

**J.A.L.COORAY**

**AN ASSESSMENT  
OF  
HIS JURIDICAL  
CONTRIBUTION**

by

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## **AN ASSESSMENT OF HIS JURIDICAL CONTRIBUTION**

*By Rangita de Silva*

The life of a remarkable personality is a fascinating study and each observer brings his own discoveries and emphasis of his perceptions to such a subject. Writing on J.A.L. Cooray - a foremost jurist in the field of Human Rights and Constitutionalism here and abroad has been the fulcrum of a journey into the country's past, a search which taught me not only about the man but my country's search for that "irreducible minimum" - known as Human Rights.

Through the prism of one man's life is to be discovered the many dimensions of Human Rights jurisprudence and a commitment to constitutional values which also captures a man's dream and vision for his country.

In the course of the long history of law if many brink situations have been averted, much of the reflections to that end have been made by philosophers who have been able to detach themselves from the monotony of legal business. They have been able to give direction to the Law and have been the source of some of its fundamental ideas. The life of J.A.L. Cooray is the story of a scholar's eternal quest for that essence of the law, Human Rights which commands universal allegiance, and appeal. This quest has contributed immensely to the expansion and liberalization of the law, both in the municipal and international sphere.

Long before human rights became a fashionable "Sherry Party"

topic of conversation, J.A.L. Cooray had not only engaged himself in human rights from an academic point of view but had worked for their respect both at home and abroad as a jurist and lawyer.

J.A.L. Cooray was educated at St. Joseph's College Colombo. After passing with honours the Cambridge Junior and Senior School Certificate Examinations in 1935 he entered Gray's Inn and the University of London to read law. On his return home as a barrister at law, he practiced as an advocate of the Supreme Court while teaching Constitutional Law at the Ceylon Law College till 1972, when he was appointed as one of the original members of the Constitutional Court. Author of several publications principally in the field of Constitutionalism and Human Rights, he authored **Constitutional Government and Human Rights in a Developing Society, Constitutional and Administrative Law of Sri Lanka and Peace and Human Rights**. Cooray was awarded the degree of Doctor of Laws by the University of London on the published work on Constitutional and Administrative Law of Sri Lanka. **Constitutional and Administrative Law of Sri Lanka** is one of the major works on Constitutional and Administrative Law.

### **CONSTITUTIONALISM**

Cooray in 1943 was one of the first to express the view that a Constitutional Bill of Rights - with procedural remedies for their enforcement would help considerably in protecting fundamental human rights - in a multi ethnic country such as ours.

His interest in the sphere of Human Rights was not confined to academia. At the December 1941 annual sessions of the Ceylon National Congress at Dummaladeniya, Wennappuwa, he moved a

resolution embodying a peasants and workers charter. Dr. Michael Roberts in *Documents of the Ceylon National Congress and Nationalist Politics in Ceylon (1929 - 1950)* states that the proposal was for the organization of the economic life of the worker and the peasant to secure for them a decent standard of living and the introduction of legislation for the provision of all amenities that go to establish such standards. The charter included a living wage, healthy conditions of work, a maximum 8 hours' working day, insurance for old age, sickness, unemployment and accident, maternity benefits for women, machinery for settlement of disputes between employer and employee and prohibition of unwarranted dismissal from service.

As joint honorary secretary of the Ceylon National Congress along with J.R. Jayewardene, in December 1942 at the annual sessions of the Ceylon National Congress, J.A.L. Cooray seconded the famous Congress "freedom" resolution changing the object of the Congress from attainment of dominion status to the attainment of freedom. J.R. Jayewardene proposed, seconded by J.A.L. Cooray that dominion status was not a boon that could be granted by a ruling race to a subject race. Two free countries could agree to treat each other as Dominions, but their freedom was not a thing that could be given by one to another. It was a state which emerged out of the toil, devotion, patriotism and idealism of the people who were going to be free.

Cooray's involvement with the national struggle for freedom was such that on the 16th of October 1943 in an article in the national Press, he suggested that pursuant to the 1943 Declaration of the British Government requesting the Ceylon Ministers to submit a draft Constitution for their consideration after the war, there should



be set up a Constituent Assembly to draft such a Constitution. Cooray was also one of the first to suggest a constitutionally entrenched Bill of Fundamental Rights justiciable by an Independent judiciary. Cooray always had in mind that the enforcement of human rights was of major significance to modern jurisprudence. On the Constitutional level, in an open society, this could be most effectively secured by an independent judiciary. The working committee considered and forwarded to the Board of Ministers a draft Constitution for a free Lanka prepared by Cooray at the request of the Ceylon National Congress.

