



LAW & SOCIETY TRUST

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In this issue we publish the text of the speeches delivered at the inauguration of the 'Equal Opportunity Programme' of the Law & Society Trust held on 21st July 1997 at the B.M.I.C.H., Colombo. In his background note, the co-ordinator of the programme, Mr. Lakshman Gunasekara, conceptualises the programme and identifies two main areas which will be the focus of the Trust under this project: equal opportunity in education and in employment.

Professor G.L. Peiris MP, in his capacity of Minister of Justice, Constitutional Affairs, Ethnic Affairs and National Integration, delivered the keynote address, Mr. Tyronne Fernando MP made an address in his capacity of chairperson of the United National Party's Committee on National Integration and Dr Neelan Tiruchelvam MP, Director, Law & Society Trust, spoke on behalf of the Trust.

In his address Professor G.L. Peiris traces the history relating to equality and discusses the relevant constitutional provisions relating to the concept of equality in Sri Lanka. He refers to the leading case of *Elmore Perera v. Montague Jayawickrema* where the Supreme Court stated that a comparison need not be made in direct terms when trying to establish discriminatory treatment. Pointing out that equality is a relative concept, he questions whether any limits should be imposed to the doctrine of equality. He stresses the need to consider the frontiers "within which affirmative action is desirable and acceptable."

Mr Tyronne Fernando in his address questions the policy on which district quotas and standardisation of marks was based which he believes was a clear departure from the principles of equality of opportunity. While accepting the multi-ethnic, multi-cultural, multi-lingual and multi-religious fabric of our society, he points out that it is important "to foster and uphold a Sri Lankan identity in every citizen irrespective of caste, creed, religion, race and gender...."

Dr Neelan Tiruchelvam's address focused on the role of the civil society in relation to equal opportunity. He questions why, despite a signatory to international human rights instruments, the promulgation of national legislation and the establishment of national institutions, gross human rights violations continue. This, he believes, is partly due to the failure of civil society. He stresses the need for civil society to mobilise itself and to organise institutional counterparts to the existing institutions. He also calls for greater advocacy on human rights issues.

We also publish the text of the Protection of the Rights of Persons with Disabilities Act which was passed in 1996 in an attempt to ameliorate the condition of disabled people in Sri Lanka. The Act provides that no person with a disability (defined in the Act) shall be discriminated against in relation to employment or admission to any educational institution.

**EQUAL OPPORTUNITY
IN
SRI LANKA**

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EQUAL OPPORTUNITY PROGRAMME

An Introduction

Lakshman Gunasekara

Coordinator, Equal Opportunity Programme

The concept of 'equality envisages a society consisting of individuals all of whom are entitled to a range of rights without any difference, theoretically, in the degree of enjoyment of these rights. It presumes society to be made up of individual citizens *devoid of any ascriptive status* such as socio-economic background, ethnicity, gender etc. Societal experience has shown, however, that, due to various other factors, there are degrees of inequality which sometimes do not meet the constitutional norms of 'equality.' These inequalities largely derive from the ascriptive status of citizens and result in socially disadvantaged groups in society. They are the result of social, cultural, economic, and political processes in society which *discriminate* against certain groups or categories of people on the basis of their ascriptive status - of various specific characteristics assigned to them as people. Such inequalities are often the cause of serious social instability or even major societal crises. It is usually in response to such imperatives that attempts are made by States to ensure an equality of 'opportunity.'

'Equal opportunity' (EO) measures are administrative regimes imposed on various activities in society at different levels. Their practice is usually a composite of State-enforced policy and measures and, voluntary measures. Today, there is a whole corpus of international and national-level legal instruments as well as legal theory which legitimises the practice of EO policies. An Equal Opportunity policy firstly identifies the kinds of discriminatory processes at work in society and the social groups disadvantaged by such discrimination. These are social groups or categories of people that are unable, or seem unable, to reach the same levels of social well-being as other sections of that society - unable to, that is, within the framework of existing normal constitutional rights and facilities. Such groups may be disadvantaged due to past discriminatory practices both legal and socio-cultural or disadvantaged by on-going discriminatory legal frameworks or socio-cultural practices. Equal Opportunity policy, therefore, means a basic requirement that all people are treated equally and fairly in various spheres of social life - such as in employment, education, other social infrastructure and in economic ventures.

EO policy is often implemented in the form of *affirmative action* measures. This means the identification of specific social groups affected by discrimination and selectively affording such groups *additional opportunities* as against those groups not affected by discrimination. These additional opportunities are then 'a reverse discrimination' and are afforded in the relevant spheres of social life.' In some instances, this reverse discrimination may take the form of numerical quotas reserved for the affected groups.

The Law & Society Trust has launched an Equal Opportunity Programme (EOP) to promote the

principle of equal opportunity and anti-discrimination law and policy in Sri Lanka. The project, funded by the Commission of European Communities, is a two year programme focussing on 'equality of opportunity' needs in Sri Lankan society in relation to ethnicity, gender, disability, age, sexual orientation and socio-economic status. The Programme involves research and legislative review, the provision of support to statutory institutions such as the Human Rights Commission and, public education. The objective is to help build an 'equality of opportunity' culture in Sri Lankan society along with the necessary institutional and legal framework to sustain it. The EOP has three sub-programmes which will be implemented in consultation with the various State and non-governmental institutions and individual specialists relevant to this subject. Specific projects will be initiated by the EOP in partnership with other institutions. Outlined below is a concise summary of the EOP.

EQUAL OPPORTUNITY PROGRAMME

The EOP has three sub-programmes for Education, Research, and Consultative work.

Sub-programme: EDUCATION

Objective: *To increase community understanding of equal opportunity and anti-discrimination rights and awareness of the institutions that provide a means of redress for infringements of those rights.*

MODULES:

- a. **COMMUNITY EDUCATION** - General community awareness-building through dissemination of information, promotional campaigns, including a mass media campaign; the provision of a telephone advisory service to the public on discrimination redress measures.
- b. **SECONDARY SCHOOL EDUCATION** - Development of a curriculum component on concepts of equality and discrimination for use in secondary school education at a suitable level; the conducting of an nationwide poster/essay competition for secondary school students.
- c. **EMPLOYER/EMPLOYEE EDUCATION** - Promotion of Equal Opportunity policy in employment in both the State and private sectors with training seminars for employers and employees; development of training modules for trainers.

Sub-programme: RESEARCH

A Consultative "Committee will be formed comprising representatives of relevant government and non-governmental institutions and individual specialists to oversee the Research work.

