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LST REVIEW

Volume 17 Issue 233 March 2007



The Law, Activism and Good Governance; Reaching Across the Spectrum

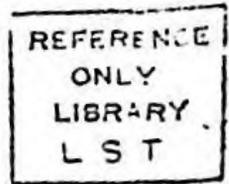
LAW & SOCIETY TRUST

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Printed by:
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ISSN - 1391 - 5770



Editor's Note

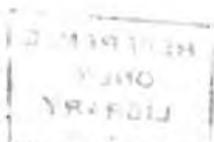
The Review, in this Issue, is pleased to offer an amalgamation of ideas and thoughts in regard to the purpose and object of the law, good governance and social activism that reaches across the spectrum of specific disciplines and looks at a common goal; namely the necessarily gradual (if not painful) revitalisation of Sri Lankan society.

Its first segment is a recent judgment by Sri Lanka's Supreme Court declaring the country's former President responsible for abuse of power in reserving to herself certain privileges consequent to her retirement that went beyond the entitlements allowed by the relevant law, the Presidents' Entitlements Act, No 4 of 1986.

The judgment, which is published at the request of a number of readers of the Review, contains a harsh indictment of the former President securing to herself of land, premises for residence, staff (security and personnel) and vehicles contrary to the provisions of the Act. The time honoured principle that no person shall participate in decision making in which he/she is has a personal interest is central to the Court's reasoning. The judges (in the decision of Chief Justice Sarath Nanda Silva) declared that the entitlements in the Act apply only to a former President and that 'the provisions have been worded in such a manner to ensure that the incumbent President would not have occasion to decide on his entitlements'

The 'conflict of interest' principle upon which this decision of the Court is based is indeed, not limited to presidential actions; rather, it permeates the sphere of all decision making in good governance and indeed, involves the judiciary itself within its ambit. For example, this is the precise basis on which activists in Sri Lanka have been urging the enactment of a Contempt of Court for many years enshrining, *inter alia* the principle that a judge should not take part in judicial deliberations in which he/she has been the subject of the alleged contempt itself.

From another perspective, the decision illustrates the limits of presidential immunity; an ideal extension of this principle would be the subjection of past acts of the office of the Executive Presidency to accountability in respect of far more abuses of power in office than mere presidential entitlements. Needless to say, these principles should be affirmed as part of the overriding concept of accountability in governance rather than as personally motivated charges against individuals based on petty feelings of anger or vindictiveness which reduces the impact of the action taken. However, in the current context of Sri Lanka the reinstatement of such a general concept of accountability seems almost entirely to be well nigh impossible.



The next paper in this Issue looks at an interesting duel of thought on this essential contradiction between partisan/personal influences and civic rights accountability by an overseas academic, *Dr Siri Gamage* written on invitation of the Review.

He points out relevantly that;

Over the decades, there have been numerous allegations and criticism about the partisan nature of some agencies in Sri Lanka, thereby depriving the citizens – especially those who are powerless – of equal opportunities; equality of treatment, and equality before the law. Politicisation, of not only the government agencies, including higher education institutions, but also the judiciary, has been of public concern for decades.

Dr Gamage's warning that the rhetoric of democratic governance can only fool those who are not familiar with democratic norms, principles and values but not the intelligent public who has seen the reality of democratic governance in other countries is equally pertinent.

The following two articles contain an analysis of the Intellectual Property Act, No 36 of 2003 by *Justice P.H.K. Kulatilake* which would be of interest to legal practitioners and law students as well as an interestingly community based exploration of the difficulties faced in the post tsunami period by *Dr Gamini Hitinayake*.

The two concluding papers in this Issue contains a recent report of a programme conducted with '*Gramaseva niladharis*' by the Law and Society Trust and an outlining of key social issues as detailed in an action strategy plan put before religious leaders as members of the Council of Religions of Sri Lanka by *Chandra Jayaratne*, one of the few business leaders in Sri Lanka whose work focus has encompassed a measure of commitment to much needed standards of social and civic accountability.

Kishali Pinto-Jayawardena

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

S.C. (F.R) Application
No. 503/2005

H. Senarath of No. 49/493/A 1,
Eriyawetiya, Kelaniya

and two others

Petitioners

vs.

Chandrika Bandaranaike Kumaratunga
Horagolla Walawwa, Nittambuwa

and 99 others

Respondents

BEFORE : Sarath N Silva, Chief Justice
Shiranee Tilakawardena Judge of the Supreme Court
R.A.N.G. Amaratunga Judge of the Supreme Court

COUNSEL : Peter Jayasekera with K. Tiranagama and K. Senadheera
for the Petitioners

N. Hatch P.C., with G. Jayakody and Mrs K. Geekiyanage for the 1st
Respondent.

P.A. Ratnayake, P.C., D.S.G., with Ms. Demuni de Silva, S.S.C., for
the 2nd-4th, 7th-8th, 10th-11th, 13th-14th, 17th to 19th, 24th, 28th,
30th, 31st, 33rd, 34, 36, 37th-38th, 42nd-43rd, 57th-58th, 65th-66th,
75th, 80th, 85th, 91st and 100th Respondents

ARGUED ON : 02nd March 2007

DECIDED ON : 03rd May 2007

Sarath N Silva, C.J.,

The Petitioners being three Attorneys at Law of this Court have been granted leave to proceed on the alleged infringement of their fundamental rights guaranteed by Article 12(1) of the Constitution. They plead that the applications have been filed in addition to their own interest, as a matter of public

interest representing the rights of the citizens of this country, to enforce the fundamental right to equality before the law.

The alleged infringement relates to the unlawful, unreasonable, arbitrary and *mala fide* executive action of the 1st Respondent who was at the material time the President of the country and of 2nd to 35th Respondents who were then members of the Cabinet of Ministers, in securing for the 1st Respondent a free grant of a land vested in the Urban Development Authority in extent of 1 ½ acres close to the Parliament which had been fully developed at a cost of Rs. 800 million; a premises at No.27, Independence Avenue, Colombo 7, from which two public authorities viz: the Ranaviru Sevana Authority and the Disaster Management Centre were ejected to be used as her residence after retirement; staff and other facilities; purportedly under the Presidents' Entitlement Act No. 4 of 1986.

The relevant provisions of the Presidents' Entitlement Act No. 4 of 1986 are as follows:

2. There shall be provided to every former President and the widow of a former President, during his or her life time, the use of an appropriate residence free of rent:

Provided that where for any reason, an appropriate residence is not provided for the use of such former President or the widow of such former President, there shall be paid to such former President or the widow of such former President, a monthly allowance equivalent to one third of the monthly pension payable to such former President or the widow of such former President. as the case may be.

3. (1) There shall be paid to –

- (a) every former President, a monthly secretarial allowance equivalent to the monthly salary for the time being payable to the person holding the office of Private Secretary to the President; and*
- (b) to the widow of such former President, a monthly secretarial allowance equivalent to the monthly salary for the time being payable to the person holding the office of Private Secretary to the Minister of the Cabinet of Ministers.*

(2) There shall be provided to every former President and the widow of such former President, official transport and all such other facilities as are for the time being provided to a Minister of the Cabinet of Ministers."

The Petitioners have pleaded that they had no access to information as to the impugned grant of benefits and advantages to the 1st Respondent and that their interest in the matter was aroused by a publication in a Sunday newspaper of 4.12.2005, which has been produced marked "P1", under the heading "All the Ex-President perks". The publication referred to an allocation of, a land at Madiwela to the 1st Respondent and of 36 vehicles, security staff, private staff amounting to a total of 248. The other matters referred to in the publication in regard to certain withdrawals from Presidents Fund amounting to Rs. 600 million, do not form part of this application. The Petitioners state that in view of the specific material contained in the publication they wrote letter dated 8.12.2005 to the Secretary to the Cabinet of Ministers requesting copies of related Cabinet Memoranda and decisions in order to verify their legality, The Secretary replied by letter dated 26. 12.2005 (P2B) regretting his inability to

comply with the request. Thereupon the Petitioners wrote to individual Ministers and some documents that were made available enabled them file the present application, Considering the matters that had been pleaded the Petitioners were permitted by Court to file amended papers setting out whatever additional material that was available with them in support of the alleged infringement.

The documents produced by the Petitioners relate *inter alia*, to premises bearing No. 27 Independence Avenue, Colombo 7, which was being extensively repaired at that stage. Since the allocation of the premises as a residence to the 1st Respondent had been directly drawn in issue, the Court made an order on the present Secretary to the President to disclose the basis on which the expenses for repairs were being incurred. Pursuant to that order the Secretary to the President produced the relevant documents marked 37R8 to 37R12 under confidential cover. It is pertinent here to note that Counsel for the 1st Respondent and later the 1st Respondent herself has filed an affidavit stating that the action of the Court in calling for information regarding the repairs is "ultra vires" and the 1st Respondent strenuously objected to any inquiry being made into such expenditure. It appears that the 1st Respondent has been ill-advised to use the phrase "ultra vires" in relation to an order made by this Court which is in terms of Article 118 of the Constitution "the highest and final Superior Court of Record in the Republic". On the other hand the Inquiry before this court is whether the action of the 1st Respondent and of the Cabinet of Ministers of which she was the head is ultra vires the provisions of the Presidential Entitlement Act No. 4 of 1986. Good governance and transparency characterize Democracy and the Rule of Law and where an infringement of equality before the law is alleged by the wrongful and unlawful grant of facilities and benefits at the highest level of the executive, strict rules of pleadings cannot be insisted upon. The Petitioners have pleaded and established that they were denied access to information. The extent to which information has been denied is borne out by the fact that the documents were sent even to Court under confidential cover. Hence, the objection of the 1st Respondent was over ruled and the documents were made available to the Petitioners.

I would set out the relevant material in reference to the three matters drawn in issue by the Petitioners as regards, the land; the residence; staff and other facilities:

The Madiwala Land

The first reference to this land in the documents produced by the parties is contained in the Cabinet Memorandum dated 28.03.05 submitted by the Minister of Urban Development and Water Supply. The Memorandum commences by stating that the 1st Respondent as President "*has requested a block of land 1 ½ Acres in extent at Madiwela... .. for the purpose of construction of a residence for herself after her retirement as President.*"

It specifically states that "*she wishes this land to be allocated in lieu of the following allowances that a former President is entitled to under the Presidents' Entitlement Act No. 4 of 1986.*

- *Pension,*
- *The official residence that she would be entitled to;*
- *Allowance for maintenance of the bungalow, plus allocation for payment of electricity and water bills;*

She will thus only take her entitlements of:

- *A few vehicles*
- *Security personnel and related equipments and vehicles for security purposes:*
- *Office staff.”*

Paragraph 2 of the Memorandum seeks to justify the grant of the land by stating that in terms of the Act if the President does not avail herself of a residence, she would be entitled to the payment of 1/3 of the pension as rental allowance. This amounts to approximately Rs.7,000/- per month. But, as Ministerial type of office residences are in short supply presently, if she avails herself of her entitlement of a residence, a Minister may probably have to take a house on rent. The minimum rental of a Ministerial type of residence, at present, in the Colombo 7 area where they are presently situated would be around Rs. 300,000/- to Rs. 400,000/- per month or more. An additional allocation of approximately Rs. 1 million has to be made annually for repairs, maintenance as well as payment of electricity and water bills.

