



**THE EROSION OF THE RULE OF LAW  
IN ASIA**

**INTERNATIONAL COMMISSION OF JURISTS  
and  
CHRISTIAN CONFERENCE OF ASIA  
International Affairs**

**THE EROSION OF THE RULE OF LAW  
IN ASIA**

**Report of the Seminar held in Bangkok  
18th — 22nd December 1987**

Printed by

INTERNATIONAL COMMISSION OF JURISTS  
and  
CHRISTIAN CONFERENCE OF ASIA  
International Affairs

# CONTENTS

	Page
<b>WELCOME ADDRESS</b>	
<i>Clement John (CCA-IA)</i>	5
<b>INTRODUCTION TO THE SEMINAR</b>	
<i>D.J. Ravindran (ICJ)</i>	7
<b>SECTION I</b>	
The Erosion Of The Rule Of Law In Asia	<i>Ninan Koshy</i> 13
Violations Of Human Rights Perpetrated In The Name of Economic Development	<i>Neelan Tiruchelvam</i> 28
The Erosion Of The Rule Of Law In Pakistan	<i>I.A. Rahman</i> 41
<b>SECTION II</b>	
Restrictions On Freedom of Press, And Other Civil Liberties	<i>Sumanta Banerjee</i> 51
Censorship — Overt And Covert In India	<i>People's Union For Civil Liberties (Delhi)</i> 64
<b>SECTION III</b>	
Erosion Of The Independence Of Judiciary And The Legal Profession	<i>Asma Jahangir and Munir Malik</i> 69
Erosion Of The Independence Of The Judiciary And The Legal Profession In Singapore	<i>Francis T. Seow</i> 73
<b>SECTION IV</b>	
Preventive Detention In Asia	<i>Maria Socorro I Diokno</i> 79
<b>CONCLUSIONS AND RECOMMENDATIONS</b>	95
<b>LIST OF PARTICIPANTS</b>	110

**WELCOME ADDRESS TO THE  
PARTICIPANTS OF THE ICJ/CCA-IA  
SEMINAR ON :**

**'THE EROSION OF THE RULE OF LAW IN ASIA'**

*Clement John  
Executive Secretary  
CCA — International Affairs*

On behalf of the Christian Conference of Asia — International Affairs and the International Commission of Jurists I welcome you to this Seminar on : 'The Erosion of The Rule of Law in Asia'. Some of you are aware of the Christian Conference of Asia (CCA) — the organisation I represent. However, for those of you who do not know CCA, let me briefly tell you about it. CCA is a regional Ecumenical body which has a membership of 110 Churches and National Councils from 16 Asian countries. It has nine desks that function under a General Secretariat. The International Affairs desk of which I am the Executive Secretary deals with areas of concern relating to human rights, justice and peace issues. CCA was founded in 1957, and has a long history of working in the area of human rights. CCA has discerned and identified various forms of people's movements in Asia today as was observed at the Eighth Assembly in Seoul 1985. "There are workers struggle for justice, and peasants movements for their rights. There are movements for the urban poor for self-determination. There are ethnic, national, cultural and tribal minority movements. In Asia, we see movements of women, and of youth, for full social participation and reconciliation; and movements for human rights and political freedom." Although

we are a Christian organisation we work with the conviction that issues of justice and human rights cannot be tackled from the Christian platform alone particularly, in the Asian context where in most of the countries Christians are in a minority. Accordingly, in the field of human rights we have endeavoured to co-operate with people of other living faiths and ideologies on basis of our common commitment to human dignity and social justice.

In the past we have worked closely with ICJ in terms of sharing information and consulting each other at various levels on issues. This is however the first time we have joined hands together to organise this Seminar. I am sure this is just the beginning and we will have many more opportunities to continue such co-operation in the future. Violations of human rights are becoming increasingly frequent and cannot be dealt with in isolation from the larger issues of peace, justice, militarism, disarmament and development. Consequently, much work and effort needs to be put in if the situation is to be improved.

While welcoming you, I would like to remember those friends who are unable to join us today. Friends in Malaysia particularly, Dr. Chandra Muzaffar who was initially invited for the Seminar also Mr. Shamsul Huq Chowdhury of Bangladesh who accepted the invitation but is unable to come because of his detention. It is indeed ironical that just two months ago around the middle of October, 87, some of us present here were discussing the implications of Security Legislations in South East Asia at a small workshop in Kuala Lumpur. That workshop was chaired by Dr. Chandra Muzaffar. I hope at some stage during our deliberations we will give thought to the situation of friends in these countries.

I take this opportunity to thank Mr. Niall MacDermot and also my friend Ravi for making this Seminar possible.