MODULES:

a. SYSTEMIC DISCRIMINATION

Objective: *To review existing legislation to identify discriminatory laws or gaps in the existing framework of employment law (e.g. private sector); to develop a methodology to identify sectors, organisations and institutions where systemic discrimination is prevalent; and to develop appropriate measures to respond effectively to *de jure* and *de facto* discrimination with a view to eliminating such discrimination.*

This will be done through

- 1) study of existing laws and recommendations to the Government concerning new legislation;
- 2) development of a methodology/criteria to identify discriminatory practices in sectors or institutions; and
- 3) study of public submissions regarding cases of discrimination.

b. REDRESSING ETHNIC DISCRIMINATION

Objective: *To obtain a more balanced and representative State structure representing the diversity of ethnic groups in Sri Lanka.*

This will be done through

- 1) a study of the ethnic composition of various employee populations, including a tracing of the historical trends since Independence;
- 2) an evaluation of 'affirmative action' measures, including a comparative analysis of affirmative action measures in other countries and, the viability of ethnic quotas; and
- 3) formulation of 'equality of opportunity' policy proposals for the Sri Lanka public.

Sub-Programme: CONSULTATIVE WORK

Objective: To work together with the Office of the *Ombudsman, Official Language Commission, and Human Rights Commission* to strengthen their effectiveness in dealing with complaints of discrimination and, to intervene to assist groups in cases before the supreme court involving equal rights abuses.

MODULES:

a. SUPPORT FOR THE OMBUDSMAN & OFFICIAL LANGUAGES COMMISSION

The LST-EOP shall work with these two institutions to enhance their role by

- 1) evaluating their current effectiveness - by studying their mode of operation and the cases examined by them, and assessing the current statutory and infra-structural limitations of these two institutions;
- 2) in the case of the Ombudsman, assessing the relationship of this office with the Public Petitions Committee of Parliament; and
- 3) making recommendations to improve the effectiveness of these two institutions.

b. SUPPORT FOR THE HUMAN RIGHTS COMMISSION

The LST-EOP will provide research support to the Human Rights Commission by

- 1) assisting in measures to make the HRC accessible to the public; and
- 2) providing the HRC with resource material on equal opportunity principles and practices (including a memorandum of test cases in class action suits elaborating the standards and principles of equal opportunity and non-discrimination).

c. AMICUS CURIAE BRIEFS

Intervention by the LST-EOP on behalf of groups with equal opportunity grievances by filing Amicus Curiae briefs.

Towards an Equal Opportunity Policy*

Professor G.L. Peiris

Dr. Neelan Tiruchelvam, Mr. Tyronne Fernando, Your Excellency Peter Burleigh, ladies and gentlemen,

The programme that is being inaugurated today is of immediate relevance to the needs of Sri Lanka at the present time. This is a programme which has the blessings of the European Union. It is a two year programme which focuses upon equal opportunity in all its ramifications - into education research and consultative work in particular. The programme has specifically identified some institutions in this country which are worthy of support. Three institutions which have been so identified are the Human Rights Commission, the Official Language Commission and the Ombudsman. Each of these has a crucial and vital role to play with regard to promoting the values inherent in the concept of equal opportunity.

1. Evolution of the concept of Equal Opportunity

If we trace the origins and the evolution of the concept relating to equal opportunity we will find that in some of the greatest civilisations the world has known this doctrine was certainly not regarded as self-evident. Its validity was not by any means accepted. On the contrary, equality was a doctrine that was vigorously challenged in some of the most vibrant civilisations that the world has known. An example of that is the civilisation of ancient Greece. Aristotle in his famous work "Nicomarchian Ethics" makes out a very powerful case for inequality rather than equality. He makes the point, with characteristic persuasive power, that the achievements of civilisation have been possible because of inequalities which have been furthered and preserved in those societies. He further says that just as the right hand is longer than the left hand, so also in any community there will be people possessed of particular attributes of mind, of character, physical powers as well as intellectual vigour, and that man is necessarily born unequal. He says that that is a fact of life which needs to be recognised. In particular, Aristotle attempts a very cogent defence of slavery. He defends slavery as an institution and he says that it is because of slavery that these civilisations were able to achieve the things that they were so proud of. In particular he makes the point that slavery brought leisure within the reach of those segments of the community that were capable of creative and original thought. Without slavery that opportunity would not have been available to those sections of the community who were in a position to make a contribution of enduring value to the progress of civilisation. So that is an epitome of the philosophy that is expounded by Aristotle with regard to equality and inequality.

* Edited for publication.

However, a different point of view began to emerge in Western civilisation as a result of four developments which can be identified. The first of these was the Renaissance which had its heyday in Italy at the end of the 15th Century and one of the principal inspirations of the Renaissance was the pursuit of the doctrine of equality as something that was inherent in the human condition. The liberation of the human spirit which was really the central message of the Renaissance was further buttressed and fortified by the Reformation which was initiated by Martin Luther in Germany. The combined impact of the Renaissance and the Reformation on Western culture was therefore to release very significant energies - creative, intellectual energies - that derived from an underlying belief in the concept of equality. The Industrial Revolution in the 19th century broke down the remaining vestiges of the feudal system and made it possible for people to change their condition as a result of their own perseverance and labour. The Industrial Revolution in that sense made a reality of equal opportunity, because the barriers and the inhibitions that were anchored in birth, in caste and in feudal systems of land tenure, were thrown to the winds and a new era began with the Industrial Revolution which in turn culminated in the "Age of Mercantilism" which was also strongly supportive of the spirit of equality. So I would identify those four developments as the catalytic influences in that regard, as far as Western culture is concerned - the Renaissance, the Reformation, the Industrial Revolution and the "Age of Mercantilism."

2. Constitutional provisions relating to equality

When we deal with "equal opportunity," it is necessary to understand certain dramatic changes which are taking place in the constitutional and political values of our own country. Actually this idea of equal opportunity as a basic concept of political theory and constitutional law is relatively new in this country. It had no sanctity in our constitutional regime before 1972. We inherited from the British, in 1948, the Soulbury Constitution which to a large extent enshrined the doctrine relating to the sovereignty of Parliament. Article 29(1) of the Soulbury Constitution declared that Parliament shall have power to make laws for the "peace, order and good government of the Island." Peace, order and good government - that is a compendious phrase which was used by the British in many constitutions throughout the British Empire. And in a famous case known as *Hodge v. The Queen* this phrase was described as "words of empowerment" rather than as "words of limitation." So there was a certain amplitude, a plenitude, of legislative power which was encapsulated in that compendious phrase - peace, order and good government.

The theory at that time was that Parliament made laws. It was for the courts to interpret and apply these laws. But it was certainly not a part of the function of the courts to determine the validity of laws that were passed by Parliament. As far as the Ceylonese Constitution of 1948 was concerned one has to recognise a limitation - a qualification to that - in terms of Articles 29(2) and 29(3), but basically we had accepted the British theory with regard to the relationship between the legislature and the courts. It was not a part of the judicial function to pronounce upon the constitutionality of legislation which Parliament had purported to enact. That derived from the British notion relating to the omni-competence of Parliament.