Cooray also pointed out that this was the first occasion when the people of this country were going to have a hand in the making of their Constitution. He suggested that in the new Constitution there should be a Chapter of guaranteed fundamental rights of all persons as well as of the different racial, ethnic and religious communities in the country.

For Cooray the 1946-1947 Constitution was an occasion of triumph and tragedy. Of triumph because freedom, for which he and many others had toiled was won, tragedy because his dreams of a comprehensive chapter of Fundamental Rights and declarations were missing from the new constitution.

An emphasis on individual liberty and freedom has been thought to be a distinctive feature of Western political and legal philosophy. Cooray postulates that the concept of human rights is in fact part of the religious and cultural heritage of man, derived from ancient philosophy and religions of both the East and the West. Cooray in a novel vision of the doctrine of Human Rights stated that the basis of human rights lies as much in the Eastern concept of "Dharma"

meaning sense of 'right' or 'duty' binding on everyone as in the scholastic theory of law, where natural law is sought to be equated with right reason. According to Dharma and natural law the ruler himself is subject to the law. Cooray in equating the Western concept of a Natural Law to the Eastern philosophy of "Dharma" refers to Asokan ideals regarding freedom of conscience and religious tolerance.

In addition to Fundamental Rights which the Courts are required to recognize and enforce, constitutions should contain what are termed "Directive Principles of Social Policy". To this extent J.A.L. Cooray's vision seemed near prophetic. In the Sir James Peiris lecture 1957 on the Revision of the Constitution - the most influential statement made at the time on constitution making - Cooray in a comparative analysis looks at the constitutions of India and Eire which have included the equality of all persons before the law, prohibition of discrimination on grounds of race, religion, caste, sex or place of birth, protection of life and personal liberty.

Cooray's argument rested largely on the need to protect minorities, which had also motivated the only specifically protective clause in the Soulbury constitution. He believed that bare majority rule without fundamental rights in a country where there are national, religious and other differences does not work quite satisfactorily. The necessary rights must be enshrined in such a way that they cannot in any event be restricted by any claims of uncontrolled power on the part of governments. Even the exercise of those rights can only be restricted by law and that also only in the interests of Justice or for purposes of public order or morality". Cooray drew sustenance for his views from the Irish and Indian Constitutions as he also did when discussing Directive Principles.

This inclusion of enforceable fundamental rights and freedoms according to Cooray "would command the respect and hence the obedience of the people as their political covenant, besides being their supreme legal document".

With revolutionary zeal fearlessly opening a 'Pandora's Box' the aborted District Councils of 1968 were in a substantially similar form urged by Cooray in 1957 within the ambit of regional devolution. The fact that the birth of the "dream child" of Cooray was aborted, resulted in future governments finding it difficult to introduce any measure of devolution other than the small amount allowed to local authorities.

He also suggested a method of regional devolution. He agreed with the Donoughmore Commissioners that a system of Provincial Councils should be established. There is a sense of *deja vu* that what had been suggested in the 1950's had to be eventually established at the price of blood and tears. Cooray said further:

"The making of a Constitution is a national undertaking. Party Politics and Constitution - making go ill together. If after a close and careful investigation by competent men and women representative of the entire nation, we are reasonably confident, that we are substituting something better in the interests of our country and all her people, than it becomes our duty to effect the change".

"A Constitution in fact, is like a person's dress. It must fit, and particularly when we borrow, we have to be very careful to see that our special requirements are satisfied". Elaborating further on his philosophy that fundamental rights form an integral part of the general principles of law, and that the enforcement of human rights



is of major significance to modern jurisprudence, he stressed that especially in a country where there are national, religious and other differences, in the absence of such constitutional guarantees, democracy would not work satisfactorily unless the fundamental rights of all persons and communities are fully implemented.

He does not however argue that a guarantee of human rights is a panacea for all ills, but he claims the view that these rights are the rights of every individual citizen in the state irrespective of the particular community he may belong to.