The justification proceeds further to state that the President has suffered by assassination of her husband and injuries suffered in an assassination attempt in 1999 and concludes by stating that “the value of land requested is insignificant” when compared with the entitlements she has given up and also proposes to forego in the future.

In paragraph 3 of the Memorandum Cabinet approval is sought to allocate the land to the 1st Respondent on a “free-hold basis for the construction of her residence at her cost”.

The Petitioners contend that the Memorandum is contrary to the provisions of the Act which specifically envisages the payment of an allowance amounting to 1/3 of the pension if a Ministerial type of house is not available. Their main submission is that the Madiwela land was originally intended for the construction of the “Presidential Palace” and a sum of Rs. 800 Million had already been spent by the State to develop the land for the purpose of such construction. The Minister, although leave to proceed was granted against him has not sought to contradict this specific averment in the petition. In the circumstances this Court has to act on the basis that the extent of 1 ½ Acres to be allocated, near the Parliament is a fully developed land in respect of which the State has already spent over Rs.800 million and that the statement of the Minister that the value of land is ‘insignificant’ is a misrepresentation of facts.

The Memorandum dated 24.8.2005 was considered on the very next day by the Cabinet of Ministers and approval was granted to it by the decision in 36RIB.

It is not clear as to what the Minister meant by a “free-hold” allocation. Such a concept is not known to the law of Sri Lanka. Whatever it may mean it is seen from document 37R2A that the Urban Development Authority in whom the land had been vested, on the basis of that decision made a free grant of the land to the 1st Respondent by Deed bearing No.1135 dated 6.9.2005. It is significant that the date in the deed being a document with several schedules covering six pages is the very next date from date on which the decision of the Cabinet of Ministers was communicated. The land had been surveyed and the date of the Plan is 15.8.2005. It is thus seen that within a matter of a brief period of this Court making a pronouncement as to the term of office of the President, the land had been surveyed, a Cabinet Memorandum submitted and approved and a deed containing a free grant issued.

The premises at 27 Independence Avenue, Colombo 7

The first reference to the allocation of No. 27 Independence Avenue, Colombo 7, to the 1st Respondent is made in the Cabinet Memorandum dated 31.10.2005, submitted by the Minister of Public Security, Law and Order (36R2 A).

This Memorandum makes no reference to the fact that a Memorandum had been submitted by the Minister of Urban Development and land at Madiwela was allocated to the 1st Respondent in lieu of a pension, residence and so on. The Memorandum of the Minister of Public Security recommends that an entirely New Division be established for the 1st Respondent as "the Retired Presidential Security Division IV" headed by a Senior Superintendent of Police with 198 personnel, 18 vehicles and 18 motor cycles to be provided for the use of the officers.

Addressing the matter from the perspective of security paragraph 3 of the said Memorandum states to:

"Allocate the house No.27 Independence Avenue, Colombo 7, for this purpose since she needs to reside in a house where adequate security can be provided and to effect repairs thereto in order to ensure security measures.

The 1st Respondent herself has submitted a Note to the Cabinet dated 2.11.2005 titled "Staff of the office of the President on retirement"(36R3A). It says *inter alia*, as follows:

"I will be entitled to certain facilities under the provisions of the Presidents Entitlement Act No.4 of 1986. Provision of official and personal staff would be one such entitlement."

I have already selected premises No.27 Independence Avenue, Colombo 7, for my office after retirement. Considering the meaningful role that I propose to play in the public affairs of this country on retirement the staff I require to maintain this office is given in the Annexure to this Note.

The annexure sets out a staff as follows:

PARTICULARS OF STAFF

<u>Designation/Category</u>	<u>No. of Positions</u>
President	01
Secretary to the Former President & Chief of Staff	01
Advisors - Political Affairs & International Affairs	02
Advisor - Social Affairs	01
Additional Secretary	01
Secretaries - Private & Confidential	02
Directors - Foreign Relations & Special Projects	01
Senior Assistant Secretary	02
Assistant Secretaries (SLAS)	03
Assistant Secretaries (Non SLAS)	03

Coordinating Secretaries	03
Programme Officer	01
Manager	01
Stenographer – Sinhala/English/Tamil	05
Data Entry Operators	03
Clerks	04
Information Officer	01
Camerman	01
Video Camerman	01
Garden Specialist	01
Garden Labourers	02
Labourers	02
Messenger	01
Drivers	09
Butlers	05
Cook	01
KKSS	05
Total	63

The matter of the staff would be dealt with under the next heading. As regards the allocation of the premises at No.27 Independence Avenue, it is seen in paragraph 3 of the Memorandum on security, the Minister has stated that these premises are needed for her to reside, suppressing the fact that the Cabinet has already by a decision taken 2 months before made a free grant of the land at Madiwala in lieu of the entitlement of a residence and a pension. The 1st Respondent in her Note to the Cabinet which has been considered by the Cabinet on the same day as the Memorandum of the Minister viz: 3.11.2005, knowing fully well that she has already got a land free in lieu of a residence has stated that she has “already selected premises No.27, Independence Avenue, Colombo 7, for the office after retirement, considering the meaningful role that she proposes to play in the public affairs of the country after retirement” and requests the personal staff of 63. There is plainly a contradiction, the Minister calls it a house to reside in and the 1st Respondent calls it an office, it has to be noted that there is no entitlement to an office in the President’s Entitlements Act No.4 of 1986. The reference to an office in the 1st Respondent’s Note is a patent mis-representation since in the staff of 63 included in the Annex there are included 5 Butlers and a Cook. Such persons cannot possibly come within an office staff.

The more significant factor not contained in the Memorandum of the Minister and the Note of the 1st Respondent is that No. 27 Independence Avenue, was not an “appropriate residence” in terms of Section 2 of the Act. As revealed in the affidavit of the 37th Respondent these premises had been donated on 14.05.1980 (37R3) by the then President to the Sri Lanka Foundation. It was used for the Human Rights Centre and at the time material by the Rana Viru Seva Authority and the Disaster Management Centre. Steps had been take well prior to the Cabinet Decision of 3.11.2005 to retake possession of the premises and to shift the Authority and the Centre to rented premises. Letter dated 11.10.2005 (37R4) was sent by the then Chairman of the Sri Lanka Foundation to the then Secretary to the President. It states that in reference “to our telephone conversation last week where you requested that the Sri Lanka Foundation voluntarily surrender the above mentioned land to the State

as Her Excellency the President wishes to use the said premises as her office after relinquishing duties," the Board has unanimously resolved to surrender the land. The surrender was sent for registration but there was an error in the process which had to be rectified with another resolution being passed as recently as 31.10.2006 (vide 37R5, 37R13 and 37R14). Be that as it may, well before even the Cabinet decision with some reference to these premises was made on 3.11.2005 the 1st Respondent on her own embarked on the process of effecting repairs. The estimate dated 30.09.2005 (37R12) for a sum of Rs 43 Million reduced to Rs. 35 Million appears to have been obtained by her directly. She addressed a minute dated 30.09.2005 to the Secretary that he should obtain the necessary allocation from the Treasury and release it early. The Secretary sent letter dated 7.10.2005 (37R10) to the Treasury requesting a sum of Rs. 40.25 Million to repair the building and a supplementary allocation was made by letter dated 11.11.2005 (37R11). The letter states that the allocation is under –

Head 801	-	Department of National Budget
Programme 07	-	Public Resource Management
Project 02	-	Budgetary Support Services and Contingent Liabilities

Whatever these words may mean the process is nothing but a fiscal ruse to incur unauthorized expenditure. It is significant that the Budget Estimates for 2006 for the former President which has also a column for 2005 does not reflect this figure (Vide: 43R3A). Infact the total expenditure for 2006 is Rs. 37 Million and for 2005 Rs. 12 Million.

Be that as it may, paragraph 3 of the letter (37R11) states as follows:

"The granting of this allocation should not be construed as adequate authority for incurring expenditure. All expenditure should be incurred in accordance with the provisions of the relevant Financial Regulations, Establishment Code and instructions issued from time to time by Government."

By this time the 1st Respondent without any recourse to a tender procedure and in flagrant violation of the guidelines which she herself laid down as Minister of Finance, personally selected a contractor and agreed on the price payable. The Submission of President Counsel for the 1st Respondent that a deviation was warranted on grounds of urgency is wholly untenable in view of the paragraph 3 of 37R11. This probably is the reason for the strident objection to the order of the Court in calling for these documents. The documents and the facts set out above clearly establish that the entire sequence of events in regard to premises No.27 Independence Avenue, is an abuse of authority on the part of the 1st Respondent and marked by a serious deception i.e. the suppression in both papers to the Cabinet the previous free grant of the Madiwala land in lieu of the entitlement to a pension and a residence.

Allocation of Staff

The allocation of staff reveals a two track approach as seen from the papers referred to above. The Minister in charge of the subject of Public Security, Law and Order has submitted the Cabinet Memorandum (36R2A) referred to above recommending the establishment for the 1st Respondent an entirely new Presidential Security Division IV with 198 personnel, 18 vehicles and 18 motor cycles. The 1st Respondent has submitted a Note to the Cabinet (36R3A) stating her entitlement to an official

and personal staff of 63 personnel. Both have been considered on the same day, that is on 3.11.2005 and allowed by the Cabinet of Ministers.

The submission of the Petitioners is that in terms of the Presidents' Entitlements Act No. 4 of 1986, a former President does not have an entitlement to an office or to office staff. There is only an entitlement in terms of Section 3(1) to the payment of a monthly allowance equivalent to the monthly salary for the time being payable to the person holding the office of Private Secretary to the President.

The specific reference to an allowance and the manner in which it is to be computed, in my view, excludes any other staff being allowed to a former President in terms of Act No. 4 of 1986. The tenor of the Memorandum and the Note submitted by the 1st Respondent appears to be that the staff requested is a "facility" to which a former President is entitled to in terms of Section 3(2) of the Act. This provision entitles a former President to "official transport and on such other facilities as are for the time being provided to a Minister of the Cabinet of Ministers."

In my view the phrase 'such other facilities' have to be read ejusdem generis, to mean similar in nature to the provision of official transport. As regards staff the specific provision in Section 2 referred above makes reference only to an entitlement of a "monthly secretarial allowance". Therefore the memorandum of the Minister and the Note of the 1st Respondent cannot derive any authority from the provisions of Act No. 4 of 1986.