I hope we have a fruitful meeting. Thank you for your participation.

## **INTRODUCTION TO THE SEMINAR ON:**

### **'THE EROSION OF THE RULE OF LAW IN ASIA'**

*D.J. Ravindran  
Legal Officer for Asia  
International Commission of Jurists*

For the past few years, the ICJ has been organising seminars on particular human rights themes rather than on general issues. One of these themes, on which a series of seminars has already been organised, is the provision of legal services for the rural poor and other disadvantaged groups. The ICJ took up this issue as a result of regional seminars on the relationship between development and human rights which analysed the causes of human rights violations rather than their symptoms. One can conclude from these seminars that meaningful development cannot take place without the participation of the people, particularly the hitherto marginalised groups of society.

One way of ensuring the participation of the poor and the disadvantaged is to help them assert their rights. In the last decade, many groups have emerged in Asia as well as in other regions, who are working for the defence as well as the enhancement of the rights of the poor and the disadvantaged. The experience of these groups shows that the efforts of the poor to claim their rights are very often frustrated by an indifferent and unsympathetic legal profession and a corrupt or pliant judiciary. In addition, there are often problems caused by restrictions on freedom of association; excessive use of secrecy laws; and, importantly, use of security laws containing catch-all clauses. As stated by Miss Diokno in her paper, preventive detention laws and national security laws are part of the ordinary

laws of most of the countries in the region and where they exist, are almost always used or rather misused to curtail legitimate dissent and to arrest or detain those defending the rights of the poor and disadvantaged. The recent arrests under the Internal Security Act in Singapore and Malaysia are good examples of the misuse of such security laws.

Poor and disadvantaged groups are not only victimised by these restrictive laws, they are further impoverished by the official development programmes themselves. In many countries, the rights of the disadvantaged are eroded in the very name of economic development which is supposed to benefit them. In short, in the last decade, there has been a steady weakening rather than strengthening of the means by which the poor and disadvantaged can assure their basic needs and exercise their rights. In the next few days, we will be looking at the causes of this deterioration and of ways to reverse it, more particularly, at the independence of the judiciary and the legal profession, the restrictions imposed on freedom of association and the press, use of preventive detention laws and security laws as well as the human rights violations perpetrated in the name of economic development.

Clement John, CCA-IA, proposed a joint seminar subsequently agreeing to the topics we suggested, and we are grateful to him for offering us the opportunity to discuss them here. In many countries the church groups, amongst others, have been in the forefront of defending and promoting human rights. Once published, the proceedings of this seminar, including the conclusions and recommendations, will, we hope, make a useful document for human rights and other groups including the church groups in their struggle for justice and human rights.

At the international level we have always benefitted from the experience and support of the Commission of the Churches on International Affairs, and particularly of its Director, Prof. Ninan Koshy. We are honoured by his acceptance of delivering



the keynote speech. Having said this, I should conclude so as to give the floor to Ninan.

Thank you.

# SECTION I

# THE EROSION OF THE RULE OF LAW IN ASIA

*Prof. Ninan Koshy  
Director of the Commission of the Churches on  
International Affairs of the  
World Council of Churches (CCIA/WCC)*

I am deeply grateful to the organisers of this seminar, the International Commission of Jurists and the Christian Conference of Asia for granting me the special privilege of giving the keynote speech. My acceptance of the invitation is more a reflection of my profound concern for human rights in Asia than of any special competence on the subject of the seminar.

I will attempt to speak mainly on the implications of the erosion of the rule of law for human rights with reference to a number of political factors and developments. The socialist states of China and Indo-China will not be included in the scope of this presentation, not because human rights in those countries are of no concern to us, but because of the differences in historical and political circumstances. Even for the rest of Asia generalisations can be difficult and misleading.

The declaration of the state of emergency in Bangladesh and the large-scale detention of political and social activists in Malaysia provide the back-drop to this seminar. In a speech in the Parliament of Malaysia, on 3th December 1987, the Prime Minister Mr. Mahathir, introducing amendments to the Printing

Presses and Publications Act of 1984, announced that the government would codify the respective powers and responsibilities of the legislature, both executive and judiciary. "This was necessary", he said "to prevent the judiciary from interfering in the work of the executive and obstructing decisions made by the government and Parliament". Such an act of codification has been introduced in many Asian countries and has led to unbridled power for the executive and the erosion of the rule of law.

Next year we will be celebrating the fortieth anniversary of the adoption of the Universal Declaration of Human Rights. The adoption of the Universal Declaration of Human Rights coincided with significant political changes in most parts of Asia, ranging from the end of military occupation and independence and from colonial domination to revolution. Asian countries provided comparatively little direct input to the formulation of the Universal Declaration of Human Rights. However, most of the new political institutions were set up according to western models and most of them accepted the rule of law as their basis and included a bill of rights or provisions of fundamental rights in some form or another. The rule of law was defined in the larger sense — a legal system, the laws of which recognize the dignity of human beings by enforcing the respect of human rights through the courts.

