>25</sup> Hettige, S.T. and Mayer, M. (eds.), *Sri Lankan Youth: Challenges & Responses*, Friedrich Ebert Stiftung Publication: Colombo, 2002, p. 239.

The selection is not fully representative of all youth leaders from all types of organisations, since organisations which have not found the programme's democratic title and the content, attractive have not bothered to nominate or to register.

The following dimension will be tested:

- moderation as political change and rejection of violence
- efficiency
- trust
- equality

### Political Change



**Figure 1.**

According to the DYLP findings Sri Lankan youth leaders have a theoretically strong rejection of violence. 91 % of the DYLP youth disagrees that it is right to use violence to bring about political change.

However, the value is conditional; 30 % believes that *as a last resort it may be acceptable to use violence*. There are no significant differences between the type of youth leaders in this respect. Even if the phrase is different, the figure could be compared to the National Youth Survey 2000, in which 31 % of the average youth found that it was *proper to struggle for a cause even if it meant violence*.

## Efficiency

In the DYLP attitude assessment it was found that 76,4 % of the responses somewhat agreed and totally agreed that it was effective to seek support at the elected provincial political representative level. When we single out the university student youth leader segment, there is a significant drop to 59.4 % who finds it to be effective to seek support from the provincial elected representatives.

According to the findings from youth leaders, 53.6% found it effective to seek attention from demonstration rallies. Quite interestingly student leaders have a much stronger belief in the method, where 72,9 % thought it to be effective or very effective.

To influence the government through advocacy as a method is recognised by 58 % of the youth leaders to be effective. The youth leaders are seldom exposed to this method as their organisations are providing community services rather than bringing about structural change. Even when translated to local language it is an unfamiliar word.

According to the results of the DYLP assessment, the picture of anti-systematic youth is defused, but not purged. There are no equivalent questions in the National Youth Survey, although 72 % have a general belief in parties. This is contrasted by the findings of a study on social capital at Colombo University in 2003. Here it was found that only 49 % of the students in the questionnaire have a general support for democracy and 82 % thought that it is not desirable to have political parties competing for power. Instead, there was a support of 63 % for one or a few strong leaders rather than having laws and talks.<sup>26</sup>

## Trust

Generally, trust is perceived to be very low in Sri Lanka. In the study at the University of Colombo, 96 % thought one has to be alert so that people will not take undue advantage and 71 % disagreed that most people are basically honest. It was found there was a perception that

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<sup>26</sup> Annika, Rigo, op. cit., 2003.



relatives, people from other ethnic communities or certain political groups are likely to take an unfair advantage of one's self.<sup>27</sup>

The youth leaders in DYLP study trust their politicians at the provincial council level. 11 % *agrees totally* that they trust their politician which could be compared to the National Youth Survey where only 8.0 % trusted their politicians a *great deal*. 44.5 % stated they 'somewhat trusted' their politicians compared to 67.5 % in NYS. According to the DYLP assessment 43.2% distrusted their politicians which is a great deal higher than the 15% reported in NYS. The rate of distrust by the university student leaders is as high as 56.7 %.

One possible analysis of this is that youth leaders have a more exposed relationship to politicians than other non - organised youth. The deviations of *more* trust towards politicians as well as *less* trust than average youth could be self - experienced good and bad performance of individual politicians, rather than the limited exposure of average youth.

Worthy of note is to revisit that in this group as much as 36 % agreed totally that it was effective to seek support from the provincially elected, which is more than double the figure of those who trust the politicians a great deal. 73 % embraced it to be effective whereas only 44.5 % trusted the politicians.

The youth leaders state trust for the management within the organisation to be 75 %. DYLP have found that most youth organisations are not led by youth themselves. The target group for the project were therefore youth leaders at grass root or medium levels. This can either be a polite answer in their anxiety that stating differently would boomerang on them.

On the other hand, as leaders themselves do not show the same trust for their peers in the organisation, 53 % believes that you can trust the peers vs. 43 % who does not trust their peers.

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<sup>27</sup> Annika, Rigo, op.cit., 2003.

Relevant to the trust discussion is also the level of involvement or effective participation.

A larger proportion, 54 % of the youth organisations seems to have difficulty in adopting effective participation through the involvement of members at the meetings.

This is a huge contrast of what the youth leaders *wish* the youth organisations to be, where 90.5 % would like that anyone should be able to speak up at meetings; and 93.5 % thinks that all members in a voluntary organisation should be treated as equals.

### **Equality and Good Governance**

The youth leaders have a strong belief as 82 % expressed that all members should be treated equal in a voluntary organisation. Interestingly as high as 11 % thinks 'somewhat agree' to the statement, and 4 % actually disagreed.

The understanding of equality between men and women is fairly high. 71 % strongly disagreed with the statement that *women should obey men without question* whereas 10 % is in agreement with the statement.

The intrinsic knowledge of right and wrong is quite strong. 86% agrees that giving gifts and contributions to government official in order to get something done is wrong.

Once again, when it gets closer to a real life situation or perceived urgent one there is less assertive statements. A relative helping out in a job selection process, 40.1 % does not condemn such an act. Students have a even more untroubled attitude, 54 % somewhat or strongly agreed that it is correct.

The strongest expression in the quantitative study was the one on whether *using money from the organisation was okay* together with the statement that all members in an organisation should be treated as equals. As many as 93 % disagreed, of which 83 % strongly disagreed that you could borrow money from the organisation for personal use.

## Conclusion and Discussion

Social capital is an analytic framework which explain why certain factors like network, collaboration, trust, tolerance and norms can function as lubricants of a society and its interaction between citizens and State institutions as well as between citizens. Even if we normally use these factors for explaining something positive, it could be regarded as neutral since the very same factor can coexists to meet negative means. In this text, I wanted to make the distinction that social capital *can* produce democratic culture but it is not an inevitable fact that they will do.

If democratic culture consists of rejection of violence, perceived efficiency of the system, trust, and norms that all support a democratic system, the quantitative forecast of the DYLP assessment provide us with some preliminary tendencies. There is a very strong disagreement that violence is rightfully a means to achieve political change, whereas the opinion is conditional and 30 % believe it should only be used as a last resort, which indicates similar results by average youth. Organised youth does not have strong anti-systematic attitudes. They think that normal democratic ways of seeking support, demonstrations, advocacy is fairly effective. The trust and distrust for provincial politicians are higher than average in youth. Although it is clear that trust and self-reliance among the youth needs to be addressed.

Youth leaders have a good understanding of rights and wrongs in society although the closer to a real life situation or temptation the less assertive are their attitudes.

With the experience that there is *a lot of room for improvement* in respect of democracy in the youth organisations, measures of improved leadership, organisational development, training and increased opportunities for youth influence are needed to escalate the chances that bring about a democratic culture as the outcome of youth engagement .



# **POLITICAL VIOLENCE AND HUMAN RIGHTS IN SRI LANKA: AN ACCOUNT FROM 1971 – 2000**

by

**Gamini Samaranayake**

## **Introduction**

Political violence in the form of insurrection, guerrilla war and terrorism has been a significant phenomenon in Sri Lanka since the early 1970s. There have been three insurrections of different origin and form. The first is the left-wing armed uprising by the Janatha Vimukthi Peramuna (JVP) confined to the Sinhalese radical youth. The second is the ethnic separatist guerrilla warfare-cum political terrorism by the minority Tamil militant youth since the mid 1970s. A major outcome of political violence is the widespread violation of human rights in the country. There is a close relationship between the continuation of political violence and human rights violation in the country. The violation of human rights both by the Sri Lanka's government forces and guerrilla organisations have been vividly reported by international human rights organizations such as Amnesty International, International Alert, Peace Research Institute of Oslo (PRIO), Asia Watch and the International Commission of Jurists (ICJ).

The main objective of this paper is to examine the impact of political violence on the status of human rights and to analyse the efficacy of the constitutional methods in relation to the protection of human rights in the country. Specifically, this paper will focus on the impact of political violence on the status of human rights and the government's response in Sri Lanka since the early 1970s. The paper argued that without addressing the root causes of political violence, mere constitutional attempts to protect human rights would be futile. Accordingly, this paper is divided into four major sections. The first one examines the pattern of political violence. The second part deals with the status of human rights in Sri Lanka. The third part examines the constitutional measures designed to protect human rights and their limitations while the final part deals with the role of successive governments. Finally the main findings of this paper is synthesized.

## Pattern of Political Violence

Since the 1970s Sri Lanka has experienced two types of political violence namely, left wing insurgency and the ethnic rebellion. The left-wing insurgency was manifested in the JVP insurrection of April 1971 and that of 1987–1989.<sup>1</sup> The secessionist ethnic armed struggle started in the mid 1970s and was led by the Liberation Tigers of Tamil Eelam (LTTE). The youth unrest due to socio-economic changes and lack of opportunities to fulfil their aspirations since the mid 1960s was a major cause behind the political violence of the JVP. According to the Youth Commission Report, which probed the causes behind the youth unrest and consequent insurrections, the most disgruntled rural youth were involved in the insurrection. According to this report, the rural youth particularly resented the English educated elite and urban middle class, which exercises tremendous power and enjoy prestige and privileges in the country. They were also concerned about corruption and bribery prevalent in the country, mostly in the public sector. Furthermore, they were found to be very cynical of the political parties, which are dominated by a handful of rich and powerful families. The Youth Commission Report also cited unemployment as yet another cause of the insurrection.<sup>2</sup> (*Report of the Presidential Commission on Youth*, 1990).

The declared aim of the 1971 insurrection was capturing State power with a view to establishing a socialist society. Consequently, the insurrection began with armed attacks on nearly 100 police stations on the 5<sup>th</sup> of April 1971. These attacks resulted in the capture or abandonment of 49 rural police stations, which comprised one-fourth of the police divisions in Sri Lanka. This guerilla action, which took place in the countryside, did not affect the urban areas. The government, however, was able to quell the insurrection and defeat the JVP. It is the general consensus that nearly 5000 were killed although the official statistics claim it to 1200 including security personnel. Nearly, 18,000 predominantly youth were taken into custody as a result of the incident by August 1971.<sup>3</sup>

<sup>1</sup> The JVP was initially known as the Che Guevara Movement among the local population. It was a breakaway group from the pro-China Communist Part (CP) in the mid 1960s.

<sup>2</sup> *Report of the Presidential Commission on Youth*. Department of Government Printing: Colombo, 1990.

<sup>3</sup> Alles, A.C. *Insurgency 1971*, Apothecaries' Co: Colombo, 1976.

The second insurrection, which lasted from 1987 to 1989, was more complex in terms of objectives and strategies. The long-term objective of the insurrection was to overthrow the United National Party (UNP) Government, which was in power since 1977. The short term objectives of this insurrection were as follows: the immediate withdrawal of the Indian Peace Keeping Force (IPKF) from the island; abrogation of the Indo-Lanka Accord of July 1987; abolition of the Provincial Council System; holding of fresh Presidential and Parliamentary elections; and the dismantling of paramilitary forces. In order to achieve its objectives, the JVP used its campaign of violence against the politicians of the ruling party, the police and other armed personnel and their family members, State-civilian officials, and politicians from opposition parties and their supporters. The government crushed this insurgency fundamentally through the use of counter violence.

### **Tamil Guerilla Warfare**

The Northeast war is a direct result of the deepening ethnic conflict between the Sinhala majority and Tamil minority. The conflict originated from the country's independence in 1948. A blanket term is applied to the many factions of the underground organization, which broke away from the youth movement of the Federal Party and Tamil United Liberation Front (TULF). Initially, there were 35 militant groups. Five groups have achieved dominance over the other guerilla groups up to the Indo-Lanka Accord in 1987. finally the Liberation Tigers of Tamil Eelam (LTTE) have annihilated the other groups.

The ultimate objective of the "tigers" is to establish an independent, socialist Tamil or Eelam State by means of an armed struggle. The Eelam comprises the northern and eastern provinces of the country. These demands may be met through the devolution of power and some degree of political self-determination. The pattern of the Tamil guerilla warfare may be viewed in three phases. The first phase, which is from the mid 1970s to 1991 concentrated on assassinating Tamil politicians and executing police informers. From 1977 the armed attacks also focused on the police who were conducting inquiries into militant violence. The target was later expanded to include Sinhala and Muslim members of the police force and other services. From 1984 onwards



Sinhala civilians residing in settlements and villages within the northern and eastern provinces became targets of terror attacks. After the Indo-Sri Lanka Accord the LTTE waged war with the Indian Peace Keeping Force (IPKF), which was entrusted to disarm the guerilla groups and observe the truce. Thus, from October 1987 up to March 1990, the LTTE was particularly engaged in armed attacks on the IPKF.

The outbreak of political violence on the 11<sup>th</sup> of June in 1990 in the North and Eastern provinces in Sri Lanka between the armed forces and the LTTE ignited the beginning of the second phase of the second Eelam war in the country. Before that, particularly from April 1989, the LTTE maintained an understanding with the Sri Lankan government. In accordance with the cease-fire with the government, the LTTE had set up a political party, the People's Front of Liberation Tigers (PELT) to contest the North-East provincial council election. They negotiated with the government to define conditions for elections and the respective subsequent roles of the political and military wings of the LTTE. The short-lived understanding between the government and the LTTE deteriorated due to the inability of the government to dissolve the provincial council in the North-East which was controlled by the EPRLF, and the revocation of the sixth Amendment to Sri Lanka's Constitution of 1978. Initially, the police and army camps within the Eastern province were targets of the LTTE attacks. Later, the strategy of the LTTE armed struggle moved onto armed attacks on army camps in the North, assassination of political leaders along with Rajive Gandhi, the former Prime Minister of India and R. Premadasa, the President of Sri Lanka. During the second Eelam war, the major part of the Northern and Eastern provinces were under the control of the LTTE.

The Eelam war began with the break up of the short-lived cease-fire between the PA government and the LTTE during the middle of April 1995. However, the government and the LTTE were unable to agree on a peace programme and negotiations collapsed. The LTTE withdrew from the negotiations and resumed the third Eelam war by blowing up two naval ships in Trincomalee harbour on 19<sup>th</sup> April 1995. During the Eelam war three, the government forces were able to recapture Jaffna

city, and confined the LTTE to remote areas and the jungle of the northeast provinces. While combating the LTTE, the PA government prepared for a political solution by means of offering a greater degree of devolution of power through constitutional reforms. The past evidence, however, indicates that the peace process would be long drawn out due to the nature of the guerilla organisation under review.

### **Status of Human Rights**

To examine the effect of political violence towards the nature of human rights in Sri Lanka, it is necessary to look into the constitutional status of human rights in the country. In Sri Lanka's context, it was the 1972 Constitution that first recognized fundamental rights.<sup>4</sup> According to section 18 (1) of the Constitution, the following were guaranteed fundamental rights: equality, freedom from arbitrary deprivation of life, liberty and security of person, freedom of thought, conscience and religion, freedom to enjoy and promote one's culture, freedom of assembly, association, speech and expression, movement and residence and freedom from discrimination in appointments to the public sector.<sup>5</sup>

The protection of all these fundamental rights, however, is subject to the law. According to section 18 (2) subject to "restrictions imposed by law and the safeguarding of public and national interests such as national security and national unity". The laws, however, revised according to the changing socio-political climate in the country, and these laws impinged on the constitutional safeguards of human rights. For instance, the insurrection of 1971 and the gradual building up of the Tamil secessionist groups in the North necessitated the tighter enforcement of laws.

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<sup>4</sup> The Constitution of 1948 made no provision in relation to human rights. However, the Constitution of 1948, Section 29 (2) prohibited Parliament from enacting discriminatory legislation on the grounds of race, and religion or legislation that infringed on religious freedom. This section was designed to protect the minorities from discriminatory legislation.

<sup>5</sup> *Constitution of Sri Lanka*. (Ceylon) 1972. Department of Government Printing: Colombo.

However, there were no provisions in the constitution with regard to remedies for breach of fundamental rights. Furthermore, the constitution does not stipulate protection from political discrimination. The most widespread form of discrimination in Sri Lanka is political discrimination. Especially, in the public sector appointments, transfers and promotions have been based on political affiliations. In the 1972 Constitution the validity and viability of human rights issues were confined to the constitution, due to the enforcement of emergency powers from 1971 to 1977. An apt example is the detention of more than 10,000 youth without trial after the insurrection of 1971. Therefore, the violation of human rights through extra-judicial killings, torture, and detention without trial were the main issues in the General Election of 1977.

The 1978 Constitution added new rights and widened the scope of certain existing rights. The fundamental rights include the right to equality before the law, freedom of speech, of assembly, and of association, the right not to be subjected to torture or “cruel, inhuman or degrading” treatment, the presumption of innocence, the right to a fair trial, etc. Chapter three, Parts 11 and 12 states specifically that “no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and that all persons have equal access and protection of the law. Section 13.2 also states that persons could be arrested or detained only based on the order of the judge. The Constitution of 1978 further details that “no person can be punished with death or imprisonment “without a judicial hearing and verdict.” Therefore, the Constitution of 1978 provided for a more detailed statement of the fundamental rights of citizens.<sup>6</sup>

Furthermore, Sri Lanka’s government signed the International Covenant on Civil and Political Rights in 1980. According to this covenant a government cannot deviate from its commitment to protect human life and cannot engage in torture even under emergency situations. The government made a further commitment to protect

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<sup>6</sup> *Constitution of the Democratic Socialist Republic of Sri Lanka.* (1978) Department of Government Printing: Colombo.



human rights in 1982 by making an Unilateral Declaration Against Torture with the United Nations.

From the above discussion it is evident that there are far reaching provisions in the constitution to protect human rights. However, the constitutional safeguards of fundamental rights are inept and inadequate to prevent the empirical violation of fundamental rights in the context of insurgencies and counter-insurgencies in Sri Lanka.

### **Actors and Mode of Violation**

The political violence and counter-violence gives rise to a dramatic increase of human rights violations such as extra-judicial executions, disappearances and abductions, torture, detention without trial, arbitrary arrests, and reprisal killings of civilians. The government's security personnel, pro-government vigilante groups, death squads, home guards, the Indian Peace Keeping Force (IPKF) and members of militant groups such as the Janatha Vimukthi Peramuna (JVP) and the Liberation Tigers of Tamil Eelam (LTTE) have engaged in gross violations of human rights.

### **Extra Judicial Executions**

The exact number of extra-judicial killings by the government forces has been a matter of debate. According to Amnesty International, the number of extra-judicial killings were 3000 or well over. The large number of extra-judicial killings between 1987 – 1989 was a major part of the counter-insurgency policy of the government against the second insurgency of the JVP. These killings have taken place in several contexts: defenceless prisoners were deliberately killed, unarmed demonstrators and curfew violaters were shot dead: People in the vicinity of atrocities attributed to the JVP were killed in acts of reprisal: individuals were targeted for assassination indicating that they were JVP suspects.<sup>7</sup> Killings after abduction by unidentified gunmen were widespread during 1987 to 1989 in the Southern province of Sri

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<sup>7</sup> Amnesty International. (1990) *Sri Lanka: Extra-judicial Executions, Disappearances and Torture, 1987 to 1990*. Amnesty International Publications: London.

Lanka. For example on the 27<sup>th</sup> of February 1990, 13 people were abducted from their homes in Nittambuwa, Gampaha district by masked gunmen who said they were members of the security forces. They were taken to a jungle at “Wavulukele” where they were shot. Of the 13 persons one youth survived.

A majority of the extra-judicial executions of civilians occurred in reprisals by the government security forces. The largest reprisal killings by the security forces were reported from the Kandy district in mid-September 1989. The victims were about 80 villagers from Menikhinna, Kundasale, Arangala and Mahawatte. After the killings the dead were dumped on roadsides, in fields, bodies were piled in public places and cemeteries and others were thrown into rivers. Many bodies were burnt on pyres of rubber tyres. Many of the victims were young men between the ages of 18 – 35. In 1989, the government captured and summarily killed the leaders of the JVP. The Kokkadicholai massacre in the North where 52 civilians were killed by the forces in retaliation for the deaths of two soldiers killed by a LTTE land mine is a case in point.

Death squads to counter the violence of the JVP carried out some of these extra-judicial killings during 1987 – 1989. The names of the well known death squads are as follows: the Black Cats, the Yellow Cats, the Eagle of the Central Hills, the Red Dragon (Ratu Makara), the Scorpion and the People’s Revolutionary Red Army (PRRA). The Black Cats were responsible for the killings of 14 persons at Eppawala in the Anuradhapura district on the 20<sup>th</sup> of March 1988. They were also responsible for a number of extra-judicial killings in the Anuradhapura district. The Eagles of the Central hills were responsible for reprisal killings at Menikhinna, Kundasale, Arangala and Mahawatte, in the Kandy district on the 14<sup>th</sup> and 15<sup>th</sup> of September 1989. The Red Dragon also operated in the Kandy district. A retired DIG issued a number of statements to the press in which he spoke of death squad activities in the south of the country. He provided a list of 830 persons whom he said had been killed between July and November in the Central Province. The general belief is that the so-called death-squads comprised army personnel in plain clothes and persons supported by the politicians of the ruling UNP. The death squads associated

with government politicians are sometimes referred to as the “Green Tigers”.

There were reports of extra-judicial killings by home guards in Sri Lanka. On the 29<sup>th</sup> of April 1992, in retaliation for an attack by the LTTE more than 50 Tamil villagers at Muthugal and Karapola in the Polonnaruwa Districts were killed by Muslim home guards.

## Disappearances

Disappearances have been a form of violation of human rights in Sri Lanka. A huge number of disappearances had occurred in Sri Lanka between 1983 and 1991. Basically, there is a close relationship between extra-judicial killings and disappearances in Sri Lanka. Disappearances and deaths had taken place after abductions either by the armed forces or unidentified persons. Since the beginning of the 1980s three thousand persons are reported to have “disappeared” in Sri Lanka due to the counter-insurgency policy of the government. According to Amnesty International, between 1984 and mid 1987 over 680 disappearances were reported from the Northeast. From mid 1987 to 1990 43 disappearances were recorded from the same area. According to Asia Watch, between 1990 and December 1991 the number of disappearances in the Tamil dominated districts were as follows: 2900 in the Batticaloa district, 2200 in the Ampara district, 1300 in the Trincomalee district and 1000 in Vavuniya, Mannar, Malaitivu and other parts of the North.