Any such Bill of Rights offered as a statement of the inalienable and immutable rights of man vested in him in recognition of his inherent dignity embodies concepts which experience has shown to be crucial for the adequate protection of the individual. On the constitutional level, in an open society the vindication of human rights can be most effectively secured by an independent judiciary empowered to give effect to constitutional provisions and thereby to enforce compliance by organs of the government.

From the impassioned pleas of Antigone to the Trials of Nuremberg an appeal to Natural Law philosophy has been man's eternal plea for justice. According to Cooray the Natural Law content on Human Rights when defined and guaranteed in a Constitution is transformed into Positive Law. Thus when properly enshrined they cannot in any event be restricted except as determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The 1946-47 Constitution, after it was in operation for a few years, came in for increasing criticism. James Jupp in his book, *SRI LANKA - THIRD WORLD DEMOCRACY*, states that the most succinct and influential statement of the legal critics was the Sir James Peiris Centenary Lecture by J. A. L. Cooray, Lecturer in Constitutional Law, in 1957, at the time of S. W. R. D. Bandaranaike's appointment of the Select Committee on the Reform of the Constitution. Cooray had argued that the Constitution had arisen from debates in the British Parliament and could not, therefore, command the full respect of a document like the Irish and Indian Constitutions. A locally drafted document approved by the entire people would make it more likely that "government will be carried on with proper regard to the spirit of the limitations or restrictions which have been imposed by the framers of the Constitution upon the powers of the Government."

Cooray borrowed the words of a foreign jurist and said that "they wish to be able to say that their Constitution has the force of law and, if necessary of supreme law within their territory through its own native authority and not because it was enacted or authorised by the Parliament of the United Kingdom, that is, so to speak, 'home-grown', sprung from their native soil, and not imported from the United Kingdom."

As James Jupp pointed out, Cooray was concerned with the absence of fundamental rights in the 1946-47 (Soulbury) Constitution. He went on to say that Cooray, like S. W. R. D. Bandaranaike, fully committed himself to justiciable fundamental rights and non-justiciable Directive Principles of State Policy.

Cooray's argument rested largely on the need to protect minorities.

He believed that democracy which is multi-racial and multi-religious does not work satisfactorily unless the fundamental rights of persons and communities are enshrined in such a way that they cannot be restricted by any claim of uncontrolled power on the part of the government. Cooray had a more binding concept of entrenched rights than was subsequently adopted.

N.E. Weerasooria commenting on the Sir James Peiris Centenary lecture on the Revision of the Constitution - which was a celebration of Constitutional Values and pragmatic ideals suited to our social milieu-states said that it is a "lucid and critical analysis of the main features and defects of the present constitution and contains valuable suggestions as to the lines on which any revision should proceed".

The Times of Ceylon commenting on the lecture wrote "Our would be reformers of the constitution might as Mr. E. F. N. Gratiaen pointed out - study with advantage and inwardly digest this analysis of the problems made by one who, apart from being specially qualified to speak on such matters is at the same time outside party politics and as such, can take a completely detached and dispassionate view of the issues involved in the revision of the Constitution".

As one of the dramatis personae of 3 constitutions in Sri Lanka, Jeyaratnam Wilson in the Gaullist System in Asia pays homage to Cooray when he states that Cooray's book on Constitutional and Administrative Law in Sri Lanka is a first rate legal interpretation of the Constitution of the First Republic. Wilson states further that Constitutional Government and Human Rights in a Developing Society too is essential reading since the author was the senior Constitutional Adviser to the Parliamentary Select Committee set up

at the commencement of the U.N.P. government of J.R.Jayewardene for the drafting of the 1978 Constitution. Many of the ideas expressed in Chapter II (Human Rights and their protection in Ceylon) and Chapter III (an Ombudsman for Ceylon) were incorporated into the constitution of the Second Republic. Wilson calls Cooray "a liberal democrat in the best sense of that term".

Cooray had held the unique position of having also earlier been a Constitutional Adviser to the Ministerial Drafting Committee on the drafting of the 1972 Constitution and to a Committee of the Constituent Assembly.

Dr. Colvin R. de Silva, the architect of the 1972 Constitution, not only paid Dr. Cooray a tribute in Parliament for his assistance but wrote that he was "a valuable member of the Drafting Committee which gave legal shape to decisions taken by the appropriate authorities." Of course it was well known to Dr. Cooray's associates that he was not in agreement with some of those decisions which were not in consonance with the views he had expressed in his lectures and writings.