The Petitioners made a further submission that in any event the entitlements in Act No. 4 of 1986 are to "every former President and widow of a former President". This is clearly seen in Sections 2 and 3. Therefore it was submitted that the entitlement becomes effective only after a President ceases to hold office and acquires the status of former President. The entitlement cannot be granted whilst the person is holding the office of President.

In my view the provisions have been advisedly worded in this manner to avoid a situation as has happened in relation to the 1st Respondent of the President himself or herself partaking in decisions as to the entitlements to be given after ceasing to hold office.

In official matters the general rule is that a person would refrain from participating in any process where the decision relates to his entitlement or in a matter where he has a personal interest. "Nemo debet sua iudex" is a principle of natural justice which has now permeated the area of corporate governance as well. This salient aspect of good governance has been thrown to the winds by the 1st Respondent in initiating several Cabinet Memoranda during her tenure of office and securing for herself purported entitlements that would if at all enure only after she lays down the reins of office and acquire the eligible status of a former President. To add insult to injury the 1st Respondent herself has submitted a Note to the Cabinet stating that she intends "to play a meaningful role in the public affairs of the country on retirement." and requires a staff to maintain her office. Whilst there may be no objection to any person playing a meaningful role in public affairs the wrongful act submitted by the Petitioners is the procurement of land, premises for residence, staff (security and personnel) and vehicles contrary to the provisions of Act No.4 of 1986, both from the perspective of time and content. The submission of the Petitioners is in my view well founded.

I am in agreement with the basic submission that the entitlements in the Act apply only to a former President and that the provisions have been worded in this manner to ensure that the incumbent President would not have occasion to decide on his entitlements.

The submission of Counsel for the 1st Respondent is that even if the grant of the land, premises and staff do not come within the purview of Act No.4 of 1986, the Petitioners nevertheless have no locus standi to file this application and that the Court has no jurisdiction to decide on the matter.

The implication of the submission of Counsel appears to be that if there is any conferment of a wrongful or unlawful benefit or advantage, that has to be addressed in appropriate proceedings but it cannot amount to an infringement of a fundamental right guaranteed by Article 12(1) of the Constitution.

It is indeed correct that a conferment of a wrongful or unlawful benefit or advantage may attract other offences such as the offence of corruption in terms of Section 70 of the Bribery Act, as amended by Act No. 20 of 1994. However the fact that the impugned action may or may not be an offence punishable by law does not mean that a person acting in the public interest is not entitled to seek a declaration from this Court that the conferment of such a benefit or advantage is contrary to the fundamental right to equality before the law. Ordinarily, an infringement of a fundamental right is alleged when the impugned wrongful act on the part of the executive or administration affects the right of the aggrieved person. The Petitioners' case is presented on a different basis where they seek to act in the public interest. The case of the Petitioners is that the 1st Respondent and the Cabinet of Ministers of which she was the head, being the custodian of executive power should exercise that power in trust for the people and where in the purported exercise of such power a benefit or advantage is wrongfully secured, there is an entitlement in the public interest to seek a declaration from this Court as to the infringement of the fundamental right to equality before the law.

In the context of this submission, it is relevant to cite from the Determination of a Divisional Bench of seven Judges of this Court in regard to the 19th Amendment to the Constitution (2002(3) SLR page 85), The Court there laid down the basic premise of the Constitution as enunciated in Articles 3 and 4, that the respective organs of government are reposed power as custodians for the time being to be exercised for the People. At page 96 the Court has made the following determination in regard to sovereignty of the People and the exercise of power:

"Sovereignty, which ordinarily means power or more specifically power of the State as proclaimed in Article is given another dimension in Article 3 from the point of the People, to include –

- (1) the powers of Government;*
- (2) the fundamental rights; and*
- (3) the franchise*

Fundamental rights and the franchise are exercised and enjoyed directly by the People and the organs of government are required to recognize, respect, secure and advance these rights.

The powers of government are separated as in most Constitutions, but unique to our Constitution is the elaboration in Articles 4(a), (b) and (c) which specifies that each organ of

government shall exercise the power of the People attributed to that organ. To make this point clearer, it should be noted that sub-paragraphs (a), (b) and (c,) not only state that the legislative power is exercised by Parliament, executive power is exercised by the President and judicial power by Parliament through Courts, but also specifically state in each sub paragraph that the legislative power 'of the People' shall be exercised by Parliament; the executive power 'of the People' shall be exercised by the President and the judicial power "of the People" shall be exercised by Parliament through the Courts. This specific reference to the power of the People in each sub paragraph which relates to the three organs of government demonstrates that the power remains and continues to be reposed in the People who are sovereign, and its exercise by the particular organ of government being its custodian for the time being, is for the People(at page 98). "Therefore, executive power should not be identified with the president and personalized and should be identified at all times as the power of the people."

The Petitioners allege an abuse of power by the incumbent custodian of such power which at all times continues to be reposed in the People. The basic question therefore arises as posed by Juvenal in the 1st century A.D who wrote the famous latin phrase in a slightly different context which has been frequently cited thereafter. "Sed quis custodiet ipsos Custodes?" meaning, "but who is to guard the guards themselves?" The 1st Respondent and the Cabinet of Ministers were the custodian of public property and public funds. The property and funds will have to be dealt with according to law for the benefit of the people. Therefore, in my view the law itself is the instrumentality through which custodians are guarded. This is the basic postulate of the Rule of Law. It has been affirmatively stated in several judgments of this Court that the Rule of Law is the basis of our Constitution (Vide: Visvalingam vs Liyanage 1983 1 SLR page 236 and Premachandra vs Jayavickrema 1994 2 SLR page 90); The phrase 'Rule of Law' itself gained recognition as a premise of English Constitutional Law.

A.V. Dicey in his famous work "The Law of the Constitution" at page 202 states as follows:

"That 'rule of law' then, which forms a fundamental principle of the constitution, has three meanings, or may be regarded from three different points of view.,

It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of' arbitrariness, of prerogative, even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us punished for a breach of law, but he can be punished for nothing else.

It means again, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the "rule of law" in this sense excludes the idea of any exemption of officials or others from the duty of obedience of law which governs other citizens or from the jurisdiction of the ordinary tribunals;..... The 'rule of law' lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts;....."



The rule of law thus gains its efficacy by being enforced by the Courts.

In *S.P.Gupta vs Union of India and others* - 1982 AIR S.C., page 149, nine Judges of the Supreme Court of India ruled in favour of a public interest suit filed by certain lawyers as a writ petition. In his judgment, Bhagwati J., who was later the Chief Justice of India made the following observations with regard to the impact of the principle of rule of the law at page 197:

"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse of abuse of power by the State or its officers."

In considering the provisions of our Constitution as analysed in the Determination in the 19th Amendment and the observations cited above of Dicey and of the Supreme Court of India, I am of the view that there is a positive component in the right to equality. That, where the executive being the custodian of the Peoples' power abuse a provision of law in the purported grant of entitlements under such law and secures benefits and advantages that would not come within the purview of the law, it is in the public interest to implead such action before Court. The denial of a locus standi in the circumstances as presented in this case where there has been a brazen abuse of power to wrongfully gain benefits from public resources, would render the constitutional guarantee of equality before the law meaningless. The facts that have been clearly established in this case prove that the 1st Respondent and the Cabinet of Ministers of which she was the head secured for the 1st Respondent benefits and advantages in the purported exercise of executive power in breach of the provisions of the Presidents' Entitlement Act No. 4 of 1986. Since executive power is exercised in trust for the People, such wrongful action is an infringement of the fundamental right to equality before the law guaranteed by Article 12(1) of the Constitution.

For these reasons I allow the application and grant to the Petitioners the declaration prayed for that their fundamental right guaranteed by Article 12(1) of the Constitution has been infringed by executive action in the purported grant of benefits and advantages to the 1st Respondent contrary to the provisions of the Presidents' Entitlements Act No. 4 of 1986.

As regards consequential relief it is seen that the 1st Respondent has after this application was filed returned the land in question by a notarial instrument. Nevertheless a formal declaration is made that the decision to grant the land referred to in the Petition to the 1st Respondent is contrary to law and of no force or avail in law.

Similarly declarations are made that the decisions which by implication give a right to the 1st Respondent to the use and occupation of premises No.27 Independence Avenue, Colombo 7, are of no force or avail in law.

I grant further declaration that the decisions that have been made from time to time by the Cabinet of Ministers and produced in Court with regard to the staff, both security and personal of no force or effect in law.

The 1st Respondent would now be entitled to the benefits as stated in Sections 2 and 3 of the Presidents' Entitlements Act No. 4 of 1986. The entitlement would be to an appropriate residence free of rent and where an appropriate residence it is not available the 1st Respondent would be entitled to a monthly allowance of 1/3rd of the monthly pension that payable. Premises No. 27, Independence Avenue, Colombo 7, which has not been used as a residence cannot be considered as an appropriate residence for the purpose of section 2 of the Act.

The 1st Respondent would also be entitled to a monthly secretarial allowance to be computed in the manner stated in Section 3(1)(a) of the said Act and for official transport and facilities relating to such transport as permitted in terms of Section 3(2)(a) of the said Act.

It has to be noted that the Presidents' Entitlement Act No.4 of 1986 is a unique piece of legislation which grants entitlements only to former Presidents and their widows. Intrinsicly it is an exception to the concept of equality before the law, since no other holder of public office is granted such benefits. It appears that there is no similar legal provision in any other country.

The provisions of this Act being an exception in itself to equality before the law, have to be strictly interpreted and applied. In the circumstances the submission of Counsel for the 1st Respondent that the allocation made in the Appropriation Act for 2006 for salaries of the Staff for the 1st Respondent creates an entitlement to a staff is misconceived. An allocation in the Appropriation Act predicates that the money allocated should be expended according to law.

The application is allowed. The 1st Respondent will pay a sum of Rs. 100,000/- as costs to the Petitioners and the State will pay a further sum of Rs. 100,000/- as costs.

Chief Justice

Thilakawardena, J.,
I agree

Judge of the Supreme Court

Amaratunga, J.,
I agree

Judge of the Supreme Court.

Law Enforcement Agencies, Partisan Influences and Civic Rights: Domination OR Customer-Oriented?

*Dr. Siri Gamage**

Introduction

In a democratic system of governance where the people who possess sovereignty and transfer their authority to an elected government for the effective and just management of civilian affairs, the judicial and civilian mechanisms set in place to address day-to-day issues facing the people are of utmost importance. This is because, irrespective of the political party in power, citizens need to go about their daily life with the assurance that the government and its agencies at the central and regional levels can be trusted to perform their duties without favour to some citizens while discriminating others. Independence from the influence of politicians who wield power, the companies and wealthy people who enjoy monetary power is essential. The rule of law and equality before the law doctrine should not only be enshrined in the administrative acts and procedures of various agencies coming under the state, but they should also be implemented without fear or favour at the grass roots levels. In order to ensure that this result takes place, there should be mechanisms and processes set in place by the state so that citizens with grievances against various government and semi-government agencies, including those engaged in law enforcement, as well as members of parliament, can seek redress.