From 1987 to 1990 a large number of disappearances have taken place in the South in connection with the insurgency of the JVP. According to a committee monitoring student arrest, 271 university students had disappeared by the end of 1989. An European parliamentary delegation estimated that the total number of persons killed and the number of disappearances between 1989-1990 amounted to 60,000. On August 28<sup>th</sup>, 1991 over one hundred parliamentarian moved to bring impeachment proceedings against the then President R. Premadasa. The impeachment referred to the disappearances which occurred during the government’s counter-insurgency campaign against the JVP from 1987–1989. A report published by Amnesty International based on the disappearances of 46 persons from the Sevana Army Camp in



Embilipitiya in the Sabaragamuwa Province shows the magnitude of the problem in Sri Lanka. They were young men between the ages of 16-19 years of age and attending secondary school. During the time they were detained, the sixth artillery unit was stationed at the Sevana camp. In several cases, relatives had received information from witnesses or military officers that the missing persons were indeed detained there. When the sixth artillery unit moved out of this camp in late January 1990, the prisoners held there simply vanished. The relatives do not know the fate of the boys. They fear they may have been extra-judicially killed and their bodies secretly disposed of in the early hours before the camp was handed over to the fourth Gemunu Regiment.<sup>8</sup>

According to a report published by Asia Watch, there have been 40,000 disappearances since 1983. According to the report of the Working Group on Enforced Involuntary Disappearances (Commission on Human Rights) disappearances for the period 1984 to 1990 are as follows: 1984: 144; 1985: 368, 1986: 256; 1988: 98; 1989: 2879; 1990: 1576. Besides, over 3000 people are believed to have disappeared in the Northeast since the beginning of the second Eelam war in June 1990.

## Torture

Although the right to freedom from torture is guaranteed under Article 11 of the 1978 Constitution, torture while in custody is another facet of the violation of human rights in the country. As Asia Watch reported torture while in police custody is commonplace. Members and sympathizers of the militant groups were subject to torture by the government forces, during interrogations as a means of extracting information or confessions. A majority of the incidents of torture occurred during the first month after being arrested. These arrests were made either under the Prevention of Terrorism Act of 1978 or the Emergency Regulations. Both acts legitimizes an indefinite detention without charge or trial.

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<sup>8</sup> Amnesty International. (1991) Sri Lanka: *Unresolved Disappearances in the Period 1987-1990*, Amnesty International Publication: London.

## Detention without Trial

There are no accurate figures about the total number of detainees. During the second insurgency of the JVP from 1987 to 1990, the security personnel, in the course of their operations against the JVP took 19,000 persons into custody. In March 1990, the government said that 14,000 persons were being detained under Emergency Regulations. By the end of April a total of 12,944 persons remained in detention.<sup>9</sup> Of these 8,424 were described as detainees held at various detention camps, police stations and prisons and 4,520 as surrendees held in 14 rehabilitation camps. Subsequently, under the rehabilitation programme 9382 persons have been released. Consequently, another 4503 have been released on the recommendation of the Ministry of Defence. The rest are in custody to be produced for trial. According to the Jayalath Committee, which looked into the situation of detainees, reported that there were 2,123 persons being held in custody. But the Organisation for Parents and Family Members of the Disappeared says according to their information more than the acknowledged number are still in custody. The LTTE has also resorted to arbitrary arrest and incommunicado detention. They are responsible for holding over 2000 prisoners in the North. However, the places where these prisoners are held have not been officially disclosed.

## IPKF, LTTE and JVP

The Indian Peace Keeping Force (IPKF) was also associated with violations of human rights. According to International Alert, they have received nearly 2000 affidavits of human rights violations by the IPKF.<sup>10</sup> Besides, Amnesty International reported that extra-judicial killings were carried out by the IPKF from mid 1987 to early 1990. Most of the extra-judicial killings occurred in the context of the reprisal killings in the wake of LTTE attacks against the IPKF. The largest single instance of killings by the IPKF was at Velivettiturai in August 1989. According to Amnesty International at least 52 people were killed. Furthermore, 43 disappearances were reported after arrest by the IPKF in the Northeast.

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<sup>9</sup> *Island*, 29<sup>th</sup> April, 1990.

<sup>10</sup> Marino, Eduardo. *Political Killings in Southern Sri Lanka*, An International Alert Publication: London, 1989.

Both the LTTE and the JVP have committed serious violations of human rights including the killing of civilians. Among the victims of extra-judicial executions by the LTTE are a large number of Sinhalese and Muslims who resided within the Northern and Eastern provinces as well as Tamil people considered traitors. Victims were reportedly shot, bayoneted, stabbed, hacked to death, burnt alive or subject to lamppost killings.<sup>11</sup> In August 1990, hundreds of Muslims civilians were massacred by the LTTE. In April 1991, some forty Sinhalese civilians were killed by the LTTE. According to Narayan Swamy Sinhalese villagers were at times hoarded to training camps and young tigers were ordered to stab them with cyanide tipped knives.<sup>12</sup> In April 1992, 58 Muslim civilians from the village Alichipathan in the Polonnaruwa district were killed by the LTTE. They were blamed for killing about 300 civilians in 1988 and more as a result of clashes between rival Tamil groups.

In the process of their military campaign against the government, the JVP killed government politicians, opposition politicians, military personnel, and their relatives government officials, university students, and civilians. Other victims of the JVP killings were former members of the JVP. During the Provincial Council Election the JVP was responsible for killing twelve candidates belonging to the opposition political parties in the Central, Western and Southern provinces. In the Parliamentary Election fourteen opposition party candidates were killed by the JVP. They were blamed for over 800 killings during 1988. Thus, the JVP was responsible for the killing of as many as 6000 people during the second insurgency from 1987 to 1990.

### **Constitutional Measures**

In order to understand the status of human rights in Sri Lanka, it is also necessary to examine even rather briefly the available opportunities of protection within the purview of the 1978 Constitution. Most significantly under the 1978 Constitution the Supreme Court was given

<sup>11</sup> The lamppost killings were a popular means of extra-judicial killings by the LTTE. In the process, they tied victims to electric poles and shot them to death with a single bullet in the head.

<sup>12</sup> Swamy, Narayan, 1994.



a special jurisdiction with regard to the protection of fundamental rights. According to the Constitution, the Supreme Court is the protector and guarantor of human rights. The court is required by Article 4 (d) not only to respect and protect fundamental rights, but also to advance them. In terms of Article 126 of the 1978 Constitution of Sri Lanka any person whose fundamental rights are infringed can seek remedies through the Supreme Court.. According to Article 126 an application must be made to the Supreme Court within one month. Furthermore, Article 17 states that a person may apply to the Supreme Court in respect of a fundamental right “to which such person is entitled”. Therefore, only a person who has suffered or is likely to suffer legal injury has the right to seek judicial redress.

Many types of cases have been entertained by the Supreme Court dealing with a “wide spectrum of matters such as admission to schools and universities, conduct of the LLB examination, compulsory acquisition of property, transfer of employees, denial of trade union rights, political victimization, torture and inhuman treatment, deprivation of personal liberty and language rights.”<sup>13</sup> According to Radhika Coomaraswamy the cases brought to the Supreme Court had common characteristics. The first is that the most frequent of cases are those pertaining to either educational or employment discrimination. Such grievances are specially relevant in a developing country like Sri Lanka where employment opportunities are limited and are tied to social status. The second area of concern is trade union action and the third area is associated with freedom of press and freedom of expression. An area, which has expanded in the past decade, has been torture and criminal procedure. However, only a few cases have been brought under the Prevention of Terrorism Act or the Code of Criminal Procedure, mainly because the Constitution of 1978 does not contain a “due process” clause.<sup>14</sup>

<sup>13</sup> Cooray, M.J.A. *An Outline of the Laws and Legal Systems of Sri Lanka*, N/P: Colombo, 1993.

<sup>14</sup> Coomaraswamy, Radhika. “The Sri Lankan Judiciary and Fundamental Rights: A Realist Critique”. *The Colombo Law Review*. Vol. 6, University of Colombo: Colombo, 1987, pp. 158-176.

Consequently, many of the cases have been dismissed due to lack of evidence or because the courts have held that acts of torture by individual officers does not amount to violation of human rights. Such trials are referred to a lower court. From 1980 to 1992 the Supreme Court has found police officers guilty of violating fundamental rights of citizens. There were eight separate cases.

The role of the Supreme Court in the protection of human rights and minority rights in Sri Lanka has been a subject of debate since 1978. Some academics and law practitioners hold the view that jurisprudence of the Supreme Court has been an establishment jurisprudence aimed at protecting the *status quo* of the establishment.<sup>15</sup> In the debate on the role of the Supreme Court in protecting human rights, Rohan Edrisinhe claims that the Supreme Court in the post 1978 era has failed in its responsibility to protect human rights.<sup>16</sup> He further argues that the Supreme Court has failed to play a dynamic and creative role in interpreting fundamental rights.<sup>17</sup> Gananath Obeyesekere who observed that many of the citizens of Sri Lanka rely on the Goddess Kali than on the Sri Lankan Court has aptly summed the role of the Supreme Court.

## Other Measures

Filing *habeas corpus*, petitions in the Court of Appeal is one method of seeking remedies to violation of human rights in connection with political violence. Article 141 of the Constitution of 1978 grants the power to issue writ of *habeas corpus* to the Court of Appeal. To file a *habeas corpus* petition, the authorities believed to be responsible for the arrest and detention of the prisoner must be identified. *Habeas corpus* petitions are filed to test the legality of a prisoner's detention. The court can issue a writ of *habeas corpus* directing the prisoner to be produced and can order an inquiry into the alleged imprisonment.

<sup>15</sup> Gomez, Mario. "Democracy, the Courts and Participatory Justice". A Seminar Paper presented at the International Conference on the Democratization Process in South Asia: Colombo, August 1992, pp. 19-22.

<sup>16</sup> Edrisinhe, Rohan. "The Role of the Judiciary in the Protection of Human Rights" in *Ideas for Constitutional Reform*. (ed.) C Ameratunge, N/P: Colombo.

<sup>17</sup> Edrisinhe, Rohan, op. cit. 1989.

If in the course of hearing a *habeas corpus* application the Court of Appeal believes that there is evidence of an infringement of fundamental rights, it should refer the matter to the Supreme Court. Between 27 of July 1988 to March 1989, 720 *habeas corpus* petitions had been filed in the Court of Appeal.

According to the General Council of the Sri Lanka Bar there were 1,500 *habeas corpus* petitions pending before the Court of Appeal in Colombo, in March 1990. During the first six months of 1989 over 400 *habeas corpus* petitions were filed. Out of 720, 320 had been disposed.<sup>18</sup> However, this procedure has not proved effective for establishing the whereabouts of the disappeared, nor has it curbed arbitrary arrest and disappearances. Besides, *habeas corpus* proceeding is often subject to delay.

Another safeguard for the protection of human rights is the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights instituted in 1986, under the Sri Lanka Foundation. The Sri Lanka Foundation Law, No 31 of 1973 states that one of the objectives of the Foundation is the safeguarding of human rights. The Commission was entrusted with the task of working towards the elimination of unlawful discrimination and the monitoring of fundamental rights.

There were several functions, which the Commission performed to achieve its objectives. The key functions were to study and prepare reports on allegations of discrimination, to review and study the legal procedure and to play a mediatory and conciliatory role. The Commission comprised not more than ten members who were drawn from several disciplines. The President appointed the Chairman and Members of the Commission. The Advisory Board to the Commission comprised the Chairman of the Sri Lanka Foundation, the Attorney General and other officials.<sup>19</sup> In addition, the Parliamentary Commissioner for Administration (Ombudsman), had jurisdiction over

<sup>18</sup> Parliamentary Debates. *Hansard* (1990), March. Department of Government Printing: Colombo.

<sup>19</sup> Goonasekere, R.K.W. *Fundamental Rights and the Constitution: A Case Book*, Open University Press: Colombo, 1988.



human rights complaints. Furthermore, cases pertaining to murder and torture could be filed in the lower courts.

## Deficiencies

There are significant deficiencies in the 1978 Constitutional provisions on fundamental rights. The first is that there is no clause to protect the right to life, liberty and the security of persons. Second, there is no due process provision in the Constitution of 1978.

Besides, there are two deficiencies based on Article 126. The first is that it provides that the Supreme Court has the jurisdiction to look into fundamental rights violations involving executive and administrative action only. The second fault of the 126 Article is that it requires a person who feels that his fundamental rights have been violated to make an application for redress within one month. The Supreme Court in Sri Lanka has stated that this one month period is mandatory and they have interpreted it very strictly. Besides Article 126 (5) provides that once an application has been made to the Supreme Court, the Court has to give its decision within two months.

The Constitution has placed certain restrictions relating to human rights in Sri Lanka. Many of these restrictions are contained in Article 15 of the Constitution. Article 15 (7) sets out the basic rule that the exercise and operation of fundamental rights are recognised by Article 12, 13(1), 13(2), and 14 and shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedom of others, or of meeting the just requirements of the general welfare of a democratic society.

Last but not least, the Special Emergency Regulations and the Act of Prevention of Terrorism Law, which are part and parcel of the counter-insurgency of the government, has limited the human rights jurisdiction of the courts. Thus, the Emergency Regulations and the Prevention of Terrorism Act (PTA) leaves provision for prolonged incommunicado detention without charge or trial in locations and conditions entirely at the direction of the Minister of Defence. All these regulations are not

currently in force. Besides, certain regulations have been amended due to pressure from human rights organizations.<sup>20</sup>

### **Government Response**

In response to pressure from donor governments and international human rights organizations, the government of Sri Lanka has agreed to undertake a variety of initiatives designed to meet its human rights obligations. In May 1989, the Minister of Higher Education appointed a committee to monitor the indictment and release of students in custody and to investigate the cases of disappeared students.

Furthermore, after 1989 the process of claiming infringement of fundamental rights has been simplified through the application of the concept of “epistolary jurisdiction”. The procedure allows for detainees to send letters directly to the Supreme Court, stating incidents of fundamental rights violations. The Supreme Court treats these letters as a notification of an intended claim and forwards them to the Sri Lanka Bar Association. If the Bar Association finds these petitions valid, they lodge a formal claim. Therefore, by relaxing its interpretation of the one month time limit the caseload increased. In 1990 over 1400 letters were sent to the Bar Association and by 1991 it increased to 1953 cases.

The government has already established various mechanisms to deal with human rights violations as follows: the Special Task Force on Human Rights (official committee), the Human Rights Task Force (HRTF), the Presidential Commission to Investigate Involuntary Disappearances and the Commission to Investigate the Kokkadicholai massacre.<sup>21</sup>

The government appointed the special Task Force on Human Rights (official committee) on the 30<sup>th</sup> of November 1990. The main objective

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<sup>20</sup> Centre for the Study of Human Rights, *Review of Emergency Regulations*, University of Colombo: Colombo, 1993.

<sup>21</sup> The task of the Human Rights Task Force (HRTF) was to register and monitor detainees. A retired Supreme Court Judge headed it.

of the said organization was to formulate and implement a strategy to meet charges of human rights violations nationwide. It was charged particularly with collecting data to meet allegations of disappearances and extra-judicial executions and helping to expedite disciplinary action against officials charged with excesses.

The Human Rights Task Force (HRTF) was set up in August 1991 under the “emergency regulations” to monitor the observance of fundamental rights of detainees. Its terms of reference was to maintain a comprehensive, accurate register of detainees, to investigate the identities of detainees, to monitor their welfare, ensure their safe release from custody, to carry out regular inspections of places of detention, record complaints and take immediate remedial action. In addition, the HRTF kept records of names of persons reported to have disappeared.

In June 1991 the government instituted an independent Commission of Inquiry into the reprisal killing of 67 villagers by soldiers at Kokkadicholai in the East. The objectives of the Commission were to ascertain whether there was a connection between an explosion, which had killed two soldiers and subsequent killing of 67 civilians nearby. It was also required to report on whether the deaths of the 67 civilians resulted from military action, or from deliberate retaliatory action taken to avenge the death of soldiers. The Commission had recommended that the military conduct warranted further investigations and trial. Consequently, the investigation by the Commission was followed by a trial before a military tribunal. In the end, the lieutenant-in-charge was convicted on the charges of failing to control his troops and disposing of bodies illegally at the site of the massacre.<sup>22</sup> In January 1991, a Presidential Commission of Inquiry into Involuntary Removal of Persons was established for one year to investigate “disappearances” that occurred after the 11<sup>th</sup> of January 1991.

On the basis of recommendation made by the report of the Presidential Commission on Youth, the government established an independent Surrender Committee with 21 district committees. By the end of May

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<sup>22</sup> Amnesty International. *“When Will Justice Be Done,”* Amnesty International Publications: London, 1994.



approximately 339 people had surrendered to committees. Furthermore, in October 1989, the government appointed a one-man committee (Jayalath Committee) comprising a retired Court of Appeal Judge, to categorise detainees and recommend which should be released, charged or rehabilitated. At the beginning of 1990, the President appointed a Commissioner – General for Rehabilitation, under the provisions of the Emergency Regulations.

Certain Emergency Regulations, which had facilitated human rights violations, were relaxed in early 1990. In mid February the Emergency Regulations 55ff was withdrawn. Amnesty International made 32 recommendations for human rights safeguards to the government of Sri Lanka in October 1991. The government accepted thirty of the recommendations. They include suggestion for better control and instruction of army personnel and police officers and prompt prosecution of criminal cases against members of the security forces, better protection for detainees and the strengthening of new human rights initiatives. The two recommendations which were not accepted by the government were as follows: to permit a Presidential Commission of Inquiry into Involuntary Removals to investigate “disappearances” which occurred before 11<sup>th</sup> January 1991 and to repeal the indemnity (Amendment Act). Since 1990, the government has allowed the International Committee of the Red Cross access to detention centres, police stations and army camps. It was as a result of the recommendations made by the United Nations (UN) Commission on Human Rights in March 1987, that the government accepted a delegation from Amnesty International in June 1991.

Beside, the government has given an assurance that members of the security forces believed to be responsible for human rights violations would be brought to justice. However, not a single case of alleged extra-judicial executions or disappearances committed in the Northeast by the security forces has been charged. A few cases have been filed in connection with incidents in the South. In 1991 at the meeting of the United Nations Commission on Human Rights in Geneva, Switzerland the government stated its commitment to prosecute members of the security forces responsible for human rights violations. The government provided a list of 14 cases to the United Nations Human Rights Committee in April 1991.

Furthermore, the government promised amendments to the fundamental rights chapter of the Constitution on 1978 to strengthen the constitutional protection of human rights and the creation of a Human Rights Commission with wide jurisdiction to document, monitor and protect human rights. However, no such legislation had been tabled until the time of dissolution of parliament in late June 1994. The government was compelled to take the above mentioned measures to assure donor agencies and aid giving countries of its commitment to the protection of human rights in Sri Lanka. According to reports from human rights organisations, the overall human rights violations in Sri Lanka have decreased sharply since 1991, but the abuse continue within the Northeast, due to the continuation of the LTTE's guerilla warfare. The violation of human rights in the context of counter insurgency policy of the UNP government became a major issue in the General Election and Presidential Election in 1994.

### **After 1994**

The People's Alliance (PA), which came to power in 1994, has taken several steps towards the protection of human rights. Soon after the general election, the government released JVP and LTTE suspects who have been in custody. The intention of releasing Tamil detainees was the peaceful negotiations with the LTTE. In 1994, the government began persecution of suspects in several extra-judicial killings and brought charges against members of the security forces.

The government has already set up three Commissions to investigate disappearances and extra-judicial killings, while paying compensation to the families of victims of political violence. Besides, the government has taken measures to disseminate knowledge of human rights by the incorporation of human rights concepts into school curricula, training in human rights was provided to law enforcement officers and the introduction of human rights as a subject in undergraduate and post-graduate studies.

Furthermore, by an Act of Parliament the Human Rights Commission was established, with wide powers relating to monitoring of administrative and executive practice and procedures. It has powers to investigate complaints of infringement of fundamental rights and to

provide for their resolution by mediation or conciliation, advisory function in relation to adherence to international human rights norms, promotion of awareness and providing education in relation to human rights. It has powers to monitor the welfare of detained persons.

Likewise, the PA government was initially committed to the protection of human rights. However, with the outbreak of Eelam war three since April 1995, the violations of human rights by the LTTE and members of the security forces increased in the North-East provinces. Besides, there were no developments in the government investigations into the mass graves at Sooriyakanda, or the grave at Ankumbura, which contained bodies of an unaccounted number of people, killed by the security forces during 1987 – 1989 second insurgency of the JVP. What is evident is that the government is confronted with a dilemma. On the one hand, it has to protect human rights due to international pressure, and on the other hand, it has to rely on the security forces to deal with the political violence.

## **Conclusion**

The prevalence of political violence is a major strain on the protection and promotion of human rights in Sri Lanka. Consequently, violation of human rights has become a part and parcel of the insurgency and counter-insurgency in the country. Hence, constitutional safeguards for the protection of human rights are futile. International pressure by the donor countries and the international human rights organizations have contributed to the monitoring and enhanced government responsibility and commitment to the protection of human rights. However, the international pressure has not been successful in relation to the violation of human rights by the guerilla organizations. Therefore, to improve human rights in Sri Lanka, the political violence in the country has to be brought to an end. This could be achieved only by a commitment of the guerilla organizations to a peaceful settlement of the conflict and willingness on the part of the Sri Lankan government to offer a genuine political settlement to the ethnic conflict and to solve the social and economic problems of the youth in the country.



# HIGHER EDUCATION, NATIONAL DEVELOPMENT AND YOUTH ASPIRATIONS

by

A D V de S Indraratna

## Introduction

Education has three segments, primary, secondary and tertiary or higher. The primary education is intended to provide literacy in reading, writing and numeracy. It is compulsory in most countries, both developed and developing, and begins at the age of five or six. In the lower departments of the post - primary schools which is also undiversified, literacy or academic oriented education is imparted. In the upper departments of the post - primary, however, the curriculum is expected to be slightly diversified with a skill component included. It is only at the higher or tertiary level, with which we are concerned in this paper, that education must be more work-based than academic oriented, and highly diversified with a vocational and professional bias.

## The Relation between Education and Development

Higher education as spelt out above is closely related to national development. National development broadly defined is the enhancement of the quality of life of the people or the nation. The connection between education and development had been traced as far back as 1776, to the concept of investment in human capital in Adam Smith's *Wealth of Nations*. However, their direct relationship found expression much later, in the second half of the twentieth century with the promulgation of the growth theory in early Neo-Classical Economics.