It did not take many years before democratic institutions were dismantled in many of the countries in Asia and even where the framework was maintained, considerable weakening of the structures took place. There has been an ambivalent attitude on the part of western countries to the fate of political democracy in developing countries. On the one hand, the West liked to see their institutions etc. adopted in developing countries. On the other, it was argued that what these countries needed was growth and that democracy and human rights were to be considered a luxury. For growth, a favourable investment climate was needed and therefore law and order was essential. Distinguished writers and thinkers criticized democratic states in Asia as being 'soft' and even suggested that a dose of authoritarianism would do no harm. The West also found enough justification for

dismantling democracy in developing countries, if the fear of communism prevailed. In the shaping of political institutions of Asia, geopolitical considerations and rivalry among major powers also played a part.

## **The Rule Of Law And Human Rights**

The rule of law is a fundamental principle of human rights law. Within a state, rights must themselves be protected by law, and any disputes about them must not be resolved by the exercise of some arbitrary discretion, but must be consistently submitted for adjudication to a competent, impartial and independent tribunal. Procedures which will ensure full equality and fairness to all the parties, should be applied and the question determined in accordance with clear, specific, pre-existing laws, known and openly proclaimed.

As Dr. Paul Sieghart points out in "The International Law of Human Rights", the function of a national government in relation to 'human' rights is different from its function in relation to 'ordinary' rights. Human rights are primarily claims against the public authorities of the state itself either to remain free from interference by them or to require them to act in some specific manner. For any human rights, the corrective duty falls in the first instance on the authorities of the state itself, not on other members of the community. The case after all, is not one for mobilising the state's monopoly of force against those who break its laws, but rather by constraining that monopoly by supra national rules and sometimes even for calling for its exercise against its own possessors.

"In the traditional view, the subjects on international law — that is those having rights and by being bound by obligations under it — are sovereign states in practice represented by their governments. The 'objects' of international human rights law, that is, the beneficiaries of the rights protected or guaranteed are individuals in their turn the 'subjects' of those states, their governments and their laws. That necessarily creates an asymmetry, those whose rights are protected are not themselves

parties to the treaties, while those whom the treaties oblige to protect do not obtain an obvious correlative benefit from the assumption of that obligation.”

Concerning the implications of the erosion of the rule of law in Asia for human rights, it is important to analyse these with reference to universal standards and international human rights law.

The violation of human rights in many developing societies is often due to the failure to nurture political institutions aimed at justice, development and order. There seems to exist a skewed emphasis on order and a consistent neglect of justice. In many Asian countries, parliamentary institutions and other representative bodies were destroyed or weakened and independent judicial systems were enfeebled or bypassed. The checks and balances essential for the respect of the rule of law were ignored and the executive extended its power at the expense of the judiciary and the parliament.

The implications were similar throughout most of the Asian countries. The severity of violations varied to a greater or lesser degree depending on the extent to which political institutions and the judiciary were dismantled or weakened. But there are significant and disturbing common trends. In general, three types of governments exist in Asia today. These are of course rather broadly categorised and there is some overlapping among them. The first category is that of a military government. It rejects a democratic framework and denies the participation of the people. It often depends heavily on some foreign power and is characterized by gross violations of human rights. The second is a civilian government which either totally or extensively depends on the military though in theory it is not a military regime. In practice, however, it is not often very different from the first category, especially with regard to the respect of human rights. The third is a government which is set up within a democratic framework. But due to internal and external factors, a series of constitutional amendments and restrictive legislative enactments, human rights are curtailed. There is a trend among some states belonging to the first and third categories to move

towards the second. In general, this has led to the erosion of the rule of law.

## **States And Emergency**

One common trend of all these categories is the use of states of emergency. A state of emergency is a justifiable constitutional provision which can be instigated by any country in order to ensure the survival of the nation. But from the experience of the last two decades, one can say that there is a consistent pattern of misuse of such provisions in Asian countries.

The provisions have been invoked to protect a particular regime or particular leadership which considers challenges to its leadership as threats to national security. In general, states of emergency have led to gross violations of human rights, arrests, incommunicado detentions, disappearances, extrajudicial killings (described in such dignified terms as 'encounter' and 'salvaging') and the systematic practice of torture. The measures adopted under states of emergency go beyond the threats or perceived threats on internal security, and the removal of judicial control has permitted widespread and gross violations of fundamental human rights by the forces whose duty it is to ensure them. There is also the disturbing tendency for a state of emergency to be perpetuated or to effect far reaching authoritarian changes within the ordinary legal norms. In many countries of Asia, people have become so accustomed to the 'emergency regime' that it has come to be seen as the normal functioning of the government.