Partisan nature of Sri Lankan agencies

Over the decades, there have been numerous allegations and criticism about the partisan nature of some agencies in Sri Lanka, thereby depriving the citizens –especially those who are powerless – of equal opportunities; equality of treatment, and equality before the law. Politicisation, of not only the government agencies, including higher education institutions, but also the judiciary, has been of public concern for decades.

One could even argue that the emergence and sustenance of resistance movements like the LTTE can be attributed to this phenomenon and the discriminatory experiences that many Tamils encountered in their dealings with state institutions formed a significant reason for the growth of such organizations. Such discrimination is not limited to the Tamils. Large sections of the Sinhalese also faced significant discrimination at the grass roots levels. A good example is the manner in which many local police stations operate – often under the influence of local politicians and other powerful persons in the society. Partisan and often intimidatory behaviour of law enforcement agencies in their interactions with citizens does not bode well for a country that boasts about democratic governance. Sociological research conducted by various researchers has also highlighted the partisan manner in which state agencies operate on the ground.

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By and large, the Sri Lankan population expected any meaningful reforms in the state, its institutions and processes to emerge from the fountain of knowledge and wisdom supposedly held by their leaders in the government, academia, media, judiciary, and general literati. The 'modernist' education, thinking and practice that was popular among Sri Lankans in the post-independence period reinforced such expectations. When this did not happen, the conflict with the LTTE started. The whole national discourse converted to be one of ethnic discourse rather than a human rights discourse in the wholistic sense. The latter was subsumed under the former. Citizenship rights which have to be universal within the area covered by the Sri Lankan state also became a casualty of this ethnic discourse and '*desana*' (speeches) made by powerful figures in society.

'Demonising the Other' became an easy pastime in such '*desana*.' Tamils, specially if they were sympathetic to the LTTE cause, were seen as the demonic force in Sri Lankan politics, religion, academic and popular discourses, whereas the state and its operators became unquestioned guardians of the entire nation. In such a context, violations of rule of law and basic human rights by those in power in regard to the lower classes of people did not attract the same attention. The people in the lower classes not only sacrificed much by way of sending their kith and kin to the battlefield in the north and east, they also tolerated the actions of state machinery biased toward the privileged layers of society.

Thus, Sri Lankan polity, society, and its various strata are caught in diverse contradictions and cleavages. Making meaning out of these divisions and contradictions is not a simple task - particularly for the subordinate and disempowered classes. On the one hand, these subordinate classes have a stake in the conflict even if they do not have a stake in the State in a direct sense while being subjected to dehumanising, disempowering and subordinating forces. On the other hand, due to various processes of modernisation and globalisation such as the opening of employment market in the middle east, upward social mobility via education, business, patronage relations and politics, some members have left their lower status in exchange for middle status positions in the bureaucracy or private sector. Thus, their thinking and behavior came to assume more middle class characteristics. They believed that it was better to be silent observers rather than vigorous advocates of social rights based on social justice principles. In a society where international linkages reinforce the status of the upper classes and the political class, and the subordination of the lower classes is accomplished by a range of diverse actions, such decisions are understandable.

Changing our Mentality and Public Pressure Groups

If Sri Lanka is to advance forward from its current maze of conflict and contradictions, deprivation of civic rights and dignity of all citizens at the grass roots level – it has to change the mentality of power vis a vis subordination (political and administrative culture) so that the citizens not only have trust in the state institutions but also feel comfortable in visiting them to obtain various services as a right. This change cannot be achieved only by public utterances or even courageous writings that expose the problem. As in other democratic countries of the world, effective monitoring mechanisms need to be set in place. Citizens also need to organise into pressure groups demanding better services and efficiency.

For example, in earlier times, people who were not satisfied with the way the local police chief operated on a given matter, had the right and opportunity to visit the ASP or SP office and bring the

matter to the attention of higher authorities in the police hierarchy. I remember from my early days in the South, ie. 50s to 70s, how average folk from the area boasted in 'teashop talks' about their visits to Tangalle where they met with the ASP or the SP and found some solutions to the problems they had with the police at Walasmulla. I believe such opportunity still exists but am not sure how political and other influences in the system have watered down this facility and opportunity- particularly the trust that average folk can still maintain in such methods of problem resolution. The independence of these institutions and the ability of the officers in charge to function according to the rulebook are vitally important factors in providing just solutions to the many problems that citizens bring to these agencies.

As part of the monitoring mechanism, there should be avenues for average folk to bring complaints against officers in charge of law enforcement agencies. These mechanisms can take the form of tribunals- administrative or judicial - as the case may be. In other countries such as Australia, there are such tribunals to review decisions. There are also ombudsmen appointed in relation to major services such as telecommunications that aggrieved citizens can go to with their complaints. At State level, a good example is the Independent Commission against Corruption (ICAC), which has wide powers and necessary resources. Even parliamentarians have to go before this commission and explain their behaviour in cases where the public has referred cases of malpractice. The Commission has powers to engage in covert surveillance as part of their investigations.

Conclusion: Building Public Confidence in Governance

These are measures that can build considerable confidence in the minds of the public about governance mechanisms. Such mechanisms reinforce citizenship rights in the context of equal opportunity, anti-discrimination, anti-corruption, fair administrative and judicial processes, trading practices, and empowerment.

While any government requires an administrative process and mechanisms such as its central bureaucracy including the police, and the judicial mechanisms need to be independent from government interferences – this does not mean that they have to be controlling and dominating mechanisms as during the colonial times. As stated earlier, there is a vast difference between governance, management and control. Equally citizens do not have to treat those in authority as deities. Those in authority need to be accountable to the public, to the parliament and its agencies monitoring the way that they function.

Governance includes making macro policies and procedures as well as relevant acts of parliament and regulations to install a fair and effective system of managing the affairs of the state. Management includes the implementation of such policies, procedures and regulations fairly by the bureaucrats and managers entrusted with this task. Control enters the scene when they start to behave beyond their delegated authority or when using such authority, they overlook principles of fairness and equity, non-discrimination, etc., as a result of influences made by powerful figures or those close to them. To avoid such circumstances, the government has to put in place monitoring and review mechanisms with necessary powers and resources. Without such mechanisms, the rhetoric of democratic governance can only fool those who are not familiar with democratic norms, principles and values but not the intelligent public who has seen the reality of democratic governance in other countries.

Criminal Prosecutions under the Intellectual Property Act, No. 36 of 2003; An Analytical Study

*Justice P.H.K. Kulatilake**

Introduction

Intellectual property is intangible and cannot be readily defined or identified. Rather, it must be expressed in some discernible way for the purposes of protection. Protection is necessary for the reason that it is an asset just like any other form of property which could be bought, sold, exchanged, licensed, or gratuitously given away. The Intellectual Property Act, No.36 of 2003 [herein after referred to as the Act] encompasses the following property rights; namely, copyright and related rights, industrial designs, patents, marks and trade names layout designs of integrated circuits and undisclosed information.

The Act provides for both civil litigation and criminal litigation. By civil litigation, the remedies provided for are injunctions, orders to deliver up or destroy infringing articles and compensation to recover damages. It provides for criminal litigation to punish the offenders.

Criminal Jurisdiction

Under Chapter XXXVIII, the authority to hear, try and determine the offences committed under the Act has been conferred upon the magistrate. Section 14 of the Code of Criminal Procedure Act No. 15 of 1979, (hereafter the CPC Act), lays down the sentences that the magistrate can impose in the exercise of the Court's ordinary jurisdiction. Nevertheless Section 11 read with Section 14 of the CPC Act inferentially enables the court to enforce punishments prescribed by any enactment where special powers of punishments are given. Hence imposing a fine not exceeding rupees five hundred thousand or a sentence of imprisonment not exceeding seven years. [Section 177 of the Act, in relation to any person making or causing to be made a false entry in any of the registers kept under the Act, or making a writing falsely purporting to be a copy of an entry in any such register, or producing, or tendering, or causing to be produced or tendered in evidence any such writing, knowing the entry or writing to be false] causes no problem. The Act empowers the magistrate in the case of a second or subsequent conviction, to double the amount of such fine or term of imprisonment as provided for in respect of some offences.

Whether the offences are cognizable

In terms of section 201 of the Act, all offences under Chapter XXXVIII of the Act shall be cognizable and bailable within the meaning of the Code of Criminal Procedure Act No.15 of 1979. According to the interpretation given in Section 2 of the Code of Criminal Procedure Act, a cognizable offence means an offence for which a peace officer may in terms of the First Schedule arrest without a warrant, is not bailable and ordinarily the magistrate may issue warrant in the first instance. However, in terms of Section 197 of the Act, upon receipt of information of an offence being committed, the

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magistrate may issue summons in the first instance. The cumulative impact of these provisions may lead to confusion in the mind of the magistrate.

Institution of Proceedings

Even though Section 197 of the Act, (in the context of the magistrate issuing either a summons requiring the person alleged to have committed such offence to appear in court and show cause, or where such person fails to appear, issuing a warrant for the arrest of such person), uses the phrase “upon receipt of information” it does not indicate precisely as to who should file information of an offence being committed. In any event, since Section 197 of the Act enables the magistrate to resort to provisions of the Code of Criminal Procedure Act No.15 of 1979, (the CPC Act) the above phrase may be construed to mean institution of proceedings under Section 136 of the CPC Act. There are three ways in which a criminal prosecution may be instituted, namely,

- (i) Upon information filed by the police that an offence under the Act has been committed. This information has to be based on investigation carried out by the police under Chapter XI of the Code of Criminal Procedure Act, (the CPC Act);
- (ii) Upon a private complaint made by the person whose right protected under the Act has been infringed. Such complaint has to be drawn up and countersigned by a pleader and signed by the complainant.
- (iii) In respect of offences falling under Section 177 of the Act, the Director General may be able to file information.

Issuance of process

As stated above, under Section 197, on receipt of information of an offence being committed, the magistrate may issue summons in the first instance. If the alleged offender fails to appear, he may issue a warrant. Sub section [1] [b] empowers the magistrate to issue search warrants. But prior to the issuance of a search warrant, he has to obtain information on oath and satisfy himself that there are reasonable grounds to believe that any goods or things by means of, or in relation to which such alleged offence has been committed are in any house or premises of the alleged offender. The search has to be carried out by the person named in the warrant.

The charge

An important feature in the offences prescribed for the violation of the provisions of the Act or infringement of the rights protected under the Act is the inclusion of mental element in the definition of certain offences. Expressions such as “willfully infringes” used in sections, 178,179,181, and 184, of the Act. “knowing the entry or writing to be false” in section 177, “any person knowingly or having reason to believe” in Sections 178 and 179, requires the establishment of the mental component by the prosecution. The presence or absence of *mens rea* is a question of fact for the magistrate to decide.

