

saulted. The petitioner did not sustain any injuries at the hands of the subversives. The history given by the petitioner to the J.M.O. is consistent with the description of the assault given in the petitioner's affidavit to this Court prior to his medical examination; and even in the absence of a clear medical opinion, there is no difficulty in taking the view that the said injuries were probably caused by the use of blunt force. In all the circumstances, I am satisfied that Sergeant Wimalasiri Goonewardena and other Police Officers of the Embilipitiya Police Station assaulted the petitioner whilst he was in police custody and caused multiple injuries to him. I hold that such conduct is violative of the petitioner's rights under Article 11 of the Constitution.

In deciding the question as to what relief may be granted to the petitioner, I have taken the following matters into consideration: ...

(iii) The petitioner who had an exemplary record of service and had won the confidence of his employer was arbitrarily arrested and incarcerated for a period of one year. He was subjected to torture whilst in police custody and was detained in a police cell for one month, which was itself cruel. On 27.05.91 the Attorney General informed the SP Ratnapura and Mr. D.G. Jayalath (the Chairman of the Committee For Processing, Rehabilitation and Release of Suspects in the Ministry of Defence) that the available evidence

was insufficient to prefer criminal charges against the petitioner. Had the Secretary reviewed the petitioner's case periodically (as he claimed to have done), the petitioner might have been released at that stage; instead, he was continued in detention and was released only on 31.10.91 after 2 months rehabilitation. It seems to me that the decision for rehabilitation itself had been mechanically made, the effect of which would have been to further humiliate the petitioner.

(iv) This court has condemned torture of persons in police custody in *Amal Sudath Silva v. Kodituwakku* (1987) 2 Sri L.R. 119, *Geekiyanaage Premalal Silva v. Rodrigo* SC Appeal No. 24/89 SCM 05.09.90; *Jayarathne v. Tennakoon* SC No. 18/89 and 10/89 SCM 04.07.91 and *Gamalath v. Neville Silva* SC Application No., 78/90 SCM 27.08.91. In the last case I observed that the previous decisions have had no effect on the police and that violations of Article 11 by police officers (which symbolise man's inhumanity to man) continue. The instant case shows that the situation is still the same....

As the offending officers have not been made parties to these proceedings, it is not possible to make any order against them personally. I therefore direct the Registrar to forward to the Inspector General of Police a copy of this judgement to enable him to take appropriate action and to make a report to this Court in that regard on or before 15.09.92.....

PEACE: THE PRIMACY OF HUMAN RIGHTS

Rajan Hoole

Those of us in the University Teachers of Human Rights, Jaffna, (UTHR-J) have constantly argued that a stable peace must necessarily incorporate human rights as an active principle. This means upholding the sovereignty of the people. To give an indication of what this means: past efforts at peace, to resolve more than one conflict in the country, showed themselves to be fundamentally flawed, because they did not have the interest of the people at the centre. There were rather secret talks about how those with organised repressive power were going to carve up spheres of influence. Thus in the months leading up to the current war, peace was said to prevail. But the

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corrosive destabilising influences involving murder and mass incarceration were connived at or ignored by both sides. The nemesis has been terrible.

We have had several vivid illustrations of where ordinary people stand in the scheme of things; as, for example, when people forced onto the streets at gunpoint by the JVP, are fired at by forces of the state, or when civilians cowering in fear are massacred after a landmine blast.

Subsequent statements and actions by those who wield power, have exposed their distance from the people. This insensitivity towards ordinary people by those who hold power, as well as aspirants for power, is at the heart of the problem.



Sovereignty of the people, thus, far from being a meta-physical principle, becomes a life and death issue. We have therefore pleaded that human rights should head the agenda in peace-making efforts. Not to do so would only be to fly in the face of recent history.

On the other hand we may have become numbed by events on our very doorsteps; we become fatalistic and cease to believe that we can influence future developments; we are simply grateful for being alive; we surrender all initiative to those with the capacity to take life and we are only too happy if those with power would give us audience to think of offending them with awkward questions. When that happens we become apprehensive about the unfathomed sense of injury that lurks in the minds of ordinary people. We begin to fear then and mentally distance ourselves from them, without being conscious of it. We lose the capacity to address them. This is where the smart word *realpolitik* takes over from human rights, which then becomes a ritual we have ceased to believe in. Unknowingly we may be on the threshold of being accomplices in a subtle form of repression.

We avoid taking violations of human rights head on and rationalise our cowardice. We argue from the standpoint of *realpolitik* that those whose politics is incompatible with human rights are there to stay and that those with rival claims must be appeased and left to exercise power in tranquility. Instead of using their exposed, untenable positions to provide space for the people, we become ready to legitimise them.

It is not talking to those who violate human rights that we have been against. Talking to those who wield power is necessary. But when talking to them one must not flatter them. They should be made to feel that their actions are contemptible and that further violations are going to be a very sensitive matter. Only such a position could provide space for healthier tendencies among the people to assert themselves. When we try to rationalise away the need to confront violations of human rights, both intellect and analysis become moribund. A vague relativism takes over from principles. We defend our position by the use of innuendo rather than argument. Pretending to see things from a very broad perspective and with blithe inattention to detail, we set off trying to confront the accumulated institutional detritus of oppressors with personal charisma. Others more sensitive, feeling helpless and guilt laden, respond emotionally to individual tragedies they confront, without seeing their overall significance.