In 1972 Dr. Cooray was appointed a judge of the Constitutional Court which was established to review the constitutionality of Court were, according to L. J. M. Cooray, shrouded by controversy which was not limited to the discussion of and a determination of legal issues. Section 65 of the Constitution enacted that the decision of the Constitutional Court shall be given within 2 weeks of the reference together with reasons.

This was in effect like tendering the hemlock cup to the members

of the court, for the court declared that the two-week period was directory and not mandatory and a decision on the Press Council Bill need not be given within a period of 2 weeks.

Justice T. S. Fernando, the presiding member of the Bench, who was also at the time President of the Court of Appeal and a former Judge of the Supreme Court, stated that the function of interpretation of the Constitution in relation to their functions, was for the Court and for the Court alone. They were not obliged to ask anybody for an extension of time after the lapse of the two-week period; and accordingly the Court continued its hearing beyond the 14th day. There was criticism of the Court by some Ministers and members in the National State Assembly who wanted proceedings in Parliament to continue on the Bill.

Showing judicial valour and a strong sense of independence and a bold spirit, Justices T. S. Fernando, Deheragoda and Dr. Cooray thereupon resigned from office. Subsequently, three new members were appointed in their place and the Press Bill was again referred by the Speaker to the Constitutional Court.

In his published lectures and writings Dr. Cooray's views on jurisprudential and related matters emerge quite clearly.

Looking into the crystal ball Cooray foresaw as early as 1969 that there was an urgent need in the country for the establishment of an independent authority to secure redress to aggrieved persons in cases of maladministration where the existing legal and constitutional machinery was insufficient or ineffective. In making a case for an Ombudsman he stated that in the mixed societies of the Asian region these complaints assume a more serious character than

in countries where the population is homogenous in nature. In discussing the protection of the individual against maladministration of the state, Cooray put forward the proposal that this gap which was not covered by institutional remedies could be covered by an Ombudsman. He was of the view that complainants should have direct access to the Ombudsman. He expressed his opposition at a public seminar to the proposal which was eventually adopted by the government to "filter" complaints through Members of Parliament.

In setting out a thesis for the reform of the system of Administrative Law, Cooray has submitted the view that the process would be hastened and improved if a single and simplified form of application for judicial review was introduced as in Britain, New Zealand, Canada and Australia. Cooray agrees with those jurists who have said that the prerogative writs have accumulated a vast cargo of technicalities that the citizen desirous of challenging an administrative power or privilege finds himself frequently engulfed in a procedural bog which bars him from his goal.

On the nature of the judicial process, Cooray agrees with the view that it is a fiction that the Courts merely "interpret" legislation. In construing a statute, what Justice Holmes called the "inarticulate major premise" of the Judge will sometimes play a part in determining the intention he attributes to the legislature. Cooray follows Francois Geny in stating that the application of deductive logic alone to a new case without creative interpretation cannot make the law conform to the changing social circumstances and needs and thereby to the ideals of justice.

### **INTERNATIONAL HUMAN RIGHTS**

Upendra Baxi writes that "the great gift of classical and



contemporary human thought to culture and civilization is the notion of human rights". New rights arise on the embers of the old and the sphere of human rights discourse embraces new thoughts and worlds.

The Western liberal discourse on rights is focussed on civil and political rights - namely the rights of citizens against the State. The liberal human rights model suffers from deficiencies in a Third World context adrift with social and economic problems, poverty and exploitation. Cooray reflects on a new social and economic order which would transform a strict doctrine of "Laissez- faire", and seeks to achieve the equitable distribution of social and economic justice, since individual rights would be impotent and sterile without being shadowed by economic and social rights, and the enforcement of an uncontrolled free market-economy would cause a still birth to the idea of social justice. Cooray at the South East Asian & Pacific Conference of Jurists held in Bangkok, in 1965, departing from the formalist tradition of Diceyan philosophy put forward a theory of economic and social rights within the Rule of Law, in effect transforming the hitherto held views of some jurists of the Anglo-Saxon countries.

