LAW AND SOCIETY TRUST

Fortnightly Review

No 3 Kynsey Terrace, Colombo 8

1 September 1991 – Volume II Issue No 23

OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

In this issue we look at emerging models of dispute resolution and new approaches to human rights, both individual and group.

Conflict Resolution and Human Rights

Emerging Trends

IN THIS ISSUE

SOME THOUGHTS ON DISPUTE RESOLUTION
– Justice A R B Amerasinghe

TOWARDS A NEW TORT FOR THE VIOLATION OF HUMAN RIGHTS
– Lakshman Marasinghe

CANADA'S ABORIGINAL PEOPLES AND LEGAL EDUCATION
– Noel Lyon

ETHNIC QUOTAS: A COMMENT
– Izeth Hussain

SRI LANKAN PRISONS: AN OVERVIEW
– Shantha Pieris

CALENDAR OF RECENT EVENTS

TO OUR READERS . . .

SOME THOUGHTS ON DISPUTE RESOLUTION

by

A R B Amerasinghe

Justice of the Supreme Court of Sri Lanka

PART I

(Part II will be reproduced in our next issue)

If there is one unpleasant thing that we all experience from our earliest moments to the end of our lives, it is conflict. We struggle within ourselves, tackling the perplexities of conscience in which duties and desires compete with each other. We come into constant collision with each other as we contend and even undertake armed encounters in aggressive attempts to protect our rights and interests. We are immersed in a world of disputes – personal, interpersonal, intergroup, intergovernmental and international. Scholars like K. Lorenz (On Aggression, 1966) and E.O. Wilson (On Human Nature, 1978) have pointed out that conflict is deeply internalized, instinctual and a part of the animal nature of homo sapiens. Indeed Kevin Avruch and Peter W. Black (Ideas of Human Nature in Contemporary Conflict Resolution Theory, 1990) suggest that since Darwin, conflict has been the major dynamic of biogenetic explanations of human behaviour. That being the case, it comes as a disappointing surprise that the options and techniques of dispute resolution receive little, if any, attention at the Sri Lankan institutions which are concerned with the training of persons whose professional lives are primarily concerned with dispute resolution. By way of contrast, in the United States, not only law schools but also institutions teaching business management, have research programmes and give courses on dispute resolution so as to adequately equip people for their professional tasks. In addition, the American Bar Association, through its Standing Committee on Dispute Resolution, which was established in August 1978, provides training for judges, lawyers and other persons on a systematic basis. The ABA assists over 400 dispute resolution programmes nationwide, activates state and local bar involvement in dispute resolution, conducts programmes for research and develops and evaluates innovative and experimental programmes such as the Multi-Door Courthouse Dispute Resolution Centers Project. Older generations of lawyers, having realized that their experience "settling" cases on the steps of the courthouse is valuable but deserving of supplementation, are now turning up in a large numbers at continuing education programmes to learn about the techniques of dispute resolution.. I had the privilege recently of participating in such a course on mediation conducted by the American Bar Association for senior judges. It was most instructive. It was very clear that while some may be born with a greater aptitude or flair than others, to settle disputes, yet the techniques of negotiation and mediation have to be learnt and the relevant skills consciously developed and refined.

The Bar Association of Sri Lanka deserves our congratulations and thanks for making a start today. In the interests of the legal profession and the public of Sri Lanka it is to be hoped that the subject will be given the important place it deserves when you prepare your future programmes of activity. The Bar Association has a special concern in the sphere of dispute resolution. Firstly, it has responsibilities in relation to the Rule of Law. A society such as ours, which is based upon the Rule of Law, depends not only on the passage of certain, fair and effective substantive laws but also on the availability and use of procedures for dispute resolution that render efficient and equitable results. It must ensure faster access to justice, assist in the elimination of court backlogs and work towards greater satisfaction by the parties with the final result. Secondly, it is lawyers to whom members of the public turn to identify, interpret and apply the standards derived from laws, regulations, rules and other written instruments such as contracts, deeds and testamentary dispositions. It is to lawyers they turn when there is a perceived divergence of interests or when persons believe that their current needs and aspirations cannot be achieved simultaneously. A lawyer is assumed to have a knowledge of the law and notions of reasonableness, fairness and justice by reason of his professional education and training. It is believed, therefore, that a lawyer is uniquely qualified to satisfactorily resolve conflicts, whether they be rights-based or interests-based in character.

"Satisfactorily resolve conflicts". That is the expectation. Fulfillment is another matter. If it takes ten or twenty

years to obtain a solution, is it satisfactory? If in the attempt to resolve a conflict it is necessary to spend such large amounts of money as to leave a disputant indebted, is it satisfactory? In 1849 Major T. Skinner in a memorandum observed: "One individual for a trifling suit may, in many instances, if he chooses, withdraw from their village and necessary occupations one half of its population as witnesses". Because our villages are more densely populated now, it may be an exaggeration to say that half a village is ruled out. Yet the fact is that every day, thousands of people do give evidence. Often they do this over and over again as cases get postponed. Is this waste of national and personal resources a satisfactory way of settling our disputes? Are there no other methods of solving the dispute? Should all those matters be established to decide the real, underlying question? Can't the parties often agree on some of the facts sought to be established through witnesses? These are problems that are not peculiar to Sri Lanka. That great lawyer-President of the United States, Abraham Lincoln, once said to his people: "Discourage litigation. Persuade your neighbours compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it."

There are other avoidable losses besides money and time for those who unnecessarily litigate instead of selecting more appropriate methods of dispute resolution. The use of the adversarial system results in a win-lose situation. It is a well-known fact that the loser, and often his family for several generations thereafter, smarts on account of the loss, sometimes resorting to criminal activities by way of revenge or on account of the animosity created. One of our British Governors, Sir Hercules Robinson, in his address to the Legislative Council on 4th October 1871, made this comment: "Our rule has destroyed every vestige of the system of village government and has given the people in its place about forty minor courts.... presided over by European forms of civil and criminal procedure.... What is wanted is some inexpensive, prompt and popular means of settling village disputes on the spot. This would tend to arrest in the very germ the growth of those contentions which at present develop into such a prolific crop of both real and petty criminal charges."