Article 29(2) of the Universal Declaration of Human Rights sets out the ultimate purpose of law "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

These provisions apply directly to claims that a situation constitutes a threat to the life of a nation and hence enables

authorities to derogate. A bonafide proclamation of public emergency permits derogation from specified obligations in the International Covenant, but does not authorise a general departure from international obligations.

The International Covenant uses the term "threat to the life of the nation" to describe the circumstances which justify derogation from the obligations to respect and protect human rights set forth in the instrument. Experience has demonstrated the need for more specific guidelines as to the circumstances which may constitute a threat to the life of a nation as opposed to a threat to a particular regime or particular ruler as is often the case in Asia.

"Three important principles concerning the definition of an emergency should be emphasized: (1) that it should be resorted to only in extraordinary and extreme situations and not as a matter of habit or to deal with chronic tensions in governance (2) the emergency provoking the suspension of fundamental rights must imperil the nation as a whole and its ability to function as a democratic polity; and (3) the threat which leads the authorities to suspend rights must be actual or closely imminent rather than speculative, potential, latent or lingering." (John F. Hartman: Human Rights Quarterly, February 1985)

The European Commission of Human Rights has specified the four following elements as characterizing a "threat to the life of a nation" : (a) when it is present or imminent (b) when it is exceptional (c) when it concerns the entire population; and (d) when it constitutes a danger to the organized life of the community.

In several Asian countries the most severe problems of abuse in the declaration of an emergency have arisen when the threat is merely perceived or feared rather than real, when emergency measures are prolonged beyond the period of real danger, when a particular regime seeks to perpetuate itself against popular opposition or when a new regime seeks to impose itself without popular support.



It is conceded that in the operation of a democratic form of government there will be tensions. Dissent and even some degree of political unrest must be tolerated or dealt with through ordinary measures. Emergency measures may be invoked only when necessary to preserve 'the life of a nation'. But the tendency in Asia has been to resort to states of emergency which have proved politically expedient for the regimes in power.

Since states of emergency tend to weaken the normal safeguards against de facto violations, a special duty to develop and institute new substitute safeguards may arise when the nature of the derogation measures applied is such as to foster or facilitate unauthorised infringement of rights.

The rule of law is often gravely endangered by the concentration of power in the executive during times of emergency. Police and military acquire unrestricted power. Correlations have been observed between widespread abuse of fundamental rights and the powerlessness of the national judiciary. The 1961 Lagos Conference on the Rule of Law recommended that "in all cases of the exercise of emergency powers, any person who is aggrieved by the violation of his rights should have access to the courts for determination whether the power has been lawfully exercised". This, unfortunately, has not been the case in most Asian countries.

The principle of proportionality and the strict requirement that an emergency threatens the life of the nation, provide the two most important substantive limits of emergency powers. Experience in Asia has shown a deplorable tendency toward the indefinite prolongation of emergency measures and an importunate tendency to resort to blanket suspension of rights in times of crisis. The principle of proportionality requires careful scrutiny and specific justification for measures taken in response to an emergency, rather than an abstract assessment of the overall situation.

Emergencies justifying derogation can arise from a variety of causes. These include war, internal rebellion and serious natural disasters. Though war is the paradigm instance for extraordinary

measures invoking an emergency, experience in Asia has identified internal political unrest as the primary basis for the instigation of states of emergency. The indefinite and variable nature of internal crises raises serious problems. One important issue concerning the justification for emergency measures deserves particular attention in Asia, viz. the doctrine of 'national security' as the basis for the 'institutionalised' state of emergency.

The ICJ's study on "States of Emergency" convincingly demonstrates that the open-ended nature of the doctrine of "national security", as advanced by many governments, is inimical to a proper view of Article 4 of the Covenant. The International Law Association (ILA) report likewise identified the inclination of these regimes to the "characterized by a hierarchisation of powers in which the ultimate control rests with the military authorities". The expansive 'national security' concept exceeds the severity, temporality and motivation limitations on (Article 4) derogation and violates the fundamental precept that the idea of an emergency is "incompatible with a perpetual state of affairs".

The Covenant on Civil and Political Rights includes "national security" as a justifiable basis for restricting freedom of movement, freedom of expression, and the rights to peaceful assembly and association.