The Context of Misrepresentations

Carrying on traditions already established, from the onset of the war the UTHR(J) had documented and commented on violations by state forces as well as militant groups. It

had been conscious of its own social context and origins as part to the liberation struggle. On the basis of experience it had maintained that a liberation struggle that fails to uphold human rights loses both rationale and legitimacy. Its criticisms and exposure of violations by Tamil groups had been aimed at finding democratic space for a healthier struggle, that would also work towards a new system of values, thus removing social causes of alienation. Sustained attacks by the LTTE on Muslim and Sinhalese civilians, and the singular and phenomenal development of political detainees in a liberation struggle together with the brutal approach to dissent, were condemned not only as morally repugnant, but also as a self-destructive malaise.

The UTHR(J) had also gratefully acknowledged the unstinting help it continues to receive from democratic groups in the South without which it could not have continued to function. Where it had failed to represent the complex reality, this was acknowledged (when it came to light). Some earlier representations of the Muslim question had been unjust and one-sided. Some remarks about the ICRC in Report No 4 were also acknowledged as unfair.

The context of misrepresentation has a different provenance. It is because these are made by friends in particular that it needs to be explored.

An important part of the work of the UTHR(J) has been to expose violations by the state forces and defending the community. On the basis of testimony obtained from a large number of victims, the UTHR(J) brought to light as early as October 1990, massive violations by the forces in the East involving massacres and mass disappearances, both running into several thousands of cases. When considerable information of this kind was circulated in Colombo, the reports were believed but not generally assimilated.

We also produced evidence to show that strong ideological motivations were at work in the actions of state forces. The exodus of Tamils from a number of fertile areas in the East had been contrived by displacement consequent upon attacks on refugee camps. The forces had repeatedly harassed refugees at Veeramunai camp, for instance, by taking away a total of 250 youths following raids. All of them, as far as was known, were not accounted for.

As shocking as these revelations were, the response in the South was generally muted. There was not the public indignation that their government was doing this to their own countrymen. A part of the reason was that following three years of terror, the mood to confront the government was not there. There were several individuals personally concerned, but lacking the ability to move ahead. Apart from general condemnations of all violence, it was the massacres of Sinhalese that were featured prominently.



In this atmosphere the tragedy was registered without being assimilated. What was unpleasant was thus kept at bay with varying feelings of guilt. Representations by groups continued to be made to the government and they probably did have some effect. But the decisive impetus to seek a different approach came from the government itself.

The brash brutality of government forces had cornered the Tamils collectively and had thus swelled LTTE ranks. Later with Mankulam and other military debacles, a section in the government was inclined to view the war as unwinnable. Consequently peace initiatives by individuals and groups became respectable. It was widely known that what would be compatible with the LTTE's politics could only be something like the pre-war arrangement. Reasoned pleas for caution made from a human rights standpoint by the UTHR(J) came to have an unpleasant ring - this time for a different reason. Moreover, a section of the mainline press had quoted the UTHR (J) reports selectively as would suit their purposes. But little was done by others to use the legitimacy given to UTHR(J) reports by the government controlled press, and hold the government answerable for the actions of government forces. It became convenient for all concerned to portray the UTHR(J) as merely an anti- LTTE organisation, as done by *Pravada* itself.

Weakness in the South

As pointed out, groups in the South interested in the peace process had one fundamental weakness. Their stand on human rights during the current war had not been loud and clear. Whatever the intentions of individuals, they had effectively shown no initiative independent of the government's perception. They thus lacked the standing to give confidence to the Tamils or to challenge the LTTE on human rights. This they would have had, had they systematically taken the government to task. Such a position of weakness is fraught with the danger, that lacking moral authority, those involved would become lost in the self-pity of the oppressors and forget their victims and the mass of the people.

The visits of the clergy to Jaffna were invaluable as pastoral visits. But anyone wanting to influence the peace

process, including the churches, must work hard towards establishing themselves as a moral force. This means that they must involve themselves in the detail and nature of human rights violations and confront the violators. It must be a force that people can trust and see as allies. Once freed from the grip of a politics of fear and destruction, their minds will turn to creative possibilities.

Democratic groups must begin by holding the government to account. That itself may save many lives. There is much to be done in the East where the families of the disappeared languish in diminishing hope, while the government remains callous and immovable. Only a force with moral authority can ensure that peace is not just a tactical device.

Asserting Moral Authority

It is often said, with emotional emphasis, that human rights considerations could be overlooked, at least tactically, when civilian lives are at stake. This can be an excuse for not working tirelessly in the human rights front and may further result in the repetition of the same excuse again and again. We know that destructive forces who have no concern for human lives are not likely to be

checked, except by exhaustion or by the application of a moral authority that can check both parties. The horrors of Operation Liberation did take place, not because there was a shortage of well meaning Southern peace makers but because they were ready to overlook human rights violations.

On the other hand unless we are confident in our ability to end the violence, it would be irresponsible not to press both sides to agree to measures giving protection to the civilian population and especially the thousands of political prisoners held by the LTTE. The UTHR (J) has been calling for such measures for two years rather than join the formal calls for ceasefires in a vacuum. Next to nothing has been done, and instead we have spent our energy chasing will o' the wisps. There are no institutional checks on the government forces, any more than existed two years ago, to prevent a repetition of the tragedy in the East.

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