With somewhat less good sense, prudence and sound judgement, perhaps, the Revd. James Cordiner, who was Chaplin to the Garrison of Colombo when the system of British-type courts were introduced into this Country in 1802, stated that the courts were "daily crowded with complainants against debtors and petty offenders. The natives are particularly prone to litigation and found of having their most trifling disputes determined by the superior power; the application to which a moderate use of common sense on their part would render unnecessary. Nothing gratifies them so much as an alternative enquiry into the nature of their grievances. The subject of dispute does not often exceed the value of ten shillings and they frequently retire satisfied even when the cause is dismissed as frivolous."

It has been doubted whether the amount involved, as Cordiner seems to suggest, necessarily provides a satisfactory criterion for deciding whether dispute resolution should be diverted from the Courts system in all cases. Moreover, one might also entertain reservations with regard to Cordiner's observation that parties retire satisfied when their causes are dismissed by the Courts. Perhaps the loser, more often than not, departs with sorrow and pain, full of irritating bitterness of temper, with vengeance on his mind. People do not go to court for diversion, sport and fun. Court-houses are not places of entertainment provided at State expense for the amusement of the public.

However, it was thought by some that satisfaction was derived from having a day in Court with its trappings and trifling embellishments and attended by officers esteemed by caparison. Then, Court-houses do seem to have been somewhat more amusing than they are today. Cordiner says that "A body of Lascoreens fantastically dressed, with Cingalese swords and hessian caps and feathers surround the Courts and give to the seat of judgement in the eyes of the natives an air of dignity and importance." The Government Agent of Kurunegala in his Administration Report for 1869 said that "A suit in Court seems to be looked on as the answer to a want met elsewhere by the Theatre, Opera, Music Halls etc." In the same year, the District Judge of Badulla in his Administration Report observed that "The Court-house is the arena chosen by popular consent in which the greater part of the superfluous excitement and passion of the native is worked out." Even today there are people who believe that a man insists on his day in Court and that, therefore, it would be futile to advise him

to resort to alternative methods of dispute resolution. If that is in fact the case, I think it is your duty as Attorneys-at-Law to study the problem of your client, consider the options available, and then explain to your client in simple terms what are the alternatives, what are the relative advantages and disadvantages of each of those alternatives and to provide proper guidance. You may be surprised to find how many people would prefer alternative methods of dispute resolution to the risky, expensive and ultimately unsatisfying process of adjudication, once the options are laid before them. The United States of America was once regarded as the most litigious country in the world. It was said that the battle cry "So sue me!" appeared to have replaced e pluribus unum as its motto. With the greater use of alternative dispute resolution processes in the last decade, the picture is, happily, changing and changing rapidly. Lawsuits have ceased to be the growth industry that it was in that country.

I do not want to create the impression that the formal, adjudicatory process and the combative, adversarial system introduced by the British is without its merits. For the determination of standards and the ascertainment of truth in certain types of situations, no better system has, in my opinion, been yet devised. I believe it is an opinion that is shared by many people. Let me recall a little story related by the Countess of Oxford. The year was 1917. An Englishman joined a caravan travelling down the pilgrim route through the mountain ranges of Persia to the Mesopotamian frontier. His companions, the Countess said, were men of all conditions and ages: Merchants, rustics, turbaned tribesmen, muleteers, camel drivers, mullahs and lesser dignitaries of Islam. Huddled together, they talked freely among themselves as the long day waned. One night, under a cold moon, some of the younger pilgrims were expressing their views on the fortunes of the war, which was going badly for the English. "The British will be beaten all to nothing and the Turk will be free", said one; to which an old man replied: "If the Turk is beaten, there is an end of all courage in the world." "Do not forget", said another, "that if the German is beaten, that is an end of all science". A third said: "But if the English are beaten there is an end of all justice." Upon which an old Mullah put his hands above his head and said: "In that case, my brother, God will not allow the English to be beaten."

Where a serious crime has been committed, there is no better place than a Court of law for deciding what the law is, and whether the facts disclose a transgression by the accused. On the other hand, minor offences, might be better dealt with less formally and by an investigation of underlying causes by mediation. As to which offences are to be regarded as "Serious" or "Minor" for this purpose is a matter of State policy and may change from time to time, reflecting public attitudes to various forms of deviant activity. At the present time you may derive guidance from section 7 of the Mediation Boards Act No. 72 of 1988. As for Civil matters, the same section obliges your client to resort to mediation in the first instance in certain types of cases. In other matters, however, you may consider the ordinary adjudicatory process in the first instance.

In general, an action in Court may be recommended where relationships are of no consequence and what is of paramount importance is a binding, enforceable decision as to the meaning of objective standards laid down by laws, regulations, rules, deeds, contracts, testamentary dispositions or other instruments in writing as applied to the facts of a case. The adjudicatory process is appropriate when objective standards and overlying facts, rather than underlying issues, are of fundamental importance to the disputants. It is the appropriate process when the concern of your client is with regard to the past rather than the future. If formality is important, select the adjudicatory process. A word of caution: Since the adjudicatory process is formal, it is governed by various rules of procedure. And so, unless you are very careful, your client may sometimes find himself out of court without even the overlying (let alone underlying) issues resolved if you do the wrong thing or fail to comply with the procedures laid down. If your bewildered and disappointed client then laments the failure of justice, then blame yourself for what you have done or failed to do. Don't distort the truth by telling him that the dispute was resolved by reference to a "technicality". The dispute remains unresolved. It remains unresolved because you, through ignorance, lack of foresight or want of care to do what was expected of you in terms of your chosen way of dispute resolution, deprived the Court of the opportunity of adjudicating upon the dispute. If estimated time and expense for the resolution of the dispute in question in relation to the means of the client and the importance of the issues involved make it worthwhile, the adjudicatory process might be recommended. If you do decide to refer the matters in dispute to the adjudicatory process, it will be decided by a judge and your role as a lawyer will be to prepare and file the papers of your client in the manner prescribed by law and, in the manner prescribed by law, to persuade the judge to decide in favour of your client. The judge and lawyers become the key people. The adjudicatory process is therefore the appropriate process where your client himself does not want to actively participate in decision-making process, except, perhaps, as a witness.