That began to change with the gradual incorporation of American ideas relating to justiciability of legislative vires. And that process really began in 1972 with the enactment of the first Republican Constitution of this country by the Government of Prime Minister Sirimavo Bandaranaike. This process was carried further with the promulgation of the second Republican Constitution of Sri Lanka, in 1978, by the Government of President J.R. Jayewardene. The importance of these developments was basically this: the Constitution of the country began to incorporate a Bill of Rights which operated as a fetter on the power of Parliament to enact laws. In other words, Parliament did not have the authority to pass laws which came into conflict with the substantive rights that were spelt out in the Bill of Rights and the assumption thereafter was that if there was any such conflict, the legislation purportedly passed by Parliament would become void and invalid to the extent of incompatibility with the fundamental rights that are enshrined in the Constitution. The theory of Marbury and Madison - that is a pivotal concept in United States constitutional law - began to find its way into the constitutional laws of our own country via these provisions relating to "inalienable" or "basic rights." Parliament, then, had a restricted domain within which it could operate. Parliament could not transgress the limits or the frontiers of its own vires. If Parliament did so, there was a remedy that was available to any person who was aggrieved in consequence of such action. The Supreme Court had the power to intervene in those situations. Of course, there was a decisive limitation - the limitation was that the challenge had to be made during the "Bill stage," before the Speaker signed the Bill into law. We are proposing to extend that principle still further and in the draft Constitution that this Government has proposed there is no such limitation. Even after a law has been enacted in Parliament it would be open to any citizen to challenge that law on the basis of repugnance to fundamental rights that are acknowledged by the constitutional instrument. This is not possible under the present Constitution. This right that is available to a citizen must of necessity be exercised during the passage of the Bill through Parliament; but once it is enacted as part of the law of the land it is invulnerable, impregnable and cannot be challenged. We are proposing to do away with that principle.

This, I would say is a dramatic revolution in the legal culture of our country. It represents a moving away from certain seminal British concepts of constitutional law and a gradual absorption into our own public law of notions deriving from American constitutional experience. Of course, the United Kingdom itself has had to modify some of the corollaries attendant upon the traditional theory as a result of British membership of the European Union. It is now the case that Britain has to demonstrate, when called upon to do so, the consistency of its laws and administrative practices with treaty obligations which have been accepted by Britain by virtue of her membership of the European Union. That, of course, is a comparatively recent development, which leaves the conceptual underpinnings of British constitutional law largely intact. But we, as I said, are gradually moving away from that cluster of principles and values.

3. Judicial remedies and the contribution of the Supreme Court

Having said that, it must be emphasised that these principles will have practical importance in our own country only if certain action is taken. An ordinary citizen of the country, who does not have large resources at his command, must be in a position to invoke a judicial remedy in

circumstances where equal opportunity has been denied. That has, in fact, happened in this country in what are called the "Boossa cases." These related to people who were incarcerated in a detention camp at Boossa. They had no access to lawyers: they did not have pecuniary resources at their command and there was a situation in which one of these persons addressed a post card to the Chief Justice, complaining of the circumstances in which he was placed. In that case the Supreme Court of Sri Lanka held that it had jurisdiction to investigate the matter brought to its attention in this informal way. That is the concept of "epistolary jurisdiction." The Latin word "epistola" means a letter. Now this is an informal process which had been instituted really by the initiatives and creativity of the former Chief Justice of India, P.N. Bhagwati. A post card written out in pencil and addressed to a judge of the Supreme Court operates as an acceptable substitute for a formal institution of legal proceedings. That is the kind of development which gives meaning and substance to the concepts that we are speaking of. The law in its formal structures can recognise these ideas but they would be of very little practical value in the community unless the vast mass of humanity, who by virtue of their underprivileged condition, have the opportunity, in practice, of invoking the remedies which are theoretically available. Those concepts and remedies would then not really serve adequately the needs of a large section of the communities of the Third World. So there has been a significant break-through in that regard. This is known as "Affirmative Action," "Reverse Discrimination" and so on enabling the more vulnerable sections of the community for whom these remedies are really intended to make practical use of them.

In the recent constitutional history of this country there was a landmark judgment which needs to be referred to on this occasion, because that again goes a long way to make a reality of these theoretical concepts and notions. I refer to the leading case of *Elmore Perera v. Montague Jayawickrema* where an important principle was discussed by the Supreme Court. The problem that one is envisaging is this - supposing I am a public servant and the gravamen of my case is that I have been treated in an unjust manner. I am entitled to certain promotions - I am entitled to be treated in a particular way - but because of political or personal prejudice I have been deprived of certain advantages to which I am entitled. Prima facie that would be a transgression, a contravention, of the doctrine relating to equality. The traditional theory is that in order to succeed in my action, I have to establish that a colleague of mine in the public service situated in identical circumstances was treated better than I was treated. In other words, it is for me to establish some form of discrimination. A colleague of mine in a situation that cannot be distinguished from my situation was in fact given advantages which are now being withheld from me for arbitrary or capricious reasons. The mainstay of my case is the proof of that discrimination between the case of my colleague and my own case. In *Elmore Perera v. Montague Jayawickrema* the Supreme Court held that no such comparison needs to be made in direct terms. It may be that I cannot cite an actual instance where a colleague of mine has been treated better than I was treated, but if inherently and intrinsically the treatment meted out to me contains elements which are discriminatory or unreasonable, that alone would be sufficient as the foundation of a remedy to which I would be entitled. In other words, this element of comparison ceases to be an essential part of the petitioner's case. This principle which was established in Elmore Perera's case certainly enriched and enhanced the law as far as its practical content is concerned.

Of course, equality is not an absolute concept. It is a relative concept, because all constitutions recognised certain circumstances in which there can be derogation from the principle of equality. That brings you into the realm of permissible derogations - permissible derogations from the equality principle in circumstances where such departures are necessitated by considerations relating to public order, public security, public health, public morals and so on. Those qualifications are part and parcel of all constitutional regimes including that of our own country.

4. Parameters of the doctrine of equality

At this point I would like to introduce a certain controversial element into the discussion, because without a consideration of that controversial element the discussion will be incomplete. What are the limits of the doctrine of equality? There you need to consider very directly the frontiers within which affirmative action is desirable and acceptable. It is one thing to treat alike people who are indeed equal. But what about situations where there is a section of the community that is weaker than the rest, for reasons which do not reflect any discredit upon the vulnerable section? For historical and cultural reasons there may be a segment of society that has not had access to education; therefore they constitute a certain backward segment in that particular society. Is it proper to confer certain special advantages on those sections that have been identified as disadvantaged or vulnerable in the relevant sense which I have just explained to you? Take for example the policy that is applied in Sri Lanka today with regard to university admissions. It is not the case that students are admitted to universities wholly on the basis of the raw marks which they obtain at the G.C.E. (Advanced Level) examination. There may be situations where a student who has an aggregate of - let us say - 280 marks out of 400 is shut out altogether from the university. However, there may be somebody else with 270 marks - 10 marks less - who is successful in securing admission to one of the universities of the Republic. Now is this fair? On the face of it it would seem to constitute a violation of the equality principle, because a student with an inferior performance is preferred to the student with the superior performance. But is it possible to conceive of certain policy considerations which justify such a course of action? In fact, the policy that is applicable today with regard to university admissions does recognise the validity of the principle which I have just expounded. One would take into account the adequacy or the paucity of facilities that are available in secondary schools in that part of the Island from which the applicant comes. So there is a weighted system; a system of district quotas and the level of performance that you would expect as a pre-condition of entry into the university would depend on an objective assessment of the nature of the facilities that are available in schools in the area from which this particular applicant sits the G.C.E. (Advanced Level) examination.