The Human Rights discourse from John Stuart Mill to John Rawls is moulded on classical western liberal ideas. In a third world society, as stated expressively by Baxi, human rights are often translated into a conflict between "bread" and "freedom". In a scenario of liberal rights "freedom" usually wins, though without broad concepts such as freedom of speech, association, conscience and religion, would only be an empty metaphor. Therefore the discussion of human rights in a developing society would be a statement on redistributive justice - in other words, a problem of

development. To this extent the human rights discourse should be wedded to the developmental process. Cooray was deeply concerned with the inter-relation of Human Rights, Peace and Development. He saw the three concepts as a triangle which would collapse if one was taken away. He was elected Chairman of the U.N. Seminar on the Relations between Peace and Development held at the United Nations Headquarters in New York.

The delegate from Ireland in proposing Dr. Cooray as Chairman mentioned that Dr. Cooray's academic qualifications, which were distinguished, in the field of constitutional law and human rights made him eminently qualified for this office, especially as President of the International Law Association of Sri Lanka, Vice President of the Sri Lankan National Commission for UNESCO, member of the Sri Lanka Law Commission and Vice President of the UNESCO International Congress on the Teaching of Human Rights held in Vienna in 1978.

Cooray introducing the concept of Human Rights in relation to Peace and Development, acted as discussion leader. He pointed out that the problem of poverty and hunger with which large parts of mankind were affected represented massive denials of human rights in the world. Describing his special interest in economic, social and cultural rights of the individual he pointed out the realization of this was essential for the actual protection of civil and political rights and the maintenance of peace.

He also postulated the view that global inter dependence between people of all countries and their interests in the development of all mankind would provide a lasting solution to the problems of development and peace. This required not only economic growth

but the satisfaction of the human needs of individuals everywhere and the increase in the quality of life of individuals universally.

Cooray felt that all forms of exploitation, oppression, discrimination, colonialism (political and economic) racism, apartheid, religious persecution would in turn provoke counter violence by the oppressed and thereby constitute threats to the development of peace. Peaceful co-existence, he affirmed, would be conducive to the maintenance of international peace and the promotion of respect for human rights and fundamental freedom.

It was also averred that the development of society was one of the essential means for ensuing individual development. Development was more than mere economic growth and should take account of the political, economic, social, cultural and spiritual dimensions of the quality of life. Societal development should aim primarily at dovetailing individual development with that of society.

To Cooray the timeless issues regarding Peaceful Co-existence and Non-Violence in international relations are words of power and passion, which should be raised to the standard of jus-cogens - a peremptory norm of international law from which no derogation is allowed.

In 1978 Cooray wedded a Third World perception to his views on Human Rights and Peace, at an International Conference held in Oslo, organized by the International Institute for Human Rights. He declared that as far as the developing countries were concerned, they not only accept the indivisibility of human rights, their universality and their inseparable association with peace and security but also consider that these concepts are steeped in their own cultural and religious traditions. Thus the Asian doctrine of

Dharma meaning sense of fairness - right or duty - may be considered to be inseparable from that of Ahimsa or peace and non-violence, not only in physical but also in political, economic, social and cultural terms.

What is underscored by Cooray's philosophy is the need to blend the dynamic individualism of the West with the spiritual development of the East.

In urging a new international economic, social and cultural order based on justice and equity, Cooray was of the view that this would ensure the realization of human rights, the elimination of colonialism, neo-colonialism, oppression and exploitation, the establishment of international social justice, an increase in the quality of life of the people and satisfaction of human needs, popular participation in development, integrated and endogenous development and would greatly facilitate respect for human rights.

A further exploration of the meaning of Human Rights and Peace was made in 1983 at the U.N. General Assembly -on the subject of "Alternative Approaches and ways and means within the U.N. system for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms". Cooray elaborating on his views stated that although constitutional and legal provisions guaranteeing human rights and providing for their protection by an independent judiciary are of great importance - and in fact the human rights movement has in many ways made the judiciary a dynamic institution - there must be above all the popular will to make human rights effective in practice.

For as stated evocatively by Judge Learned Hand "Liberty lies in

the heart of men and women. When it dies, there is no constitution, no law, no court can save it; while it lies there it needs no constitution, no law, no court to save it".

Cooray was greatly committed to the cause of education on Human Rights. The way in which the State can promote knowledge is primarily through its educational machinery and a multi disciplinary approach to law. A Human Rights consciousness should aim at fostering the attitudes of tolerance, respect and solidarity, inherent in human rights and a greater awareness of the ways and means by which they can be translated into social and political reality.