If adjudication is your choice in the circumstances of the case, you may, nevertheless consider the desirability of avoiding a full-scale battle in Court by exploring the possibility of narrowing down the matters in dispute at discussions and negotiations with the other side. Most seniors will tell you that in the end cases are usually either settled or the decision based on much narrower grounds than when they first went into Court. So, why not endeavour to narrow the dispute on an agreed basis at the outset? Your skills as a negotiator and/or mediator would be of great importance here. The outstanding matters for decision may then be submitted to a Court for resolution in terms of Chapter LII of the Civil Procedure Code. The Court will give judgement upon the basis of which an enforceable decree will be framed. Much time, money and effort can be saved by this process of dispute resolution which regards the Court as the place of last resort for solving outstanding problems which cannot otherwise be satisfactorily dealt with. This is as things should be. In the words of Sandra Day O' Connor, Associate Justice of the U.S. Supreme Court, "The courts of this country should not be the place where the resolution of disputes begin. They should be the places where disputes end - after alternative methods of resolving disputes have been considered and tried. The courts of our various jurisdictions have been called the `courts of last resort'."

(To be continued in our next issue)

TOWARDS A NEW TORT FOR THE VIOLATION OF HUMAN RIGHTS?

Karunaratne v Rupasinghe and six others

Decided on 17 June 1991

by

Professor Lakshman Marasinghe

The Petitioner Karunaratne was first arrested on 10th February 1990. He was detained at the Kantalai Police Station upon the reasonable suspicion that the petitioner was engaged in terrorist activities on behalf of the Janatha Vimukthi Peramuna. Subsequently upon representations made to the Attorney-General on the petitioner's behalf, the petitioner alleged that he was released upon orders issued by the Attorney-General. The Attorney-General had found, according to the petitioner, a complete lack of evidence to support the suspicion of him being involved in terrorist activities as the Vice-President of the J.V.P. of the Northern and Eastern Provinces. It was further alleged that the Attorney-General's order was issued on 19th October 1990 and that he was released from detention on the 23rd of that month.

Inspite of the fact that the Attorney-General's written order for release was not subject to any condition, the Court found that the petitioner's release was made subject to him having to report to the Kantalai Police Station once every month. The Court, however, was willing to concede that this condition may have been imposed as a result of informal advice given by the Attorney-General to the Kantalai Police regarding the Petitioner's release.

The petitioner thereafter resumed his normal activities as a cultivator and a social worker. As a social worker he was then the President of the Rural Development Society of Raja Eliya and the district organizer of a Community Education Centre, a non-profit making voluntary organization.

By the 1st of October 1990, the petitioner developed an abdominal ailment for which he obtained on that day, Specialist's attention in Colombo. The persistence of the ailment compelled him to enter and be admitted to the Kantalai Hospital on the 28th of that month. One and a-half hours after admission, at 8.30 that morning, the petitioner was arrested for the second time by the 2nd and 3rd respondents in this petition, the Sub-

Inspector and a Sergeant from the Kantalai Police Station. This was done, it was later alleged, under the orders of the 1st respondent, who was then the Headquarters Inspector (H.Q.I.) of the Kantalai Police Station.

The Court found upon submissions made on behalf of the 3rd respondent, that this second arrest was made upon a letter addressed to the H.Q.I., Kantalai, from the Chairman of the Committee for Processing, Rehabilitation and Release of Suspects (the Rehabilitation Committee). The Chairman of that Committee was the Inspector General of Police, who was cited in this petition as the 4th respondent. The justification for his second arrest was based upon a specific Emergency Regulation[1]. Under that Regulation[2], the Minister of Defence or his Secretary was empowered to:

> *".....Order to the effect that any person who has been detained under the provisions of regulation 17 or regulation 18..... or under the provisions of section 9 of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as the case may be, in the interest of the welfare of such person, be subject to rehabilitation for such period as is specified in the Order....."*

It was alleged by respondents 1 – 3 that the letter addressed by the Chairman vested them with legal authority to arrest and respondents 5 – 6 contended that they were vested with legal authority to detain the petitioner, as they did. Respondents 1 – 3 were the H.Q.I., S.I. and Sergeant at the Kantalai Police Station while the 5th and the 6th respondents were the Officers in Charge of the Ratnamalee Camp at Anuradhapura where the petitioner was detained.

In the present proceedings, the petitioner prayed for his release and damages in the sum of Rupees 50,000. While allowing both claims in a unanimous decision of the Supreme Court, the Court took a giant step towards making the officers responsible for the arrest and detention of the petitioner, personally liable to him. The importance of this decision is in the fact that the Court departed substantially from its own previous decisions in which damages were normally awarded against the State where tax payers money became the source of payment. In awarding damages against the officers personally, the Court observed, that that would tend:

> *".....to encourage, rather than to deter the infringement of fundamental rights by public officers, who may be tempted to accede to improper pressures from superiors or outsiders (or even deliberately flout instructions) in the belief that they would be immune from personal liability in applications of this nature. That approach will not induce public officers to exercise, perform and discharge their powers, duties and functions with due care and attention for the fundamental rights of citizens, and it is relevant to point out that Article 4 (b) [of the Constitution] imposes a duty on public officers to respect, secure and advance fundamental rights. Hence even if the provisions of Article 126 had been ambiguous – and I do not find them to be ambiguous – I would prefer that interpretation which enables relief to be granted against the actual wrong doers[3]".*

Mr. Justice Mark Fernando with whom the rest of the Court[4] agreed adopted a recent decision of theirs, where Kulatunga J. had explained the rationale for awarding damages against the officers responsible for violating the fundamental rights of citizens. Fernando J. while adopting Kulatunga J. in **Dissanayake v Superintendent Mahara Prisons**[5] said:

> "There are several decisions of this Court in which the personal responsibility of wrong doers has been

---

1. Emergency regulations made on 29.9.90 and published in Gazette 630/7 of 5.10.90.

2. Regulation 18B.

3. Karunaratne v Rupasinghe and six others – decided by the Supreme Court of Sri Lanka, on 17th June 1991, at pp. 5 – 6 of the typescript.

4. Dheeraratne and Wadugodapitiya JJ.

5. Decided on 28.3.91, 6/90 Spl. S.C.M.

recognized, and relief granted against respondents other than or in addition to the State. The result of granting relief only as against the State is that ultimately it is the members of the public who have to pay when public officers infringe the fundamental rights of their fellow citizens."