In drafting the words of limitation on the right to freedom of thought, conscience and religion, it was noted that the terms 'national security' and 'public safety' were not "sufficiently precise to be used as a basis for the limitation of the exercise of the rights". Because of the fear that the term was inadequately defined, national security was omitted from the original draft proposals. The importance of narrowing the scope of national security was clear to the drafters.

*If limitations were not clearly defined, but couched in general terms, there was little guarantee that rights would not be violated. If freedom of worship and freedom of*

*information might be abridged on the basis of such vague expressions as 'public order' and 'national security', such freedoms were in great jeopardy indeed. In the name of 'public order', many a saintly character had been crucified, in the name of 'national security' many a patriot guillotined. It would be better to have no covenant than for it to be an instrument for suppressing human liberty.*

*(UN Doc. A/2929 — 1955)*

The legitimate concept of national security is limited to activities which present an imminent threat to the very existence of the nation. An acceptable definition of national security does not allow its use as a pretence for unfettered restriction on rights.

There is a need to have a new and clear concept of security. A government which engages in the systematic abuse of human rights has no basis for justifying the measures taken for its self-preservation on the grounds of national security. A state may be said to be secure only when all of its constituent elements, its territory, its habitants and its government are secure. Security with regard to the inhabitants consists of the inviolability of their human rights. In a state where security to inhabitants is completely lacking, state security cannot be said to exist. Such a government cannot justify limitations on rights to protect national security when, in fact, there is no state security to protect but only the government's interest in self-preservation. A concept of 'national security' must be reinforced by a concept of 'people's security'. True security for the people demands respect for human rights, as well as social and economic justice and a political framework that would ensure it.

National security laws enacted in all Asian countries have been used to suppress even legitimate political opposition. Known by various names in the different countries (National Security Act, Internal Security Act, Public Security Act, Special Powers Act, Emergency Regulations, etc.), they have many similarities. They are often written in the same language and terminology. Many of the provisions are severe and some of them draconian, as is the case with some Prevention of Terrorism Acts. Many of the

new laws, especially those referring to the provisions against terrorism, have to be called 'black laws' and are laws aimed at thwarting the rule of law.

Another emergency measure, which is rarely based on an objective assessment of strict necessity, is prolonged administrative detention of persons suspected of subversive activities. It has been pointed out that the phenomenon of "deviation by perpetuation" exists as an ever-widening net of detention is imposed first on suspected terrorists, then on their sympathizers and associates, then on trade union or other activists, and finally on anyone suspected of disloyalty to the regime. UN reports have shown that as detention expands to this grey area of "suspected" opinion and belief, long after violent disturbances have ceased or diminished the "principle of proportionality may be presumed to have been violated". As an ICJ study concluded, "Administrative detention threatens all three constraints in the principle of proportionality: severity, duration and scope." In addition, violations of the non-derogable rights to life, protection against torture and inhuman treatment have frequently occurred in the context of administrative detention. Many governments in Asia resort to detention without trial as a means of imposing punishment without the slightest semblance of due process or the constraints of a definite sentence.

According to theorists of national security doctrines, internal subversion is the most important threat to national security. This means that a latent and permanent war exists between the State and an enemy within the state identified as sections of the people. It cannot be established that one uniform national security doctrine prevails all over Asia. But one can find many common elements, the most prominent of which is the acceleration of militarization. Increase deployment of the military to deal with domestic law-and-order situations and the proliferation of paramilitary forces are features even in those countries where the military is not in control. In some countries the army has been organized and strengthened primarily to deal with the internal situation. Militarisation of Asian countries has severely undermined the rule of law. In several countries martial law has

been in force for long periods leading to the militarization of politics and politicization of the military. This has led to significant changes in the role and tasks of the military, making re-establishment of the rule of law extremely difficult.

The term 'transition' is used to describe the transfer of power from military regimes to civilian governments accompanied by a change from authoritarian political institutions to those of representative democracy. This transition also implies an important change in the legal system, with particular reference to the political constitution.

The withdrawal from political power of the military in such situations often raises many questions. What are the military conceptions of political legitimacy and of acceptable civilian governments? What is regarded as the proper role of the armed forces in relation to a country's government? Does the composition and functioning of the armed forces replicate or complicate the ethnic diversities and inter-communal relations of the state (e.g. Sri Lanka, Fiji)?

It should be mentioned that demilitarization in countries where the armed forces enjoyed a strong and well-constructed political position is, at least in the short term, a matter of degree rather than an absolute. The idea that demilitarization consists a straightforward transfer of power from military to civilian rule is to say the least, simplistic. In some ways it is perhaps an even more complex process than decolonization, in others it is similar particularly concerning attempts to determine conditions and inhibit and constrain the behaviour of the successor government. Furthermore, possibility of re-intervention is always there.