In the Festschrift for Felix Ermacora - the well-known Austrian Jurist, termed "**Progress in the Spirit of Human Rights**", Cooray reflects that the corresponding duties which entail the invocation of rights, has its base in the Asian concept of Dharma. According to the concept of Dharma, duties are emphasized equally with rights which would be an interesting premise to work on in solving the dilemma of a too emphatic assertion of rights. This cross cultural affinity gives Human Rights a fresh appeal.

Enacting elaborate codes of Human Rights and acceding to resounding international instruments embodying such rights could sometimes be only a smoke screen, without any intention of paying more than lip service to such values. The shadow should not be mistaken for the substance. Thus talking of Representative Government in South Asia he sets out the thesis that though a Bill of Rights could be mere "paper rules", in a South Asian landscape, they could, if strictly enforced, act as a bulwark against racial and religious discrimination.

With his preoccupation with economic and social rights, Cooray shares a sense of Place and Time, common experiences and common values with other South Asian Jurists. Among them there was always a sense of "something has to be done". Cooray was a Delegate to the South East Asian and Pacific Conference of Jurists held in Bangkok on the "Dynamic Aspects of the Rule of Law in the Modern Age". Cooray served on the Committee on Economic and Social Development within the Rule of Law. The Committee deplored the fact that in the South East Asian region, civil and political rights were being recognized at the expense of economic and social reform which is important for the establishment of a welfare society and redistributive justice.

#### **HUMAN RIGHTS COMMITTEE**

As a mark of recognition for his concern for Human Rights Dr. Cooray was elected to the U.N. Human Rights Committee 1983 - 1990, and served as Vice Chairman from 1987 - 1990. During this period Dr. Cooray played a prominent part both in the examination of the Reports of State Parties to the International Covenant on Civil and Political Rights and under the Protocol in the decision of Communications from individuals claiming to be victims of violations of rights.

In the Netherlands case concerning discrimination based on sex, the author claimed that she was a victim of violation by the State Party of Article 26 of the International Covenant on Civil and Political Rights which provided that all persons are equal before the law and were entitled without any discrimination to the equal protection of the law. The author claimed that the only reason she was denied unemployment benefits were her sex and marital status and contended that this constituted discrimination within the scope of



article 26 of the covenant.

The Human Rights Committee was of the view that Article 26 must be read in the light of other comparable U.N. conventions laying down obligations to combat and eliminate discrimination in the field of economic, social and cultural rights and the convention on the elimination of all forms of discrimination against women.

The Committee held in a progressive judgement that the circumstances in which the author found herself at the material time and the application of the then valid Netherlands law, made her a victim of violation based on sex of Article 26 in terms of the International Covenant on Civil and Political Rights, because she was denied a social security benefit on an equal footing with men.

In the well known case of Sandra Lovelace, which revealed many interesting issues under article 5(4) of the Optional Protocol, the author of the communication, living in Canada, was born and registered as "Mallseet Indian" but had lost her rights and status as an Indian in accordance with sec. 12 (1) (b) of the Indian Act, after having married a non-Indian. Pointing out that an Indian man who married a non-Indian woman did not lose his Indian status, she claimed that the Act was discriminatory on the grounds of sex and contrary to articles 2(1), 3, 23 (1) and (4), 26 and 27 of the covenant.

The Human Rights Committee recognized that the relevant provision of the Indian Act, although not legally restricting the right to marry as laid down in article 23 (2) of the covenant, entailed serious disadvantages on the part of the Indian woman who wants to marry a non-Indian man and would in fact cause her to live with her

fiancee in an unmarried relationship.

The Committee held that whatever may be the merits of the Indian Act in other respects, it was not reasonable to deny Sandra Lovelace the right to reside on the reserve, nor was that denial necessary to preserve the identity of the tribe.

Although the Committee has established a number of important precedents since 1977, its jurisprudence is still evolving.

In the case of the Mikmaq tribal society - the author alleged that the Government of Canada has denied and continued to deny to the people of the Mikmaq tribal society the right of self determination, in violation of article 1 of the International Covenant on Civil and Political Rights. It was further submitted that Canada had deprived the alleged victims of their means of subsistence and had enacted and enforced laws and policies destructive of the family life of the Mikmaqs and inimical to the proper education of their children. The majority of the Human Rights Committee in calling for a high degree of proof observed that the author had not proved that he was authorized to act as a representative on behalf of the Mikmaq tribal society.