The placing of personal liability upon officers of the state for violating human rights could be justified upon several grounds. Firstly, it may be conceded that a State acts through its officers and a violation of human rights by a State is committed through them. Secondly, when a State acts through its officers, the views held by the officers of a State towards the implementation of its rules would determine the way a State treats its subjects. The 'alter ego' of the State are its officers. Thirdly, as Hart had written in his book on **The Concept of Law**[6], a system of law is a Combination of Primary and Secondary Rules. The Primary rules are those rules which create obligations – duties – which the individuals under the system are required to obey. The Secondary rules, are essentially those rules which ensure the orderly functioning of the Primary Rules. The core of a legal system, Hart thought was a combination of these two rules. Hart, further made the point that in any legal system there must be an "inner point of view" or an "inner aspect", that human beings functioning the legal system take towards its rules. For the proper functioning of the rules, the importance of the "inner point of view", for Hart, cannot be under estimated. For the existence of a legal system in the fullest sense of the word, in addition to the Primary and Secondary Rules, the views taken by the officials towards the Rules themselves form a quintessential element. Hart, therefore concluded, that the "Inner View" is particularly important in relation to the secondary rules. The officials, according to Hart, must not only `obey' the secondary rules but must take an inner view of these rules and this is, for Hart, a necessary condition for the existence of a legal system. In the present judgement, the Supreme Court had found the officers of the State faulting in their `inner view' of the legal system and their personal liability was therefore justifiable.

Lastly, there is a new thinking among Human Rights activists that the time has arrived for the recognition of a Tort against the violation of Human Rights. It is believed that such a Tort should be founded outside the parameters drawn by such traditional Torts as False Imprisonment, Assault, Battery, and Malicious Prosecution. Could the present decision be the first step towards the establishment of such a Tort in Sri Lanka?

CANADA'S ABORIGINAL PEOPLES AND LEGAL EDUCATION

by

Professor Noel Lyon

The **Canada Act, 1982** was the last Act of the United Kingdom Parliament to make law for Canada. The Act itself says that no future enactments of that Parliament will apply to Canada, and while future British Parliaments may not be bound by that limitation because of the doctrine of parliamentary sovereignty, no Court in Canada would pay any attention to a future British enactment purporting to apply to Canada. That is, Canadian constitutional law regards the finality and unalterability of the **Canada Act, 1982** as part of its fundamental law. In order to achieve full political independence we have had to free our minds of colonial ways of thinking, the core of which was the imperial hierarchy that required judicial deference to British laws and institutions.

Unfortunately, two centuries of colonial thinking have shaped Canadian laws, institutions and programmes of legal education, so that even in 1991 there is some tenacious clinging to old, familiar legal landmarks. Also, a general lack of interest in legal theory among Canadian lawyers, at least until recently, has resulted in much confusion and some hostility with respect to the new regime of 1982, which not only entrenched a charter of rights and freedoms in the Constitution but also introduced a supremacy clause that makes the Constitution the supreme law and expressly requires that other laws yield to it when they are inconsistent with it.

---

6. Hart, (H.L.A.) The Concept of Law, Clarendan Press, Oxford.

The transition from a common-law based legal system with parliamentary sovereignty as its grundnorm to modern constitutionalism on the American model, in which sovereignty resides in the people, presents a great learning opportunity for Canadian lawyers. No longer can we get by through invoking long-dead English legal scholars and aping British judges, barristers and academics, nor can we simply imitate Americans. We must finally think for ourselves, and the Supreme Court of Canada, to the credit of the judges, has been remarkable in the leadership it has shown in developing a distinctive Canadian constitutional jurisprudence.

The Court has shown none of its pre-1982 hesitancy when reviewing either executive or legislative action under the Charter. The supremacy clause seemed to end finally the tired old debate about legislative supremacy versus judicial supremacy. It is the Constitution that is supreme, said Chief Justice Dickson in an early Charter case, and the judges have a duty whether they like it or not, to apply supreme law through judicial review.

Learning to live with an entrenched charter of rights and freedoms is proving to be very instructive for Canadian lawyers, but I believe that it is in the elaboration of the newly-entrenched rights of Canada Aboriginal Peoples, or First Nations as they prefer to call themselves, that we will free our minds and our system of legal education from the narrowness and blindness that have attended indoctrination in common law ways of thinking within an imperial hierarchy.

The charter forms Part I of the **Constitution Act, 1982,** which was a schedule to the **Canada Act, 1982** (the British neither need it nor want it as part of their law – it was produced for foreign consumption only, in Canada). Part II of the Act bears the heading "Rights of the Aboriginal Peoples of Canada", and its key provision, S.35(i), says –

> *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*

Before 1982, legal claims made by aboriginal peoples were treated as common law matters. Claims of aboriginal title to land were slotted into the English property concept of profit a prendre and thus reduced to a personal, usufructory right to go onto land to hunt, fish and gather wild food plants. As settlement extended across the southern half of Canada and reserves were established for some six hundred Indian bands (as they were called by the Europeans), these rights were limited in their exercise to unoccupied crown lands. As for Indian treaties, these were regarded by the courts as "mere" agreement made between the crown and various Indian tribes, subject to abrogation by Parliament.

The expectation of the Europeans was that the Indians would gradually be assimilated into the dominant society and the "Indian problem" would thus disappear. To expedite this process, the Canadian government, with the co-operation of the Roman Catholic and Protestant branches of the Christian religion, established residential schools for Indian children. For some four decades, Indian children were taken from their families, put into European school uniforms and given a standard English education. Not only were these children punished for speaking their own languages, but evidence has been surfacing over the past year of widespread physical, psychological and sexual abuse in the residential schools. The goal of assimilation was not achieved, and instead some three generations of Indian children suffered severe emotional damage which may be a major cause of today's high rates of alcoholism, violence and suicide among Canada's Aboriginal Peoples.

It is against that background that the Supreme Court of Canada, in 1990, pronounced two of its most enlightened judgements, one on the meaning of "existing aboriginal rights" and the effect of their recognition and affirmation in the **Constitution Act, 1982,** the other on the nature of Indian treaties and the proper approach to their interpretation.

The first of these cases is **R. v Sparrow** (1990) 70 DLR (4th) 385, in which Chief Justice Dickson (now retired), speaking for unanimous bench of a six judges, wrote –

> *It is clear, then, that S. 35(1) of the Constitution Act, 1982, represents the culmination of a long and difficult struggle in both the political forum and the courts for the constitutional recognition of aboriginal rights.....(at 406).*

> *.....the honour of the Crown is at stake in dealings with aboriginal peoples. The special trust relationship and the responsibility of the government vis-a-vis aboriginals must be the first consideration in determining whether the legislation or action in question can be justified. (at 413).*

The case was sent back to the trial court, for want of evidence needed to apply S.35 in a responsive manner. Much of the judgement consists of directions to the trial judge as to the proper approach to interpretation of S. 35. Those directions in effect make of S. 35 a distinct charter of fundamental rights for aboriginal peoples, such that the Parliament of Canada, whose legislative domain under federalism includes "Indians and lands reserved for the Indians", may not enact laws that infringe unnecessarily or unreasonably on aboriginal rights or treaty rights. In the **Sparrow** case, the issue was whether federal fishing regulations limiting the length of net permissible for salmon fishing is inconsistent with S. 35(1) of the **Constitution Act, 1982** in the context of Mr. Sparrow's fishing activities. If so, the regulation would be of no force and effect in those circumstances.