In these writings, economic growth was introduced as a function of two factors, labour and capital (Refer Cobb-Douglas Production Function). Human resource was implicitly included in labour, while capital comprised natural and man-made resources. The direct relationship between higher education and national development comes via this human resource development, which is simply "the process of increasing the knowledge, the skills and the capacities of all the people in a society".<sup>1</sup>

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<sup>1</sup> Harbison, F. & Myres, C.A., *Education, Manpower and Economic Growth*. McGraw Hill Book Company, New York, 1964.

According to Alfred Marshall.<sup>2</sup> “the most valuable of all capital is that invested in human beings...If one of the major goals of nearly all societies is rapid economic growth, then programmes of human resource development must be designed to provide knowledge, the skills and the incentives required by a productive economy. If one rejects the notion that investment in education must be productive, then he should be prepared also to reject the goal of rapid economic progress”.

Just as advances in technology improve the efficiency of machinery, so does higher education, the efficiency of manpower. Higher education not only supplies the manpower but also increases the productivity of the existing labour force by enhancing its skills. In economics we learn that, *ceteris paribus*, i.e., other things remaining the same productivity determines wages. It is also generally accepted that the higher the level of education, the higher the level of wages. Higher wages reflect higher productivity, and higher productivity higher economic growth. In this way too, the close link between education and economic development can be established. Education also, on its own, can promote economic growth by vocationalising and professionalising its structure to widen the scope of self-employment in an expanding economy.

This positive correlation between education and national development can be empirically seen if one compares the level of development of countries as gauged by their respective per capita GNP with the status and the level of education as reflected in the total public expenditure on education, or expenditure on higher education, as per cent of GNP, age-specific (19-24) enrolment in higher education, and science and technology (S & T) personnel available per 10,000 people.

<sup>2</sup> *ibid.* p. 13.

**TABLE 1. Indicators of Relationship between Education and Development**

1	2	3	4	5
Country	Gross National Income per capita - 2001 US Dollars	Public Expenditure As % of GNP 2000/1	Age-specific Tertiary Enrolment 2001	S & T Personnel * per 10,000 People-(1997)
Japan	35,610	3.5	48	71.1
USA	34,280	4.9	73	35.7#
Sweden	25,400	7.9 (1999/0)	70	67.9
UK	25,210	4.4 (1999/0)	60	34.2
France	22,730	5.8	54 54.0	54/0
Canada	21,930	5.5	59	36.2
Australia	19,900	4.9	63	39.1
Italy	19,390	4.7	50	21.2
Korea	9,460	3.8	78	29.0
Malaysia	3,330	6.8	28	1.6
Thailand	1,940	5.5	35	1.6
Egypt	1,530	4.8 (1997)	39 (1998/99)	7.2
Philippines	1,030	3.4	31	1.6
Sri Lanka	880	3.0	4.0 (Approx.)	2.2
Indonesia	690	1.6	15	na.
India	480	4.1 (1999/0)	10 (1999/0)	14 #
Pakistan	420	2.7 (19997)	3 (1991)	1.1
Bangladesh	360	2.5	7	na.

Notes: Years within brackets indicate the latest available

\* = S & T personnel + scientists, engineers and technicians

# = Only scientist and engineers

Source: *UNESCO Statistical Year Book*  
*World Development Report 2003*



Table 1 gives a list of 18 randomly selected developed and developing countries arranged in order of the size of their per capita gross national income. Corresponding public expenditure on education as per cent of GNP, age-specific. (19-24 or so) enrolment in higher education and S & T personnel per 10,000 population are respectively in columns 3 to 5. It is reasonably demonstrated by the data presented in this Table that lower the education expenditure, the enrolment and the number of S & T personnel, the lower the level of development, thereby establishing the relation between education and development. The top nine developed countries in this Table which have a total public expenditure on education of 4 – 8% of GNP, more than half of the age cohort population (48 – 78%) enrolled in higher education, and scientific personnel (scientists, engineers and technicians) of 20 to 70 per 10,000 people have a per capita national income of nearly \$10,000 or more. The bottom nine developing countries which have a public expenditure of between 1.6%, 6.8% of GNP, age specific tertiary enrolment of less than 40 (4 to 39 leaving out Pakistan whose data relate to 1991) and S & T personnel between 1 and 2 (except for Egypt which is reported to have 7.2) have per capita national incomes of less than US\$ 3,400. It is noteworthy that at the very bottom, Bangladesh, one of the least developed or most seriously affected countries (LDC/MSA), with a public expenditure of 2.5% and age-specific tertiary level enrolment of 7% has a per capita GNP of US \$ 360, that is less than \$ 1 per day at the poverty level.

Because of this very simple relationship between education and development, however, one must not go away with the idea that the more a country spends on education and the more the number who enroll in education, the higher the level of development would be, or there is one to one relationship between education and development. The rate of economic growth of a country depends not only upon the quantity or volume of investment but also on the composition or productivity of that investment. Similarly, the actual contribution of education to development depends upon both its volume of output and quality. That is, in other words, upon its equity, as well as excellence/

effectiveness. They must be attained with efficiency, the third attribute of good or proper education. Let me discuss them one by one.

Equity is equalization of educational opportunity to all, irrespective of class, caste, creed, ethnicity and location. If every child deserving and desirous of education has equal access to it, quantitatively as well as qualitatively, then the attribute of equity is attained. There may be, if not some, at least a few, who have neither the capacity nor the aptitude for education. Their not having access to education, does not, in my view, negate the characteristic of equity. There may also be some, who despite their capacity, may shun higher education for reasons such as their social status or affluence. Their not receiving education is similar to voluntary unemployment and does not vitiate the principle of equity either.

While equity would ensure equal opportunity of, or access to, education for all, it must be relevant and of high quality, for it to be relatively productive and to contribute substantially to national development. This is what its *excellence or effectiveness* is all about. Education is said to be excellent or effective if it fulfills its aims. In the present context of Sri Lanka, three such broad aims can be identified.<sup>3</sup>

They are:

1. To turn out mentally critical, socially responsible and economically productive citizens;
2. To develop professional, technological, technical and vocational skills to meet the man power needs of the country, and
3. To promote national harmony, political stability and social cohesion.

Excellence, in other words, demands that the type of education must be relevant to various types and groups of students so that they blossom out fully, or their talents are fully developed. It also must be relevant

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<sup>3</sup> Indraratna, A.D.V. de S., *Economics of Higher Education in Sri Lanka*. Navrang: New Delhi, 1992.

to the social, economic, political and cultural needs of the country. It must meet the manpower demand of an expanding economy.

Excellence and equity are not mutually exclusive. On the contrary, they are compatible and interrelated. Excellence can be achieved without compromising on equity, if resources are not limited. When they are limited, as they necessarily are, excellence must not be sacrificed for mere equity or catering to mere numbers, as has happened in Sri Lanka's university education in the sixties and after. A judicious balance may have to be struck between equity and excellence in order to avoid "aridity",<sup>4</sup> which may ensue if equity is pursued at the expense of excellence.

Education must also be so planned as to achieve both equity and excellence within the given resources. In other words, the resources must be most productively used in the economic sense, to get the maximum benefit or output. In simpler words, given the maximum resources that could be diverted to education, the most relevant and qualitative education must be put out which is made equally accessible to all irrespective of caste, creed, class, ethnicity, religion and location. This is what is meant by *efficiency*, the third attribute of good or proper education.

The system of higher education in Sri Lanka should have been so fashioned as to fulfil the aims enumerated above by achieving excellence and efficiency without unduly compromising on equity. It must have been linked to national development almost as an integral part of the country's overall economic plan. The education system which was inherited from the British was far from this goal. Apart from the western education in medicine, law and engineering left behind by them, higher education has been hardly vocationalised or professionalised to suit the needs of an emerging or transitional economy. It has been able to turn out the necessary personnel to man the public service replacing the British expatriates, but it has not been able to produce enough science and technology personnel.

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<sup>4</sup> Jayaweera, Swarna., *Equity and Excellence in Education*. J.E. Jayasuriya Memorial Lecture, 14 February, 1991.



Sri Lanka has been enjoying universal free education for fifty eight years, from even before independence. This has paid good dividend in raising the literacy of the people at all levels with a very high average literacy of 91% and achieving a high Physical Quality of Life Index (PQLI) of more than 80 and an Human Development Index (HDI) of 74, at present, akin to those of developed countries. But it has done so creating at the same time a surfeit of educated unemployed of more than 300,000, about 4.5% of the labour force of whom nearly one tenth are graduates, This is alongside a severe dearth of S&T personnel needed for an expanding economy, creating thereby a mismatch between youth aspirations and employment. At the same time there is also an alarming drop-out rate of 60% and 50 % after the GCE Ordinary and Advanced Level examinations respectively, and around 85% (in 2001 it was 86.5 %)<sup>5</sup> of those who qualify according to the existing criteria (eligible category) who are denied entry to university.

### What has gone wrong?

The late Dr C.W.W. Kannangara, *the Father of free Education*, could not complete the task of establishing a truly national system of education which he took upon himself during his 14 years (from 1923 – 1947) in the Legislative Council. He could not accomplish his unfinished task afterwards, as he could not enter the first Parliament in 1948. His immediate successor also does not seem to have continued with his policy either.

Then after the break-away of the Bandaranaike group from the UNP and the formation of the SLFP in 1952, confrontational politics began to enter the polity of our country. Education was one of the worst victims of this. It became politically sensitive and also highly politicized. There was no continuity of education policy even though some sort of national system of education came into being with the take-over of denominational schools and the estate schools in 1961. Education, particularly higher education, which should be linked to national development, as has been explained before, was never planned as an integral part of an overall economic plan.

<sup>5</sup> *School Censuses and UGC Statistical Handbooks.*

With the introduction of free education in October 1945 and the switch-over to national languages as medium of instruction, three months thereafter in January 1946, school enrolment increased significantly. Enrolment in government schools which was only 8,121 in 1945 has arisen to 23, 280 and 44, 457 in the following two years, an increase of 187 % and 91% over the preceding year, respectively. With these *Swabasha* students qualifying for admission to university in and after 1959, university enrolment was bound to increase several fold. In the absence of any prior planning for this increase, the government had to almost overnight elevate to university status Vidyodaya and Vidyalankara pirivenas, two ancient centres of Buddhist learning. Even these two, along with the University of Ceylon, could not cope with the continuously increasing numbers, which by 1965 had arisen to 10,723 almost seven times from its 1554 in 1947. The government then acquired the race course in Colombo and created the second Faculty of Arts in Colombo with more than 2,000 new students (which earned the nickname of *Aswa Vidyalaya*).

Because of the very slow growth of the economy since 1956, the increases in financial resources that the government could divert to University education fell far short of the requirements of the increasing enrolment. The real expenditure per capita, in fact, declined by 63% between 1959/60 and 1965/66, within a matter of six years. Soon, not only the excellence but also the equity of higher education had to be sacrificed, by restricting the number that could be admitted as a percentage of the "eligible". This had come down to 33.69% by 1969/70 in a matter of another five years and stands today at 13.25% (in 2001/2002). This problem of the lack of access to university education has become all the more severe because of the government's failure to provide adequate facilities in other tertiary, technical and vocational institutions. This has been one of the causes of youth frustration and youth unrest.

In view of the limited resources, the only way a judicious balance between equity and excellence could have been achieved was by having a proper plan for higher education as an integral part of an overall economic plan. This, the government failed to do even when it formulated the 1959-68 *Ten Year Plan* and the 1972-1976 *Five Year Plan*. Instead, it continued to solve the problems as they arose in



an *ad hoc* manner until the University Grants Commission (UGC) was established under the Universities Act No 16 of 1978.

The UGC instituted a Planning and Research Division in its Secretariat in 1980 and this Division came out in 1984 with the first Five Year Corporate Plan, 1984-1988. The Five Year Corporate Plan was closely monitored with an annual Implementation Plan revised every two years on a rolling basis. The goal of the Corporate Plan was consolidation for quality rather than undue expansion. However, with the change of government in 1994 and the appointment of a new Commission, university planning was almost abandoned. New universities began to be established due to political pressure rather than on the basis of academic considerations or socio-economic needs. In that scenario, the imperative need to revise and diversify the curricula in keeping with the changing world scene and the emerging “knowledge economy” with rapid advances in information and communication technology took a back seat.

### **Remedial Attempt in the Last Decade**

In order to bring about some continuity in education policy and programmes, particularly in respect of primary and secondary education and to coordinate it with higher education, a National Institute of Education and a National Education Commission were established in 1987 and 1991 respectively. However, due to their politicization, they too have not been able to act independently. There also has been a Tertiary and Vocational Education Commission alongside, which has been working independently of both the National Education Commission and the University Grants Commission. Because of the lack of coordination among these commissions, in addition to the entry of politics into them, there had neither evolved from them a national educational policy which could continue irrespective of the government in power, nor had any educational reforms been formulated, to specifically, among others, to take care of the large drop-out at GCE Ordinary and Advanced Level Examinations, and the large numbers denied access to university, to which reference has been already made.

Then, in 1997, several Presidential Task Forces were appointed to examine the existing systems of general and university education and



technical and vocational training and make recommendations for their restructuring. They have recommended an exhaustive set of reform proposals, spelling out actions and programmes and specifying their respective implementing agencies. We are concerned here only with the higher education reforms, namely, those pertaining to university and tertiary, technical and vocational education.

In regard to university education, there is a set of fifty proposals under nine headings. They are very comprehensive, but we are able to refer to them only very briefly within the scope of this paper. These proposals have attempted to attend to the deficiencies of the present system. Towards this end, they had among others, included reforms for curricular revision and diversification for increasing the quality and relevance of university education and for its better planning with private sector participation. Their implementation was expected to enhance the employability of graduates passing out of our universities, which is a major problem today. They also include proposals to increase the access to university education, by almost doubling the present intake to 20,000 by the year 2005, as well as the budgetary resources to 1.0% of GDP diverted to it, by 2001.<sup>6</sup>

Most of the reforms, if not all, are confined to paper up to this day. Because of the abandonment of planning in the university system to which we have already referred, no corporate plan has come out of any university incorporating these proposals. One has only to look at the figures of intake and budgetary allocation to see the bankruptcy of university planning. The intake of 11,381 of 1977 has increased only by 1.14 % to 12,144 in 2001/2002, in five years, whereas the number eligible has increased by 30.25% from 70,382 to 91,678. increasing the percentage denied entry from 83.83% to 86.75% during the same period. The budgetary allocation too, instead of doubling, has, in fact, slightly decreased from 0.53% in 1997 to 0.50% of GNP/GDP in 2001. This is without any compensatory increase of funds from outside sources. For universities have not taken the trouble to generate their

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<sup>6</sup> *University Education Reforms 1997*, The Presidential Task Force on University Education, Sri Lanka. p.2 & p. 13.

own funds by becoming entrepreneurial even slightly, as suggested in the reform package.

As in the case of university education, the Presidential Task Force on Technical Education and Vocational Training Reforms, has put forward 16 major proposals under four broad headings. One major proposal was in respect of coordination of activities of Technical and Vocational Education Commission (TVEC), Vocational Training Authority of Sri Lanka (VTA), National Institute of Technical Education of Sri Lanka (NITSEL) and National Apprentice and Industrial Training Authority (NAITA), under the Ministry of Vocational Training and Rural Development. This was to be done in collaboration with the private sector. Among other major reforms were training for self-employment, and a separate stream to enable those who have the aptitude and ability to go to degree level in technical education. Here too, nothing significant has been implemented.

In 1997, there were about 19,900 undergoing training at craft and technical level and 15,400 enrolled at 34 technical colleges and their affiliates, together making up about 35,300. This was 32,000 in 2001 thereby indicating that the annual intake has remained more or less the same. This is not surprising in view of the constant budgetary allocation in money terms to technical and vocational education. In fact, the quality would have even suffered because of the considerable fall in the real expenditure per capita.

Higher education does not seem to have been given high priority by the new government which assumed office in December 2001. Nor do the higher education reforms proposed by the previous government, referred to above, seem to have been taken serious note by the new government. In the meantime, there has been a build-up of the educated unemployed over the years. It stands today at around 300,000, 10% of whom are graduates.

### **Mismatch between Employment and Youth Aspirations**

As shown above, the quality and relevance of education has suffered due to several reasons such as the slow expansion of the economy, the lack of planning of higher education to attain its aims as set out

earlier, the significant decline in the allocated budgetary resources per capita in real terms, and the absence of a continuous national policy due mainly to confrontational politics and the politicization of education including the consideration of party loyalties in the appointment of heads of institutions of tertiary education and training. The universities also have been very slow to change and to adapt themselves to emerging needs of a knowledge-based economy in a globalised world.

University admissions or establishment of new universities have not been on the basis of socio-economic needs but very often due to political pressure. Private sector needs or man power demand have not been given due consideration in either admission to different courses or planning and revision of curricula. The net result was the turn out of a surfeit of arts graduates from the universities who could not find employment both due to lack of jobs in the government sector and unwillingness of the private sector to employ them because of their inability to meet private sector challenges. This naturally caused frustration in them. They have entered the university hoping to secure a job at the end of their university career, and their inability to find one naturally caused frustration in them.

Then there are those who were “eligible” for entry but were denied admission due to specified quotas mainly in the professional courses. This too caused frustration. There are also large numbers dropping out at the O Level and the A Level examinations. In 2002, nearly 90,000 failed to qualify for university admission at the 2001 A Level examination. Then there is also a larger number, a 60% drop out at the O Level. Only a small percentage of these drop-outs find places at technical or vocational training institutions as we have pointed out earlier. They too join the frustrated unemployed youth. This frustration was, in fact, one of the root causes of the youth insurrections, which Sri Lanka had suffered in the past, and this volcano with nearly 300,000 estimated educated unemployed, about one third of the labour force is the largest segment of the unemployed, may erupt at any time, even in the future. The governments have been trying to alleviate the situation from time to time by having management training and graduate training schemes and graduate employability schemes like the *Sarasaviya Saviya* of the Ministry of Employment and Labour. These would not be enough. It is only scraping the surface of the problem.



There must be proper planning of the economy with higher education plan as an integral part of it. Higher education must meet both man power demand generated by the economy as well as promote self-employment by its professionalisation and vocationalisation to add further stimulus to a growing economy, rather than turning out people, sometimes even with training, for jobs that do not potentially exist. When we graduated from the universities in the early fifties, there were plenty of job opportunities to meet with our aspirations. It is no longer the case. Many graduates when they pass out of the universities today, particularly those with Arts-based degrees, meet instead with frustration.

### **Higher Education and Employment**

Higher education must be demand driven. It has to create the supply to meet the man power demand. With the growth or expansion of the economy the demand naturally increases, and as we stated at the beginning, higher education contributes to growth by providing the necessary skills demanded by the growing economy. It can also contribute to growth by enhancing and updating the skills of the existing labour force by providing technical and vocational training. In addition, as we indicated before, higher education, particularly technical and vocational education, can impart skills or training for self - employment (plumbing, welding, masonry, carpentry, electrical wiring, mat weaving, pottery, wood carving and other cottage and house craft), in this instance supply creating its own demand, adding further stimulus to economic growth.

For higher education to do all these, education must be of high quality and relevant to the emerging needs. It must be diversified and work or skill-oriented rather than academic - oriented. By this, we are not saying that humanities should not find a place in universities. What is emphasized is that, even those in pursuit of humanities, must be oriented to meet the present day needs of the private sector with good communication skills, such as proficiency in English, and literacy in computing. In this context, the IRQUE Project (Improving Relevance and Quality of Undergraduate Education) launched in June this year,

funded from a World Bank Loan of US \$ 40.3 million to strengthen IT skills and English proficiency of future undergraduates as well as to improve study facilities on campuses is commendable. It is hoped that this support of the World Bank will be effectively utilized to reap the desired goals of the project and not allowed to befall the same fate as of many such projects in the past.

Regular revision of curricula, diversification of courses to meet the challenges of globalisation with rapidly advancing IT is a must. For higher education to be demand driven, an indication of man power requirements must be given to the tertiary institutions of education and technical and vocational training. For this, some authority like the Human Resource Development Council (HRDC) should be entrusted with the task of preparing man power plans on a rolling basis. There also must be linkages between higher education authorities and the private sector, to ascertain private sector requirements and plan courses and curricula to meet them. After all, the private sector is the major prospective employer of graduates in arts, commerce and management studies as well as the products of technical colleges in commerce and business studies.

The higher education, as it is today, cannot fulfill the tasks, I have discussed above. Implementation of reforms is necessary, in both University Education, Technical and Vocational Education and Training. Already, there are two sets of reforms (in addition to the one on General Education) relating to these two sectors. In my view, they are a very good starting point. They have to be examined for their relevance to meet the challenges faced by the “Regaining Sri Lanka: Vision and Strategy” for accelerated development. They should not be sidetracked or pigeon-holed merely because they were formulated by the previous government.

While reforms are being undertaken to improve the quality and relevance of higher education, to enhance the employability of its output, I may suggest another remedy to reduce the youth frustration due to large “eligible” numbers being shut out from universities. The requirements for admission to our universities have been pitched very low at 45% of the total aggregate mark due to political pressure. Naturally a large number becomes so - called “eligible” even though they may not be very deserving of university education. The eligible mark for admission to recognized universities of other countries is



much higher.<sup>7</sup> If Sri Lanka fixes the entry requirement initially at a modest 50%, that is only 5% more than now, the number qualifying will be less. To that extent, the frustration due to the denial of entry to those who have become eligible will be less. On the other hand, this would ensure that only those who really deserve and have an aptitude for university education enter its portals and the quality of the university education (with less drop-out etc.) would also improve as a result. Although this has been suggested even a decade before,<sup>8</sup> the UGC has not been able to implement it due to political pressure.

Education should be above party politics. There should be a national policy of education which should have continuity. To this end, University Grants Commission, National Education Commission and the Tertiary and Vocational Education Commission must be completely independent of political interference with their Heads appointed by the President on the recommendations of the Constitutional Council. They together must formulate a national educational policy, which once accepted by parliament, must be followed by all governments irrespective of the party in power.