The expression ‘wilfully’ is construed to mean that a person cannot be held to have committed an offence unless he had not only the intention to commit the Act but also full knowledge of the

circumstances which rendered his act criminal; vide *Wilson Vs. Inyang*¹, *Young Husband Vs. Lufig*.² Professor G.L. Peiris subscribes to this view.³ Use of the expression 'knowingly' indicates that the accused's ignorance of the circumstances which made his act criminal, may constitute a defence; vide *Regina Vs. Hallam*.⁴ Therefore a person cannot be convicted unless the prosecution proves that the accused had the requisite knowledge.

An evidential burden on the accused

Certain offences prescribed in the Act include deeming provisions, ie "shall be deemed to represent" Sections 180,182,185, and 192. In such instances, the accused will be called upon to explain away the circumstances. It is an evidential burden. He must give a reasonably true explanation which is consistent with his innocence. The burden of proof would be similar to instance where presumptions are drawn against a person; vide, *King Vs. Jayasena*⁶, *Banda Vs. Andre Appu*,⁷ *King Vs Allis Appu*.⁸ The accused must create a reasonable doubt.

Section 186 includes phrases "unless he proves that he acted without intent to defraud" and "unless he proves that he had acted innocently", in which case the burden shifts to the accused. Such burden is an evidential burden as opposed to proof beyond reasonable doubt. Under Section 189 which deals with an offence relating to false name or initial, if the offender can prove that he is a person "*bona fide*" carrying on business it is a valid defence. Section 196 enables the prosecution to institute action against a person who abets the commission of an offence under the Act.

Mode of leading evidence at the Trial

In terms of Section 167 of the Act, the evidence shall be given by affidavit. But the court has discretion to take evidence *viva voce*, in lieu or in addition to evidence by affidavit. As regards the documentary evidence printed, mechanically produced or written copies or extracts, certified by the Director General or otherwise filed or kept under the Act are admissible in evidence without further proof or production of the original.

When the allegations are in respect of wilfully infringing any right in order to prove the allegation it may be necessary to lead the evidence *viva voce* or by affidavit of the person whose rights have been infringed. Apart from the registered owner, a registered agent, an assignee, or a licensee may be able to give evidence on behalf of the principal or on his own behalf if his rights have been infringed.

The accused or his or her spouse can give evidence if called for his defence in which case he or she will be cross examined by the prosecution.

¹ [1951]2 K.B. 799.

² [1949]2 K.B 354.

³ Vide General Principle of Criminal Liability in Ceylon, First Edition page 30.

⁴ [1957]1 QB 372.

⁶ 48 N.L.R. 24.

⁷ 24 N.L.R 218.

⁸ 7 N L.R. 327.

Forfeiture

Provisions have been made in the Act under Section [178], [186], [197] for the magistrate to make order forfeiting the goods or things in relation to which the offence has or might have been committed. In appropriate cases he has discretionary power to order that those productions be destroyed or otherwise disposed of in such manner he may direct i.e. sale. An interesting feature is that this power can be exercised irrespective of whether the alleged offender is convicted or not. The magistrate may make an award to an innocent party for any loss he may have sustained in dealing with such goods. Another important feature is the provisions for cost of defence and of prosecution having regard to the information given by, and the conduct of the accused and the prosecution respectively.

Unlike in the Penal Code, the Act provides a limitation to prosecution in terms of Section 201 of the Act. Prosecution has to be instituted before the expiration of three years after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first occurs.

Issues and Challenges Related to Rehabilitation of Tsunami-Affected Communities in Sri Lanka: a case study of Sagara Place, Panadura

*Dr. Gamini Hitinayake**

Introduction

The tsunami of December 2004 devastated the eastern, southern and northern coastal areas of Sri Lanka killing over 40,000 people. It displaced over 500,000 people in the coastal areas. Destruction of houses, property and infrastructure, fear of arrival of another tsunami, post-tsunami shock and loss of family members and relatives were major reasons which contributed to the displacement of the population. This paper attempts to describe some experiences gained while working with tsunami-displaced communities during the first six months after the tsunami and deals with unresolved issues and potential problems which need to be addressed in order to provide effective relief to affected communities.

As a measure of preparing for possible tsunamis in future, the government decided to set aside a 100m belt within which people would not be allowed to have their dwellings. This buffer zone concept has given rise to many social issues pertaining to livelihoods of people who had lost their homes in the reserved area. The study has indicated that some communities have overcome the mental stress and trauma faster than others. Except for few problems, relief support from the government seems to be largely uniform across the affected area. However, the roles of NGOs were highly variable. Dependency syndrome in the recipients of relief has also surfaced as a major problem. Unnecessary political interference has become an impediment to providing relief in an unbiased manner.

Some politically motivated parties have persuaded the IDPs to resist attempts at relocation to alternative sites. Difficulties of resource pooling and coordination among GOSL, private sector donors and NGOs also have made it impossible to provide effective rehabilitation measures to IDPs.

The Event of the Tsunami

On the 26 December 2004, an earthquake measuring 9.0 on the Richter scale occurring off the coast of Sumatra triggered a violent and powerful tsunami that resulted in major loss of life, damaged infrastructure and internally displacement many people in several Asian and African countries, including Sri Lanka. The recent tsunami devastated eastern, southern and northern coastal areas of Sri Lanka killing over 40 000 people and displaced over 500,000 people occupying the coastal areas.

Destruction of houses, property and infrastructure, fear of arrival of another tsunami, post-tsunami shock and loss of family members and relatives caused the displacement of the population. This paper attempts to provide an overview of related issues, analyze the situation and understand possible consequences of the implementation of post tsunami rehabilitation programme in Sri Lanka. The study focuses on how such programmes could manage risks and vulnerabilities of affected people.

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This case study from the Panadura in the Kalutara district is used as an example to discuss specific issues relating to tsunami rehabilitation programmes in the context of the implementation of these programmes in Sri Lanka.

Background and context

Within hours of the first wave striking Sri Lanka, thousands of people were left destitute as they watched their homes being swept out to sea. 41,393 houses were completely destroyed, while 36,168 houses were partially damaged, rendering innumerable numbers of people homeless in an instant.

Rebuilding over 77,000 homes is a daunting task even for a Government. Hence, immediate relief was provided by making available temporary shelters. A total of 17,382 families were housed in 102 camps and 4,750 tents. After six months (that is by June 2005) the number reduced significantly as alternative housing was found. The next step was to provide the displaced with transitional housing which would be more comfortable. As at June 2005, 35,193 Transitional Accommodation units were completed and 7,455 more were under construction. It was expected that when 7,455 shelters under construction are completed, all the affected person who are presently living in welfare centres and tents would have transitional houses.

Families whose houses were located beyond the buffer zone were provided with grants up to US\$ 2,500 to rebuild their homes and 20,770 families took up this offer. These families are now on the road to regaining some semblance of normalcy. Families whose houses existed within the buffer zone were not allowed to rebuild on their land, even though they continued to retain ownership to the land. The Government in conjunction with various donor organisations has taken on the responsibility of providing such families with a sponsored plot of land. This is a time consuming process as land has to be identified, allocated and divided into blocks.

Also, 182 schools were damaged by the tsunami, robbing students of their attempts to return to their classrooms in the new school year, and also delaying the rehabilitation process in respect of young people. In addition, 287 unaffected schools were used in the immediate aftermath of the tsunami to house thousands of displaced people who had lost their homes. Four universities, three technical institutes and 13 vocational institutes were also affected by the disaster. As many as 102 schools and nine vocational institutes were identified for relocation as they are situated in close proximity to the shore line.

Further, the tsunami left an estimated 275,000 people unemployed, many of whom were the sole income earners in their families. The Government estimates that approximately US\$ 237 million will be required to assist the unemployed to regain their livelihoods. A large number of assistance schemes and programmes are already being planned or implemented by the government, NGOs and private institutions with a view to help the communities affected. The Government provides 234,000 beneficiaries with a sum of US\$ 50 a month. In addition, a further 881,000 receive US\$ 3.75 a week in cash and rations to meet their everyday needs.

It is clear that immediate income generating opportunities will need to be offered through community and public work once the temporary cash grants are phased out. Skills training and business development services were started as long term support for restoring economic activities. However,

since many interventions are directed at district and community levels, there exists the risk of duplication and uneven distribution of assistance due to poor coordination. Therefore, there is a critical need to coordinate all relief and rehabilitation activities throughout the affected areas.

The Government has introduced two loan schemes with two others planned to assist people who have lost their sources of livelihood. These loan schemes include:

- A US\$ 50 million fund set up to provide Susahana loans through banks and financial institutions. The loans can be obtained by micro, small and medium enterprises. Presently US\$ 19.4 million has been disbursed to 4,154 recipients;
- A US\$ 7 million loan scheme available for micro industries through the National Development Trust Fund (NDTF). Loans can be accessed through partner organisations such as NGOs which are registered with the NDTF. US\$ 1.36 million has been disbursed to 37 partner organisations, of which US\$ 0.7 million has been provided to 2070 borrowers;
- A loan of US\$ 28 million made available through donor assistance for small and medium industries;
- A US\$ 20 million loan scheme created for micro enterprises with funds provided by a donor nation;

Post-tsunami rehabilitation programme: The case of Sagara Place, Panadura in Kalutara district

Kalutara District is located south of Colombo in the Western Province of the country, which recorded 256 deaths and displaced 27713 people after tsunami in December 2004.¹ The tsunami affected the entire coastal belt of the Kalutara District. A total of 2386 houses were destroyed completely and 4311 were damaged partially. Of the partially destroyed, 512 were beyond repair while the others required significant repairs). A large stretch of the coastal belt of Kalutara with 56 *Grama Niladari* (GN) divisions was affected by the tsunami.²

Sagara place is one of many GN divisions in the Kalutara district that was devastated by the tsunami. It is located close to Panadura, which is a semi urban area of the district. Six people had died in the tsunami waves.³ About 15 people became disabled, injured or sick. Of the total of 321 houses, 245 were damaged. House units that were completely destroyed, partially destroyed-unusable and partially destroyed-usable were considered damaged. Of the 245 houses damaged 118 were located within the 100m zone while remainder was outside the zone. (Table 1).

At the time of the tsunami, a large proportion (46%) of houses of that was in Sagara place were temporary constructions (Table 1). Also 46% of the houses that were damaged due to the tsunami were located in the coast reservation area. Most housing units (96%) were occupied by one family.

¹www.statistics.gov.lk.

²www.tuafren.gov.lk. GN division is the smallest administrative unit in Sri Lanka.

³(Kurukulasooriya, 2005).

People of all age groups including young and elderly were affected by the tsunami. About 32% of the housing units were inhabited by more than five members.

Table 1 - Housing units and people affected by tsunami.