The second Supreme Court decision is **R v Sioui** (pronounced see-wee) (1990) 70 DLR (4th, 427, an appeal from conviction of a Huron Indian for cutting trees and burning the wood, all within a provincial park, where such conduct is prohibited by law. Chief Sioui (as a Huron Chief, this person is roughly equivalent to a cabinet minister in Eurocanadian society) claimed that he had the right to cut and burn trees for ceremonial purposes anywhere in his people's traditional lands, under a treaty made with the British in 1760. At that time the British were wresting control of that territory, which became Quebec, from France. The alleged treaty consisted of a single paragraph signed by General James Murray, ordering safe passage for the Hurons, who were to be allowed "the free exercise of their Religion, their Customs and liberty of trading with the English".

When the Supreme Court looked at the circumstances in which General Murray signed that document, including the British concern to maintain peaceful relations with the Hurons and the fear that they might be provoked into an alliance with the French, the judges concluded that a treaty of peace and friendship had in fact been entered into. One of the terms of the treaty, recorded in the document, was that the Hurons were to be allowed the free exercise of their customs, one of which is the making of ceremonial fires for various occasions. The Court went on to find that Chief Sioui's firemaking activity was not incompatible with the purpose of the park legislation, so that the park regulation must, in the circumstances, yield to the treaty right, which has the status of supreme law.

Mr. Justice Lamer (now Chief Justice of Canada), speaking for a unanimous bench of nine, gave to treaty law a status within the Canadian legal order that it has never enjoyed in the past and could not have achieved without the changes in judicial thinking brought about by the new constitutional regime of 1982:

> *It must be remembered that a treaty is a solemn agreement between the Crown and the Indians, an agreement the nature of which is sacred. The very definition of a treaty thus makes it impossible to avoid the conclusion that a treaty cannot be extinguished without the consent of the Indians concerned.* (at 456)

The Supreme Court had, in 1985, in **Simon v The Queen** (1985) 24 DLR (4th) 390, ruled that an Indian treaty is not a treaty as defined by international law, but is **sui generis.** The Court regularly uses that term to describe aboriginal rights, suggesting a distinct body of aboriginal law that is neither a part of nor dependent upon the common law.

It is here that we can begin to acquire a better understanding of law and its relationship to society, for the challenge of aboriginal rights forces us to free ourselves from the conformity of thought and narrowness of worldview that results from the process of indoctrination that we have called legal education. The first stage in the transition to a new constitutional theory has already been traversed, thanks to the supremacy clause introduced in 1982. Freeing our minds of the doctrine of parliamentary supremacy has allowed us to step through the looking-glass into a richer intellectual universe. No longer need we refer all matters to the common law as though the experience of one of the world's many cultures enjoys a validity for all peoples and all times. Nor is the legislature, however democratically elected, to be the source of all wisdom and truth. Our higher aspirations and better selves, which we have been expressing for the past forty five years through our

participation in the development of international law, call for broader standards that are able to transcend the partisan, the petty and the shortsighted that compromise so much of the democratic process in free societies.

We begin, then, with the claim of the aboriginal peoples that they are sovereign peoples with inherent rights of self-determination. Until recently, the general response of governments in Canada to such claims has been one of disbelief and ridicule. We all learned in law school that Queen Victoria who acquired all sovereignty from her ancestors, who received it from God himself under the theory of the divine right of kings, gave some of that sovereignty to her Parliament of Canada and the rest to her provincial legislatures. There is none left, so Aboriginal Peoples will have to settle for delegated powers. That is, instead of the inherent human right to self determination contemplated by the International Covenant on Civil and Political Rights, Canada's First Nations are to be "given" powers of self-government by the European peoples who came, uninvited, to their lands. Such a proposition is not only outrageous in principle; it is ludicrous as a position taken in the 1990's by a society that claims to be civilized and that has long prided itself on its internationalism.

This is where legal education comes in, as the best way out of the rigidities and contradictions that afflict the common law mind when faced with matters for which the common law and all its jurisprudential trappings are simply not equipped.

Legal education that treats a body of judicially-fashioned law concerned mainly with relations between private individuals as the foundation of the legal order is bound to fail. Law students should be taught that public law is the legal foundation of society and should be exposed to the essentials of international law, constitutional law and the law of local government as the core of their first year of law studies. The law that governs relations between citizens, such as the law of torts, contract and property, can then be set in its proper place within the larger legal order that structures society.

The resulting perspective allows a new, more responsive approach to the difficult problems of accommodating diverse value systems and cultural experiences, problems that are testing most legal systems in the world today. In Canada, the task of making space in the constitutional order for aboriginal peoples is not the only instance of the need to accommodate diversity, but it is the most difficult and therefore the most instructive one.

We need to re-examine our theory of law and legal education. The present system assumes a process of adaptation in which the common law system and method of reasoning provides the base, then the comprehensive statutory system of the modern administrative state is grafted onto that base and, finally, a modern constitution is superimposed at the apex. International law finds its way into legal processes through points of entry fashioned by the common law or by statute.

What we need is a theory that matches the world we are living in, one that can respond to the forces of globalization. The need to preserve the global environment and to achieve both north-south and inter-generational equity, all within a world where the demand for democratic participation and freedom are becoming irresistible. To me that spells a fresh beginning in which we identify the various sources of law, arrange them in a hierarchy of relative importance, then set about the task of developing a framework that will integrate and harmonize them. The attempt to set them all into the framework of the common law is what has created many of our present problems, yet we persist with an essentially common law framework for legal education.