Above all, there must be adequate resources coming into higher education, to implement the reforms, making it excellent and relevant to the needs of the time and linking it to country's development goals. 2% of GDP is about the minimal required for higher or tertiary education, at least half of which should come into university education. In the same breath, I must admit that it would not be possible for the government to increase its present grant by so much as to almost double it until the economy has taken off and is on a path of long-term sustained growth. Higher educational institutions themselves must become a little entrepreneurial and generate their own funds, in addition to whatever resources are put into higher education by the private sector. But the irony is that for the economy to have sustained growth, a relevant and efficient education system is a necessary condition. It is one of the determinants of productivity, which has been specified as one of the four challenges which have to be faced by the Regaining Sri Lanka Strategy and Vision in order to attain its goal of sustained growth of 8-10%.<sup>9</sup>

<sup>7</sup> Indraratna, *op.cit.* Table 6,5 p. 65

<sup>8</sup> *ibid.* p. 58

<sup>9</sup> Government of Sri Lanka, *Regaining Sri Lanka: Vision and Strategy for Accelerated Development*, May, 2003.



## FROM ELITE RULE TO REGIME CONTROL: THE CRIPPLING OF DEMOCRATIC INSTITUTIONS AND STRUCTURES IN SRI LANKA

by

Sisira Pinnawala

### Introduction

The majority of countries that were under colonial rule plunged into turmoil and dictatorships took over in a very short time after they gained independence. Sri Lanka was an exception and was considered a model democracy in the Third World. It was common for the analysts of post - colonial societies to cite Sri Lanka as a model democracy in the Third World countries for a number of reasons. The country was relatively peaceful though there had always been ethnic competition and conflict. Violent class conflict was not a serious concern in the post - colonial Sri Lankan polity though an organized trade union movement existed since the colonial days. However the most important reason that made Sri Lanka an exception in the former colonies of the Third World was the liberal democratic tradition that it managed to maintain since independence until recently. The situation began to change in the 1960s which first saw signs of liberal democracy faltering in the country. Press freedom was one of the first areas that were affected with the taking over of the largest and the oldest newspaper publisher by the government in the mid sixties. The country experienced two left wing insurrections, one in 1971 and the other during 1987-90 period which is by far the bloodier of the two. Today the ethnic conflict has developed into a civil war. Other forms of organized political violence, as manifested by the proliferation of election related violence, have become a common feature in the conduct of mainstream i.e., parliamentary politics as well. The public service which was relatively independent in the early days is largely controlled today by the regime in power and that has affected not only day to day decision - making but also long term policy. Even the judiciary is under strain with politicians instigating threats and intimidation against judges who decide against the ruling regime and its politicians. Civil society actors have been made ineffective by strict controls of freedom of expression and raw violence organized by politicians. Though one could not say that the country has fallen to the levels of Latin American dictatorships it certainly is moving in that direction.

The crisis the Sri Lankan society is going through today was perhaps not something that was conceivable in the early days of the post - independent Sri Lanka. Therefore, it is not surprising that Sri Lankan analysts in early days were either focusing on minor hiccups of liberal democracy in the country (Jupp)<sup>1</sup> or not paying any attention to the phenomenon at all. The main problem affecting the Sri Lankan polity for them was, which would have indirect repercussions on liberal democracy of course, the ethnic issue. However in the nineties we witness some interest among Sri Lanka analysts to focus on the failure of liberal democracy in Sri Lanka. Decline of democracy in Sri Lanka is examined in an article by Mick Moore<sup>2</sup> in which he discusses the principal causes and the process that led to the decline of democratic traditions in the country. His argument is in line with the general view held by many others of the situation. In this brief article he claims that the success of liberal democracy in the country during the early period was due to the role played by the post - colonial elite that had the control of the polity. His explanation for the decline therefore naturally rests on the decline of the role of this elite class in politics. Moore in addition refers to activities of individual politicians too for causing the deterioration.<sup>3</sup> While accepting his basic assumptions and premises as well as the essence of his argument, I wish to differ in the explanation of the failure of liberal democracy in Sri Lanka. I propose that the decline of democracy in Sri Lanka needs to be explained primarily in terms of some unique developments that took over the institutions of liberal democracy in the Sri Lankan context, especially the party system.

The argument I wish to develop is, that the crisis of democracy in Sri Lanka was inevitable, as the social context of post - independence Sri Lankan polity in general was not conducive to successful working of liberal democracy. Even when liberal democracy was operating in the first few decades<sup>4</sup>, it was operating in an limited and artificial environment. Firstly, Sri Lanka did not have the necessary social ethos, traditions and structures to support the liberal democratic institutions it

<sup>1</sup> J., Jupp. *Sri Lanka: A Third World Democracy*. London: Frank Cass, 1978.

<sup>2</sup> M., Moore. "Retreat from Democracy in Sri Lanka?" *Journal of Commonwealth and Comparative Politics*, Vol, 30, no 1, pp. 64- 84, 1992.

<sup>3</sup> M., Moore. *op. cit.*, pp. 73-75, 1992.

<sup>4</sup> M., Moore. *ibid.*, 1992; J., Jupp. *ibid.*, 1978.



inherited from the British. Secondly, some later developments that were results of some of the inherent characteristics of Sri Lankan social organization led to the transformation of democratic institutions, particularly the party system, into a system of patronage politics based on primordial attachments and loyalties. This destroyed its ability to be an instrument of secularism and a mobilizer of socio-economic interests - the two most important elements that are fundamental to the success of liberal democracy. The above transformation in the party system led to the development of political party based identity among the citizenry, an identity that closely resembles kinship and other familial and communal identities. These developments in the operation of the party system in turn resulted in political parties operating as any other form of primordial nodes such as kinship organization in society. The political parties becoming primordial like groups defeated the original purpose of the party system and the results are the undemocratic developments that we see in the country today. It finally resulted in regime actors taking over the control of the State and transforming the control/rule of society by the State into one of a regime control. The decline of the political influence of the westernized elite who took over the control of the country after it gained independence<sup>5</sup> and the consequences of wider social transformations in the 1950s and 60s need to be understood as part of the above development.

The patronage system based on political party organization therefore is the major cause of the failed democracy in Sri Lanka. Political violence that has become the defining characteristic of Sri Lanka's parliamentary politics today also needs to be understood as part and parcel of this situation. The main cause for the failure of democracy in Sri Lanka therefore is in the evolution of one particular institution of democracy itself, namely the party system. Political party system in Sri Lanka has been taken over by local ethos, traditions and structures making it evolve into a system of organizations with some features that are unique on the one hand. On the other, certain political developments and the actions and policies of individuals and governments also contributed to the failure. The actions of individual

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<sup>5</sup> M., Moore, *ibid.*, 1992.



political leaders<sup>6</sup> and processes that were harmful to democracy<sup>7</sup> also contributed to the above transformation of the party system. This process of *localization of the institutions of democracy*, i.e., how the party system came to be reformulated and reconstructed under the influence of the local ethos and traditions is the root cause of the failure of liberal democracy in Sri Lanka. In my examination of these developments, I shall first provide a brief account of the political developments that led to the decline of democracy in Sri Lanka with special reference to Moore<sup>8</sup> and Jupp<sup>9</sup> with my own interpretations. My dependence on the former is partly due to the fact that his is the first attempt (though short) to study this problem and partly due to his correct reading of the process. In the second part of this article, I shall attempt to explain the localization of democratic institutions, particularly emergence of a system of dependency based on political power thus turning political parties into networks of patron - client relations.

### **Elite Rule and Liberal Democracy in Sri Lanka**

Liberal democracy was part of natural social development in Europe and emerged partly as a political response to monarchic despotism. The colonial countries of the Third World on the other hand inherited liberal democracy as part of their colonial heritage. For them it was only a mechanism of political administration and not an ideology that is part of their own social traditions. Sri Lanka was no exception to this though she managed to maintain a *working liberal democracy* longer than many other former Third World colonies except for India. However, as I have stated in the foregoing, eventually the liberal democratic system began to collapse in Sri Lanka under the severe socio-political strain it continued to experience since independence. During the period when liberal democracy appeared to be working in Sri Lanka, it was solely due to the domination of Sri Lanka's political

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<sup>6</sup> M., Moore, *ibid.*, 1992.

<sup>7</sup> J., Jupp, *ibid.*, 1978.

<sup>8</sup> M., Moore, *ibid.*, 1992

<sup>9</sup> J., Jupp, *ibid.*, 1992.

scenario by a westernized group of elites. The working of liberal democracy in Sri Lanka during these early days therefore cannot be understood without understanding the hegemonistic control they had on Sri Lankan polity.

The post - independence Sri Lankan polity was characterized by liberal democratic politics, the prime operators of which were a group of elites who were the product of the British colonials. Colonial elites and their domination in post - colonial politics are not unique only to Sri Lanka. They were a main feature in most countries that were under colonial domination, especially the British. As in the case of many other former colonies, in Sri Lanka too, the post - colonial elites took over the administration after the colonial masters left. What is different in Sri Lanka however is the way they took over the administration and most importantly, the way they conducted their politics. Unlike in the majority of the countries that gained independence after popular agitations and rebellion, Sri Lanka was granted independence by the British without any confrontation. It was a gradual handover of power through consultation and compromises between the elites and the British rulers. As a result there was no mass involvement in the *liberation* process (there was no liberation struggle) that could unite the masses and the elites in one polity. The independence was handed over to the above elite group and the politically operational group of post-independence Sri Lanka continued to be dominated by them. The masses were largely passive bystanders in politics and there was no politically effective and meaningful interaction between the masses and the elites in the conduct of liberal democratic politics in the early years of post- independence Sri Lanka. The fundamental characteristic of Sri Lanka's liberal democracy during this period was, therefore, its total dependence on the elite group.<sup>11</sup> Functioning of liberal democracy in Sri Lanka during the period needs to be seen in the light of this elite hegemony.

The elites ruled the post - independence Sri Lanka was a composite group of people drawn from various ethnic, caste and religious

<sup>10</sup> M., Moore, *ibid.*, 1992. J., Jupp, *ibid.*, 1978.

<sup>11</sup> M., Moore, *ibid.*, 1992.

backgrounds. However, there was unity on the basis of common characteristics such as the English education, westernized values and ideology. Another important factor that united them was kinship that often crossed ethnic and caste boundaries.<sup>12</sup> They were the Brown Sahibs or coloured gentlemen of the British mould. Though they were united politically against the British occupation, there were divisions and problems underneath this unity. For example, Tamils and the Sinhalese were always in competitive confrontation while maintaining a united front only when dealing with the British. There were also divisions on the basis of the power base of the elites that naturally extended to ideological differences as well. The post - colonial elite group in Sri Lanka may be divided into two in terms of their resource base. One was the traditional elites who were mainly land owners who maintained a very loose and one way patron - client relationship (the dependency was in one direction) with the masses in the periphery as previously mentioned. The other was the educated professionals, who came from the first group mainly yet not exclusively. Though this second group shared many things including western values in common with the first group, they were ideologically more socialist and leftist. The second group was in politics through the trade union movement. Still their politics was also characterized by a patron - client relationship similar to the above, and this time the clients were the workers. Under the middle class nature of the trade union movement in their formative years<sup>13</sup> and the nature of the workers whom they organized<sup>14</sup> such development was not surprising.

This fragile and superficial unity among the elites and the lack of interaction between them and the masses were the defining features of early liberal democracy in Sri Lanka. They are two sides of the same coin. The causes that created unity within elites, namely, the English education and the western values, in turn created a vast socio-cultural and political gap between the elites and the masses. On the one hand, they were the nobles while the masses were the yeomen

<sup>12</sup> J., Jiggins, *Caste and Kinship in the Politics of the Sinhalese 1947 - 1976*, Colombo: K.V.G. de Silva and Sons.

<sup>13</sup> K., Jayawardena, *The Rise of Labour Movement in Sri Lanka*, Duke University Press: Durham.

<sup>14</sup> M., Roberts, *Labour and the Politics of Labour in the Nineteenth and Early Twentieth Centuries, Modern Ceylon Studies*, Vol. 5, no. 2, pp. 179-208.



who served them. On the other, the elites were the cultured and the refined and the masses were the uneducated and the uncultured. It must be noted here that though there was no politically meaningful interaction between the elites and the masses, there was an important link connecting the two groups with one another. There existed patronage links binding them together and in these links the relationships were entirely top down and the client masses, were the passive partner. This top down and one way linkage is evident from the existence of 'voter blocks' for the candidate from the elites in the periphery where there were plantations owned by the Colombo elites. The elite patrons could influence the voting of the masses in these voter blocks but the clients did not have any influence over the political actions of the elite.

Elite hegemony, therefore, not only characterized the fragile nature of the elite dominated politics in post - independence liberal democracy but also it is one of its major weaknesses. It also raises an interesting question about the liberal democracy in Sri Lanka during the early days. It is valid to re-examine the commonly accepted assumption about the success of post - independence liberal democracy in Sri Lanka and to see whether it was a reality or something that only had a superficial<sup>15</sup> existence. There was no mass based liberal democracy operating in Sri Lanka but a liberal democracy operating within a small space and limited environment. At the same time it must be said that contrary to the popular view, there was no fully fledged liberal democracy among even the elites. Analysts of democracy in Sri Lanka during the period tend to assume that the post - colonial elites were fully liberal and democratic.<sup>16</sup> But many important values of liberalism were absent in them. For example, the elite did not seem to believe in equality. Elites were a mixed group in terms of caste, ethnicity and religion with established cross group social relationships, yet they were parochial in their ideological orientations in many ways. Caste was very important for them in most activities including politics and so was kinship.<sup>17</sup> Yet the most important is their lack of sensitivity to matters

<sup>15</sup> Moore seems to be holding a similar view with regard to the situation. He (Moore 1992) mentions this but does not go into details.

<sup>16</sup> M., Moore, *ibid.*, 1992.

J., Jupp, *ibid.*, 1978.

<sup>17</sup> J., Jiggins, *ibid.*, 1976.

relating to ethnicity. The breakdown of the National Congress, the introduction of the Citizenship Act, the Act that led to the disfranchisement of people of Indian origin and the Sinhala only language policy are some of the many examples in this connection.<sup>18</sup> There is evidence that equality was not part of their repertoire of political values too. One could even argue that the only reason that they are different from the elites in South Africa during the apartheid regime is that this group was not openly racist. There was no institutionalized racism but the way the elites treated the Tamil plantation workers can be seen as bordering on such levels. During the period the Tamil plantation workers were barred from political participation, and liberal democracy was limited mainly to the elites who were the operators of Sri Lanka polity. The Sinhalese and Ceylon Tamil masses were not barred from political participation through institutional measures but the way the elite - mass relationship was organized did not allow for effective and meaningful participation of them in the political decision making process. Therefore, one could be justified if one were to ask whether there was liberal democracy in South Africa in the days of apartheid because it also had regular elections and separation of powers.

There are two causes that contributed to the decline of the above elite hegemony. The first is the weak unity in the elite society. The unity among the elite was mainly on the surface only. There were no strong political interests or historical bonds binding them together. The common bond was westernization in terms of culture and social status. Though there were cross group social relationships that were the result of social interaction caste, ethnicity and race were strong dividing factors in the elite society and there were no political interests overriding these parochial loyalties. Unlike in India, there was no anti - colonial struggle in Sri Lanka and this also was a factor which contributed to the weak unity among the elite. The second is the social and political gap that existed between the elites and the masses. The masses were not only non party to active politics during the period of elite hegemony but also

<sup>18</sup> Some analysts believe that the disfranchisement was the result of the fear that existed among the elite of a possible emergence of a strong left movement that could challenge their hegemony. But I believe the role played by the ethnic factor should not be discounted, at least for the Sinhala elite.



the relationship between them and the elite was characterized by a form of linkage with elements of *patron - client relationship* in which the rural masses, especially those who are from the areas of economic presence of the elites (plantations and estate), considered the elites as their benefactors and treated them with due respect. It must be mentioned here that this situation was not patron – client relationship in the classical sense as there were neither significant economic dependency nor exploitation involved. It was mostly a cultural expression of dependency. There was complete elite indifference towards the masses and their needs. Masses were taken for granted in politics and the decisions on their destiny were considered the divine right of the elite. The relationship between the post - colonial local elites and the local masses was similar to the relationship that existed between the colonials and local elites during the pre-independence era. The lack of an anti-colonial struggle may be cited as one contributing factor for the situation as stated earlier. Unlike in India, independence was entirely an achievement of the elites. This situation, i.e., the gap between the elites and the masses and the elites' indifference to their interests and the needs provided the opportunity for a shrewd and versatile politician called SWRD Bandaranaike to come forward mobilizing the unmobilized masses. The arrival of Mr. Bandaranaike on the Sri Lankan political scene heralded the crisis in the post - colonial elite hegemony.

The very significant role Mr. Bandaranaike played in creating the crisis in elite society, can be understood by looking at the role he played in turning the hitherto inactive (unmobilized) rural masses into active participants and bringing them into the political mainstream. His message of socialism carefully blended with Sinhala Buddhist ideology was very effective and was readily received by the rural masses that had been neglected by the leftists and taken for granted by the post-colonial elites. The socialist slant of the message was acceptable also to the working class as well. On the basis of his nationalist cum socialist platform he could form a new alignment of, as he himself called it, the five great forces, namely, the priests, native physicians, teachers, farmers and workers covering the whole political landscape of Sri Lanka. As a result, Sri Lanka's politics became effectively peoplized. Mr. Bandaranaike's arrival is a revolt within the elite community but



its subsequent development led to serious social transformations. This heralded the beginning of the end of Sri Lanka's elite hegemony in politics. Further, with Bandaranaike policies, both nationalist and socialist, Sri Lanka was embarking on a path that had greater repercussions in society. They were to be responsible for a large scale social transformation in terms of class alliances and ethnic relationships in Sri Lankan society. In this sense Bandaranaike's arrival not only heralded the beginning of the end of elite hegemony but also beginning of a wider structural crisis in Sri Lankan polity.

### **The Beginning of Regime Control: Liberal Democracy under Strain**

The election of Mr. Bandaranaike with the help of a coalition of the left parties and the nationalist forces in 1956 ended the hold traditional elites had in Sri Lankan politics. The new political force that supported Bandaranaike was a mixture of nationalists and leftists. They also had their roots mainly in rural Sri Lanka. Bandaranaike's socialist ideals and his political obligations to his diverse political base are manifested in the policies and actions that followed. He requested the symbolic presence of British forces to be withdrawn from the country, something he always demanded as part of his vision of a fully independent Sri Lanka. He nationalized public transport and the ports which were in accordance with the socialist policies he espoused. His obligations to the newly mobilized electorate of the rural middle class and the poor, which on the whole was driven by his nationalist vision, resulted in the Sri Lanka polity moving away from secular politics which was broadly a feature of the traditional elite politics. A careful examination of subsequent events reveals that some of the developments that contributed to the deterioration of democracy are unintended results of Bandaranaike policies. It could be argued, that though Bandaranaike was a social democrat of the European mould in political orientation, two of his policies later became forces that challenged liberal democracy in Sri Lanka. One is his policy of nationalization and the other is localization and indigenization. To understand the adverse results of these, we need to examine the politicization of government apparatus and the deterioration of inter ethnic relations, particularly those between the Sinhalese and Tamils, in the years that followed.

Nationalization is not an anti liberal democratic policy. Nationalized structures, though they have lost their attraction and are gradually disappearing, are still part of many western democracies. But in Sri Lanka nationalization today has become a part of political patronage structure. It is today the principal means of distributing political favours, i.e., jobs and positions, to supporters of the party that is in power. I am not arguing that distributing political favours was not present in Sri Lanka prior to the introduction of policies of nationalization. Neither am I claiming that liberal democracies are completely free of patronage and political favours. The argument I wish to present here is that the nationalization of private enterprises helped and expanded doling out political favours in Sri Lanka and is the forerunner to a more wider and harmful development of politicization of the State apparatus. The nationalized establishments gradually became employment agencies and no ruling party considered that there were moral issues involved in using public sector agencies to give away favours to their own supporters. Therefore, the ethics of not using State apparatus for personal political gain was broken as part of the nationalization process. This was of course not widely practised during the period of Mr. Bandaranaike. But it became more or less part of accepted governmental policy later during the period of Mrs. Bandaranaike, who further expanded the nationalization policy with the coalition of the left parties she assembled. As seen from the developments later, especially after 1977, nationalized industries became more like private property of the regime in power, and particularly of the minister who was in charge. It is this politicization of the State agencies or more accurately, subjugation of them to the control of the regime in power that had harmful effects on liberal democracy in Sri Lanka.

### *Politicization of Society and Bureaucracy*

The entry of politics into public sector agencies through the interference of the regime in power expanded with nationalization. In the sixties more private enterprises came to be nationalized. This included petroleum distribution, a section of the press and several other business establishments. In the seventies under the land reforms large privately owned plantations as well as private holdings over fifty acres were taken over by the government. The large estates were retained by the



State that directly managed them while mainly smaller holdings were turned into co-operative farms under government supervision. They, especially the co-operative farms, became *de facto* properties of the ruling group that used them at their will to provide employment opportunities for their supporters. Further, with a contracting economy and a private sector made virtually ineffective through nationalization and strict State controls, the nationalized agencies and the public service became the main sources of employment in the country. Coupled with rising unemployment levels among the educated youth, a powerful vote block, the governments had no other means than using the government sector establishments as the source of employment generation and providing employment, with priority given to the supporters of the party in power. Under the circumstances, it was only natural for the new political ethics of using nationalized services to dole out employment to their own people to expand into other areas of government, thus starting politicization of the whole State sector. The result was the emergence of the practice of providing employment in the State sector to supporters and loyalists of the ruling party.

Politicization of the State sector began in earnest under Mrs. Bandaranaike who was then in a coalition government with the left. It was she who introduced land reforms and nationalized the estates. There were several other policy measures under her that affected the public service negatively thus destroying its independence. On the urging of the left partners, she also introduced what was called *People's Committees* to oversee development work and *Worker's Committees* to supervise the work of State agencies, mainly nationalized enterprises. This was an extreme move in the direction of socialism and was not much different from appointing informal *political commissars* to have control over the public service and administration. The people who were appointed to these bodies were minor party officials or long term and loyal supporters of powerful politicians. Though this practice was later abandoned, by that time it had managed to further legitimize the interference of the regime in the public service by establishing a new precedent. The other development that led to political interference in the public service and affected its independence was the introduction of the directive requiring the approval of the local MP of the ruling party, or that of the defeated candidate, for jobs in the clerical and



similar services in the State sector. Transfers and promotions in the public service also gradually became part of the patronage structure during the period. The formal abolition of the Public Services Commission and the Judicial Services Commission by the 1972 Constitution removed all obstacles to regime interference in the public service including the police service. However, it must be also said that there was still no widespread interference by the higher level regime actors in the core of the State services during the period of Mrs. Bandaranaike. That came only later after the elections in 1977 that defeated Mrs. Bandaranaike and brought in Mr. J.R. Jayewardene into power. With this began the most destructive era, destructive not only in terms of its harmful effects on democracy but also in terms of the material and social destruction it created in Sri Lankan politics that put an effective end to liberal democracy. To understand these developments further, it is useful to examine the other development in the post-elite politics we stated earlier which is the de-secularization of Sri Lankan polity.