CHARACTERISTIC	DETAILS			
Distance from the beach	Less than 100m: 118	More than 100m: 126	Not reported: 01	
Materials used for construction of houses	Permanent: 132	Other: 112		
Ownership of land	Family: 120	Rent / lease: 08	Coast reservation: 113	Other: 04
No. of families in the housing units	One: 235	Two: 09	Three: 01	
No. of members in the housing unit	Less than 5: 168	5-7 members: 71	8 or more: 06	
Population affected by age group	Less than 5 years: 72	5-14 years: 132	15-29 years: 281	More than 30: 469

Source: Department of Census and Statistics, 2005

Sequences of transition of tsunami-displaced communities

The sequence of events that took place during the rehabilitation of displaced communities is given in Table 2. According to Table 1, it is clear that people who lived within the 100m zone before tsunami were not rehabilitated beyond Stage 3. However except one family at Galgoda temple, all others (who lived within the 100m zone before tsunami) have reached stage 3 of the rehabilitation process. Some of the people who lived outside the 100m zone before the tsunami in Sagara place, have reached stage 4 phase.

Table 2 - Phases of transition: Rehabilitation tsunami-displaced communities of Sagara Place during first six months after the tsunami

Stage	Sequence of shelter / support measures	
1	<i>Welfare centres:</i> People moved to Rankoth Viharaya and Galgoda Temples. Later they became welfare centres: Immediate food, water and health relief was provided. Funeral expenses were provided for families who lost family members.	
2	<i>Temporary shelters at welfare centres (Rankoth Viharaya and Galgoda Temples):</i> Tents were built inside these welfare centres to keep the displaced people. Food and clothes were received as donations from various sources.	<i>Living with relatives / friends or rented houses:</i> Some middle class people have started living with relatives and friends managed to rent houses from the nearby area. They have refuse to be in temporary shelters.

3	<p><i>Transitional houses:</i></p> <p><i>a. for those who lived within the 100m zone:</i> Modarawila camp: 262 houses Galdoda Temple: 85 houses</p> <p><i>b. for those who lived outside the 100m:</i> This stage is completed and they have returned to their original locations</p>	<ul style="list-style-type: none"> • Most middle class people who lived outside the 100m boundary have returned to their former locations through transitional houses or after repairing their partially damaged houses. • However, most of the middle class people who lived within the 100m zone has refused to be in camps as they continues to live with relatives / friends houses until they get permanent houses.
4	<p><i>Permanent houses:</i></p> <ul style="list-style-type: none"> • Already some have completed in the outside of the 100m buffer zone area and handed over to people. • Providing permanent houses for those people who were living outside the 100m zone but not had clear titles (the lands they were living was belongs to parents or built on the coast reservation) also have become a problem due to finding land. • Little progress has been made with permanent housing for people who were living inside the 100m zone. This is due to difficulties finding suitable land. 	

Sri Maha Viharaya (Galgoda temple) and Rankoth Vihara temples were the welfare centres that were established to hold the displaced people of Sagara Place (Table 1). Those displaced people who were living outside the 100m buffer zone have returned to their original locations after the construction of transitional houses (for those houses that were completely destroyed) or after repairing in the case of partially damaged houses.

After the initial relief, the government established a camp to keep those who lived within the 100m buffer zone affected by the tsunami in the Panadura area at a location called Modarawila on the Panadura-Horana road. Transitional houses and other general amenities are being built here. A co-operative retail shop, library and children's park have been established. Many people who lived in Welfare centers at two temples have been relocated here. At present about 909 people live in this camp. Two hundred and sixty two transitional-housing units have been built to provide shelter for these people. Twenty-nine organizations are devoted to the welfare of the inhabitants of Modarawila camp.

However, one of the welfare centres (temporary camps) established with the tsunami at Sri Maha Viharaya (Galgoda temple) is still in operation. Displaced people living at this temple are mostly inhabitants of 685D *Sagara Place Grama Niladari* (GN) division. Four hundred and ten people belong to 118 families still living at the camp established in the temple. Recently 85 transitional houses have been built for the use of this people. Some housing units are in construction in the temple premises. All most all people living in the temple have got transitional houses. Only one family is living in a temporary hut. About 75 families have moved to Modarawila camp lately from Galgoda temple.

The Divisional Secretary heads the team of government officials that provide for the victims in the area. It was also reported that some disagreements and misunderstandings exist between the organizers of the “Galagoda” camp and the Government officials. It is not clear whether these people are properly registered with the Divisional Secretary as tsunami victims for providing long-term assistance. The fact that some families have been already shifted to a place with better facilities indicates that this is not necessarily a result of bureaucratic mistakes.

Assistance received by the displaced people: Modarawila and Galagoda temple camps

Assistance received by the Modarawila and Galagoda camps and rehabilitation of housing units outside the 100m boundary is shown in Table 3. This shows that the inmates of the “Galagoda Camp” are receiving almost the same assistance as in the case of Modarawila camp now. This is a much improved situation when compared to the status of Galagoda camp in March 2005. The involvement of government in coordinating relief at the Galagoda was clearly visible in June 2005.

However, it is seen that these communities are still affected by the dependency syndrome. Much focus has to be given to the psycho-social aspects of these groups as they should be elevated from the status of commensalisms to self reliance.

Table 3 - Assistance received by the people displaced and living in the two camps

Service provider	Type of assistance
General public and many welfare organizations	Immediate relief: Food, water, clothing
Sri Lankan Government	Rs. 5000.00 per month for a family in cash for three months
	Food coupon to the value Rs. 375.00 per week
	Rs. 2500.00 for purchasing kitchen utensils
	Training for starting various livelihood activities (especially small businesses) have been provided
World Vision	Medical assistance and counseling
Sumitrayo (it is a local NGO)	Counseling
Rotary Club, Sumitrayo	Basic things to start small businesses: Sewing machines for making dresses, bicycles, weighing balances, carpenter kits, steamer for making string hoppers, necessary things start making curry powder; basic things to start small boutiques”
International Organization for Migrants (IOM)	Transitional houses: <ul style="list-style-type: none"> • 256 houses at Modarawila camp • some are being built at the Galagoda camp Water and toilet facilities, health camp, childrens park, cooperative shop, conduct English classes
Sewa Lanka Foundation	Transitional houses: <ul style="list-style-type: none"> • Many transitional houses outside the 100m

	zone in the Sagara place <ul style="list-style-type: none"> • 85 houses at the Galagoda camp • 06 houses at the Modarawila camp
Thaipe County Buddhist Organization	Permanent houses at the Sagara Place outside the 100m zone
Jayagrahanaya-Colombo Buddhist Organization	

Modarawila was established later hence question of immediate relief did not arise.

*Not available to Galagoda camp

Income and impact on livelihood

Income distribution (before the tsunami) of people who lived at Sagara Place, Panadura, who were affected by the tsunami is given in Table 4. This shows that majority of them (about 74%) earned a low income. The remaining 24% can be considered as having a middle income.

Table 4 - Income distribution (before tsunami) of people lived at Sagara Place, Panadura affected by tsunami.

Income category	No of families	Percentage
Less than Rs. 5000.00	90	37%
Between Rs. 5000.00-9999.00	91	37%
More than Rs. 10000.00	61	25%
Not reported	03	01%
Total	244	100%

Source: Department of Census and Statistics, 2005

Some insights about the impact of the tsunami on the livelihood of the people are shown in Table 5.

This indicates that about 64% of the people had managed to restart their livelihood activity after tsunami. However in the case of government employment, actual livelihood activities were not affected; only some people who did the government jobs were affected. Data shows that all who employed in the government sector have returned to their respective jobs after the tsunami. Recovery rate of livelihood activities after the tsunami is about 60% when we exclude government employment from the analysis. This indicates that rehabilitation activities must be further strengthened in order to assist the remaining one third of IDPs to resume their livelihood activities.

Table 5 - Impact of tsunami on livelihood of people lived in Sagara place, Panadura.

Livelihood activity	Before tsunami	After tsunami
Fishing	14	03
Fishery related industries	15	05
Tourism	04	02
Government employment	30	30
Other	307	197
Total	370 (100%)	237 (64%)

Source: Department of Census and Statistics, 2005

Issues after six months of relief efforts (June 2005):

After the initial relief phase, agencies expanded their focus to provide permanent shelter. Considering timely rehabilitation and resettling of affected communities, there remains several major issues and unresolved problems relating to managing of risks and vulnerabilities of affected people.

These problems include the following:

1. Some people are still depressed / demoralized and hence they are not in a position to take advantages of some of the training and support provided to start small businesses. Also it is observed that some of the training given to them had little relevance to the style of life that they were used to;
2. The relief measures have placed some communities especially the poor families above their previous living standards, whereas the middle class families have not yet recovered completely. This has caused some unrest and jealousy among communities;
3. Although middle class people appear to do well in terms of physical resources in comparative terms, they have suffered heavy losses and are still unable to make a come back. For example, some have lost small enterprises such as ice cream plants, bakery, grinding mill, carpentry, beauticare centre, etc. In contrast, others (low income categories) who did not originally possess many material goods are complacent with the support they receive and are planning to further improve their lives;
4. Lower middle class people in the camps in particular, have not received adequate support and attention as they evade competition. Other communities are more aggressive and are often comprise the majority voice. This is largely due to the policy and methods used in the distribution of relief. When the popular demand is for equal distribution, it is inevitable that all individuals would be given the same type of assistance. Providing false information by some people also has contributed to confusion. Lack of accurate data possessed by the authorities can be considered as the major reason for creating this unfortunate situation;
5. Some are still depressed as their future is uncertain. Some are not sure where and how to start their lives anew. This is particularly so with lower middle class people living in the camps. Also these people are apt to be quickly angered with both inmates and outsiders with very little or no provocation;
6. People are still reluctant to make use of the free facilities at the Government hospitals in the area. Health camps functioned for about six months with the assistance of qualified doctors who volunteered to support the displaced communities. However, continuation of this practice has now been deemed to be impossible;
7. It seems that most people living in the camps (other than lower middle class) are showing signs of their vocation and related patterns of behaviour. People in this camp like in most others consist of fishermen and those who involved in trades of hardship. These communities are violent; conflicts are common among them and most are addicted to liquor;

8. The training and assistance that is provided for initiating livelihood activities are not sufficiently focused. A community living in a camp cannot be considered as homogenous when support for livelihood activities is planned. Hence, categorizing people based on the reliable information is essential to make the rehabilitation efforts successful. Lower middle class people have expressed interest to get loans to start their businesses while others insist on grants;
9. When estimates were made on damages caused to livelihood, very often the roles performed by women (which are not clearly visible) have not been taken into consideration, eg; dress making, making ready made food for sale;
10. Some children residing in the camps are still not attending school. Since they are displaced, they are living away from the original schools. No serious efforts have been made to organize education facilities at the camps. Some schools which these children were attending have been destroyed. Also most parents are still not in a position to send their children to school, as they are still not settled in their new locations;
11. Occasional cases of violence caused to women and children have been reported from the camp.
12. Some people like to remain as groups and do not want to exit community life for an independent existence. They like to move with the group (closest allies). They want to remain with the group until transitional house complexes and other facilities that enable group behaviors are developed.