In fact, the foundations of that system were challenged in the leading case of *Seneviratne v. The University Grants Commission*. In that case the student with the superior performance who was excluded from admission to the university argued that this whole policy constituted a direct violation of the principle pertaining to equality. But the Supreme Court in an elaborate judgment held in that case that there is no violation of equality here, and the policy in question was an attempt to correct a historic injustice. Here again there is a seminal idea which goes

back to Greek civilisation. Both Plato and Aristotle insisted that there is as much injustice in treating unequals equally as in treating equals unequally. Now here you are dealing with two people who are inherently unequal - a student coming from one of the remotest regions of Tissamaharama competing with the student who had all the advantages at Royal College or St. Thomas' College. The argument is that you cannot treat these people alike as they are basically unlike each other. Therefore, in structuring a policy relating to admission of students into universities you have to take into account these inequalities which are part and parcel of the situation existing on the ground. To do anything else would be totally lacking in pragmatism. That was the pith and substance of the judgment that was handed down by the Supreme Court on that occasion, dealing with the case of *Seneviratne v. The University Grants Commission*.

What about ethnic quotas for example? Would it be proper to allocate a certain quota to particular communities - the Tamil community or the Muslim community - with regard to recruitment to the Public Service or promotion from one grade to another in the Public Service? Would that amount to an erosion of the principle relating to equality? In other words, should you derive an advantage vis-a-vis appointment or promotion simply because of your ethnic origin and identity? Now this again has been the subject matter of litigation in this country and the Supreme Court has held that promotions cannot be based on an ethnic principle. But that judgment does not directly relate to appointments to the Public Service. Would it then be permissible, arguing on the basis of analogy with the principles contained in the Supreme Court judgment in the University Grants Commission case, to argue that there may be other circumstances in which, for reasons of public policy, in order to further communal amity, ethnic tranquility and so on, it would be permissible to recognise a system of quotas? Is that a possible point of view? I am not suggesting an answer nor am I arguing for an affirmative or negative answer, but these are all very complex and convoluted questions of policy which arise with regard to the interpretation of the equality doctrine.

In the United States there was a very interesting case relating to university admissions. It involved a student called Bouquet. This revolved round the policy that was adopted by a medical school of the University of California at Los Angeles. Priority was given to coloured students - black students were preferred on the premise that they had not enjoyed equal access to educational opportunities. Therefore, a coloured student with a relatively weak performance was preferred to a white student with a higher number of marks. Bouquet was a white student who argued that this policy was violative of the basic right to equality. Bouquet argued that since he had fared better in the examination, he should be offered a place in the medical school before the university offered a place to somebody whose performance was less impressive than his own. This matter eventually ended up in the Supreme Court of the United States - it was a sharply divided Court - and the judgment which clinched the issue was a judgment by Justice Powell. Justice Powell particularly singled out the admissions policy of Harvard University and said: "Harvard University has not allocated quotas." Harvard University has not said that if there are hundred places available then six places must be reserved for coloured students. Justice Powell said that such a rigid allocation of quotas would be "unattractive." However he praised the policy of Harvard University for giving appropriate weightage to geographical, cultural, ethnic and social factors. Among other things, these would be taken into account as

relevant considerations in making decisions with regard to the admission of students.

You have problems of this kind where there is a greater demand than the number of places that you can offer - a greater demand for university places than the extent to which satisfaction is possible; a greater demand for job opportunities than you can satisfy in actual practice. And here you are really applying the doctrine of "distributive justice." These are very controversial questions that one has to consider in applying this doctrine. In New Zealand there had been very acute problems with regard to the protection of the rights of the Maori community. Would you reserve a certain number of places for them in universities, in the public service and so on? Otherwise would they remain permanently in the backwoods of that country? On the other hand, there is a certain danger in quotas also if you freeze the numbers at a certain level. Three Maoris can get in where one hundred places are available. As the levels of Maori education increase over the years the Maori community might actually find that the quota system is a disadvantage from a long term point of view. So those are all very interesting questions that arise in this field and I think it is necessary that we should address ourselves to those complexities as we apply the principle relating to equality in the context of our own social and political system.

5. Institutional mechanisms

I am very happy that this programme is being inaugurated at this time particularly because it involves substantial support for the three institutions which I identified at the beginning remarks - the Human Rights Commission, the Official Languages Commission and the Ombudsman. The Human Rights Commission is possessed of very considerable powers - it has begun functioning, and it is not just an adjudicating mechanism. It will take up the cause of people who lack the resources to bring their grievance before a court of law. It also has a conciliatory function, and will help people to sort out their disputes in an informal way. It also has a duty to advise government on broad questions of policy before actual problems have arisen. These are all elements of the jurisdiction that has been conferred upon the Human Rights Commission.

The Official Languages Commission is extremely important in the context of government policies at the present time. You would have seen in the newspapers that some very concrete actions are being taken to alleviate the problems that Tamil speaking people in Colombo and the suburbs, face problems that they have at police stations with regard to detention, custody and so on. We are in the process of appointing Citizens' Committees to alleviate these problems. We will draw on the services of the leaders of civil society - university lecturers, representatives of political parties and trade unions. All this is part of the current initiatives of the government.

The Ombudsman has an equally important role. The Ombudsman will enable problems to be sorted out swiftly, inexpensively and in a manner that is bereft of technicality. Until we assumed office there was an Ombudsman but the Ombudsman could do very little good. The Constitution of 1978 incorporated the notion of the Ombudsman, but the situation was that you could not get a concrete problem before the Ombudsman at all. You had to find a Member of Parliament who would be prepared to raise this matter in Parliament. That Member of

Parliament had to obtain the permission of the Speaker to have this referred to a Committee of Parliament. Naturally the government of the day would constitute a majority in that Committee and it was only if that Committee was satisfied that there was a prima facie case that the matter was forwarded to the Ombudsman at all. That is a complete distortion of the processes and procedures that are identified with the Ombudsman. It is a negation of the values that are inherent in the Scandinavian experience pertaining to the Ombudsman. The idea of the Ombudsman is that you should be able to pick up the telephone and tell the Ombudsman of your grievance and he will give you instant relief. That was certainly not possible in terms of the procedure that was laid down in the Constitution of 1978.

The second piece of legislation that this government introduced upon assumption of office in August 1994 was to simplify the procedures relating to the Ombudsman and to make it possible for a person with a grievance to have direct, unimpeded access to the Ombudsman. So this Government places the highest possible premium on the work of the Ombudsman. We identified somebody who was eminently suited to that role - Professor Bertram Bastiampillai, Professor of History and Political Science of the University of Colombo. I am very happy that this initiative by the Law & Society Trust and the European Union will further strengthen the mechanism of the Ombudsman. I would therefore very enthusiastically welcome this initiative as being exceedingly opportune and beneficial, having regard to Sri Lankan priorities at the present time. I am very happy that my colleague Mr. Tyronne Fernando, M.P., is present here on this occasion. That perhaps symbolises the spirit of bi-partisanship in these matters - these are national issues which need to be dealt with from a broader stand point, remote from rivalries and clashes between political parties, and it is therefore a matter of profound satisfaction that Mr. Tyronne Fernando who is heading a committee of the United National Party addressing issues connected with national integration is here with us. I also would like to thank, on behalf of the government, the Ambassador of the European Union who, unfortunately, is not present on this occasion because of a bereavement in his immediate family, for the generous support which the European Union has extended in this regard.