### *De-secularization of Sri Lankan Polity*

The crisis in the elite that brought Mr. Bandaranaike into power had a very significant impact on the Sri Lankan polity. Though the post-colonial elites were not completely free of parochial and communal ideologies (there was caste factor and ethnic factor always deciding individual election campaigns) these were not determinants in the broader political alignments. For example, until 1953 the UNP, which is the party formed by the post-colonial elites, resisted the pressure from various quarters to proclaim Sinhala as the official language of the country and give pride of place to Buddhism which is the religion of about 70% of the country, unlike the platform on which Mr. Bandaranaike fought the election which was rural and parochial. The leadership and the masses that supported Mr. Bandaranaike could get him to agree to a position that clearly favoured the majority Sinhalese<sup>19</sup>.

<sup>19</sup> This is not to claim that Bandaranaike was a communal politician. He was far from it. It is clear that when he agreed to the policy of making Sinhala the official language of the country he was not seeing it as a way to make Tamils the second class citizens of the country. His attempt to introduce an arrangement bordering on federalism to solve the ethnic crisis in Sri Lanka immediately after he came into power is evidence of his liberal views. However, he became a victim of circumstances and could not realize his vision.

The trend that was set with this led to gradual deterioration of the situation of the Tamils in mainstream politics. Protests by the Tamils which were always peaceful and backlashes from the Sinhalese which were often not, started taking the ethnic politics down a spiral. The 1972 Constitution brought in by Mrs. Bandaranaike with the agreement of her left partners constitutionally established the hegemony of the Sinhalese thus formally ending secular politics in Sri Lanka. The other measure that was introduced during the period that seriously challenged the democratic tradition of the country and tested the Tamils to the limits was called standardization of university admissions.<sup>20</sup> It proposed to rectify the imbalance in university admissions that allegedly favoured the Tamils, mainly in science - based disciplines, by introducing higher admission requirements for the students who sit for the university entrance examination in the Tamil medium. Though this may have some justification from the rural Sinhala point of view which was the power-base of Mrs. Bandaranaike, it was totally against the democratic values and further distanced the Tamil community from participation in Sri Lankan polity thus adding to the deterioration of liberal democracy in Sri Lanka.

The 1972 Constitution could be seen as directly contributing to the deterioration of secular Sri Lanka polity not only by the majority dominant constitutional structures it established, but also in the way they came to be introduced. The Tamil political parties boycotted the constitutional making process from the beginning thus making it an exclusively Sinhala product. The fact that the protests of the Tamil leadership were not considered, was itself an indication of a society that was not going to be one that is ethnically fair minded in the future. The 1972 Constitution removed the protection thus far the minorities were enjoying under the first Sri Lanka Constitution of 1947. The argument of the creators of the new Constitution was that the presence of such protections was indications of non-secularity of Sri Lanka. They also argued that the new Constitution taken in its entirety was more secular than the previous one and did not have any adverse

<sup>20</sup> C.R., de Silva. (1974) "Weightage in University Admissions: Standardization and District Quotas in Sri Lanka 1970 - 1975," *Modern Ceylon Studies*, Vol. 5, no. 2, pp. 151-178.



clauses damaging to minorities. This was not acceptable to the minorities who boycotted the whole process of constitutional making in the seventies. Their exclusion, though that was by their own volition, indicated to an emergence of a serious rift in ethnic terms and the dissatisfaction of the minorities. It also told in no uncertain terms of the direction the polity was moving. It must be noted here that all political protests by the Tamil minority in Sri Lanka were not carried out by keeping away. They protested also through confrontation in many other situations. For example, there were protest rallies and agitations against the new constitution. De-secularization that was moving fast by this time also contributed to the decision by the Tamils not to take part this time in the constitution making process. The shifting of Tamil political protests from Colombo to Jaffna that started during this period is also part of this new development.

In addition to the above constitutional and administrative measures that led to de-secularization of Sri Lankan polity, there were several other developments that contributed to de-secularization in the sixties. One important development in this area was in the moves to give Buddhism the status of favoured religion in the country and its subsequent repercussions. In 1957 a State sponsored grand event was organized to celebrate 2500 years of Buddhism in the country. With that began government sponsorship of Buddhism in the form of financial support and other forms of patronage. To take advantage of the situation Buddhist societies began to emerge in many State institutions and for a Sri Lankan being a Buddhist became one informal yet important qualification for special treatment. In the seventies a new system of holidays that were based on the Buddhist calendar<sup>21</sup> were introduced. Buddhist religious ceremonies came to be accepted as part of all State functions. In the late seventies and eighties the preferred position given to Buddhism was further enhanced constitutionally as well as by policy decisions. For example, the 1978 Constitution established Buddhism as the State religion. It also created a cabinet position for Buddhist affairs. The establishment of a cabinet position for Buddhists later led to other religions demanding for similar cabinet recognition leading to appointing of ministers responsible for affairs of

<sup>21</sup> This was abandoned after about two years mainly due to practical problems.



the other three leading religions, namely, Christianity, Islam and Hinduism. It was however more symbolic than something of practical value in the latter cases and did not affect the place Buddhism attained as the preferred religion in all State affairs.

De-secularization was moving fast not only at the level of policy. There was also change in the whole social outlook. This was evident from two important developments that came to dominate the lives of the citizens during the period. The first one of these is that of society becoming less and less tolerant in general and of minority demands in particular. Ethnically determined attacks began to be a regular and severe feature. One could even say that they came to be taken for granted since the late 1970s. The society was becoming less tolerant of opposition, both ethnic and political, and violence became a feature during elections since the 1977 election, which for the first time saw pre - election violence as well. At the same time the Tamil political movement also was becoming more and more violent in practice and more and more communal in expression. The culmination of this was the ethnic riots in July which was unprecedented in scale and intensity in Sri Lanka. The second development in this direction was political leaders, especially Sinhalese political leaders, becoming more and more dependant on Buddhist rituals for invoking blessings on them. In the late eighties and early nineties, for example, holding *bodhi poojas* became part of the political patronage structure with some very powerful politicians becoming the principal sponsors and beneficiaries of these events. The establishment of non-secular society was complete.

### *Breakdown of Civil Society and Violence in the Conduct of Politics*

The other major threat to Sri Lanka's democracy came from changing civil society relationships. This change can be seen in relation to two areas. The first is in the relationship between civil society and the State. It is here that the previously discussed process of politicization of administration and judiciary also contributed. The Sri Lankan civil society today is not only highly controlled by the regime in power, but also the relationship between the two has taken a new form. In this new format individuals can no longer interact directly with the State as in a normal democracy. They need an intermediary in the form of a political party. Secondly, the relationships within civil society itself. In

this area an emerging new form of patron - client relationship that is based on political power and violence has replaced the previous one that was based on passive distribution of favours. Violence in the conduct of politics and that it is part of all the activities of civil society is also a direct result of the above two.

The government's dealing with the judiciary, the public service and the security forces as well as its close collusion with the underworld forces is important to understand the violence unleashed by the regime through its party organization and its damaging impact on civil society activism. Though it is true that it was during the 1960s under the previous left of centre government that the judiciary and the public service came to be under the Cabinet Executive, the interference in these institutions was in a very limited extent during the pre - 1997 period. Though the pre - 1977 regimes too manipulated State machinery to their advantage, their interference in the State system was limited mainly to gaining personal favours and as a result there was still rule of law operating in the country. There was one important reason for this. The political leadership of the day did not interfere in the day to day running of the institutions. There was no interference at all in the operations of the security forces, especially the police. In the 1980s the domination of the regime over the State apparatus became institutionalized and they became extensions or organs of the party in power. Politicians of the ruling party not only used the State machinery to help themselves and their followers but also to suppress and silence their opposition.

Regime actors not only took over the State apparatus but also took over the control of civil society in the late seventies through a dependency structure formed on the basis of political party organization. The impact of this situation needs to be seen in relation to three main areas, namely, the control of the news media, entrance of violent politics and domination of other areas of civil society by the regime in power. Electronic media in the country in the early days were limited to one radio station owned by the government which was considered as the government's own propaganda arm. The control of the print media began much later when Mrs. Bandaranaike took over the biggest publishing house called the Lake House, accusing it of bias against her party. It must be said here that her decision was mainly due to the



influence of the left parties who were in a coalition government with her that time. Her government also was responsible for closing down some other newspapers for publishing views that criticized her government. However, the most blatant control of the news media came only in the late 1980 with both electronic media and the press coming to be controlled both formally (through takeovers and shut downs) and informally (using family influence).<sup>22</sup> With the rise of Mr. Premadasa as the number two man of the governing UNP, the situation became worse. It is rumored that after he became the President of the country he used threats and intimidation (threats of withholding government loans) on privately owned publication houses to make them tow the line as he could not use the same family influence his predecessor had used. The control of the electronic media suffered a similar fate and not a single day passed without Mr. Premadasa related story coming as the lead item in the main news bulletins of radio and TV. Further, he used the government owned media to attack not only the political opposition, but also his own party members when they dared to express views that dissatisfied him.<sup>23</sup>

Violence in the conduct of politics is not entirely new to Sri Lanka though it became a regular feature only lately. Even during the early days when the elites were engaged in liberal democratic politics there were incidents of violence during elections against individuals in remote areas. Threats and intimidations by the ruling party candidates who were often the rich and the powerful or belonged to a high caste group to manipulate the voting process were also not uncommon. However widespread violence began to be part of elections only in the sixties. They came to be part of the conduct of politics in general only much later in the eighties (see Table I).

<sup>22</sup> In 1980s in addition to the government controlled Lake House, there were only two other national publishing houses. Of the two, the Wijaya Publication was owned by the Ranjit Wijewardene and the Island Group by Upali Wijewardene, two cousins who were related to the President Mr. J.R. Jayewardene.

<sup>23</sup> His use of media to attack Mr. Gamini Dissanaike and Mr. Lalith Athulathmudali are examples here.



**Table I : Incidents of Election Violence since 1970.**

Year	Election	Murders	Other Incidents	General Characteristics of Violence
1970	General Election			First post - election violence
1977	General Election	62	7817	Open support for violence by regime
1982	Referendum			Regime actively participates in violence
1981	DDC Elections 4			A minister is named for the involvement of hijacking of ballot boxes.
1989	General Election	669		Majority of killings by the JVP and paramilitaries of the regime.
1994	General Election	12	45 serious incidents	Regime violence is countered by the opposition for the first time. Non-State actors come into monitor election violence.
1997	Provincial Council	7		Regime attacks on the opposition
1999	Presidential Election	8	320 serious incidents	Regime attacks on the opposition. LTTE for the first time enters into election violence in the South
2000	General Election			
2001	General Election	56 incidents	1514 serious	Opposition violence becomes intensified. Post - election causing 11 deaths.

Source: *Administrative Reports of the IGP, Colombo and PAFFREL Reports.*

In the sixties Sri Lanka witnessed the first incident of election related violence on large scale when post - election violence against the defeated party took place for the first time. Seventies, however, was the turning point of violent politics in Sri Lanka. In 1971 the country saw the first violent attempt to remove a duly elected government when a group of Marxist revolutionaries staged a rebellion. The Tamil separatist movement also became more and more violent during the period with many groups of militants coming into the scene. During the 1977

election, pre-election violence also was added to the scene of political violence in the country. The government party politicians today use violence to establish hegemony of the regime in all activities.<sup>24</sup> Today organized political violence is the way in which politics is being conducted in the country. It extends from threatening academics and the judiciary to many others. The common denominator of all these activities are the political party organization based on patron - client relationship.

Another area of State control of civil society is seen in the control of trade unions by the regime through the manipulation of political party loyalties and connections. This began with the nationalization which allowed the regime in power to get its supporters as employees of the nationalized establishments. The result was creation of party controlled trade unions which are regime loyal. Regime loyal trade unions today have replaced traditional trade unions that were part of the left movement. This has made them irrelevant as political activists fighting for workers' rights. The SLFP that started nationalization with its left leaning social democratic ideology was any way attractive as a political party to the workers and therefore, it is not surprising workers forming trade unions supporting that regime. Later the most rightist party of the country the UNP also got into the trade union movement, first in the nationalized ventures and, then in other, State organizations. It was the presence of loyal supporters in large numbers who have been installed in State sector jobs that enabled these non-traditional actors to get into the trade union movement. As we stated earlier nationalization was the beginning of a political culture that legitimized political loyalty as the principal criteria of not only securing a government job but also the whole career prospects of the employees. This in turn enabled political parties to have a controlling role over its membership leading to the emergence of political patronage based dependency and power relationship structure. The control of the trade union by the party changed them from organs of the working class to power centre of the regime in power. The political favours the regime was able to

<sup>24</sup> Use of violence previously limited to politicians attacking their rivals has today extended to the two arms of the State, namely, the executive and legislature. The recent attempt by a gang alleged to be followers of a powerful minister to prevent a *Gazette* notification being published is an example of this.

distribute helped this situation further. They are strike breakers when their party is in power and strikers when not. There are numerous examples of the regime using State resources and trade unions for the advantage of the party in power. Buses of the Ceylon Transport Board are often used to bring supporters into political rallies and State vehicles are used for election purposes such as transporting speakers. Another example of the regime actors using State resources, especially those in the nationalized service, is the use of members of trade unions of the ruling party during the 80s to intimidate the opposition. The then secretary of the Trade Union (who was a powerful minister) Federation affiliated to the ruling party in the post-1977 era is alleged to be behind number of attacks on strikers.<sup>25</sup> His group was known as the chain gang because the method they used to break strikes and intimidate protestors was to attack them with bicycle chains. Thus trade unions not only became part of the regime manipulations of civil society but also the victims of it.

### **Political Party based Patronage and Institutionalization of Regime Control**

Regime political power penetration in Sri Lankan civil society is operated through a well organized patron - client relationship that connects actors belonging to different levels from the national to the local. The relationship is one of dependency based on linkages founded on the political party and extends downwards from the top national leadership. Below the national leadership, who are the national level patrons, is the provincial leadership who are the clients. Below the provincial leadership there are leaders of the urban and rural periphery. The network extends to community levels binding the whole social organization in an interconnected network of relationships based on party affiliation. The clients at the lower levels receive material rewards

<sup>25</sup> The so - called *Green Tigers*, a para-military group that appeared during the 1987-90 insurgency, are another extreme example of these violent groups with political patronage. They got the name *Green Tigers* for their alleged affiliation with the then ruling party and the terrorist methods. Green is the colour of the UNP which was in power then and Tigers are Liberation Tigers of Tamil Eelam who are notorious for their ruthless methods.



in the form of jobs and other services and benefits such as contracts for them and their supporters (who are their clients) from their patrons. Further, patrons intervene when the subordinates are in trouble, especially from law enforcement agencies. In their place the patrons at higher levels of the hierarchy receive support during the elections from the local leadership that mobilize their followers to work for the respective patron, canvassing voter support and engaging in intimidation as part of it. This chain of rewards and services on the basis of political office has created a new form of patron-client relationship that is different from the classical dependency relationship which is based on economic power and exploitation. Today the patron in the regime violence structure is a professional politician who depends on political office for his livelihood and social position. The client is also a minor political figure who not only depends on the patron for his existence but also expects favours from him for his political future. This chain of dependency has resulted in a new form of feudal relationship where the *knight* is the political leader with an *army* consisting of criminals and army deserters who are in ready supply. The other component who is his vassal is the average voter who is no criminal but an innocent victim of this relationship. This dependency relationship has also resulted in imposing constraints on both patrons and clients that prevents unilateral decisions by the top.

Some form of political link between the westernized elites and the rural voters existed in Sri Lanka since independence. The westernized elites who inherited the leadership role from the British had some influence over the rural electorates through their plantation bases in the periphery. As plantation owners, they had cultivated loyalties with the rural nobility and commanded respect of the general public as well. It was, therefore, common for these elites to command block votes in electorates of their plantation bases in some of which they had ancestral roots. The existence of these *family electorates* did not, however, mean that a patron-client relationship in any practical political sense existed during the period. For one, there was no active political involvement of the rural masses during the period of the westernized elite rule. Further, as we have already discussed there was no dependency of any form between the westernized elites and the rural masses and their leaders (rural traditional leadership) other

than mutual respect and small occasional favours which are more social in nature. The connection between the westernized elites and their rural bases was founded on a very loose set of relationships and cannot be called a patron-client dependency. It was only in the 1980s we witness the emergence of a definite patron-client relationship that is founded on political power and linkages based on political party organization. This is the culmination of the anti-liberal democratic developments in the country and cannot be separated from the events that preceded. Therefore, to understand these new developments we need to relate them to what happened in the previous years and also to some inherent characteristics of Sri Lankan society. Moore<sup>26</sup> says that the end of liberal democracy was a result of the end of elite domination of Sri Lankan parliamentary politics. This assertion is only partly true as the end of elite domination did not end democracy in the country. It was only the beginning of the end. The so-called end of westernized elites domination did not result in a complete removal of the Colombo centred elite from the political scene. In fact, they are still in power. If we carefully examine the centres of power, including the Cabinet (excluding the Presidency of Premadasa who comes from a different social group which may be a temporary phenomenon rather than the beginning of a trend) the descendants of the westernized elite group still wield considerable and decisive political power. What we see is not a complete change of elite control but change in the composition of elites and as a result the quality of the elite control. Further it also must be mentioned though the composition of the elites has changed, they are still predominantly urban and westernized in their values<sup>27</sup> with the same class roots at the very top. But they also have incorporated a substantial portion that has come from more nationalistic and rural backgrounds into their group.

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<sup>26</sup> *ibid.*, 1992.

<sup>27</sup> These westernized values of the new elite are different in substance to those that the post-colonial elites shared. The westernized values today are more a product of globalization unlike the previous. For them, it is the ends that matter not the means. In the previous case of the post-colonial elites westernization was liberal ideology and *English values* such as gentlemen behaviour. They valued the means as well as the ends.



The elite group that rules the country has gone through some significant changes in the composition and, as a result, the way they conduct politics and relate to the masses. To understand this change of linkages, namely, the new qualities the linkages have assumed we need to examine the new and emerging social groups in the periphery as well. In the present context the periphery is not politically passive as the periphery of the early days. They are well mobilized as a result of the so-called *Bandaranaike Revolution* (Bandaranaike led rural mobilization) and also as a result of the two left, wing insurrections of 1971 and 1987-90 periods. The traditional left, though it concentrated more on the urban voter and the working class, also need to be mentioned here as playing a valuable role in mobilizing the periphery in some regions such as the Southern and Sabaragamuwa Provinces. In addition, there are a few significant social forces in the periphery today which are products of the socialist and centralized economic policies of the sixties and seventies and also those of the open economy of the 1980s. These forces are mainly part of either the informal economic sector or the less established sectors of the economy. Of these, the informal sector expanded under the restrictive economic policies of the 60s and 70s period. To their ranks were added some formal development policies and programmes (for example, tourist developments) that were undertaken during the same period. In the area of less established of economic activities, there were industries and businesses that came into take advantage from the policies of the open economy. They were either service-oriented or relied mainly on overseas markets not only for product export but also for raw material. They were high profit generating in most cases but their contribution to the local economy was less in terms of long term generation of economic activities and providing stable employment opportunities. These economic activities created a new group of rich who did not share the same economic and social discipline of the old classes. These people, who can be called *lumpen capitalists* on the basis of their outlook and behaviour, are important to understand the new patron-client relationship in politics and its harmful impact on liberal democratic values and institutions in the country.

The change of composition of the top elite and the changes in the periphery both in terms of political mobilization and creation of new



social forces accompanied another development with it. That is the emergence of *career politicians* in the country. These are the political operators who depend entirely on politics for existence. They can be either the leaders or other operators such as political agents of the leaders who exist either distributing or receiving political favours. The total politicization of society and State institution meant that the very existence of the citizens, whether it is a job, a transfer or even some affair to be connected with law enforcement, required political intervention. This extreme politicization of society necessitated the above new breed of political operators who could get the work done. These groups are linked together in a well defined patron-client relationship (See Table II).

**Table II**

<b>Group</b>	<b>Composition</b>	<b>Social Character</b>
National elites	Leaders of the new rich ( <i>Lumpen capitalists</i> ) and the descendants of the old elites	Western values but with nationalist bias
Regional elites	The descendants of the traditional regional leadership and new regional rich	Nationalist in orientation but without any cultural ethos. Prone to violence
Masses (urban and rural)	Mainly small landholders and manual workers with no fixed income.	These groups are not either properly integrated with the mainstream economy or the operators do not get the full benefits of the mainstream economy

The above outlines the basic characteristics of the groups that are linked in the new patron-client relationship based on political power. The emergence of this relationship meant that the distinction between civil society and the State has been effectively lost. There was a new way the citizens relate to the State in Sri Lanka. It is through a chain of political links that is structured in a chain of patron-client relationships. In this series of links the very top is the national political leadership which consists of the descendants of the old elites and the new recruits. Second tier in the periphery are the rural leadership that again is a composition of the descendants of the old rural leaders and the leaders of the new *lumpen rural groups*. The most important feature of the patron-client relationship connecting these groups is the central role politics play in deciding everything from livelihood strategies to one's position in society, broadly, power and prestige. Loss of political power, which means change of regime, is end of the road for all those who are connected to the chain. Therefore, these groups resorting to violence in the conduct of politics is not only not surprising but also is the natural way of doing politics in this distorted system of parliamentary politics. The violent politics, that is the main feature of Sri Lanka's failed democratic system, therefore, is a product of this relationship. The organized violence in the country and the failure of liberal democracy are inextricably linked.

## Conclusion

Sri Lanka never had a social and institutional base suitable for successful functioning of liberal democracy. The handing over of independence resulted in democracy not getting the nationwide legitimacy as in India.<sup>28</sup> On the one hand, in addition to the internal division within the elite group itself, there also existed a large gap between the masses and the elites from the beginning. On the other, the minorities had their grievances and concerns regarding not only of their role but also in their very existence in the Sri Lankan polity, which is Sinhala dominated. The post-colonial elite group in Sri Lanka unlike their Indian counterparts were not far-sighted enough politically and ideologically to realize the harmful political fall outs of their isolationist

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<sup>28</sup> M. Moore, *ibid*, 1992.

political behaviour (separation from the masses) and as a result there were no conscious attempts to engage in nation building. The elites as stated before were legitimate rulers of the country by default rather than by consensus of all sections and groups of society. Masses were not actively taking part in the political process and the minorities gradually became sidelined as years went by. Theoretically speaking, the ruling post-colonial elites, therefore, could be seen as having only partial legitimacy. Within the restricted environment in which they were legitimate there was liberal democracy, but it is doubtful this democracy had much meaning to the masses who were only bystanders of the political process.