Community responses and the levels of protection afforded to the displaced communities and populations

As a measure of preparing for possible tsunamis in future, the government has decided to set aside a 100m belt within which people would not be allowed to have their dwellings. Two different rehabilitation plans have been proposed by the government for previous occupants of the 100m belt and others separately. Rehabilitation efforts based on the buffer zone concept have given rise to many social issues. Moving out from the original locations will seriously affect some livelihood activities, eg; fishing as they prefer to live near the coast.

It remains unclear as to where the “no construction zone” will be applicable. The present “100 meter” limit will be crucial to fishing communities and those making their living from tourism, for obvious reasons. Dependency syndrome in the recipients of relief has also surfaced as a major problem as most of the displaced expect government and NGOs to provide everything for them. When some organizations tried to mobilize them to perform their day-to-day work, they refuse to attend to such duties.

Unnecessary political interference has also become an impediment to providing relief in an equitable manner. People have been influenced into protesting and pressurizing the government to provide more relief, despite the fact that in some of these cases, they have received basic support to continue their life. Some communities have overcome the mental stress and trauma faster than others. For example,

people of low income categories have fared better compared to middle class people. Social homogeneity within the group and greater mutualism among them can be attributed as the reason for this. As commented previously, relief measures have placed some communities above their previous living standards while middle class families have incurred relatively significant losses which they could not recoup during the period. This has caused some unrest and jealousy among communities.

It also remains unclear as to how people will respond to specific townships set aside by the government as the sites for their future homes.

The effectiveness of specific relief measures

Relief support from the government seems uniform across the affected area while the role of NGOs was highly variable across the affected areas. Influence wielded by local people and political leaders seems to affect the distribution of relief, eg;. at some places boats have been provided for people who did not have boats before the tsunami. Because of the lack of proper coordination mechanisms, the mandates and interests of the NGO community also seems to have influenced the area and type of support they have provided. On rare occasions, some NGOs were found trying to push personal/specific agendas. Personality factors of government officials were also found to have an adverse effect on equitable provision of relief measures.

The government has taken advantage of the tsunami and the massive inflow of relief funds to implement policies such as establishing a coastal setback, relocation of population into planned townships and national control over the revival of the fishing industry, which are not accepted by all due to differences in ideologies and interests. The unprecedented global response to the disaster generated, still promises a huge volume of funding for international NGOs from private, bilateral and multilateral sources. Pressure to implement relief efforts rapidly and spend donor funds on schedule has been intense.

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'Gramaseva Niladharis' and Issues of Governance; Recent Perspectives

Malkanthi de Silva and Sanjeevani Perera***

This brief paper will deal with perspectives in regard to the problems of '*gramaseva niladharis*' (local level administrative officers) emanating from five training programs¹ held from November 2006 to February 2007 organized by the Law and Society Trust' on 'Law and Good Governance' in the Kegalle and Gampaha Districts. The paper will detail the context in which this programme was conducted and then examine some perspectives emanating from the discussions held during this programme with the '*gramaseva niladharis*.' This paper should be read in conjunction with the overall Report on the Good Governance Programme '*Addressing Dilemmas of Empowerment at Local Government Level; the Manifold Problems that Citizens face in 'Going to the gramaseva niladhari'*' published in *LST Review, Volume 16 Issue 225, July 2006*

Introduction

The system of 'local government' in Sri Lanka has been a tradition from ancient times. The present system is however not a continuation of this tradition. It is more or less a system introduced by the British.² However, the Sri Lankan system is not a fully-fledged level of governance as in Great Britain. It is one of democratic decentralization for the performance of a limited scope of functions at local level.

The glaring misfortune that citizens have experienced and gradually accepted is that this 'limited scope of functions at the lower level' have never been 'performed' to the satisfaction of the citizen. The reason for this is perhaps twofold. Given that 'executive convenience'³ and 'centralized power' is the trend favoured in Sri Lankan governance, it becomes apparent that 'decentralization' of power does not take place in its truest sense and when it does take place, the cooperation and coordination that is required by the central government and the local government authorities is, to a great extent, lacking. Therefore the capacity to perform their 'functions' to their optimum at the lower level of governance is hindered.

Another factor that equally contributes towards hampering the performance of functions at the lower level of governance is the fact that most officials appointed to the local government largely lack the

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¹ 1st programme - held on the 18th and 19th of November 2006; 2nd programme-held on the 16th and 17th of December 2006; 3rd programme- held from the 20th to the 21st of January 2007; 4th programme- held from the 10th to the 11th of February, 5th programme- held from the 24th to the 25th of February. There were 100 *gramaseva niladharis* who participated in the programme, representing 50 *gramaseva niladharis* in each district, and the questionnaires were administered among all these 100 participants.

² Report of the Commission of Inquiry on Local Government Reforms, 1999.

³ The 1978 Constitution of Sri Lanka vests much power and discretion with the executive presidency.

required knowledge to carry out their functions efficiently being unable to draw a distinction between their powers and duties. Hence, the gradual deterioration in the system becomes apparent. Whilst conceding that autonomy and decentralization of power at the level of local government does not take place in a true sense, we have been essentially concerned with that element of lack of knowledge on the part of the '*gramaseva niladharis*' that contributes towards inefficiency at the lower level. Although decentralization of power has been a long felt need, the process through which such a political change can be brought about is far more cumbersome and requires political will. Therefore, it was felt that empowerment (through imparting knowledge) of officials appointed at the lowest level of governance who are the citizens' first point of contact with regard to their day-to-day administrative and legal concerns is another way of looking at the current problem. Ensuring 'good governance' at the lower end of the hierarchy was looked upon as giving the citizen greater faith in the system by empowering even those few conscientious '*gramaseva niladharis*' to work to the betterment of the local community, thereby contributing towards enhancing the overall image of 'governance' in the country.

Perspectives of the '*gramaseva niladharis*' in regard to their problems

Responses advanced by '*gramaseva niladharis*' as answers to specific questions asked by us during this programme were revealing. A questionnaire was distributed among a selected group of '*gramaseva niladharis*' which was chosen to participate in the program from Gampaha and Kegalle Districts. The variation in the competence levels of those who were the subjects of the questionnaires was very evident. Thus, significant differences surfaced between the responses provided by some which were rich and comprehensive while the rest provided brief answers. It was clear that the latter responses were mere replicas of the answer sheet of one person. Very little discussion had been carried out. Only a handful had come up with slightly different ideas.

Another factor was that, owing to the current situation of the country, most of these officers have experienced political influences being brought to bear on the manner in which they did their work. This inhibited them from speaking out. It was evident that these public officers were reluctant to express strong opinions about any issue seen as impacting on their job/social position.

The majority of the officials interviewed had well developed notions in regard to the basic features that the concept of good governance should incorporate. Thus, it was asserted that fundamental rights and basic human rights should be assured while public officers should necessarily be efficient and ought to be responsive to the concerns of the local citizens. The executive, legislative and judiciary should protect the freedom and rights of people. Universal franchise should be a matter of individual conscience. Some comments emphasized that unnecessary political interference must be stopped at all levels and that all public officers should be given proper training on their scope of duties. Almost all the respondents thoroughly criticized the current widely prevalent politicization of local government and public administration processes. Interestingly it was stressed that the burning need was for community leaders who will form a national policy devoid of petty political differences. Furthermore, it was pointed out that public servants as well as the people should be well aware of the laws governing them and that adherence to the law should be strictly observed. This should apply to authority figures such as judges as well as other persons in positions of power such as police officers.

Other concerns adverted to included the following; having a well planned foreign policy, strengthening mutual goodwill among ethnic groups, minimization of difficulties faced by the general public in getting their common needs fulfilled, curbing bribery and corruption, maintaining a healthy coordination among politicians, public officers and the general public, giving due respect to the suggestions and comments of the general public while providing a speedy service, making room for a fair distribution of wealth and income, sound identification of training needs of employees to achieve optimum efficiency, exercising the concepts of transparency at all times in assuring people's right to know and question about the proceedings of the government, fair valuation of labor, honorable living conditions and equality before law to be assured, candor and straightforwardness to be exercised in decision making while winning the hearts of the people from the grass roots level and elimination of poverty/minimization of financial aid.

One question particularly focused on identification of the most critical problems and drawbacks encountered by the common people in the present context. Some respondents emphasized the need for a peaceful and stress free atmosphere where people are able to move about feely and engage in the business of ordinary life as opposed to the conflict driven society of today. It was pointed out that government institutions should play an active role in fulfilling the basic needs of the people as the privatization of essential services has resulted in good services being available at a higher cost which deprives the lower income classes of benefits. Furthermore, at the rural level, it was observed that people have been seriously deprived of access to good education and enhancing knowledge, resources and basic rights. Some of the negative aspects stressed were the biased nature of the police in exercising their powers and the unfair distribution of wealth, public services etc. Bribery and corruption rampant among the public administration sector and at the level of the '*gramaseva niladharis*' themselves was acknowledged.

Respondents stated that the existing proportional representation electoral system in Sri Lanka had impacted negatively on citizens' right to elect their most preferred representatives. Problems in the judicial/legal process were also underlined. Delays and deficiencies in the legal system directly or indirectly were observed as contributing to the increasing crime wave in the country. The general public was meanwhile not aware of what assistance is available for them within the country's legal framework. The experiences of the '*gramseva niladharis*' were that although there are numerous institutions established to provide legal assistance, people were constantly complaining about the various difficulties that they have to face when they actually seek support from them. Thus, a satisfactory service has not been provided by such legal aid institutions despite the massive publicity given to their programmes. Although '*gramaseva niladharis*' direct people to these organizations for legal advice, there have been little significant results in the cases so directed.

Questioned about their views about religion, ethnicity, economy, gender relationships, education, decision making on employment, family relationships and issues related to social development etc. that affects good governance, female respondents stated that though limitations pertaining to gender relationships and employment have become more or less flexible than earlier, certain aspects still needed to be reformed. Violence against women is a continuing problem despite laws that are in place. A different kind of opinion depicted that stern action should be taken against various religious missions that influence people to embrace another faith by offering financial or other benefits.

Meanwhile, the majority of the participants were of the opinion that lack of knowledge in law was a hindrance in carrying out the functions of a '*grama niladhari*' effectively. This necessity was emphasized due to the fact that the '*gramaseva niladhari*' is the state representative to the division (*vasama*) that possess statutory powers to whom the ordinary folk come for legal advice. One of the functions of the '*gramaseva niladhari*' is to act as a peace officer and when anti-social activity is reported, the officer concerned should be well aware of the statutory powers that he is vested with in order to take the most appropriate steps to rectify the situation such as making arrangements to arrest the culprits and give evidence at the courts, so that the offenders are duly punished.