Some of the main problems of transition from military regimes to civilian governments deserve consideration. While constitutional guarantees and civil rights are re-established in an effort to maintain the new government which may still be fragile, several of the repressive laws of the former regime are often retained. Human rights advocates often find themselves in a dilemma because it might appear that too much pressure on the government may bring back the military still waiting in

the wings. This is made really difficult because of the unresolved issue of the role of the military in the new governmental framework as well as the desire of the military to ensure that its personnel are not punished for the crimes committed during the previous regime. At the same time there are demands from the victims of injustice in the past to bring to book the offenders. The amnesty offered by the new governments to the officials of the previous regime including those in the military raise controversies.

It may be too early, to say that the hopes raised by the people's revolution of early 1986 in the Philippines have been dashed, but one has to be profoundly concerned about the new erosion of the rule of law due to increasing growing dependence of the government on the military and the governmental support of armed vigilante groups.

## **Ethnic Minorities**

Democracy functions by majority rule and consensus politics. Within this framework the ethnic minorities often become excluded not only from the decision-making processes, but also from the enjoyment of the equality of the rights which the Universal Declaration of Human Rights recognises, the Covenants and Conventions enact, but which majoritarian approaches tend to undermine. Without therefore the consent of the majority, the minority in a simple democratic structure will be marginalised until 'as a last resort' rebellion may seem to be the only answer.

The problems of Sri Lanka are sufficient to prove that if a minority considers itself threatened in language, land, economics and culture, then violence not only results but escalates and other countries become drawn in.

Human rights abuses committed within the framework of ethnic conflicts are qualitatively different from human rights abuses against persons in general because they tend to be directed 'not only at individuals but also at collectivities singled out according to ethnic identification'. These violations range from genocide

to illegal and arbitrary detention and torture, mass population-transfers, deportations and segregation, lack of due process of law, discrimination in public and private institutions and other forms of open or subtle antagonism. When the state apparatus itself engages in human rights abuses, then the ethnic victims of such abuses may find that recourse to existing legal safeguards is less than satisfactory.

Internal conflicts related to ethnic struggles have a propensity to become international. India's role in Sri Lanka, especially in its present form, raises fundamental questions not only with regard to India's objectives but also about mechanisms for resolution of such conflicts.

The right to self-determination will be debated in each situation in the absence of a universally accepted definition of ethnic group. There is renewed interest in the concept of 'internal' self-determination which includes different forms of political autonomy. The rule of law for human rights for ethnic groups may have to be enshrined in the constitutions in especially entrenched clauses in situations where they will be a permanent minority under the domination of a majority community. New mechanisms may also have to be devised under international law.

In the sequence of political developments in several Asian countries, first the national security argument is introduced, then comes emergency or other ways of curtailing human rights, and finally comes the development argument, i.e. that all this is for development. This is usually an after-thought but is much trumpeted. The concept of development is entirely growth-oriented, there is no consideration of justice or self-reliance or participation by the people. This is the type of development that demands a favourable investment climate and law and order conducive to the establishment of transnational corporations. It has to be pointed out that international institutions like the International Monetary Fund and the World Bank have contributed to this process. Development is prescribed independently from human rights instead of affirming that the right to development, in the true sense of the word, is itself an intrinsic aspect of human rights.

It has to be emphasized that civil and political rights are needed to enable participation of the people, to implement reasonable development policies and to ensure equitable distribution of wealth, as well as economic growth. Contrary to what is often said that democracy is a luxury for developing societies, the poor and the underprivileged have discovered that fundamental rights are their best defence and perhaps their only means of improving their situation economically, politically and socially. In most Asian countries, there is a failure of social legislation even when well-meant, to reach the greater sections of the population. This is because vast sections are unorganized and not in a position to demand legislation aimed at progressive social changes and even if enacted, to ensure implementation. There is a tendency on the part of many governments to suppress the efforts for organisation of these sections. Civil and political rights have to be upheld under the rule of law to allow such organization through which alone true development is possible. Increasingly the regimes of Asia, displaying increasing features of authoritarianism are clamping down heavily on the freedom of information and communication and stifling the press. The new laws in Malaysia and Bangladesh are only the most recent examples. This trend exhibits not only an intolerance of criticism but also destruction of lines of communication and flow of information with a view to weakening peoples' movements.

In fact one of the most encouraging developments is the increase in awareness of people manifested through their struggles in organized movements for human rights and justice all over Asia. This is a protest against broken promises and part of the revolution of expectations. It is an affirmation of self-respect and dignity.

These movements and groups, at great risk in many places, protest against the arbitrary actions of the executive, in their struggle for the respect of fundamental human rights and basic needs. The repressive machinery of the governments is set against them with no respect for the rule of law.