With the decline of the post-colonial elite rule and the emergence of regime control which is the present situation, there are both qualitative and quantitative changes in the working of democracy in Sri Lanka. The political landscape has changed with the addition of new actors, namely, the masses as active participants of the political process. Politicization of society and the emergence of political party based dependency relationship are also important developments in this context. Organized violence becoming part of the normal conduct of politics needs to be seen in this context. These changes in form and content in the organization of political activities of Sri Lanka makes the current phase substantially different from the elite dominated liberal democracy the country had in the early days.

However, there is one that both contexts share in common. This is in the area of legitimacy of the ruling class. As stated, in the early days the rule of the elites had only partial legitimacy as there was no active participation of the democratic process that made the elite the rulers of the country. Today though there is active participation of a very broad section of society with the political party based dependency linkages, the system based on that has made the rulers legitimate representatives of one group. The State has become representative of the group in power and is not recognized by the ones who oppose it. It is not only the minority Tamils who are fighting against the State proper that questions the legitimacy of the State. The mainstream Sinhala groups also question the legitimacy of the Sri Lankan State as it has been taken over by regime groups that receive power through violence channelled through the previously mentioned dependency relations. The regime control of the State has resulted in rulers either losing legitimacy or having only partial legitimacy as in the case of the post-colonial elites.



# DEMOCRACY AND PROBLEMS OF GOVERNANCE IN SRI LANKA

by

**A. Sivarajah**

## INTRODUCTION

The purpose of the study is to investigate how non - democratic practices have been creating problems of governance in Sri Lanka. The hypothesis of the study is that anti-democratic tendencies have created the problems of governance.

### Conceptual Basis of the Study

The problems of governance in a developing democratic country can be analysed either from a modernization or Marxist perspective or from a standpoint that emphasizes the role of State and politics in these societies. If new patterns of social integration do not keep up with the process of differentiation, social disorganization results. The more politically oriented arguments from this tradition, such as that of Huntington, proposes that political decay results from the failure of political institutions to accommodate social groups that are mobilised by a complex set of social forces, especially economic development.

Of these the modernization theory of S.P. Huntington is more appropriate for our study. He seeks to explain the process of violent conflict in terms of social changes and political development. He draws a distinction between countries which are governed effectively, and those, which are devoid of effective government.

Huntington in widening the scope of the modernization theory perceives that characteristics of countries, which are not effectively governed,

are most evident in the modernizing countries of Asia, Africa and Latin America. He observes that the predominant trends in most of these countries since the Second World War have been the following: Conflict based on ethnicity and class, recurring incidents of rioting and mob violence, the spread of corruption among those in authority and power, the violation of the basic rights of citizens; curtailment of the powers of the legislature and the courts, and the fragmentation or disintegration of mass-based political parties.

According to Huntington, these conditions of conflict and instability are largely attributed to the rapid social change and the rapid mobilisation of new groups into politics coupled with the slow development of political institutions. The process of social changes of modernization is defined as the multifaceted nature of the process of modernization. The modernization perspective of Huntington

### What is Democracy

The word democracy is of Greek origin, *Demos* (people) + *Kratos* (rule). The word democracy in its sense, gives different meanings:

- (i) refers to a form of government by people directly or through their representatives.<sup>1</sup>
- (ii) refers to a value system with specific characteristics, with a form of government in mind. Abraham Lincoln (1863) opines that "Government of the people, by the people, for the people shall not perish from the earth"<sup>2</sup> One of the most difficult questions to answer satisfactorily is what is democracy. Not only is there no agreed definition, but some definitions are so vague.

<sup>1</sup> Sumanasiri Liyanage, *Democracy and Civil Society*. Colombo National Integration Workshop: NIPU, 1998. p. 1.

One difficulty in defining democracy arise from the fact that political systems are in a continual state of evolution.

Historically the system of government in some polis in Greece in the 5<sup>th</sup> century B.C. were democratic. The principle characteristics of Greek democracy were:

- (i) people's right to speak in the governing assembly
- (ii) people's direct participation in law making
- (iii) administration of the law by people themselves
- (iv) equality of every citizen before the law
- (v) no bifurcation between rulers and people
- (vi) identity between citizens and people
- (vii) non - identity between people and population

There is a gap of 2000 years between the fall of Greek democracy and the rise of modern constitutional democracy. Four factors which contributed to the development of modern democratic theory are:

- (i) Greek tradition
- (ii) The republican tradition
- (iii) The development of representative governments
- (iv) Concept of political equality

The fundamental values of constitutional democracy are as follows:

- (i) the public or common good
- (ii) individual rights
- (iii) justice
- (iv) equality
- (v) diversity
- (vi) truth
- (vii) patriotism

For a system to be fully democratic it would have to meet the following criteria:

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<sup>2</sup> ibid. p. 4.



- (1) Equal votes
- (2) Effective participation
- (3) Enlightened participation
- (4) Final control of the agenda by the democrats
- (5) Inclusiveness

The problem of modern democracies is the flagrant inequality of possession and of opportunity now existing in democratic societies.

In modern times democratic institutions have, generally speaking, been most successful in new countries, such as the United States, Canada and Australia, where the conditions of life have been easy for the people; and in European countries more or less in proportion to their prosperity.

It is obvious that the problem, intrinsically is economic, especially in the case of developing countries. For e.g., unemployment. "When we consider the problem of preserving democratic institutions broadly, from both the national and international point of view, we seem to be helplessly caught in vicious circle. We know that democratic institutions are threatened by social discords within the nations, and still more by war between them"<sup>3</sup>

In short, democracy can be defined as -

- (i) a system of government and
- (ii) a way of life.
- (iii) As a minimum, democracy is a system of government that fulfills at least two essential requirements:
  - (a) It must be able to elicit accurately as possible the opinion of many people as possible;
  - (b) Democracy described as a society with liberty and justice for all.<sup>4</sup>

<sup>3</sup> Care L. Becker, *Modern Democracy*. Yale University Press: New haven and London, 1964. p. 97.

<sup>4</sup> Dorothy, Pickles. *Democracy*. Methuen & Co Ltd: London, 1970. p. 14.

## What is Governance

The concept in ancient Indian polity of rulers being bound by *dharma* was precisely that of ensuring good governance to the people. Ancient Indian polity recognized the rights of the people to good governance.

The essential prerequisites for quality governance are that the system should be good and submitted to the needs, aspirations and background of the people concerned. Those selected in operating the system should be endowed with character and competence and motivated by the spirit of public service.<sup>5</sup>

Thus fundamental principles of governance are as follows:

- (1) a social order for the promotion of the welfare of the people with social, economic and political justice for all
- (2) Minimization of inequalities in income and elimination of inequalities of status
- (3) Right to adequate means of livelihood for all citizens, men and women equally
- (4) Opportunities and facilities for children develop in a healthy manner
- (5) Right to work, to education and public assistance in case of unemployment and humane conditions of work
- (6) A living wage for workers
- (7) Free and compulsory education
- (8) Raising the level of nutrition and the standard of living
- (9) Protection and improvement of environment<sup>6</sup>

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<sup>5</sup> Subhart Cashyap, *Crime and Corruption to Good Governance*. Uppul House: New Delhi, 1977. pp. 1-4.

<sup>6</sup> *ibid.* pp. 5-6.

## Democracy and Problems of Governance in Sri Lanka

### (a) Politics and political system in Sri Lanka and problems of governance in Sri Lanka

After nearly four centuries of colonial rule Sri Lanka emerged as an independent country in February 1948. The peaceful transfer of power from the hands of the British to the Sri Lankan elites, the island's established democratic institutions together with its competitive political process have earned it a reputation as a model constitutional democracy. But this reputation did not last long due to many factors.

The debate on the nature of the post-colonial state revolved on three issues: First, political form and constitutional arrangements; secondly, the security arrangements, especially the defence agreements with Britain. "Thirdly, the emerging conflict between those who sought to undermine the primacy of Buddhism and the Sinhalese in the Sri Lankan polity".<sup>7</sup>

As K.M. de Silva has pointed out that, "By the end of 1954 and the early part of 1955 the Sinhalese Buddhist majority long dormant was asserting its national dominance and intent on establishing the primacy of their language and religion in Sri Lankan polity".<sup>8</sup>

S.W.R.D. Bandaranaike successfully exploited this in his election campaign in 1956 and came to power with a decisive victory and formed a government. This government in order to fulfill its election promise brought legislation to make Sinhala as the only official language of Sri Lanka. The Federal Party (FP) representing the Sri Lankan Tamils organized a sit down protest demonstration at the Galle Face Green. Again, when the Sri Lanka Freedom Party (SLFP) government under the premiership of Mrs Sirimavo Bandaranaike decided to implement the Official Language Act in the North and the East the FP launched a satyagraha campaign in the Northern and the Eastern Provinces. The SLFP government suppressed the satyagraha campaign by sending armed forces to the North and the East.

<sup>7</sup> K.M. de Silva, ed/ *Sri Lanka: Problems of Governance*. Konark Publishers Pvt. Ltd: Delhi, 1993. p. 10.

<sup>8</sup> *ibid.* p. 11.



“The role of the opposition in Sri Lanka during the decade was conditioned by the country’s macro political context of which the key elements were the rising authoritarianism and the deepening armed conflict in the North and the South”.<sup>9</sup>

The perception of a lack of participation and power sharing in any effective sense robs the opposition in parliament of a sense of legitimacy.

With the introduction of the first republican constitution in 1972 by the United Front (UF) government which came to power in 1970 with an absolute majority, the FP not only changed its demand from federalism to separatism, but also formed a broad coalition known as the Tamil United Front (TUF) with other political parties and organizations. The TUF came to be known as Tamil United Liberation Front (TULF). At the first National Convention held in Vaddukoddai in May 1976 resolved that the restoration and reconstruction of the free and sovereign secular socialist State of Tamil Eelam as its objective. Thus as Bradman Weerakoon observed, “Sri Lanka’s political history in the 1980s – a divisive ethnic conflict, foreign intervention in the internal affairs of the country, youth unrest and the JVP insurgency, the emergency and the State’s counter offensive, residual violence and allegations of human rights violations have all raised questions about the ability of Sri Lanka’s State to fulfill the essential requirements of democratic governance.”<sup>10</sup>

Sri Lanka’s two party system since 1956 appears to be on the brink of a long period of change and realignment. “In the two main parties factionalism has reached the point where the parties themselves need systematic reconstruction to accommodate or, as it is more likely, to watch factions break away ...”.<sup>11</sup>

In short, as K.M. de Silva has pointed out that -

<sup>9</sup> Y.R. Amerasinghe. “The Role of the Opposition in the Politics of Sri Lanka, 1977 – 1991.” eds. Mahinda Werake and P.V.J. Jayasekera, *Security Dilemma of Small States*. South, Asian Publishers Pvt. Ltd: New Delhi, 1995. p. 102.

<sup>10</sup> Bradman, Weerakoon. “Sustaining Democracy in Sri Lanka: Opportunities and Challenges”, eds. Bradman Weerakoon and Shelton Wanasinghe, *Reflections on Governance*. Marga Publications: Colombo, 1994. p. 5.

<sup>11</sup> K.M. de Silva, op. cit. p. 403.

- (i) Within a decade of the attainment of independence the legatees of the British were under systematic attack by populist nationalism and by the Marxists.
- (ii) Periods of rapid political and social change placed enormous pressure on the country's institutions and its economy alike.
- (iii) Competing political elites used or misused, existing institutions to impose their agendas.<sup>12</sup>

**(b) Issues of economic development and the problems of governance in Sri Lanka**

The estimates of Sri Lanka's national income indicate that up to mid-1970s there have been marked short-term fluctuations in the annual growth rates, with the exception of 1951-1952 and 1967-1970 period.<sup>13</sup> "In this respect the trend which commenced in 1977 of a continuing increase of the real per capita GNP..."<sup>14</sup>

The economic policies adopted by different governments since independence did not bring about any radical change in the economy of Sri Lanka. "The development policies of all ruling parties were conditioned by several external and internal factors".<sup>15</sup>

Among the factors which contributed to the slow economic growth of Sri Lanka has been the rapid population growth after independence. This adversely affected the employment opportunities, and aggravated the unemployment problem in the country.<sup>16</sup>

The Consumer Finance Survey conducted in 1973, the data from which, when compared with those from earlier surveys (1953 and 1963), were seen indicating a decline in income disparities....<sup>17</sup>

<sup>12</sup> K.M. de Silva, op. cit. pp. 400-40.

<sup>13</sup> G.H. Peiris. "Economic Growth, Poverty and Political Unrest". Ed. K.M. de Silva, op. cit. p. 250.

<sup>14</sup> ibid. p. 250.

<sup>15</sup> N. Shanmugaratnam. "Emerging Agrarian Trends and Some Reflections of the Agrarian Reforms in Sri Lanka", *Social Science Review*, No 2 January, 1980. p. 60.

<sup>16</sup> G.H. Peiris, op. cit., p. 259.

<sup>17</sup> ibid. p. 262.

The main conclusions of the data are -

- (a) that acute malnutrition (or wasting) among children,
- (b) that calorie consumption showed a progressive decline
- (c) and pronounced deterioration in food consumption levels.<sup>18</sup>

According to G.H. Peiris, the idea that intensifying poverty, a widening gap between the rich and the poor are among the principal causes for the instability and unrest is found in many writings on the affairs of the country. Poverty can certainly account for some of the basic elements of the Sri Lankan crisis. "There are other ingredients of Sri Lanka's economic experiences of the recent past which have contributed to intensifying political unrest.<sup>19</sup> For example, the spatial inequalities in the distribution of direct benefits of the changes witnessed since the late 1970s.

Although role of caste was a factor in the uprisings of 1971 and 1987-1989 of the Janatha Vimukthi Peramuna (JVP), other factors such as unemployment and youth aspirations were also important, "By the middle of March 1971 it was evident that the government faced a deadly threat from the JVP. The insurrection that broke out in April 1971 was the first episode of violence directed by them against the government of the country over the next two decades."<sup>20</sup>

In October 1988 the JVP organized a series of disruptive strikes and violent demonstrations in the Central, Western and Southern provinces. In November, the JVP intensified its campaign of violence and protest; it demanded a boycott of the presidential election.

"The high literacy and unemployment rates in combination with modest economic growth that have retarded the upward social mobility which young people from the rural areas have come to expect as something society owes them....."<sup>21</sup>

<sup>18</sup> *ibid.* p. 269

<sup>19</sup> *ibid.* p. 44

<sup>20</sup> K.M. de Silva, *op. cit.*, p. 409,

<sup>21</sup> Gananath Obeyesekere. "Political Violence and the Future of Democracy in Sri Lanka". *Committee for Rational Development, Sri Lanka: the Ethnic Conflict*, Navrang: New Delhi, 1984. p. 76.



### **(c) Issues Relating to language, religion and problems of governance in Sri Lanka**

The origins of the ethnic crisis in Sri Lanka could be traced to the misunderstandings between the middle class leaders of Sinhalese and Tamil communities in Sri Lanka during the British colonial rule. The ethnic crisis gained momentum when Sinhala language was made the only official language of Sri Lanka with the introduction of the first republican constitution in 1972. The Federal Party not only changed its demand from federalism to separatism but also formed a broad coalition known as Tamil United Front. (TUF)

The Tamils in general and the youths in particular, had been undergoing a sense of deprivation in regard to university admissions, employment opportunities, land alienation and in the use of the Tamil language for official purposes.

In addition to the frustration of their inability to gain admission to the universities due to media - wise standardization of marks, the Tamil youths were influenced by other objective conditions which might have prompted them to indulge in violent methods, namely

- (i) The demonstration effect of the abortive armed insurgency by the Sinhala radicals led by the JVP in 1971;
- (ii) The birth of Bangladesh through the armed struggle of Mukthi Bahini with the aid of India in 1971;
- (iii) The promulgation of a new constitution in 1972;
- (iv) The atrocities committed by the police on the last day the 4<sup>th</sup> International Tamil Research Conference held in Jaffna in 1974;
- (v) Tamil riots of 1977.

As a result the Tamil youths decided to resort to armed struggle to achieve their aim. **Namely, a separate Tamil State.**

#### **(d) Political violence and the problems of governance in Sri Lanka**

One of the features of politics in Sri Lanka since the sixties is the use made by politicians of all parties of the lumpen proletariat of Colombo and its suburbs. Further, more increasingly disturbing trends have occurred in the use of these elements for political thuggery.<sup>22</sup> The most disturbing trend in the institutionalization of violence occurred in the massive election victory of the UNP in 1977 and its relations with the trade union known as the Jathika Sevaka Sangamaya (JSS). It organised and effectively controlled government offices and corporations. Examples of political violence are as follows:

1. A series of violent acts occurred in Jaffna in the end of May and early June 1981 of which the most serious was the burning of the Public Library.
2. A gang of thugs brandishing clubs and knives broke up a meeting organized by artists and writers, where Ediriweera Sarathchandra, Sri Lanka's best known dramatist was beaten up.
3. On July 4, 1980 teachers at Maharagama Teacher Training College were picketing peacefully when a government Transport Board bus came through the college gates and began to assault the teacher trainees with rubber belts, stones, bicycle chains, etc.
4. On June 15<sup>th</sup> 1978, at 9.30 a.m. about 400 thugs, members of the J.S.S. threatened six sectional heads at the Thulhiriya Textile Mills and drove them off the premises and they were forced to resign.
4. On January 3<sup>rd</sup> 1980 the Personnel Manager of the People's Bank was abused and assaulted in his office by J.S.S. officers.

The pattern of these activities was clear: the gangs were organized and they belonged to the J.S.S., the trade union of the government in power. However, the greatest shock occurred as a result of the Supreme Court decisions which have been openly flouted by the government.

<sup>22</sup> *ibid.* p. 83

- (i) A Buddhist clergyman filed a suit against the police officer who seized leaflets distributed by him. The Court held that fundamental rights of the clergyman has been violated and that damages and costs be directly paid to him. The Cabinet however, promoted the police officer and ordered that the costs and damages be paid out of public funds. There were several other cases of this nature. As Gananath Obeyesekere observed, "such political organization of violence co-heralded the demise of what has been so far one of the few democracies in the non-western world."<sup>23</sup>

Although the People's Alliance (PA) under the leadership of Chandrika Kumaratunga came to power in 1994 with the promise of eradication of violence and restoration of democracy, it was not completely successful.

## Conclusions

The purpose of this study has been to examine democracy and the problems of governance in Sri Lanka. In section III of this study an attempt was made to explain democracy, and in section IV governance. The examination of politics and the political system of Sri Lanka since independence shows that within a decade after independence, the emergence of nationalism based on Buddhism challenged the secularity of the polity. There has been important structural changes in the Sri Lankan economy since independence but these have not succeeded in providing an adequate basis for self-sustained growth. The ethnic conflict in Sri Lanka became explosive in the 1970s and in early 1980s due to the escalation of the struggle against the armed forces of Sri Lanka by Tamil militants. As a result, defence spending increased to more than 20 per cent of the total budget. The ethnic conflict cost the country Rs 150 billion. The impact of the civil war on Sri Lankan economy has been severe.

<sup>23</sup> Shelton, Wanasinghe, *Reflections on Governance*, Marga Institute: Colombo, 1994, p.51.



Our examination also shows that organized political violence since 1977 had undermined the democratic order in Sri Lanka, making governance of the country difficult.

Therefore, we propose that following steps to overcome the problems of governance in Sri Lanka :

- (i) Need for participatory democracy in Sri Lanka. It implies that decision - making would be conducted at the relevant level by directly elected and recallable representatives of the citizenry;
- (ii) An effective system of local government institutions would be essential as a strong base for a functioning participatory democracy.
- (iii) If participatory democracy is to be a reality, devolution must necessarily be its definitive character.
- (iv) Changes to the institutional structure. It is a society's institutional structure which enables it to function as an organism, coping with its internal tensions and responding flexibly to external changes.<sup>24</sup>
- (v) The Judiciary, with its autonomous powers of judicial review, has a key role to play.
- (vi) Institutions of the polity depend for their effective functioning on the institutional strength of political parties.
- (vii) Effective functioning of NGOs.
- (viii) Internal reform within the trade union movement carried out by the movement itself.

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<sup>24</sup> *ibid.* p. 53

## BLINDNESS AS A FORM OF DISABILITY IN PRE-MODERN SOUTH ASIA

by

D.P.M. Weerakkody

The purpose of this paper is to examine the more important references to blindness in the early literature of South Asia with a view to understanding the position of blind persons in the pre-modern era and the attitude and reaction of their contemporaries towards blindness as a form of disability.

A disability may be defined as a physical or mental impairment that interferes with a person's ability to lead a happy and productive life. It may interfere with a person's expectations, job performance, or relationships with family, friends, and society in general. Persons with similar impairments may not be equally disabled; the loss of a finger may be a more serious impairment to a professional musician than to a historian. Accordingly, 'physical disability' has no inherent meaning; rather, it is defined by any given community's understanding of people's roles. Thus, physical disability is a cultural construction. In the ancient world, therefore, the meaning of physical disability depended on the community's understanding of people's roles - what they were supposed to do. In other words, the criterion of physical disability rested, not on one's ability to function as an individual but on one's functional ability within the community. The definition of ability and disability, therefore, shifted according to one's socially prescribed role.<sup>1</sup>

According to modern usage, blindness implies total or partial loss of vision involving both eyes. However, the exact level of vision defined as blindness varies in different countries due to differing legal and social requirements. In the United States blindness is defined as unimprovable vision of 20/200 (6/60) or worse. On the other hand, the World Health Organization (WHO) Program Advisory Group on the Prevention of Blindness lists a visual acuity of less than 10/

<sup>1</sup> Rose, 2003.p. 3.