It remains for me to thank Dr. Tiruchelvam and the Law & Society Trust for inviting me to share these thoughts with you on this occasion and I wish your endeavours every success.

Equality of Opportunity: the standpoint of the UNP*

Mr. Tyronne Fernando

Honourable Minister, Dr. Tiruchelvam, Your Excellency, Mr. Co-ordinator, friends,

I would like to join the Honourable Minister in thanking the Law & Society Trust and the European Union for beginning this discussion on Equality of Opportunity. I have been asked to speak, on the approach of the United National Party to this subject. I would venture to say that both our parties - the two major parties - have come a long way on the economic front, from when there was the adherence to the old socialist principles of equality. We are talking about equality of opportunity. The old political parties, like the Lanka Sama Samaja Party, were looking at equality in terms of Sama Samaja - "Equal Society Party." They were not talking really of equality of Opportunity but were talking of equalising society - taking from the rich and giving it to the poor. We have all come a long way from that, including I think, the LSSP, and we are now talking of a level playing field, where individuals have equality of opportunity to be unequal. You have the equality of opportunity to display your talents, and your merits and be rewarded accordingly. You may end up, of course with an unequal society.

I hope you will agree with me that this is an area where we have to be quite sure about what we are talking, as I think we are moving into an area where we are talking of equality of opportunity, even to be unequal. As far as the United National Party is concerned, since 1948 we have advocated this equality of opportunity rather than attempting to equalise society. The sort of economy we set up in 1977 came in for much criticism at that time. It was an attempt to give everybody an equal opportunity to improve themselves economically. There was a notable decrease in the role of the state, and an expansion of the private sector. All this towards an equality of opportunity. This is how it was spelt out - "every citizen should be afforded equality of opportunity and should be judged by his or her merit and ability and be rewarded accordingly." However, as the Honourable Minister pointed out, there should be a safeguarding and nurturing of the rights of the handicapped and the less privileged, and that is the ultimate safety net we have to extend to the handicapped members of our society.

I would also like to deal with the ethnic issue. The Honourable Minister spoke of the 1972 Constitution. The abolition of section 29 (4) of the Soulbury Constitution gave rise to many fears among the minority communities. And in addition, the introduction of the system of standardisation of marks, and district quotas, gave further rise to these fears. This was a clear departure from the principles of equality of opportunity. To give you some figures, the percentage of Tamil entrants to the Science Faculties came down from 48.3% in 1969 to 14.2% in 1975 under the new system of standardisation. I agree with the Honourable Minister that there are certain areas in the country which are handicapped on that same principle - the safety net principle - then how far are you to go to correct this? Here it seems to have had a very

* Edited for publication

drastic effect, where 48.3% has become 14.2 per cent. In other words you can see that a large sector of Tamil youth who would have got sufficient raw marks to make it to university were left out. Indeed Professor C.R. de Silva in his *History of Sri Lanka* says, "this led to great frustration and disappointment among the Tamil youth in Jaffna who used pressure on the Tamil leadership to opt for a separate state." We have to understand that also. From the Sinhalese point of view, they felt they were the underprivileged, and that they had got less of the benefits of education. But in turn, reverse discrimination went to such an extent that the Tamil youth felt they had to have a separate state, and that resulted in the Vaddukoddai resolution of 14th May 1976. In 1977 the UNP government reversed that, or at least modified that to a large extent and our party categorically spelt out that whilst the UNP accepts the multi-ethnic, multi-cultural, multi-lingual and multi-religious fabric of our society, the UNP will endeavour to foster and uphold a Sri Lankan identity in every citizen irrespective of caste, creed, religion, race or gender to ensure the unity, prosperity and stability of Sri Lanka. In other words, we have to move, I think the government has also accepted this, towards the Sri Lankan identity. All are citizens of Sri Lanka and these other differences of race, religion, creed and caste and even gender have to be kept in their relevant places. I have always illustrated this from the experiences of the Sri Lankan Cricket Team, who are now world champions. In the Sri Lankan Cricket Team you have people of various races, various religions, castes, but only one gender, so far. But they play in that team as Sri Lankans. They are just on their merit. The cultural differences are respected but kept in their place, and you are judged on merit when you play for Sri Lanka. When you play, shall we say, in the society of Sri Lanka whether in the economic field or education field you will basically be judged on your merit. This was the reason for Article 12 of the 1978 Constitution - "all persons are equal before the law and are each entitled to the equal protection of the law."

I want therefore to stress, because I have been asked to speak from the stand point of the United National Party, that we have fostered a sense of security amongst the minority communities instead of giving them a perception of marginalisation. In this respect I welcome the call by the government to implement the language policy to its maximum. And I might mention that the National Integration Committee of the UNP has recommended, and the party has accepted and is now implementing, that the UNP-controlled provincial councils and local authorities should implement this official language policy fully. This was done about a year ago, and I have been meeting with our provincial councillors and our other local councillors to find out the problems and giving whatever relief is possible. For instance, I remember three or four months ago our team visited Ratnapura and we sorted out their problems, by giving Tamil Typewriters. I also remember clearly that Tamil Typewriters were given to the Urban Council of Mawanella. These are the problems they have - lack of equipment, lack of trained staff and so on. So we have to build up this atmosphere of confidence. Confidence building measures in the name of equality of opportunity can be done right here and now. One is official language implementation, employment and promotion in the public service in a just manner, education at the tertiary level on the basis of merit to a great degree while leaving room for the most disadvantaged.

Going one step further, I would say that it is not constitutions and laws that will create the necessary confidence in the minds of men. We have to be practical about it. A Policeman should be able to read back to a complainant his statement in his own language. I think you would appreciate what I am trying to say, the social contract must essentially be a sense of fair play, and as far as the UNP is concerned we have always demonstrated by action that we stand for equality of opportunity whether it is in economic, political or cultural spheres. In particular I want to remind you that in 1988 we, for the first time, made both Sinhala and Tamil official languages and made English a link language, brought about the provincial councils, all of which are basically measures towards democratisation and equality of opportunity. As I said at the outset, we should bear in mind that we have to provide, basically a level playing field and each individual has to get his rewards according to his merit and ability, and ultimately, the equality of opportunity.