Just identifying the different sources of law that we recognize and asking questions about the appropriate interpretive framework for each can start the process of liberation of our minds from the confinement of common law thinking. We should now understand that international law demands a prior claim to our loyalty if we are to save the planet and survive as a species. The narrow, technical approach of the common law will not do for interpreting international law, and law students ought to learn the appropriate skills and perspectives before their minds are set too firmly in common law methods of reasoning. Next in importance comes constitutional law, which is the meeting point of our experience as a society and our common values and commitments with other societies. Within the domestic legal order in Canada we continue to give priority to statute law, under a modified version of the principle (not doctrine) that a democratically elected legislature has the highest claim to make law within the constitutional framework. At the bottom of the hierarchy of laws we find the common law, equity and the Civil Code of Quebec, each of which requires an interpretive framework appropriate to its purposes, history and methods.

For a general theory of law and legal education, that is sufficient. However, the challenge of aboriginal rights in Canada allows us to apply this new understanding to identify other, special sources of law that must be included if we are to find resolutions that will endure. Those special sources are the Indian treaties, which form a unique body of laws peculiar to the relationship between the crown and the aboriginal peoples, and the tribal laws of the aboriginal peoples themselves. Freed from the procrustean bed of common law equivalency, these two sources of law will enable us to end the practice of imposing European values and experience on peoples for whom they often have little if any meaning and are frequently destructive.

Peoples who were believed by our ancestors to be savages without civilization have somehow survived two centuries of cultural suppression and are now helping us learn how to purge our own culture of its destructive attitudes and practices. The question not yet answered is whether we have the wit to listen and learn.

ETHNIC QUOTAS: THE ISSUE OF DISCRIMINATION

by

Izeth Hussain

Mario Gomez's wide-ranging analysis (Fortnightly Review, No. 20) of the Supreme Court's decision on ethnic quotas is extraordinarily stimulating to read, and is valuable for the issues of fundamental importance that it raises. But I have some misgivings about it.

The most important part of his analysis is about the distinction between affirmative action and ethnic quotas, the former being designed to remedy past discrimination while the latter are a guarantee against future discrimination. It is legitimate, according to this distinction, to enquire whether discrimination has actually taken place when what is at issue is affirmative action, not ethnic-quotas. Gomez argues that if this distinction had been clearly grasped by the court, it would not have called for proof of past discrimination. Instead, the focus would have been on the efficacy or otherwise of the ethnic quota system in preventing future discrimination, and the court's decision on the Ramupillai case could have been different.

I am not sure that I have grasped Gomez's argument fully. It appears to me that the question of preventing future discrimination can only arise if there has been discrimination in the past. In setting out the rationale for ethnic quotas, Gomez writes in para 6 on page 12 : "That merit as the sole criterion can only be an ideal. That in a multi-ethnic society with generations of acrimony and tensions between the two principal ethnic groups, merit will never be the sole criterion." What this formulation implies is that in certain multi-ethnic societies discrimination is not just an aberration that can be corrected through affirmative action but something that is structural, and therefore, practically incorrigible.

It appears, then, that in both cases, ethnic quotas as well as affirmative action, the issue is discrimination and the question has to be asked in both cases whether behind perceptions of discrimination there has been actual discrimination. The difference is that in the case of ethnic quotas we have to go further to establish that discrimination is in-built and has a structural character, and for that purpose we have to examine our ethnic relations perhaps from the time of Dutugemunu. There may be a case for ethnic quotas at the present juncture, at least as a temporary and provisional measure, but it is difficult to see how Gomez's distinction would have made the court ignore the question of whether there has actually been discrimination.

Both Gomez and Ms. Coomaraswamy (FR No. 20) have been critical of the Attorney General's presentation of the State's case. I do not think he could have, with the best will in the world, substantiated discrimination or non-discrimination because the relevant data simply isn't there. And the reason for this is that our

Governments have been unwilling to deal with charges of discrimination made both by the Tamils and the Muslims.

Let me illustrate. Coomaraswamy refers to the Leader of the Opposition claiming during the 1980 budget debate that intake of Tamils into the public sector had diminished to well below 3%. Actually the late Mr. Amirthalingam produced detailed statistical data during more than one budget debate to allege discrimination against both the Tamils and the Muslims. The official position was that they had not applied for entry into the state sector in sufficient numbers. But no data showing that was forthcoming because the Public Administration Ministry had failed to keep records showing the ethnic composition of the applicants. The Government could not bother with Amirthalingam and his allegations.

The late Sir Razick Fareed published in the Daily Mirror of 12/10/79 an open letter to the former President, which contained the following: "We have had concrete cases of grave injustice to members of my community in the Public Service – particularly the SLAS (CAS). Such cases remain to be repaired. If details were needed I shall present them. Is the Foreign Service or assignment abroad representative of this community? The answer is no. Heads of Missions do man missions from various communities. This is at a political level. Is there a single Government Agent of my community in any district? Are officers for such posts lacking? Are officers of the seniority of GA's of other communities not available among my community?" Before proceeding further, I must state that in the perception of many Muslims the discrimination against their community has been worse than against the Tamils. According to a subsequent editorial in a Muslim paper, all that happened was that the Presidential Secretariat sent an irrelevant reply to Sir Razick listing Muslim appointments to State Corporations. But he had not complained that Muslims were not beneficiaries of political appointments. He made charges about discrimination against Muslim Government officials. The editorial concluded that the irrelevance of the reply showed that his charges were unanswerable.

Our Governments' reluctance, or rather refusal, to confront the issue of discrimination seems to have behind it a Sinhalese consensus. Going through the proceedings of a 1984 seminar on national identity held by a leading Sri Lankan Institute, I found that in over 400 typescript pages there were no more than three brief and incidental references to discrimination. How, it might be asked, can our minorities possibly transcend their ethnic identities and give primacy, or equal importance, to their national identity when they believe they are being discriminated against? Surely, the sine qua non for the promotion of national identity is the elimination of discrimination. But that was far from the preoccupations of the learned participants at that seminar, and likewise, in all the seminars and meetings on ethnic relations in which I have participated. Perhaps the explanation is that it is not in the nature of beneficiaries to question the processes by which benefits are showered on them. It is the majority which benefits through discrimination against the minorities.

Given the refusal to examine charges of discrimination, the concrete particulars of the sort necessary to convince the court could not have been available to the Attorney General. The concrete particulars are crucially important because the argument based on the statistical disproportion between an ethnic group's ratio in the state sector and its national population ratio is not convincing by itself. All ethnic groups in a multi-ethnic society will not show an equal enthusiasm for entry into the state sector. The point is that most ethnic groups seem to have a compulsion to differentiate themselves as much as possible, and consequently they tend to engage in different occupations. A purely statistical approach to the problem of discrimination is mistaken.