An important aspect of the emergence of these movements and human rights groups is the solidarity among them. They are



concerned not only with human rights and the rule of law in their own countries but also in other parts of Asia and the world. They express this through solidarity actions protesting against detentions without trial in Malaysia, political killings in the Philippines, torture in Korea, police brutality in India and suppression of the ethnic minority in Sri Lanka. They provide and exchange information and counter-information against the background of dis-information and censorship of governments. It will be by strengthening and supporting these movements and groups by encouraging them to broaden their base that we will be able to prevent erosion of the rule of law in Asia. As stated in the Universal Declaration of Human Rights "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

# **VIOLATIONS OF HUMAN RIGHTS PERPETRATED IN THE NAME OF ECONOMIC DEVELOPMENT**

*Neelan Tiruchelvam*

In a presentation of this nature it would not be possible to survey comprehensively the impact of the developmental process on the effective exercise of human rights. There is a growing body of human rights documentation, including publications of the International Commission of Jurists (ICJ) which have dealt with human rights implications of different aspects of the development process. In our presentation, we shall focus on the impact of economic development on politically marginalised and socially and economically disadvantaged groups.

We shall in this regard refer to the developmental experience of India and Sri Lanka, to examine how in the name of economic development, the rights of ethnic minorities, tribal groups and that of indentured labour in agriculture and plantation sectors have been affected. An examination of these experiences would enable us to examine the broader conceptual issues as to whether there is an inherent incompatibility between economic development and human rights.

One of the prevailing myths of the first and second developmental decade was the exalted, if not primary role that

was accorded to the State as an agent of social and economic transformation or even as a protector and mediator in the affairs of civil society. The articulation of the nation-state and the awesome responsibilities that it arrogated to itself, had profound implications for the concerns of this seminar. But the State has failed to deliver the goods as far as the poor and the under-privileged are concerned, and forsaken the vulnerable sections of the population. The promise of alleviation of poverty and deprivation remain largely unfulfilled. What was more disturbing was that the State apparatus began to progressively assume a coercive character. Dissent with the ruling orthodoxy was considered illegitimate. The State became more and more repressive as it, on the one hand, failed to fulfill its promises, and on the other hand, was incapable of containing the tide of rising discontent and political protest. The modern State, the modern economy and advanced technology began to impose solutions which destroyed natural and cultural diversity. Far from integrating the different elements within the body politic, it marginalised vast sections of the population through an increasingly centralised State apparatus. These developmental processes culminated in the attempt to impose the will of a mono-ethnic state on a multi-ethnic polity.

The competition for scarce resources and economic opportunities has fuelled antagonisms arising out of the sharp cleavages of race, caste, tribe, religion and language. Fragile political institutions have failed to adequately accommodate the demands for power and resource sharing by marginalised ethnic and religious groups. Policies to advance national cohesion have been pursued at the expense of the linguistic and cultural traditions of minority groups. Ethnic discontent began manifesting itself in secessionist movements resulting in repressive responses by the State, posing serious social justice and human rights concerns. The plight of refugees from internal conflicts has strained regional and international peace and stability.

In the recent history of the Indian sub-continent, ethnic violence has increasingly become a common phenomenon.

From the Pathan-Bihari clashes in Pakistan to the anti-Sikh riots in New Delhi, anti-reservation stir in Gujerat, and the Sinhala-Tamil conflict in Sri Lanka, racial violence has left a trail of destruction of property and human life. The emotional and psychological scars that remain after such outbreaks are in fact more destructive than the physical damage. The sense of community within a plural society is often shattered by the cruelty, terror, and suffering unleashed by the forces of mob violence.

Sri Lanka is a classic case study of the disintegrative impact of ethnic conflict on the developmental process. Hitherto much of the intellectual discourse on ethnic issues in Sri Lanka has focussed on the historical, ideological, cultural, and social issues, but there has been inadequate attention devoted to the economic dimensions of ethnic discontent and conflict. Little attention has been devoted to the economic elements which sowed the seed of ethnic discontent which have led to violent and explosive expression.

With regard to the competition for economic resources and opportunities, one needs to point out that perceptions of "injustice" and "deprivation" of competing ethnic groups, often shape the parameter within which competition for the division of the economic cake takes place. This in turn determines the terms and conditions under which access to economic and educational opportunities would be regulated.

One of the central grievances of the Tamils is that successive governments consciously introduced policies which drastically altered the terms under which ethnic groups competed for power, influence and economic opportunity. Even overtly, political measures such as linguistic and citizenship laws impinged upon the economic spheres. While providing the Sinhala educated majority with opportunities for upward mobility, they were perceived as excluding and/or limiting an achieving minority, such as the Tamils from similar opportunities. Similarly, the policies relating to ethnic preference posed a threat to the mutual well-being of a community as well as the preservation of its cultural identity.