**PROMOTING THREE BASIC FREEDOMS:
TOWARDS GREATER FREEDOM OF
ASSOCIATION, ASSEMBLY AND
EXPRESSION IN ASIA:**

COUNTRY REPORT ON SRI LANKA

Vijaya Samaraweera

September 1997

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Equal Opportunity and the role of the Civil Society*

Dr Neelan Tiruchelvam

Honourable Minister, Honourable Tyronne Fernando, Your Excellency, distinguished members of the diplomatic Co., ladies and gentlemen,

The Law & Society Trust is very pleased to have this opportunity of inaugurating the Equal Opportunity Programme which is an important component of the Trust's programme of work for the next few years. Both the Minister and Mr. Tyronne Fernando have outlined the philosophical, constitutional and contemporary political issues relating to Equal Opportunity. From the perspective of the Law & Society Trust, and those who are engaged in the struggle for the protection of human rights in this country, what is particularly relevant is the kind of role that civil society can play in promoting programmes and policies with regard to Equal Opportunity. Engagement of civil society in Sri Lanka commenced in a formal sense I think after the insurrection of 1971, when the Civil Rights Movement was established to protect the rights of the detainees who were incarcerated after that insurrection. Since then, civil society organisations, concerned with human rights issues, have worked at different levels with a view to ensuring more effective protection and promotion of human rights in this society.

As the Honourable Minister and Mr. Tyronne Fernando pointed out, one of the levels at which this engagement has taken place has been in the articulation of constitutional standards with regard to civil and political rights and the machinery that has been put into place for their enforcement. We have endeavoured both at the normative and institutional level and at the international level to encourage the Government of Sri Lanka to become a signatory to international human rights instruments, and to accept the complete machinery envisaged by those instruments with a view to improving the framework for the protection of human rights in our own society. These initiatives lead to the government of Sri Lanka becoming a signatory to the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention against Torture and so forth.

The third level, at which the struggle of human rights were taken place has been at the institutional level, by encouraging the state to establish institutions such as the Official Languages Commission which was based on legislation and a model which had been applied in Canada; the Human Rights Commission and the Ombudsman. There was also a Commission which was established under the Human Rights Commission Law for the Elimination of Discrimination, another institution established as a result of these efforts. But despite the extraordinary energy that has been devoted to human rights work both at a normative level and at the level of institution building, the human rights community today in this country remains

* Edited for publication.

deeply frustrated and disappointed in view of the continuing contradictions between promise and reality in the human rights field. The continuing violations of human rights, which are documented by the international human rights organisations, and which are carefully researched and documented by domestic human rights organisations, point to this disturbing reality. In 1990 and 1991 UN Working Group on Disappearances pointed out that out of 53 countries which they had investigated, the highest number of disappearances took place in Sri Lanka. These were documented cases of disappearances. An appalling fact which is deeply embarrassing to the human rights community, which has over two decades worked towards the more effective promotion and protection of human rights.

Where have we gone wrong in the field of human rights? We have endeavoured to draw on concepts and principles based on international instruments. We have attempted to draw on the constitutional jurisprudence of a number of countries in the Commonwealth. We have drawn on new countries which have, since the collapse of the Cold War, both in Central and Eastern Europe, adopted a new constitutional model. Therefore, in the conceptual and in the normative sense, a great deal of energy has gone into the elaboration of these concepts and ideas. We have, as the Minister pointed out, established very important institutions, manned them with reasonably good people, with a commitment to some of these values and concepts. But none of these institutions appear to function effectively and to be able to respond to fulfil their full potential. The weakness here is again the failure of civil society. Civil society needs to mobilise itself, to organise institutional counterparts to the Official Languages Commission, to the Human Rights Commission, to enable that complaints which are not adequately directed towards these institutions are in fact effectively directed towards these institutions. Despite the fact that we have a Chapter on fundamental rights, which prohibits gender discrimination, there is not a single case of gender discrimination, which has been argued before the Supreme Court of Sri Lanka. Thus, there is a need for advocacy on human rights issues, for greater intellectual effort being devoted towards the study of the systematic discrimination, for the presentation of cases before these institutions, to present, as the Co-ordinator pointed out, *amicus curiae* briefs which research the law, and place the law in the context of recent developments. This is another important obligation that civil society needs to fulfil. The scope of this project, therefore, is three fold; one is the level of education, which is public education, the second is the level of research and the third is the level of advocacy, by mobilising the energies, the efforts of civil society organisations and the work which is being done in our universities, by our scholars and academics would, I think, significantly bridge this gap between promise and reality in the field of human rights.

With these observations, I wish to thank all of you for having attended the inauguration of this project and particularly the Minister and Mr. Tyronne Fernando and I hope that two years from now, the Co-ordinator would be able to organise a similar event where the outcome of the project would be presented to a similar audience. I hope that we will be able to end on a more optimistic note. Thank you.

**Protection of the Rights of Persons with Disabilities
Act, No. 28 of 1996**

[Certified on 24th October 1996]

L.D. - O.37/94

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES, FOR THE PROMOTION, ADVANCEMENT AND PROTECTION OF RIGHTS OF PERSONS WITH DISABILITIES IN SRI LANKA; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO:

WHEREAS it is necessary to make legal provision to give effect to the national policy on the rehabilitation, welfare and relief of persons with disabilities and in furtherance thereof to make provision for the establishment of a National Council for persons with disabilities.

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

Short title and date of operation

1. This Act may be cited as the Protection of the Rights of Persons with Disabilities Act, No. 28 of 1996, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

PART I

**ESTABLISHMENT OF THE NATIONAL COUNCIL FOR PERSONS WITH
DISABILITIES**

Establishment of the National Council for Persons with Disabilities

2. (1) There shall be established a Council called the "National Council for Persons with Disabilities" (hereinafter referred to as the "Council").

(2) The Council shall, by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal and may sue and be sued in such name.

Constitution of the Council

3. The Council shall consist of the following members:

- (a) the Minister who shall be the Chairman of the Council;
- (b) eleven members appointed by the President in consultation with the Minister to represent persons with disabilities and to represent, any bodies corporate or unincorporate (hereinafter referred to as "voluntary organisations") which are engaged in providing services to persons with disabilities including self-help organisations of persons with disabilities;
- (c) nine other members appointed by the President by name or office in consultation with the Minister, from among members of Parliament or Provincial Councils or local authorities or members of bodies of professionals or public officers.

A member appointed under paragraph (b) or (c) is hereinafter referred to as an "appointed member."

Term of office of appointed members

4. Every appointed member shall, unless he vacates office earlier by death, resignation or removal, hold office for a period of three years from the date of his appointment and shall unless he has been removed from office, be eligible for re-appointment.

Removal and resignation of appointed members

5. (1) The President may, in consultation with the Minister, remove any appointed member from office without assigning any reason therefor.

(2) In the event of the vacation of office by death, resignation or removal of any appointed member, the President may, in consultation with the Minister, and having regard to the provisions of section 3, appoint any other person to succeed such member. Any member so appointed shall hold office for the unexpired term of office of the member whom he succeeds.

(3) Any appointed member may at any time resign from office by letter to that effect addressed to the President.