The enthusiasts for ethnic quotas may deplore the court's decision in the Ramupillai case. I hope it proves to be salutary. The posing of the simple and straight forward question whether there has actually been discrimination exposes the sheer absurdity of talking about perceptions of discrimination without enquiring into them. Perceptions of discrimination may really be misperceptions, or they may be accurate – in which case we had better do something about it. For those perceptions have led to two rebellions, not just one, within this small island, that of the Tamils and also that of the JVP which had behind it perceptions of caste discrimination.

THE SRI LANKAN PRISONS: AN OVERVIEW

by

Shantha Pieris

For a population of sixteen million the number of people behind bars is rather frightening. Sri Lanka has about 20,000 young people detained under the emergency laws for suspected involvement in the abortive JVP insurrection of 1987–1989. The number of Tamils under detention for their involvement in the still ongoing separatist war is unknown. In addition to these figures caused due to the present civil turmoil in the country, there are the normal criminal population. This number consists of 18,000 people convicted of non– political crimes.

After the Indo–Lanka Accord of 1987, almost all of the suspected Tamil militants held in detention before the Accord were released. Many held in detention for suspected involvement in the country's civil unrest have yet to be charged. This is probably due to the fact that the State has given a low priority to the prosecution of this category of offenders. As a result, many suspects languish in detention, forgotten by society.

As for those suspected of committing non political crimes, the number in remand is about 70,000. It is the purpose of this article to study the problems of these remandees, whose numbers continue to increase every year. There are several reasons why Sri Lanka has a very high remand population. Many of the reasons as this article will show, is tied to the criminal justice system this country follows.

Of course the problems of the remand prisoners, cannot be studied in isolation from the problems of the convicted prisoners. This is because the two are housed together in several of the prisons in Colombo. There is therefore a certain amount of intermixing, however hard the prison officials try to keep them apart. In the process there is a cross–fertilization of anti–social ideas to the detriment of society as a whole. The prison officials allege that prisons are over–crowded by at least three times the original capacity. The solution of building more prisons is unacceptable for several reasons.

1. It does not address the root of the problem, which is actually a social problem, the attitudes of society towards those who transgress the laws by which that society is governed.

2. It sides steps the issue of what is causing the increase in the prison population.

3. The experience of the recent past has shown that new prisons that were built at a colossal cost to the economy, have tended to be taken over by the Defence Ministry to house detainees. In the context of the present civil war, habitable prisons for those who have committed "normal" crimes has become a low priority.

4. It must also be remembered that no foreign aid will be granted to build prisons. This itself is symptomatic of a wider social ostracisation to the whole concept of a prison and what social needs it should serve. Infact the attitude seems to be that the less said about it the better.

This "ostrich–like" attitude has other ramifications, like low social esteem for those who are involved with the prison system, for example, for prison officials, lawyers who do legal aid, for N.G.O.s that work among the prisoners, and last but not least for the prisoners themselves. Infact, it would be truer to say, that the prisoners get blamed by all the other groups, especially by the prison guards, for the poor social status that they all share.

One responsible Prison Official spoke about his subordinates being "infected" by the prisoners, as a result of which they became corrupted. They learnt to take bribes, bring in drugs, commit sexual crimes and become accomplices in murders. The possibility that the susceptibility to these so–called infections, were caused as a result of the poor quality of the entrants to the Prison Service was not considered. This illustrates that groups that work or come in contact with the prisoners also need to be re–educated on their attitudes and values towards the latter.

5. A Prison is a self-contained world of sorts. Not only does it contain accomadation for the primary inmates, the prisoners, but it must also house the prison officials and their families. This means that basic infrastructure like water, electricity, sanitation and recreation must exist for these two categories. In addition, the families of the prison officials require marketing facilities, and if the prison is far away from an urban environment, also adequate transport facilities for the other members of the family to get to their places of employment, studies etc.

The needs of the lawyers, especially in the case of remandees, and the relatives of the prisoners are also overlooked. Often there is a conflict of interests between the needs of the relations of the prisoners and the the prison officials. For example, prisoners from far-away places like Ambalangoda, Matara and Tissamaharama might be housed in Colombo, for the sake of the convenience of the Prison administration, rather than opting to build a new Prison closer to the prisoners home towns, so that the prisoners may get visits from home more regularly.

Unlike in other countries like Singapore, Hong Kong or Japan, Sri Lanka does not possess well developed Prison Industries. In these countries prisoners learn life skills that are relevant to a highly competitive economic system. These skills stand them in good stead, to make a fresh life when they are released. Sri Lanka by contrast, only possess the occupational pas_times introduced by the British in the colonial days. For example, teaching men to weave cloth for prison uniforms, in a culture where such work is looked upon as a strictly female occupation, will not help these men to be gainfully employed.

Quite apart from the issue of sexual stereotyping in employment, the machines on which the prisoners work are museum pieces. Further, the tailoring work done, does not make allowance for innovative thinking. Hence the prison tailors on their release, will perhaps be of use in working in a assembly-line factory, where all they have to do is to sew pieces of cloth without ever having worked on the full product.

Thus when considering the issue of building a new Prison in Sri Lanka, the aspect of the needs of Prison Industries in the future is never taken into account. Another aspect that is often neglected is the need for aesthetic beauty in the planning of Prisons. One exception to this rule, is the beautifully planned and well maintained grounds of the Pallansena Open Air Prison for Juvenile Offenders, in Negombo. The haphazard building of Prisons without adequate planning should not be encouraged. This again is a value-judgement on the purposes, needs and objectives of correctional incarceration.

The statistics reveal that in regard to convicted prisoners, 80% are people convicted for failure to pay fines imposed by the courts. It is also revealed that more than half of the convicted prisoners are imprisoned because of drug-related offences, usually they also happen to be addicts.

This seems to illustrate that the problem of over-crowding in the prisons needs to be tackled at a different level. In short, society must attempt to keep people who do not need to be in Prison, from being incarcerated.

Some suggestions as to how this could be done are enumerated below.

1. The strengthening of the Probation Service in the country. This will enable the courts to order community service under supervision of the Probation Care Services, instead of the invariable jail terms prescribed at the moment.