Many of them observed that problems come up in instances of sudden deaths and matters pertaining to state lands. Therefore the importance of familiarisation with Acts and Ordinances such as land reclamation, forest etc. to minimize duty-related problems was high. Problems have also sprung up when these officers attend court hearings to give evidences as cases are not investigated and documented properly at the basic level. Our assessment of the legal capacity of these '*gramaseva niladharis*' was negative; these officers were not aware of the various revisions made to laws and regulations that directly affect their duties/power/functions as '*gramaseva niladharis*' and neither were they provided with the most basic circulars affecting their duties. Outstandingly, most of the '*gramaseva niladharis*' were not aware of the Acts and Ordinances furnished to them, during the programme itself. Rather, they were only aware of Acts and Ordinances related to their most general duties such as registration of persons, births, deaths and marriages etc. It was highlighted that knowledge in law is important in submitting observation reports and assessment reports. Attending to traffic accident scenes to carry out their duties too has become highly difficult due to lack of knowledge.

Some officers seem to have faced unexpected and embarrassing situations during court proceedings due to their lack of knowledge of the law and legal process. A prime example was given by one of the participants to support his view. A lorry carrying a load of timber felled (allegedly) illegally on state land had been jointly seized by the Divisional Secretary and the police and the suspect had been produced before the courts. Without summons being served, the police officers had requested the relevant *grama niladhari* to appear to give evidence. At that point, the attorney-at-law on behalf of the defendant had asked this particular officer to produce the relevant plans, details of boundary stones etc presumably on the basis that the land in question was not state land but private land, and consequently, if the charge based on the on the fact of the land being state land was to be sustained, it was imperative that a plan needed to have been produced. As he was completely unprepared in this regard, the suspect had been acquitted.

A slightly different notion was expressed by some others who said that although lack of knowledge of the law was not a major obstacle, it would have been better and useful if *grama niladharis* could be given legal training. Disturbingly, (but not surprisingly) many appeared to perceive such training from the perspective of career enhancement rather than benefiting the people who come to them for assistance.

One of the matters raised by a respondent caught our interest and attention. What he mentioned was that the wide prevalence of electronic and print media focusing on rights protections has resulted in people becoming increasingly and gradually educated about laws relevant in that regard. He identified this as a specific reason as to why '*gramaseva niladharis*' needed to be more familiar with the law.

Further examples were given in this regard. On one occasion, a respondent had been able to respond to the requests of the community in his area by taking custody of a licensed weapon, which had been illegally used by the owner. In other instances, in regard to the illegal felling of trees, they have been able to cite the relevant provisions of the law and take speedy action against the perpetrators. In many instances however, they emphasized that such actions have been frustrated by unnecessary political influences directed at them by politicians and even their own superior officers at the administrative level.

The respondents as a whole, pointed to the fact that that people do not seek legal assistance in regard to whatever problems that may arise due to lack of awareness as well as due to the unbearable costs incurred and excessive traveling involved. Further, as some institutions, including the police, do not act in terms of court decisions and people have lost their faith in the nature of the judicial framework, which is expected to act in an unbiased manner. Poor co-ordination between government institutions and even among divisions of the same office was seen as a primary obstacle in the development process.

Among the factors making it difficult for the '*gramaseva niladharis*' to provide an optimum service, were listed the following; delays in receiving circulars applicable to their powers, unnecessary interference of superior officers, poor working conditions and inadequate office facilities which brings down the morale of public officers and generates frustration, divulging of confidential information given by the '*gramaseva niladharis*' putting them into a difficult situation within the division, inadequate training opportunities and the non-availability of a comprehensive plan to get maximum service from the '*gramaseva niladharis*' by the government and the impact of the 13th Amendment to the Constitution of Sri Lanka in which context, they have had to confront practical hardships in the discharge of their functions which, surely, they cannot be expected to grapple with, without some legal training.

Conclusion

It is clear that tremendous effort will need to be expended if the local government system in Sri Lanka is to function properly. Mere changes in the laws and regulations will not suffice for this purpose. Legal training is also inadequate in that regard. In the currently highly politicized system of public administration in Sri Lanka, '*gramseva niladharis*' are placed in unenviable positions of being unable, even when acting honourably and in full knowledge of the law, to perform their duties properly. Many succumb to bribery and corruption, deeming that the situation is so hopeless that there is no other recourse. In turn, those who are directly affected are the lower income sections of society who are compelled to come to these officers for day-to-day matters. Undoubtedly, this is an overwhelming tragedy of public administration that should receive serious public attention.

Position Paper on Key Social Issues for Consideration by Leaders of Religious Communities as Members of the Council of Religions

*Chandra Jayaratne**

Background Environment

A very high degree of deterioration of "acceptable values and norms of society", is the order of our daily lives, irrespective of where one resides in Sri Lanka. This significant deterioration, (unfortunately and sadly), appears to be getting embedded at all levels and in all segments of society, especially, negatively impacting on young children, youth and women.

Some of the recent incidents and observations as noted below, support the aforesaid conclusion;

- The molesting of a 6 year old child at an international school sports meet at the prime stadium in Colombo, an event held with the participation of many officials, teachers, parents and children;
- The use of a sophisticated stun gun by a school going youngster to shock and render the victim unconscious (a type of weapon used by trained commandos) whilst engaged in a street fight with children from a neighbouring school;
- The statistics recently quoted by a much respected former civil servant that there are 100 abortions a day in Sri Lanka in the illegal institutions that have sprung up in Colombo and other cities, operating under the guise of family planning health clinics;
- The statistics recently quoted by the much respected former civil servant estimating that 60% of females in households across the country are physically abused by their husbands or lovers;
- A statistic quoted in a TV interview by the previous Police Chief that there are over 5 reported cases of rape a day and that the number unreported may be many more, involving fathers raping children whilst mothers are away at work in the middle east;
- The statistics appearing in "Ravaya" newspaper quoting a senior Human Rights Commission official that in the month of January 2007 alone there were 201 abductions (ie. Over 6 per day or one every 4 hours,);
- Regular reporting of ransom demands across the country and reports of the payment of millions of rupees in securing the release of hostages;
- Sri Lanka being consistently in top quartile world statistics on Suicides
- Several gruesome murders reported daily across the country;
- Dangerous physical violence unleashed in society as regularly reported in the media;
- Robbery and thefts, even petty thefts from residential homes involving gangs. armed robbers, who use sophisticated and well supported networks to carry these out, replicating crime scenes and methods seen only in foreign films;
- Disappearance and theft of vehicles as a part of organized crime and driving them off for sale in un-cleared areas or to dismantle and sale as spare parts;
- The significant prevalence of narcotic import, peddling and consumption involving school children, work site labour and by clients in roadside joints;

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- The ever increasing consumption of illicit alcohol and the ready source of credit financing for this purpose;
- Pornography as a thriving trade involving young children and youth as participants and customers;
- Ever present and increasing paedophile activity;
- Prostitution dens with supporting sophisticated communications networks springing out across the country, operating openly and involving foreign and local call girls, including even youth and some times school children;
- Total disrespect for law, order, justice and human security;
- Total disrespect for other cultures, religions and customs
- Total disregard for the needs and disrespect for elders and no care or concern for the sick, marginalised and those in abject poverty;
- A total disregard for and a lack of concern for the environment/ecology and its sustainability and wanton destruction and exploitation for short term gain;
- The lack of honesty, integrity, transparency and accountability by those with public accountability, with rampant corruption practiced transparently without any fear or shame;
- The direct and indirect involvement of high level politicians, their network partners and personnel of the police and judicial hierarchy in the above activities;

Consequential Long Term Impact on Society

If the current external environment as noted above is allowed to remain as an ignored fact, a consequence of the war and conflict, division amongst segments of society and poverty, the practices and behaviours as seen today will become embedded in social behaviours and easily become accepted norms and values of society

A National Priority Objective of Religious Leaders

The restoration of accepted values, norms and behaviours in society is now the singlemost priority objective of Religious Leaders. With national leaders, civil society leaders, teachers, media, police and others in society, who should and can play an active role in the area of preserving and developing acceptable values and norms of society, being silent, disinterested or suppressed and the national leadership focused and engaged in other areas of priority interest, the fundamental core for sustaining the future social equilibrium of the civil society appears to be cracking in a way that it may not be easy to piece it together and build a nation for growth, prosperity and peace.

In the current circumstances, it is only the religious leaders and their network community spreading its wings across the length and breadth of Sri Lanka leveraging their respective religious organizations and temples, churches, kovils and mosques that can play an effective role in restoration of accepted values and norms in Society

Whom Should Religious Leaders Target

The respective religious leaders should target their followers, all those persons attending their religious institutions, temples, churches, kovils and mosques for regular religious observances, Sunday schools, prayers, special ceremonies and meetings, religious festivals and even all those persons listening, reading or watching media related religious discussions, sermons and discourses.

All ages, all segments of society across the island should be the target, with specific reference to young, youth, women and elders, as those who can be made effective partners in the initiative.

What Strategies Could be Adopted?

The religious leaders could arrange for each of the acts, events, practices highlighted in the first section in this policy paper to be subjects of sermons and discussions, quoting reference to the present state of affairs, past values and norms of society and the religious guidance in this regard and specifically how effective acceptable citizens should model their behaviour in society in regard to these events, incidents and practices and how to avoid them and more importantly what path to progress socially, economically and spiritually they must adopt in their daily lives and behaviour.

Each of the subjects thus detailed can be the focus of sermons, discussions, writings and reviews on a weekly basis, with regular reflections of the lessons of the past weeks as well. The religious leaders should in addition canvass the active participation and support of national leaders, civil society leaders, teachers, media, police and others in society in their initiative and also win their active committed support as network partners.

The Way Forward

It is good that the Council of Religions has accepted the above recommendations and stressed the need for a multi stakeholder driven national action strategy accepted by the government, key persons in decision making positions in the governance structure, the key media, educational, cultural, law enforcement, district administration institutions and other key stakeholders of civil society.

Some of the essential features of such a strategy were a long term vision that will be acceptable and welcomed by the majority of people, that the strategy be led by the religious leaders and key persons from civil society; that it would have the formal acceptance by the President of the Republic and other key politicians, officials, media and civil society leaders; that it would be high profile and be effectively communicated/supported by all media networks. Other features included that the action strategy be targeted at children via the network commitment of the school system, secure the network support of key law enforcement, cultural and district administrators and be launched dedicating the year 2008 to be declared as an year committed to embedding in society, acceptable societal values and norms.

The preparation of a draft action plan should be undertaken involving learned professionals and civil society leaders and be presented to the Council of Religions for review and adoption with necessary improvements and amendments. A series of deliberations and debates could be arranged with the participation of multi stakeholders. The private sector and the donor community and interested non governmental organizations could be also brought in to the network for support.

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