(4) Where an appointed member, by reason of illness, infirmity or absence from Sri Lanka for a period of not less than three months, is temporarily unable to perform his duties, it shall be the duty of such member to inform the President in writing of such inability. Thereupon, the President may, in consultation with the Minister, and having regard to the provisions of section 3, appoint some other person to act in his place.

Remuneration of members

6. All or any of the members of the Council may be paid such remuneration as the Minister

may determine in consultation with the Minister in charge of the subject of Finance.

The Chairman and the conduct of business

7. (1) The Chairman shall preside at all meetings of the Council at which he is present. In the absence of the Chairman from any meeting of the Council, the members present at such meeting shall choose from among themselves another member to preside at that meeting.

(2) The quorum for any meeting of the Council shall be five members.

(3) The Council shall meet as often as necessary, and in any case at least once in each month, at such time and place as the Council may determine, and shall, subject to the other provisions of this Act and any regulation made thereunder, regulate the procedure in regard to its meetings and the transaction of business at such meetings.

(4) The Chairman may designate an officer of the Council appointed under section 15 of this Act to be in control of the day to day administration of the affairs of the Council.

Acts not invalidated by reason of a vacancy

8. No act, decision or proceeding of the Council shall be deemed to be invalid by reason only of the existence of any vacancy in the Council or any defect in the appointment of any member thereof.

Delegation of powers to members

9. The Council may delegate to any member of the Council, any power, duty or function conferred or imposed on, or assigned to, the Council by this Act, and in the exercise, performance or discharge of such power, duty or function such member shall be subject to the general or special directions of the Council.

Secretary to the Council

10. The Secretary to the Ministry of the Minister shall function as the Secretary to the Council.

Seal of the Council

11. (1) The seal of the Council may be determined and devised by the Council, and may be altered in such manner as may be determined by the Council.

(2) The seal of the Council shall be in the custody of such person as the Council may decide from time to time.

(3) The seal of the Council shall not be affixed to any instrument or document except with the sanction of the Council and in the presence of the Chairman and one member of the Council who shall sign the instrument or document in token of their presence.

(4) The Council shall maintain a register of the instruments and documents to which the seal of the Council has been affixed.

Principal function of the Council

12. The principal function of the Council shall be to ensure the promotion, advancement and protection of the rights of persons with disabilities.

Other functions of the Council

13. Without prejudice to the generality of section 12, the other functions of the Council shall be -

- (a) to advise the Government on the promotion of the welfare of, and the protection and advancement of rights of, persons with disabilities;
- (b) to take all such measures as are necessary, in consultation with the relevant Ministries, Provincial Councils, local authorities, District and Divisional Secretaries, public and private sectors and organisations, to promote the furtherance of, and safeguarding, the interests and rights of persons with disabilities;
- (c) to recommend schemes, to promote the welfare of, and for protection of, persons with disabilities;
- (d) to initiate and implement schemes for, the promotion of the welfare of, and protection of the rights of, persons with disabilities;
- (e) to ensure the adoption of, and compliance with, the relevant international declarations and conventions relating to persons with disabilities, by the Government;
- (f) to maintain accurate statistics relating to persons with disabilities and the services available to such persons;
- (g) to identify the principal causes of disablement and promote effective measures for their prevention and control;
- (h) to formulate and promote measures for the rehabilitation of persons with disabilities;

- (i) to establish and maintain rehabilitation centres for persons with disabilities;
- (j) to ensure a better standard of living for persons with disabilities;
- (k) to ensure that the requirements of persons with disabilities are met adequately;
- (l) to establish and maintain institutions to accommodate and care for persons with disabilities and provide educational and vocational training for such persons;
- (m) to encourage the establishment by the State and by private individuals, of institutions to accommodate persons with disabilities and the provision of educational and vocational training to such persons;
- (n) to guide, support, co-ordinate and monitor, the activities of institutions established for the care of persons with disabilities;
- (o) to encourage and provide facilities for full participation by persons with disabilities in all activities;
- (p) to introduce programmes to make the physical environment accessible to persons with disabilities and implement schemes to provide access to information and communication by persons with disabilities;
- (q) to monitor and co-ordinate the programmes and schemes formulated, initiated and implemented by the Government and by voluntary organisations and bodies, for the upliftment of persons with disabilities and to provide grants for such purposes, and to make necessary recommendations;
- (r) to make the public aware of the conditions and needs of persons with disabilities through publications and other programmes;
- (s) to assist, by way of grants or otherwise, organisations engaged in providing services to persons with disabilities;
- (t) to assist wherever possible, persons with disabilities to be painfully employed;
- (u) to encourage the study of, and research on, methods to improve the quality of life of persons with disabilities and to promote their participation in all activities;
- (v) to do all such other acts or things as may be necessary for the discharge of all or any of the above functions.

Powers of the Council

14. The Council may exercise all or any of the following powers:
- (a) acquire, hold, take or give on lease or hire, mortgage, pledge or sell or otherwise dispose of, any movable or immovable property;
 - (b) to establish a National Secretariat for Persons with Disabilities to assist the Council in the discharge of its functions;
 - (c) employ such officers and servants as may be necessary for the purpose of discharging the functions of the Council;
 - (d) enter into and perform directly or through any officer or agent authorised in that behalf, all such contracts as may be necessary for the discharge of the functions and the exercise of the powers of the Council;
 - (e) open and maintain current, savings or deposit accounts in any bank or banks;
 - (f) borrow such sums of money as may be necessary for the purpose of discharging its functions;
 - (g) accept and receive, grants, donations and bequests both movable and immovable, from sources in Sri Lanka and abroad and apply them for the discharge of its functions;
 - (h) make rules in respect of the management of the affairs of the Council;
 - (i) generally, to do all such other things as are necessary to facilitate the proper discharge of the functions of the Council.

PART II

STAFF OF THE COUNCIL

Staff of the Council

15. (1) The Council may appoint such officers and servants as the Council may deem necessary for the proper and efficient discharge of its functions.

(2) The Council shall in making any appointments under this section have regard to the desirability of appointing persons with disabilities to the staff of the Council.

(3) Subject to the other provisions of this Act, the Council may -

- (a) exercise disciplinary control over or dismiss, any officer or servant of the Council;
- (b) fix the wages or salaries or other remuneration of such officers and servants;
- (c) determine the terms and conditions of service of such officers and servants; and
- (d) establish and regulate a provident fund and any other welfare scheme for the benefit of the officers and servants of the Council and may make contributions to any such fund or scheme.

Appointment of public officers to the staff of the Council

16. (1) At the request of the Council, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry under which that officer is employed and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration be temporarily appointed to the staff of the Council for such period as may be determined by the Council with like consent, or with like consent be permanently appointed to such staff.

(2) Where any officer in the public service is temporarily appointed to the staff of the Council, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis*, apply to, and in relation to, such officer.

(3) Where any officer in the public service is permanently appointed to the staff of the Council, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis*, apply to, and in relation to, such officer.

(4) Where the Council employs any person who has entered into any contract with the Government by which he has agreed to serve the Government for a specified period, any period of service to the Council by that person shall be regarded as service to the Government for the purpose of discharging his obligations under such contract.