In the field of Constitutional Government and Human Rights Dr. Cooray's commitment and deep concern has been strong. The list of his activities is too long to be enumerated here. To name a few he acted as Chairman, Human Rights Commission of Sri Lanka 87 - 89, Vice President of the Sri Lanka National Commission for UNESCO 1978 - 1985, Member of the Sri Lankan Delegation to the U.N. General Assembly in 82 & 83 and Vice President of the UNESCO sponsored International Congress on the Teaching of

Human Rights held in 1978.

Cooray was also a Member of the Sri Lankan Delegation to the General Conference of UNESCO in 1978 and 1980, and of the Sri Lankan delegation to the U.N. sponsored World Conference to combat Racial Discrimination. He also served as a Member of the Sri Lanka Law Commission.

### CONCLUSION

Cooray's main work which dealt with one of the important turning points in Sri Lanka's history is comprehensive in scope and monumental in size. There is a certain sense of timelessness about his writings and the generations standing in the wings will read his books with the same interest, as the older generations.

His life has been an effort to instil basic constitutional values in society. He acted as an academic and lawyer. Intellectually and politically sensitive to socio-economic forces, Cooray believed that a Constitution should embody a vision which subsumes the different organs of government, and was one of the earliest to anticipate the needs of our mixed society in constitution-making.

There are two important respects in which, having regard to their lectures and writings, one may surmise that Cooray along with Dr. Colvin R. de Silva would probably have felt that the first Republican Constitution did not meet with their ideals. Firstly on the issue of equality they would probably have felt that Sinhala and Tamil should be made equal in law and in status.

Secondly, in the secular character of the State. Apart from this the safeguards that existed in the Constitution relating to the rights of

minorities were inadequate in the popular consciousness. Dr. Cooray was fully aware that secularism and cultural pluralism were essential for the body politic in a multi-ethnic, multi-religious society. To this end he urged the establishment of District Councils as early as in the 1940s.

To Cooray the devolution of power from the centre was not synonymous with dismemberment of the nation. On the other hand decentralisation accepts the pragmatic ideal of unity in diversity. Cooray was aware that the failure of the Tamil leadership to secure fulfillment of the aspirations of their people could precipitate the demand for secession and the struggle for Eelam. There is no doubt that ethnic tensions in the country could have been lessened or altogether averted if the concessions subsequently extorted had been given at an earlier point in time. In fact it is rather difficult to reconcile Cooray's liberalist philosophy with some of the provisions of the 1972 constitution. A gulf between Cooray's deeply held convictions and some of the provisions of the 1972 constitution is to be seen. Even though a Bill of Fundamental Rights was included in the Constitution there was no specific procedure provided in the Constitution for their enforcement, these rights did not per se give rise to a cause of action which fatal flaw was remedied by the 1978 Republican Constitution which provided an effective machinery for the enforcement of those rights by the individual against the state.

In the international human rights sphere Cooray was acutely aware that the discourse on human rights would be mere 'paper rules' if it remained the prerogative of lawyers and human rights activists alone. Since the law as practiced in the community comprises the 'living law', Cooray strove hard to spread human rights doctrine and consciousness through Human Rights education.

He also realized that concepts of group loyalty and of duty to society which were heavily etched in the indigenous legal traditions of the East have given way to the rights - oriented individualistic concepts of the West. Thus Cooray formulated a juridical philosophy based on social groupings and an emphasis on duty, and the non-materialist values of the East. He was in no way polemical but felt that there should be a marriage of the dynamic individualism of the West with the spiritual ideals of the East.

Like a zen monk devoting his life to drawing a single perfect circle to get to the very core of life, Cooray strives still to understand the very essence of law. He does not rest in retirement in the ivory tower of the academic. He strives again to capture a dream continually evasive but (which could be captured) within human power to achieve.

My conversations with him were important for at least 2 reasons - to know both the world I share with him and to know the world that he knows and could create for me. He evoked a world of ideas, ideals and thought in which were dramatized vital aspects of the human experience.

In 1936 Rabindranath Tagore wrote to Nehru - "Through all the details of your life runs a current of humanity which over passes the tangles of facts and leads us to the person who is greater than his deeds and truer than his surroundings". This could be true of J.A.L. Cooray.