200 (3/60) as the vision level suggested as blindness, which is twice as low as the U.S. definition. The WHO level of visual acuity is also described as the inability to count fingers in daylight at a distance of 10 ft (3 m).<sup>2</sup>

In modern parlance, those unable to distinguish between light and dark are called 'totally blind', whereas the partially blind have some sight that may be useful for certain purposes. However, with a few rare exceptions, ancient languages almost never speak of total or partial blindness, since they normally regard 'blindness' as a total and permanent loss of sight. While someone who is totally and permanently unable to see, both of whose eyes are completely insensitive to light, would certainly be called 'blind' in all these languages, not every person who could properly be considered blind according to some of the modern definitions would have been designated as such in ancient times. In addition to the difference between the ancient and modern languages regarding the degree of sightlessness (whether it is total or not), there is also an important distinction in respect of the duration of the loss of vision (whether it is permanent or not) as connoted by the various terms. The words for 'blind' are not used in ancient literature when the loss of sight is expected to be only transitory. Thus, apart from exceptional cases involving divine intervention or miraculous powers, 'blindness' is normally considered a permanent condition, one which could not be reversed through natural or therapeutic means.

The *Rig-Veda*, however, mentions how the semi-divine twin Asvins cured a person who was deliberately blinded.<sup>3</sup> The Asvins, the divine physicians, cured Rjrasva's blindness, and most of the passages in the *Rig-Veda* which refer to him commend these doctors for their wonderful work. The following may be quoted as an example:

<sup>2</sup> *Software Toolworks Encyclopaedia*. s.v. "Blindness", Copyright © 1992, Grolier Electronic Publishing, Inc.

<sup>3</sup> Griffiths, 1963, pp.78-80.



“His father robbed Rjasva of his eye-sight who for the she-wolf slew a hundred withers. Ye gave his eyes, Nasatyas, wonder-workers, physicians, that he saw with sight uninjured.”<sup>4</sup>

Rjasva, mentioned in *Rig-Veda* I, 117 was one of the sons of Vrishagir. The she-wolf for whom he slaughtered the sheep was one of the asses of the Asvins, in disguise and the Asvins consequently restored to him the eye-sight of which his angry father had deprived him.<sup>5</sup>

Similarly, a verse in the *Atharva-Veda* reads: “Whatever one makes a man dumb; makes [him] blind every head-disease of thine, do we expel out [of thee] by incantation.”<sup>6</sup> In the same *Veda* there is a reference to ophthalmia being cured by a charm.<sup>7</sup>

However, ancient languages do distinguish between total and permanent ‘blindness’ on the one hand, and ‘dimness of vision,’ ‘weak eyesight,’ ‘temporary loss of sight’ ‘loss of sight in one eye,’ etc., with a high degree of consistency in their terminology.<sup>8</sup> Thus the *Vacaspatyam* points out that a person who has lost the sight of one eye is not blind because the function of seeing is performed by the other eye.

Felix Just has drawn our attention to a further complication in this field of study, namely, the issue about the choice of terminology in modern languages. ‘Given today’s growing desire not to judge or discriminate unfairly against certain individuals or groups of people, and the increasing awareness of how negative attitudes are conveyed in the very language we employ, some people suggest that one should avoid using the words ‘blind’ or ‘blindness.’ Too many negative connotations are inevitably associated with these terms, they argue,

<sup>4</sup> Hymn 1, 116.16, Griffith p. 156; cf. Hymn 1, 117.17-18, pp. 159-160.

<sup>5</sup> *Satam Mesan vrkye caksadanamrjasvam tam pitandham cakra. Tasma aksi nasatya vicaksa adhattam dasra bhisajavanarvan* (*Rigveda* 1, 116, 16)

<sup>6</sup> *yah krnoti pramotamandham krnoti purusam sarvam sirsanyam te rogam bahinirmantrayamahe.* (*Atharvaveda*, IX, 8, 4).

<sup>7</sup> *Visalpasya vidradhasya vatikarasya valajeh yaksmanam sarvesam visam nirvocamaham.* (*Atharvaveda* IX 8, 20)

<sup>8</sup> Just, Ch. 2.

due to the long and frequent use of many metaphorical expressions containing these words, including some rather harsh passages from the *Bible*. Furthermore, they rightly point out that using such categorical expressions as 'the blind' or even 'blind people' has the effect (even if unintended) of placing many diverse people into one seemingly homogeneous group and thus neglecting their individuality. Such usage also puts undue focus on one aspect of their lives as if it were the defining or most important characteristic of these people. Thus, some recommend that the term blind be reserved for those individuals with no usable sight at all, and that the terms visually impaired, low vision or partially sighted be used to describe persons with some usable vision, regardless how little. These recommendations, Just observes, actually fit the ancient usage of terminology better than the modern definitions of 'legal blindness'.<sup>9</sup>

As with other disabilities, the ancient attitude to blindness varied, depending on whether it was congenital or acquired. People who are unable to see from birth are congenitally blind, while those who lose their sight due to disease or injury become victims of acquired blindness. 'Old-age blindness' refers to the loss of vision only late in life for those individuals who were able to see throughout most of their years. Whereas the congenitally blind were liable to be exposed, and had fewer chances of survival, those who acquired blindness, especially if they became blind in adult life, were allowed to live and be subjected to admiration, compassion, charity, neglect or rejection as the case may be. Buddhism, for instance, distinguishes between the congenitally blind and those who become blind in later life. The former are not admitted to the Buddhist order of monks;<sup>10</sup> but those who became blind after entering the order were not expelled. This is very different from the situation in ancient Rome where any physical blemish or disability disqualified entry into the priesthood.<sup>11</sup> Indeed, L. Caecilius Metellus, who lost his sight saving the Palladium when the temple of Vesta caught fire in 241 B.C. also lost his priestly rights.<sup>12</sup>

<sup>9</sup> *Encyclopaedia of Blindness*, pp.334-36.

<sup>10</sup> I.B. Horner, p. 116.

<sup>11</sup> Plutarch, *Quaest. Rom.* 76.

As for 'Old-age blindness', care of one's disabled parents has been held in Buddhism to merit ample reward in the next life. Witness the case of Kayavya. "Though a robber, he still succeeded in winning felicity in heaven." Part of his merit was that "he worshipped his old, blind, and deaf parents in the forest every day".<sup>13</sup> In a number of *Jataka* stories, the Bodhisattva is represented as looking after his aged and blind parents. The 'Guttila Jataka' (no. 243) is a well-known example.

Permanent physical characteristics, being personal, individual attributes, serve, among other things to establish people's identity. A permanent physical handicap, therefore, is liable to become a convenient means of identification, to the exclusion of other characteristics. That people with visible disabilities or 'visually apparent diseases can become annoyed if their condition is announced in public was recognized by the Jaina community probably as early as the fifth or sixth century B.C. The *Acaranga Sutra* counselled against such provocative behaviour:

"A monk or a nun, seeing any sort (of diseases), should not talk of them in this way: He has got boils, or leprosy, etc., his hand is cut, or his foot, nose, ear, lip is cut.' For as all such people, spoken to in such language, become angry, hence, considering well, they should not speak to them in such language."<sup>14</sup>

But it is Kautilya, who recorded one of the earliest laws against discriminatory language prescribing fines for abusive speech, including the use of reverse or euphemistic terms:

"Among abusive expressions relating to the body, habits, learning, occupation, or nationalities, that of calling a deformed

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<sup>12</sup> Ovid, *Fasti*, vi 436-54; Cicero, *scatur.* 48; also Dionysius of Halicarnassus, *Ant. Rom.* li.21.3; Seneca, *contr.* x 4.2. Metellus was punished for violating the taboo forbidding males entering the temple. Compare Dio Cassius' account (Liv. 24) of a similar occurrence in 14 BCE when a fire in the Basilica Pauli spread to the temple of Vesta. On this occasion the sacred objects were rescued by the Vestal Virgins. Only the eldest priestess did not because she was blind. Cf. N. Vlahogiannis, "Disabling Bodies" n. 29.

<sup>13</sup> *Santi Parva* VIII.

<sup>14</sup> Jacobi, *Transl.* 1884, pp. 152-153.



man by his right name, such as 'the blind', 'the lame', etc., shall be punished with a fine of 3 panas. If the blind, the lame, etc., are insulted with such ironical expressions as 'a man of beautiful eyes', 'a man of beautiful teeth', etc., the fine shall be 12 panas. Likewise when a person is taunted for leprosy, lunacy, impotency and the like. Abusive expressions in general, no matter whether true, false, or reverse with reference to the abused, shall be punished with fines ranging above 12 panas, in the case of persons of equal rank".<sup>15</sup>

One of the ordinances of Manu states: "He who even in accordance with the true facts (contemptuously) calls another man one-eyed, lame, or the like (names), shall be fined at least one *karshapana*." Similar laws are also mentioned in the *Mahabharata*.<sup>16</sup>

However, the prohibitions of Kautilya and others against 'ironical' expressions contrast with the eastern habit of 'designating unaesthetic things with virtuous expressions'.<sup>17</sup> Thus the Hebrews '... called the blind sage *nehora* or *ma* or *eynayim*, meaning clear-sighted; also *mephatcha apertus* or *roeh shemesh*, one who sees the sun'.<sup>18</sup>

All major religions and philosophies have contemplated questions of suffering, its origins, possible meanings, reality or unreality, and connections with the progress of the soul (if any). Disablement often enters the picture as a more or less permanent state of suffering, whose absence is the hallmark of the final blissful existence. Thus in the Zoroastrian *Vendidad*, the prophet's vision of an ideal future state provided for eugenic selection so that there shall be no humpbacked, none bulged forward there, no impotent, no lunatic; no one malicious, no liar; no one spiteful, none jealous; no one with decayed tooth, no leprous..."<sup>19</sup> According to a hymn of the *Atharva-*

<sup>15</sup> *Sariraprakrtisrutavrtti janapadanam sariopavadena kanakhanjadibhih satye tripano dandah Sobahanaksidanta iti kanakhanjadinam stutinindayam dvadasapano dandah. Kusthonmada klaihyadibhih krtsayam ca. Sathyamithyastutinindasu dvadasapanottara dandastulyesu.* (Kautilya, *Arthasastra* III. 18).

<sup>16</sup> *Laws of Manusmrti*, p. 274.

<sup>17</sup> Preuss (Transl. Rosner, 1978), p. 273.

<sup>18</sup> Miles, 1995, p. 56.

<sup>19</sup> transl, Darmesteter, p. 17.

*Veda*, an end to disability is possible only in heaven, where the righteous are blessed "Where the well-hearted, the well-doing revel, having abandoned disease of their own-selves, not lame with their limbs, undamaged in heaven (svarga) – there may we see our parents and sons."<sup>20</sup>

The sages of the *Upanishads* also appear to advocate the diligent study of sacred knowledge as the means of attaining the Brahma World and thereby freeing oneself of all physical ills. The *Chandogya Upanishad* says, "Therefore he who has crossed that bank, if blind, ceases to be blind; if wounded, ceases to be wounded; if afflicted, ceases to be afflicted. Therefore when that bank has been crossed, night becomes day indeed, for the world of Brahman is lighted up once for all."<sup>21</sup> We may compare the Biblical promise that soon in Gods righteous new world, all blind, deaf, lame, and speechless ones will be restored to radiant health: "Then the eyes of the blind shall be opened, and the ears of the deaf unstopped; then shall the lame man be like a hart and the tongue of the dumb sing for joy."<sup>22</sup>

The view of suffering (and therefore of disability) propounded in the religions of South Asia generally holds that each person goes through many lives, that the conditions in each successive life depends on conduct in the earlier ones, and that our lives are controlled either by external transcendental powers or by social or environmental influences. Explanations based on such beliefs vary widely, depending on how they balance ideas of good and evil, fair and just, reward or punishment, the possibility of progress toward final liberation from the cycle of lives, and so on. Within these variations the observable fact that some people live with a life-long severe impairment of body or mind has often been interpreted as an inevitable outcome of

<sup>20</sup> *Yatra suhardah sukrto madanti vihaya rogam tanvah svayah. Aslena angairahutah svarge tatra pasyema pitarau ca putran. (Atharva-Veda, VI, 120)*

<sup>21</sup> *Tasmad va etam setum tirtvandhah sann anandhobhavati. Viddhah sann aviddho bhavatyupatapi sann anupatapi bhavati Tasmad va etam setum tirtvapi naktamaharvabhiniispadyate sakrdvibhato hyavaisa brahmaloka. (Chandogya Upanishad VIII 4, 2-3).*

<sup>22</sup> *Isaiah 35:5, 6; cf. Matthew 15:30, 31.*

personal misdeeds in earlier lives; and this understanding has shaped the various doctrines of *karma*<sup>23</sup> which differ widely from each other.

In a doctoral thesis dealing with blindness in India, S.C. Roy has suggested that, as early as the 15th century B.C., there was a civic and religious concern for sightless and otherwise disabled people, which disappeared or diminished during the *Upanishad* period due to its emphasis on the pursuit of transcendental values leading to detached withdrawal from social and political interests and an attitude of otherworldliness, which ruled out any type of social reform or ministering to the needs and sufferings of others. It led logically to a repression of bodily needs or to a detached indifference to them as though they did not exist. Life was no longer a valuable treasure, but was thought of as an unbearable burden. This devaluation of life gradually led to the exclusive pursuit of transcendental values, and a withdrawal from social interests and activities. According to Roy, this pessimistic attitude of the *Upanishads* and the consequent spirit of asceticism and detachment from social interests was further accentuated by misinterpretations of the doctrines of *karma* and reincarnation.<sup>24</sup>

The view that a man's present good and evil fortunes are due to his own past actions and that his future destiny will be shaped by his current deeds, both good and evil, "makes social service meaningless and the stretching of a helping hand to others useless".<sup>25</sup>

It is true that disabilities are often viewed as retributive consequences of sins committed in previous births. The *Institutes of Vishnumrti*, for example, list disabilities and their antecedent sinful states in a former incarnation. Some wicked men suffer a change of their (natural) appearance in consequence of crimes committed in this life, and some in consequence of those committed in a former existence.

<sup>23</sup> Miles, 2000, p. 611.

<sup>24</sup> Roy, 1960, p. 24.

<sup>25</sup> Roy, 1960, p. 30.



“... the stealer of a lamp will become blind; he who extinguishes it will become one-eyed; injury (to sentient beings) is punished by general sickness; an adulterer (will have) swellings (in his limbs). Thus in consequence of a remnant of (the guilt of former) crimes, are born idiots, dumb, blind, deaf, and deformed men, who are (all) despised by the virtuous, ceremonies therefore, must always be performed for the sake of purification, because those whose sins have not been expiated, are born (again) with disgraceful marks.”<sup>26</sup>

However, as Miles has observed, “The idea of karma need not necessarily appear in quite such retributive terms. Those who have been domineering or over-intellectual in one life might need the “rehabilitative” experience of being mentally handicapped next time round, to overcome the arrogant tendency and thus enable the soul to progress towards enlightenment. In fact, much of modern psychotherapy intends to relieve the ‘inner disablement’ caused by repressed memories, and to enable people to answer to themselves for their past actions.”

M. Miles, who has conducted extensive research into disability in Asia, cites a number of Buddhist examples from the commentary to the *Dhammapada*, including Cakkhupala Thero who, in an earlier birth, had been a doctor, whose patient tried to avoid paying the agreed fee for treating her eyes. He had therefore given her a blinding ointment; so later suffered himself the appropriate penalty of blindness.<sup>27</sup>

That belief in *karma* and reincarnation is no barrier to social service and welfare of the disabled is borne out by the record of good works performed by various Buddhist and Hindu rulers and their subjects. Thus, king Dharmasoka is credited with the organization of care institutions for people with disabilities, though little is known of how they functioned.<sup>28</sup> His example was followed in the 4th century A.D. by king Buddhadasa of Sri Lanka. “For cripples

<sup>26</sup> *Goghastvandhah dipapaharakasca kanasca dipanirvapakah (Visnumrti, XLV, 19, 20, 21)*

<sup>27</sup> H.C. Norman, 1959, pp. 3-24; E.W. Burlingame, 1921/1969, I: pp. 154-8.

<sup>28</sup> Smith, 1920, pp. 66, 162.

[who moved about with the help of a chair-like frame] and for the blind he built refuges in various places....<sup>29</sup> This good work was continued by his sons Upatissa and Mahanama. The Chinese pilgrim Fa-Hien, (c. A.D. 400), mentions city houses for the sick and the disabled in Buddhist North India, which apparently offered short-term residence.<sup>30</sup>

Around A.D. 645, Asoka's philanthropic practices were revived by king Harsha of Kannauj.<sup>31</sup> According to the *Rajatarangani*, during the reign of Anantadeva, in 1028, Utpala built a town named Utpalapura in which was a 'house for the blind'. The king had five brothers and "their charity made everyone desire and pray for their riches, by whatever means acquired, whether by plunder or by honest means". Reddi quotes an inscription dated 1162 which mentions free food distribution to poor and disabled people,<sup>32</sup> while Muslim and Christian sources refer to a few asylums for people with leprosy or mental illness during the 15th and 16th centuries. Modern verifiable data begins with the Hindu Rajah Kali Shanker Ghosal, who opened an asylum for blind and other disabled people at Benares in 1826, closely followed by the Muslim Nasiruddin Haider who, though not a believer in rebirth, maintained the pious tradition by opening the king's poorhouse for 'blind, maimed, leprous, infirm' etc at Lucknow in 1831.<sup>33</sup>

The doctrines of *karma* and reincarnation may also be thought of as providing motivation to disabled persons themselves by exhorting them to perform meritorious deeds in order to attain a better existence in the life to come. The tangible result would be that the disabled persons themselves become useful and beneficent members of the society in which they live. To take an example from the folklore of Sri Lanka: Near Vellavaya in the Uva province is a village called Handapanagala. The Handapanagala tank was built by

<sup>29</sup> Geiger, 1929, pp. 13-14.

<sup>30</sup> Legge, 1886, p. 79.

<sup>31</sup> Smith, 1920, pp. 317-318, 324.

<sup>32</sup> Reddy, 1941; cf. Miles, 1995, p. 54.

<sup>33</sup> Miles, 1995.

the local queen who is known by the villagers as Kanabisava i.e. the 'blind queen', while the tank is called 'Kanabisava-bendi-wewa' (i.e., the tank built by the blind queen).<sup>34</sup> In an arid area such as Handapanagala, a tank would be a tremendous blessing to the inhabitants, and the queen doubtless expected to be reborn as a healthy being in consequence of this meritorious action.

Although belief in *karma* did not necessarily discourage a charitable attitude towards disabled persons, it appears to have encouraged the exclusion of such persons from many aspects of social life. The *Laws of Manu* list a number of such prohibitions:

"An impotent man and one degraded are without share (in an inheritance); so also those born blind or deaf, those (who are) crazy, idiotic, or dumb, and all who are without manly strength".<sup>35</sup>

The following ordinances require a king to exclude certain individuals at the time of consultation:

"At deliberation-time he should expel the foolish, dumb, blind, and deaf; birds, the aged; women; the impure, diseased and deformed".

"The despised disclose counsel, so also do birds, and especially women; therefore among these let him be careful".<sup>36</sup>

The following persons are debarred from giving evidence in a court of law: "Nor one wholly dependent, nor one of bad fame, nor a Dasyu, nor one who follows forbidden occupations, nor an aged (man), nor an infant, nor one (man alone), nor a man of the lowest castes, nor one deficient in organs of sense."<sup>37</sup>

Manu even forbids the presence of disabled persons at the *śrāddha*, i.e. the offering to deceased parents and relatives, which

<sup>34</sup> W.R. Perera, II, 7.

<sup>35</sup> *Anamsau klibapatitau jatyandhabadhirau tatha unmattajadamukasca ye ca kecinnirindriyah.* (*Manusmṛti*, IX, 201).

<sup>36</sup> *Jadamukandhabadhiramstairyagyonanvayotigan strimlecchavyadhitavyangan mantrakalepasarayet. Bhindantayavamata mantram tairyagyonas tathaiva ca striyas caiva visesna tasmāt tatdr̥t bhavet.* (*Manusmṛti*, VII, 149, 150)

<sup>37</sup> *Nadhyadhino na vaktavyo na dasyurna vikarmakṛt na vṛddho na sisur naiko nantyo na vikalendriah.* (*Manusmṛti*, VIII, 66).



is one of the most important ceremonies of the Hindus: "An epileptic man, one who suffers from scrofulous swellings of the glands, one afflicted with white leprosy, an informer, a madman, a blind man, and he who cavils at the Veda must (all) be avoided. A blind man by his presence causes to the giver (of the feast) the loss of the reward for ninety (guests), a one-eyed man for sixty, one who suffers from white leprosy for a hundred, and one punished by a (terrible) disease for a thousand. If a lame man, a one-eyed man, one deficient in a limb or one with a redundant limb, be even the servant of the performer (of the *śraddha*), he also must be removed from that place (where the *śraddha* is held).<sup>38</sup>

The *Mahabharata* is more positive in Bhishma's advice to Yudhishthira that "If they that are to be employed in *śraddhas* happen to be dumb, blind, or deaf, care should be taken to employ them along with Brahmins conversant with the Vedas".<sup>39</sup>

Ariel Glucklich (1984), who has examined Manu's disability-related laws in the context of other Hindu writings and commentaries on law, disability and sickness. She has brought out some of their positive elements, such as exemption from taxes<sup>40</sup> and some protection of property,<sup>41</sup> nevertheless she admits that the majority of rules are restrictive and discriminate against disabled or chronically sick people. "Handicapped and sick people are, in effect, denied status as legal agents."<sup>42</sup> The exclusions extend to inheritance, religious duties, financial transactions, and appearing in court as a witness. The rationale behind this exclusion is a combination of the presumed incompetence of disabled persons, and beliefs based on the view that disability arises as a consequence of evil deeds in a previous life, a view which contributes to the weakening of the sufferer's credibility in the present life. Similar legal incapacities are recorded in Kautilya's *Arthashastra*:

<sup>38</sup> *Manusmṛti*, III, 161.

<sup>39</sup> *Anusasana Parva*, XXIII.

<sup>40</sup> *Andho jadah pithasarpi saptatya sthavuras ca yah srotriyesupakurvams ca ha dapyah kanacikaram.* (*Manusmṛti*, VIII, 394).

<sup>41</sup> "Ajadas cedapogando visaye casya bhujyate bhagnam tad vyavaharena bhokta tad dravyamarhati". (*Manusmṛti* VIII, 148).