2. The Criminal Procedure Code, the Penal Code and other criminal statutes, need to be amended to allow for the granting of personal surety in lieu of the presently ordered monetary bonds. This will reduce the possibility of other anti-social activities, like the prevailing bail-bond industry. This latter activity ensures the perpetuation of poverty and indebtedness of the suspects or their families, in the event of them being able to pay the bail bond.

It must be remembered that the overwhelming majority of the prison population, both remand and convicted are both poor and illiterate. The Criminal Law's bias towards incarcerating the poor and the disadvantaged, the most vulnerable segments of society, perhaps require a greater study by a sociologist.

3. Giving suspended sentences. No statistics are available as to the prevalence of this method of sentencing. however greater use of it could reduce the jail population. In view of the fact that crimes are often hatched in Prisons, it can be a method of pre-empting the spiralling crime rate.

There are also important psychological reasons why this should be adopted. Such as the better well-being of the offender. This is especially important in the case of a first offender. After all, if one of the primary purpose of a criminal justice system is rehabilitation, the giving of suspended sentences may reduce the likelihood of recidivism as compared to say incarceration.

4. Where the courts think that in a particular instance a fine should be imposed, adequate time should be given for the payment of it. It has become a practice in some courts, to order the immediate payment of a fine. The probable reason is that the judge does not want to keep the case on the ever-lengthening court roll, as will be the result when time is granted. However jail sentences which swell the ranks of the 70,000 on remand, merely for the non-payment of fines, are equally undesirable.

5. As in other countries with a well developed Probation Service, the court should require a probation officer to present a report on the social and economic background of the accused, before the sentence is pronounced. The purpose of this is to re-analyse the whole dimension of the prevailing means of punishing deviant behaviour. If one of the purposes of punishment is to re-integrate the offender some day as a responsible member of the community, then greater thought need to be given by judges to the consequences of their decisions on the individual cases and any matter that is in favour of the accused should be taken into account in mitigation.

This is a plea for judges to exercise justice tempered with mercy. It is a call for judges to exercise greater discretion. Not just to give greater strength, vigour and muscle to the bare bones of the Law, but also to give it a sense of direction and purpose. Anything less, is an abdication of the traditional role that judges have always exercised in the past.

6. Since the statistics reveal that the majority of both the convicted and remand prisoners were accused of narcotics-related offences, perhaps the time has come to set up a separate court on the lines of the Labour Tribunal, to speed up the trial of these particular offences. The advantages of such a move are obvious, given the fact that drug offences are non-bailable. It would reduce the time spent by an accused in remand, thereby reducing the problem of overcrowding considerably.

It must be considered that justice delayed is justice denied. In these particular cases it is doubly so, as the time spent in remand by people who are deemed to be innocent until proven guilty is considerable, sometimes taking several months.

7. Documentation of the procedure in court. These statistics are vital in order to do any field studies on the workings and the impact of the criminal justice system in Sri Lanka. For example, the courts should keep a record of
- the number of suspended sentences pronounced,
- how many community sentence orders made,
- how many jail sentences pronounced for non payment of fines,
- how many jailed for other reasons.

At the moment it is virtually impossible to get data in some systematic form. Also it is very time consuming as the material is not collated and made available at one central place for the purposes of research, analysis and suggestions for Law reform.

Another reason why such data should be kept is that there have been several instances of injustices being done to remand prisoners who have been kept in remand for non payment of fines, for more than five years. These people did not have the services of a Lawyer because they were too poor to obtain one and also didn't meet with people who offered free legal aid. Their story would have been different if courts had a coherent method of systematizing and accounting for the sentences pronounced.

Further the existence of such injustices show that Lawyers as a whole need to be re-educated on their social responsibility, especially towards their brethren who are from the disadvantaged and oppressed segments of society. Ultimately a society will be judged by posterity not by the number of luminaries and great people it produced; but on how humane it was in its treatment of the dissenter, the law-breaker, the poor, the oppressed and the defenceless. On that score that society will stand or fall, be termed civilized or barbaric.

CALENDAR OF RECENT EVENTS

Paralegalism

A ParaLegal Workshop was held on Thursday the 22 and Friday the 23 of August 1991, at Kochchikade, in the District of Gampaha, for the Sama Sevaya's All-Island District-level organizations. It was conducted by SHANTHA J R PIERIS of the Law and Society Trust, in association with MOHAN SENEVIRATNE of Lawyers for Human Rights and Development and INDRASENA JAYASINGHE of SamaSevaya. INDRA NILAWEERA of the Law and Society Trust also participated in the workshop.

This marks the sixth ParaLegal workshop the Law and Society Trust has been involved with, in as many months. To date a total of 120 grassroot organizers of Non-Governmental Organizations (trade unionists, women activists, prison chaplains, research and programme officers, legal-aid officers, self-help activists) and law students, have been trained to act as catalytic change agents in societal transformation.

During the past six months the Law and Society Trust, has been actively promoting the concept of paralegalism. So far the response to the concept has been very encouraging. The Trust's association with paralegalism to wit, obtaining procedural and substantive justice and fair play for the disadvantaged majority, had its genesis in 1985:

- at Bangalore in India, at a seminar organised by the International Commission of Jurists (ICJ), on "Law and Rural Development in South Asia".

The Law and Society Trust was subsequently involved in the follow-up Conferences :

- at Rajpipla, Gujarat, India in 1987, on "Legal Resources for the Rural Poor and Other Disadvantaged Groups."
- at TagaTay City, Philippines in 1988, on "Asian Seminar on the Training of Para legals."
- at Puncak, Indonesia in 1990, on "Asian Seminar on Para Legal Trainers."
- at Pung Wang and Cha-am, in Thailand in 1991, a Workshop on "Asian Level Training Programme for Trainers of Rural Paralegals."

To our readers . . .

Sri Lankans who wish their names and addresses to be added to our mailing list are kindly requested to pay a subscription of Rs. 125/= for half a year (July - December 1991) or Rs. 250/= for a full year (July 91 - June 1992), postage included. Cheques should be made payable to "**The Law and Society Trust**", at 3, Kynsey Terrace, Colombo 8.

Overseas readers: We would be grateful if you could help to defray postage costs with US $ 10 for half a year (July - December 1991) or US $ 20 for one year (July 1991 - December 1992). Members of donor organizations or groups with whom we have existing arrangements for the reciprocal exchange of publications are exempted.

Printed and Published at the Law & Society Trust, 3 Kynsey Terrace, Colombo 8, Sri Lanka