PART III

FINANCE

The Fund of the Council

17. (1) There shall be established a Fund to be called the National Fund for Persons with Disabilities (hereinafter referred to as the "Fund").

(2) There shall be paid into the Fund -

- (a) all such sums of money as may be voted from time to time by Parliament for the use of the Council;
- (b) all such sums of money as may be received by the Council by way of aid, grants, donations or bequests from any source whatsoever, whether in Sri Lanka or abroad;
- (c) all such sums of money as may be received by the Council by way of proceeds from the sale of any movable or immovable property of the Council.

(3) There shall be paid out of the Fund -

- (a) all such sums of money as are required to defray any expenditure incurred by the Council, in the exercise, performance and discharge of its powers, duties and functions under this Act;
- (b) all such sums of money as are authorised by the Council to make any *ex gratia* payment to any individual or organisation in recognition of any exceptional or outstanding contribution made by such individual or organisation towards the upliftment or improvement of the status of persons with disabilities;
- (c) all such sums of money as are required to be paid out of such Fund, by or under this Act.

Audit and accounts

18. (1) The Council shall cause proper accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Council.

(2) The financial year of the Council shall be the calendar year.

(3) The provisions of Article 154 of the Constitution shall apply to the audit of the accounts of the Council.

Investment of moneys of the Council

19. Any sum of money belonging to the Council may be invested by the Council in such manner as the Council may determine.

PART IV

REGISTRATION

Registration with the Council

20. (1) No voluntary organisation shall engage in providing services or assistance in any form or manner to persons with disabilities either directly or through any institution or other body or organisation, unless such voluntary organisation is registered under this Act.

(2) Notwithstanding the provisions of subsection (1), any voluntary organisation which, on the day preceding the appointed date, was engaged in the provision of such services or assistance, shall register such organisation within three months of the appointed date.

Application for registration

21. Every application for registration under this Act shall be made to the Secretary of the Council in the prescribed form and in the prescribed manner.

Grant of certificate

22. On receipt of an application made under section 21, the Council shall, having regard to the services and assistance provided by such voluntary organisation, grant registration to such organisation and issue a certificate to that effect.

PART V

PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

Provisions for the protection and advancement of persons with disabilities

23. (1) No person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment or office or admission to any educational institution.

(2) No person with a disability shall, on the ground of such disability, be subject to any liability, restriction or condition with regard to access to, or use of, any building or place which any other member of the public has access to or is entitled to use, whether on the payment of any fee or not.

Remedy for the contravention of the provisions of section 23

24. (1) Where there has been a contravention of the provisions of section 23, any person affected by such contravention or the Council on behalf of such person may apply to the High Court established under Article 154P of the Constitution for the Province in which the person affected by such contravention resides, for relief or redress.

(2) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down by rules made by the Supreme Court under Article 136 of the Constitution.

(3) The High Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any application referred to in subsection (1).

PART VI

MISCELLANEOUS

Regulations

25. (1) The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are required or authorised by this Act to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of publication or on such later date as may be specified therein.

(3) Every regulation made by the Minister, shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(4) The notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Power of Council to make rules

26. (1) The Council may make such rules as it may consider necessary in relation to any matter affecting or connected with, or incidental to, the exercise, discharge and performance of its powers, functions and duties.

(2) Every rule made by the Council shall be approved by the

Minister and notification of such approval shall be published in the *Gazette*.

Officers and servants of the Council deemed to the public servants within the meaning of the Penal Code

27. All officers and servants of the Council shall be deemed to be public servants within the meaning and for the purpose of the Penal Code.

Council deemed to be a scheduled institution within the meaning of the Bribery Act

28. The Council shall be deemed to be a scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

Protection of members and officers of the Council for action taken under this Act or on the direction of the Council

29. (1) No suit or prosecution shall lie against the Council or any member of the Council or any officer or servant thereof, for any act which in good faith is done by him under this Act or on the direction of the Council.

(2) Any expense incurred by the Council in any suit or prosecution brought by or against, the Council before any court shall be paid by the Council, and any costs paid to, or recovered by, the Council in any such suit or prosecution shall be credited to the Consolidated Fund.

(3) Any expense incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court, in respect of any act which is done or purported to be done by him under this Act or on the direction of the Council, shall, if the court holds that the act was done in good faith, be paid by the Council, unless such expense is recovered by him in such suit or prosecution.

No writ to issue against person or property of a member

30. No writ against person or property shall be issued against a member of the Council in any action brought against the Council.

Returns

31. The Council may for the purpose of discharging its functions under this Act, require any person to furnish to the Council, such returns and information in respect of such matters and in such form as may be determined by the Council.

Power of Council to authorise any officer to enter and inspect premises

32. The Council may, where it considers it necessary for the purpose of discharging the functions of the Council, authorise in writing any officer to enter and inspect at all reasonable hours of the day any premises of a voluntary organisation which is engaged in providing services or assistance to persons with disabilities. An officer so authorised is hereinafter referred to as an "authorised officer."

Powers of inspection and search

33. Any authorised officer may -

- (a) enter and inspect the premises of any voluntary organisation engaged in providing services or assistance to persons with disabilities;
- (b) enter and inspect such place where he has reason to believe that a voluntary organisation is engaged in providing services or assistance to persons with disabilities without being registered under this Act;
- (c) examine any books, registers or records maintained by such organisation under this Act, and make extracts or copies therefrom;
- (d) interrogate any person in any such premises for the purpose of ascertaining whether the provisions of this Act are being complied with.

Offences

34. Any person who -

- (a) fails to furnish any return or information in compliance with any requirement imposed on him under this Act;
- (b) knowingly makes any false statement in any return or information furnished by him;
- (c) wilfully omits any matter in any return or information furnished by him;
- (d) resists or obstructs any authorised officer in the exercise by such person of any powers conferred on him by or under section 33 of this Act;
- (e) contravenes the provisions of this Act or any regulation or rule made thereunder,

shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding ten thousand rupees or to

imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Offences by bodies of persons

35. In the case of any offence under this Act committed by a body of persons, then -

- (a) where such body of persons is a body corporate, every director, secretary and officer of that body corporate shall each be deemed to be guilty of that offence;
- (b) where that body of persons is a firm, every partner of that firm shall be deemed to be guilty of that offence:

Provided that, no such person shall be deemed to be guilty of an offence under this Act, if he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the commission of the offence.

Sinhala text to prevail in case of inconsistency

36. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation

37. In this Act, unless the context otherwise requires -

"Local authority" means a Municipal Council, Urban Council, a Pradeshiya Sabha and includes any authority created or established by or under any written law to exercise, perform and discharge, powers, duties and functions corresponding to or similar to the powers, duties and functions, exercised, performed and discharged by any such Council or Sabha;

"person with disability" means any person who, as a result of any deficiency in his physical or mental capabilities, whether congenital or not, is unable by himself to ensure for himself, wholly or partly, the necessities of life;

"prescribed" means prescribed by regulations made under this Act;

"Provincial Council" means a Provincial Council established under Chapter XVIIIA of the Constitution.

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