<sup>42</sup> Glucklich, 1984; cf. Miles, 1999, p. 74.

disabled persons could neither inherit, nor make a valid contract, nor act as witnesses in court.<sup>43</sup> Narada's list of those unable to inherit property includes the mad, blind, lame or idiotic (*jada*) as do earlier law codes, together with their entitlement to maintenance, and their sons' right to inherit.<sup>44</sup>

The *Institutes of Vishnumrti*, composed somewhere in the third or fourth centuries A.D., declares the following persons inauspicious and recommends that one should turn away at the sight of them: "Having seen one intoxicated, or insane, or deformed, he must turn back."<sup>45</sup> Expounding on this idea, one commentator includes in this group of unlucky persons several others, e.g., the humpbacked, the deaf, the blind, barren women and naked and hungry persons.<sup>46</sup> Indeed the central plot of the *Mahabharata* turns on the prohibition against blind Dhritarashtra becoming king. Despite being the oldest son, Dhritarashtra is disqualified from succeeding to his father's throne because of his congenital blindness.<sup>47</sup>

Another prohibition found among various cultures concerns the admission of blind persons to priesthoods and orders of monks. Jagdish Chandra Jain has suggested that people with disabilities "were excluded from entering the Jaina monastic order - children, old men, eunuchs, dull, timid and sick persons, robbers, kings, lunatics, blind, slaves, wicked and stupid persons, debtors, deformed persons and various others."<sup>48</sup>

With this we may compare the *Old Testament* which also shows the blind as disqualified from carrying out certain religious rites, as well as entering into the sanctuary: "For no one who has a defect shall approach: a blind man, or a lame man, or he who has a disfigured face, or any deformed limb, or a man who has a broken foot or broken hand, or a hunchback or a dwarf, or one who has a defect in his eye

<sup>43</sup> Shama Sastry, 1961, p. 236.

<sup>44</sup> Narada, XIII, 22.

<sup>45</sup> *Vishnumrti*, VII, 10 and LXII, 34.

<sup>46</sup> Julius Jolly, p. 202; cf. Miles, 1999, P. 75.

<sup>47</sup> *Adi Parva*, Sect. CIX, CX, CXLIII.

<sup>48</sup> Jain, 1947, p. 194, see also pp. 179-181.

or eczema or scabs or crushed testicles. No man among the descendants of Aaron the priest, who has a defect, is to come near to offer the Lord's offerings by fire; since he has a defect, he shall not come near to offer the bread of his God.<sup>49</sup> Disqualification for having a physical defect also extends to the animals considered for sacrifice". Those that are blind or fractured or maimed or having a running sore or eczema or scabs You shall not offer to the Lord, nor make of them an offering by fire on the altar to the Lord."<sup>50</sup>

However, we have no evidence to suggest that priests who lost their sight were socially ostracized or expelled from the priesthood as such. On the contrary, they were still expressly permitted to partake of the food offerings set apart for members of the priestly families.<sup>51</sup> Moreover, since the priesthood was a hereditary office in ancient Israel, a man could not be prevented from becoming a priest on account of blindness, nor would someone who was already a priest be deprived of his office if he lost his sight. All the descendants of Aaron were automatically priests, and a priest who lost his sight would not thereby cease being a member of the tribe of Levi. What the passage states is that priests with a physical 'blemish' were restricted from participating in certain rites normally performed by the priests, namely 'approaching' or 'drawing near' to the Lord and the sacrificial altar and 'offering' various gifts.

On the other hand, among the early Muslims, an individual could be disqualified from appointment as Caliph if he were blind.<sup>52</sup> The historian Ibn Khaldun (1332-1406) listed four conditions (a fifth was disputed) for the Caliph. The fourth stated that "Freedom of the senses and limbs from defects or incapacitations such as insanity, blindness, muteness, or deafness, and from any loss of limbs affecting (the imam's) ability to act, such as missing hands, feet, or testicles, is a condition of the imamate, because all such defects affect the (imam's) full ability to act and to fulfill his duties. Even in the case of

<sup>49</sup> Levi 1:18-21.

<sup>50</sup> Levi 22:22.

<sup>51</sup> Levi 21:22.

<sup>52</sup> Monbeck, 1996, p. 40.



a defect that merely disfigures the appearance, as, for instance, loss of one limb, the condition of freedom from defects (remains in force as a condition in the sense that it aims at perfection (in the imam)).<sup>53</sup> Based on this requirement, several Caliphs were deposed by the strategem of blinding them.<sup>54</sup>

In fact, for many priesthoods, absence of physical blemish was probably the sole qualification. The *Etymologicum Magnum* (s.v. *aphelos*) states that in Athens candidates both for the office of *archon basileus*, the highest religious magistracy in the State, and for priesthoods, were required to undergo a physical examination or *dokimasia*. Similarly, Plato in the *Laws* laid it down that in his ideal state a priest should be "whole in body and legitimate".<sup>55</sup> Physiological perfection may also have been insisted upon in the Roman world from very early times. Dionysios of Halicarnassus tells us that Romulus ordained that priests should be free of all bodily defects. While Romulus belong to the realm of myth, there is little reason to doubt the essential accuracy of the sentiment of perfection behind Dionysius' story.<sup>56</sup>

In Christian Ethiopia, Alvarez was appalled to discover that blind and crippled persons were admitted to the priesthood as a form of social welfare:

"A monk had come (for ordination) entirely blind: how was he, who had never seen nor had eyes, to be made a priest for the Mass: also another entirely crippled in the right hand, and four or five who were crippled in the legs: these also they made priests, and a priest had to be sound in his limbs. The answer came, that ... with respect to cripples, I should speak to the Ajaze Raphael.... He asked me what such as these would do if they had not alms from the Church."<sup>57</sup> The practice was still common three centuries later.<sup>58</sup>

<sup>53</sup> Ibn Khaldun, Muqadima 1: 395-396 ; cf. Miles, 1999, p. 162.

<sup>54</sup> Haj, 1970, pp. 110-111.

<sup>55</sup> Plato, *Laws*, 6.759c.

<sup>56</sup> Dionysius, Halicarnassus, 2.21.3.

<sup>57</sup> Beckingham and Huntingford, Prester John, Vol 2, pp. 352-3; cf. J. Illise, 1987, p. 22.

<sup>58</sup> Combes and Tamisier, *Voyages*, Vol. 3, p. 198.

The ordination of an adventitiously blind person in Sri Lanka for a very different reason, is recorded in the third part of the *Mahavamsa* which belongs to the 12th century A.D. The episode concerns the elder brother of the 7th century king Manavamma. The elder prince Manavamma, who had the right to the throne, was chanting *mantra* at Gokanna (modern Trincomalee) in order to obtain a boon from Skanda Kumara, when he saw the god's sacred peacock, in thirst trying to pierce the hard shell of a coconut. Prince Manavamma offered his eyes to the peacock who pierced them and quenched his thirst. The prince became blind and received the boon from the god. However, because of his blindness, he was unwilling to assume kingship. Therefore, his younger brother, also called Manavamma, became king of Anuradhapura. He took his elder brother to Abhayagiri Vihara, had him admitted to the order of monks, built the Uttaraḥa Pirivena and caused him to dwell there with six hundred monks. He was also entrusted with the protection of the Tooth Relic, having been provided with the necessary facilities and personnel. The monks of the Abhayagiri, as well as the king himself, followed his advice.<sup>59</sup>

There are a number of passages in post-Vedic literature which reflect a more positive and constructive attitude towards the disabled. Kane quotes Baudhayana's rules for a special type of *upanayana*, the rite of initiation to educational studies, performed for youths who were "blind, deaf, crippled or idiots".<sup>60</sup> Though they were unable to study the Vedas, performance of this special rite conferred social status and enabled them to marry. The *Institutes of Vishnumṛti* prescribe that "The king must protect the property of minors, of (blind, lame or other) helpless persons (who have no guide), and of women (without a guardian)".<sup>61</sup>

Part of the nobility of kings, according to the *Mahabharata*, is their sustenance of "widows and orphans, the maimed and the poor". Yudhishtthira, sending greetings to Dhritarashtra's court, includes "the many hump-back and lame ones" among the servants; and inquires

<sup>59</sup> Geiger, tr. *Culavamsa*, Vol. I, ch. 57; cf. Rohanadheera, 1996, p. 23

<sup>60</sup> Kane, 1974, pp. 297-298.

<sup>61</sup> *Balanathaśtridhanani rāja paripalayet*, (*Vishnumṛti*, III, 65).

after the welfare of those who are "defective in limb, those that are imbecile, the dwarfs to whom Dhritarashtra gives food and raiment from motives of humanity, those that are blind, and all those that are aged, as also to the many that have the use only of their hands, being destitute of legs".<sup>62</sup> However, while inquiring after the welfare of these disabled folk, Yudhishtira does not fail to note that "no doubt, sins must have been committed by you in your former lives."

In dealing with associations, agreements and their violation, Brihaspati gives an example of what appears to be village cooperatives or artisans' guilds binding themselves to perform certain charitable activities, such as the construction of a travellers' rest-house and relief to helpless or poor people.<sup>63</sup> The profit or benefits accruing must be properly distributed among members of the association; alternatively "it shall be bestowed on the idiotic, the aged, the blind, to women or children, to afflicted or diseased persons, to persons having issue, or the like (worthy persons)".<sup>64</sup> Thus, the ancient legal systems of India, while serving to disenfranchise disabled persons, also had the effect of protecting them and providing for them.

While we can learn much about formal and formulaic religious restrictions, we do not hear much from ancient sources about the every day life of visually impaired persons. Still, a few examples testify to the existence of blind people in a wider range of capacities. The *Mahabharata* observes that although "a blind man, without a guide, encounters many difficulties on a road", yet such a man "with attention, is capable of moving about his own house".<sup>65</sup>

According to the *Natyasastra* "The gati [gait] of persons moving about in darkness or blind men should consist of the feet being drawn over the ground and the hands should be groping for the way." The *Shabdakalpadruma* (s.v. "andha") quotes the following

<sup>62</sup> Udyoga Parva, XXX; cf. Miles, 1999, 101.

<sup>63</sup> Brihaspati, XVII, 10-12; cf. Miles, 1999, 80-81.

<sup>64</sup> Brihaspati, XVII, 22-23.

<sup>65</sup> Santi Parva, 11, 400.



illustration from the *Harivamsapurana*: “Although he is not blind he is walking like a blind man. Hence his name is *Andhaka*”. Thus *andhakam karoti* “behaves like a blind person”.

The story of the monk *Cakkhupala*, to which reference has already been made, depicts the blind monk taking a journey led by a sighted guide holding the tip of his staff, but uncompromisingly rejecting the guide’s assistance once he realized that the latter had broken his precepts. Later, in a familiar setting, he took his exercise independently.<sup>66</sup> Unfortunately, resident monks had failed to sweep the path where *Cakkhupala* walked, and during his exercise he trampled many innocent insects that had come out after a shower of rain. This raised ethical questions for some of his fellow monks who, as Miles points out, may have had Jainist leanings.<sup>67</sup>

Regarding forms of employment, we hear in the *Mahabharata* of a blind <sup>1</sup>dra warder competently guarding a holy place.<sup>68</sup> We also have an early example of occupational disability and industrial action. The priests of king <sup>1</sup>Vetaki, when their eyes became weakened and painful from the smoke of years of burnt sacrifices, declined to continue, and eventually the king could not find any Brahmins willing to do the work.<sup>69</sup> Robbing ‘the blind, the lame, and idiots of their all’ is said to be a crime equivalent to killing a Brahmin; and people with various disabilities are listed as exempt from threat by armed men.

Blindness appears repeatedly in the *Upanishads* as a metaphor for ignorance, e.g., “like blind men led by one who is himself blind”.<sup>70</sup> This comparison is also met with in other cultures.<sup>71</sup> In contrast, non-Christian Greek literature speaks of “blind guides” in more factually comparative contexts: “Nay, there will never be a foolish king any

<sup>66</sup> H.C. Norman, 1959, pp. 3-24; E.W. Burlingame, 1921/1969, I: pp. 154-8.

<sup>67</sup> M. Miles, *Blind & Sighted Pioneer Teachers in the 19<sup>th</sup> Century China and India* (part 1 & 2) n. 15 (The History of Education Site).

<sup>68</sup> *Vana Parva*, XXXVI-CXXXVII.

<sup>69</sup> *The Mahabharata* – *Adi Parva*, Sect. CCXXV.

<sup>70</sup> *Avidyayam antare vartamanah svayam dhirah panditammanyamanah dandramyamanah pariyaṇti mudha andhenaiva niyamana yathandah.* (*Katha Upanishad*, 1, 2, 5).

<sup>71</sup> Notably as a saying of Christ against the Pharisees. *Matthew* 15:14 “Let them alone they are blind guides. And if a blind man leads a blind man, both will fall into a pit.” *Luke* 6:39 “Can a blind man lead a blind man?”

more than there could be a blind guide for a traveller".<sup>72</sup> At one point the blinded Oedipus even functions as a guide for others.<sup>73</sup>

Like other human predicaments, disability is viewed philosophically in the *Mahabharata*, whether because Death carries all away regardless, or because one can always find someone in a worse state. The dispassionate condition is in fact to be learnt from the example of disabled people, since "the blind, the deaf, and they that are destitute of reason, are perfectly consoled for the loss of their senses".<sup>74</sup>

Although our sources give us some idea of the public attitude towards blind persons, we have no way of learning what blind persons themselves thought of their life and condition. What we have are the reactions which authors have represented as those of their blind characters, and these usually express dissatisfaction at the way such persons are misunderstood or ill-treated by their sighted fellows. In the Bengali folk ballads collected by Chandra Kumar De and published by Dinesh Chandra Sen, a handsome blind youth describes his life as a mendicant musician:

"I have no name, princess. They call me a 'mad fellow' and mock me. There are some who take delight in throwing dust at my person and annoying me in other ways, while there are kind men who receive me well. Some serve me with refuse food and think that the mad man would be glad at such an act of charity".<sup>75</sup>

Although Dhritarashtra does become king in spite of his blindness, he later complains to his charioteer that, on account of his blindness his eldest son treated him like a fool and paid no heed to his words: "Seeing me void of eye-sight, and incapable of exerting myself

<sup>72</sup> Dio Crysostum, *Orations* 62. 7; cf. Diog. Laert. 5. 82; Xenophon, *Memorabilia*, I, 3, 4.

<sup>73</sup> Sophocles, *Antigone*, 1014. *Oedipus at Colonus*, 1520 ff.; cf. Just, 1997, ch. 2 n. 137.

<sup>74</sup> *The Mahabharata*, Santi Parva, p. 255.

<sup>75</sup> Sen. Vol. IV (1) 211-237.

actively, my wretched son, O charioteer, believeth me to be a fool, and listened not to my words".<sup>76</sup>

Here the association of blindness with foolishness is much more than a mere metaphor. We may compare Vidura's reminder to Dhritarashtra of the proverb that "of the five senses beholding to man, if one springeth a leak, then from that single hole runneth out all his intelligence, even like water running out from a perforated leathern vessel."

The function of sight can, to a certain extent, be replaced by the use of the other senses. Stimulated by necessity and trained by education, touch, hearing, taste and smell take the place of vision. Moreover, having no sight to distract them, many blind persons cultivate their remaining senses all the more effectually. As for the exercise of their mental faculties, although lacking some of the means by which various impressions are received, and attention is aroused, blind persons are as capable of reflection and reason as other human beings, while, owing to their condition, they are more frequently encouraged to apply their minds more closely. That blindness does not necessarily render its subjects intellectually inferior may also be inferred from the number of famous persons who were blind from childhood or early youth, demonstrating how erroneous the idea is that the physical condition of the blind is necessarily associated with intellectual darkness.

Vidura's attitude is in marked contrast to the other common and equally destructive attitude which regards blind persons as compensated for their lacking sense by extraordinary intelligence or sharpness of other senses. This notion of compensatory powers robs blind persons of all credit for their achievements and all responsibility for their failings. It neatly relieves society of any obligation to equalize conditions or provide opportunities or help the blind help themselves.

The attitude of wives towards the blindness of their husbands varies from Princess Gandhari's decision to blindfold herself so as

<sup>76</sup> *The Mahabharata, Vana Parva, Sect. XLIX.*



not to be superior to her blind husband,<sup>77</sup> to Pradweshi's complaint that her learned but blind husband Dirghatamas was unable to support her financially, but she had been obliged to support him.<sup>78</sup> As the quarrel develops, Pradweshi instructs her sons to throw their father into the Ganges, but they set him adrift on a raft. He is eventually rescued by king Vali, who invites the venerable Rishi to beget sons for him, with his queen Sudeshna. But Sudeshna, knowing the Rishi is blind and old, sends her <sup>1</sup>dra nurse to him, with whom he has eleven children. We also have the story of Savitri,<sup>79</sup> who marries the son of blind, exiled king Dyumatsena. When Yama comes to take her husband, Savitri pleads strongly with him, obtaining a return of the eyesight and kingdom of Dyumatsena, and eventually winning back her husband's life. When Dyumatsena's usurper has been killed, his subjects demand that Dyumatsena return, saying "Whether possessed of sight or not, even he shall be our king!"

Blind men, like other disabled persons, figure as both objects and victims of licentious conduct. According to the *Mahabharata*, women cannot resist bestowing their favours "upon men that are hump-backed, that are blind, that are idiots, or that are dwarfs", as well as those who are crippled or extremely ugly.<sup>80</sup> On the other hand, the *Pancatantra* has a story in which a hunchback is companion to a blind man who marries an 'unlucky' three-breasted princess. The latter begins carrying on with the hunchback and they plot to kill the blind man.

However, it is as poets, prophets and teachers of men that ancient literature best remembers blind persons. Some of the composers of the Vedic hymns were themselves blind and were highly esteemed as Rishis, seers or sages. According to Griffith, hymn no I, 36 of the *Rig-Veda* and the twelve following are ascribed to Kanva, the celebrated blind Rishi who is called the son of Ghora and is said to belong to the family of Angiras.<sup>81</sup>

<sup>77</sup> *The Mahabharata*, Adi Parva, Sect. CX. P. 262.

<sup>78</sup> *The Mahabharata*, Adi Parva, Sect. CIV, pp. 250-52; cf. Miles, 1999, pp. 104, n. 230.

<sup>79</sup> *The Mahabharata*, Vana Parva, Sect. CCLXLII-CCLXLVI, pp. 626-639.

<sup>80</sup> *The Mahabharata*, Anusasana Parva, p. 5; cf. Miles, 1999, p. 347.

<sup>81</sup> *The Hymns of the Rig - Veda*, I, 36.

Dirghatamas was another renowned blind poet and sage. In a hymn to Agni, he is referred to as follows: "Thy guardian rays O Agni, when they saw him, preserved blind Mamateya from affliction."<sup>82</sup> Dirghatamas, being Mamata's son, is called Mamateya. According to Griffith, hymn 149 and the 24 following hymns are ascribed to the blind Rishi Dirghatamas".<sup>83</sup>

The blind person in early India whose fame travelled furthest was probably Asoka's son Kunala. Legends of his blindness, fall to beggar status and musicianship reached Japan in perhaps the middle of the first millennium A.D., where they were inextricably linked with legends of Semimaru, an archetypal itinerant blind musician-beggar whose story reappears in many forms and dramatic presentations.<sup>84</sup>

One of the best-known literary figures of more recent times is the 16th century blind poet Sur Das, possibly a court musician under the emperor Akbar.<sup>85</sup> It has been observed that the name 'Sur Das' tended to attach itself to any (male) blind Hindu or Sikh person, especially one who sang or played a musical instrument.<sup>86</sup> J.S. Hawley questions whether the original Sur Das was actually blind.<sup>87</sup> Based on the remains of Sur's poetry, Hawley concludes that "if Sur was blind, he did not make a great point of it before the world."<sup>88</sup> Miles is critical of the way Hawley dismisses Indian tradition regarding Sur Das.<sup>89</sup> A well-known figure of the early 19th century was the Vedic scholar Swami Virjananda Saraswati (1779-1868). He was blinded by smallpox at the age of five, and orphaned at eleven. He nevertheless persevered with his studies, taught for many years in different places, and eventually became a famous guru at Mathura. Dayananda Saraswati (1824-1883), the founder of the Arya Samaj, studied under him for nearly three years from late 1860. Virjananda

<sup>82</sup> *Rig - Veda*, 1, 147, 3.

<sup>83</sup> *Rig - Veda*, 1, 140.

<sup>84</sup> Matisoff, 1978.

<sup>85</sup> Fritz, Lehmann, 1982.

<sup>86</sup> Betson et al., III: 445.

<sup>87</sup> Hawley, *Sur Das*, 22-33.

<sup>88</sup> Hawley, p. 32.

<sup>89</sup> Miles, ch. 8, n. 8.

has been described as an irascible, outspoken and an uncompromising opponent of what he considered the degeneration of Hinduism as a result of worthless, sectarian texts. For example, he denounced the *Bhagavata Purana*.<sup>90</sup>

Blind poets and prophets also figure in the history and folklore of Sri Lanka. One of the Sinhala classics relates the story of an old, wise, and blind Brahmin who made correct predictions on three brothers from a royal family as to when and in what order they would ascend the throne of the country by listening to the sound of their foot steps.<sup>91</sup> Another blind Brahmin is held to be the author and composer of the thirty two *sindu vannam* of the low-country musical tradition of Sri Lanka. The *Tunsarane*, a devotional poem usually sung by pilgrims climbing to the Sacred Footprint, was composed by a blind poet from Sabaragamuva by the name of Lokuru Naide. He was a member of the circle of poets at the court of the last king of Kandy, Sri Vikrama Rajasinghe. In the poem he introduces himself as one who does not see the sun and moon, but proclaims the virtues of the Buddha.<sup>92</sup>

The cultures of pre-modern South Asia agree with the rest of the ancient world in considering blindness as a disability and therefore as part of the suffering inherent in our imperfect universe. What is unique is the attempt to explain it as the result of one's actions in a previous existence. Although this explanation cannot be held to have universally discouraged an attitude of charity and benevolence towards blind persons on the part of society, it has led to the imposition of a number of restrictions which must have prevented blind persons from participating fully in the religious and social life of their communities. However, the traditions about famous blind seers and prophets, poets and teachers are an indication that, in most periods of history, there were vision impaired persons who were endowed with sufficient determination to challenge negative social attitudes and prove themselves capable of making an enduring contribution to the upliftment of their fellow beings.

<sup>90</sup> Rai, Lajpat (1967) pp. 21-25; J.T.F. Jordens, 1978, pp. 32-39.

<sup>91</sup> Piyaratana Thero, 1953, pp. 20.

<sup>92</sup> M. Dodantenna, 1994, p. 15.



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