What I am concerned with is not so much the content of these grievances but their articulation as reflective of the diverse perceptions of injustice and deprivation that compete with each other for recognition.

On the Sinhala side, the dominant perception is that of a historically deprived majority. In our view, there are several forces which have interacted to shape the Sinhala-Buddhist perception of deprivation and injustice:-

The first of such notions is the conception of the sons of soil and the notion that the majority community are the legitimate inheritors of the island, the land and its resources. These forces tend to view all other minorities as late comers; immigrants whose access to resources and economic opportunities should be defined and limited.

The second force was the perception of historical deprivation. This is the perception that one of the manifestations of colonial policy was to consciously favour minorities and disadvantage the majority. One variant of this is the belief that while majority defied through peasant rebellions imperial domination, the minorities functioned as "supplicants" and thus carried away "the plums" of public office under colonial rule.

The third force is the majoritarian principle. The transfer of political power, and the dominance of political power in the pre-independent years fed the determination to further the political dominance into that of the economic, social and even cultural spheres.

These competing perceptions of deprivation, then have important implications for the notions of social justice which would directly or indirectly influence the allocation of resources. Would it be, that of the endangered minority or the politically assertive majority? Would it be, a conception of social justice based on proportionality or that of meritocracy?

The conception of proportionality can take two forms. Preference policies directed in favour of politically weak and

socially vulnerable minorities, such as the scheduled castes in India, raise less difficult issues, than policies which are directed towards favouring a politically dominant and assertive majority such as envisaged by the new economic policy in Malaysia. One of the implications of the policy of proportionality is the attitude that a minority should not be too successful, too visible or prominent in any sphere of economic activity. This notion is even reflected in some contemporary writings, where with regard to indigenous entrepreneurial development, there is reference to the need for an ethnic group in maintaining the economic profile "appropriate to a minority" in areas where other groups are in a preponderant majority. These concerns can also have implications for the right-privilege relationship. Minorities feel that the opportunity to compete equally in economic and educational spheres is an inalienable right of a citizen in a society committed to constitutional equality. However, when these rights are enforced or exercised in a manner prejudicial to majority interests, then there are privileges which the minorities must forgo in the name of racial equity.

We have hitherto looked at situations where cultural and economic policies pursued by nation-states have impacted on the cultural identity and social and economic rights of minorities. In this regard we also need to briefly refer to the gross abuses of human rights to which minorities have been subjected; through indiscriminate and arbitrary arrests, preventive detention without trial, torture, cruel and degrading treatment, extra judicial killings and disappearances. In Sri Lanka, instances of such human rights abuses have been documented in their reports of Amnesty International and formed the subject of a recent resolution by the U.N. Human Rights Commission. But the Courts in Sri Lanka have tended to assert the primacy of national security over its duty to protect the dignity and integrity of all its citizens.

The second area of concern relates to the impact of large scale dam and hydro-electric projects and deforestation programmes which have threatened and endangered the identity and the way of life of tribal groups and indigenous people. The right to self-determination of indigenous people is being increasingly

acknowledged by the U.N. Working Group on Indigenous Populations and in the discussions on the Convention of the International Labour Organisation.

The common features attributable to such groups are historical continuity, distinction from other sectors of society, non-dominant situations and the determination to preserve distinct characteristics.

Such indigenous groups have enjoyed a deeply spiritual relationship with their lands which was basic to their beliefs, customs, culture, and very existence. Both in the colonial and post-colonial eras, the ruthless appropriation and exploitation of indigenous territories and their renewable and non-renewable resources have placed these groups on the brink of extinction. Accordingly, it has been argued that indigenous groups have the right to exist, to defend their lands and to ensure the survival of their culture, their institutions and their way of life. Two specific categories of indigenous people that we shall consider in this regard are the Veddahs of Sri Lanka, and the Chipkos of North-East India.

The Veddahs are the original cave dwellers from the Stone Age in Sri Lanka. They live in their jungle habitat with little contact with the outside world. Hunting and fruit gathering had been their main mode of existence. Later, this was accompanied by a slash-and-burn agriculture system. Originally, the Veddahs were nomadic, but in recent times they have found that forest cover and jungle life were fast disappearing. Yet in spite of this, the Veddahs retained almost distinct ethnic characteristics of their own. Population growth and the needs of development in the rest of Sri Lankan society encroached upon traditional Veddah lands through colonisation and the clearing of jungle for cultivation. More recently however, the Veddah way of life was threatened by the massive Mahaweli Irrigation Scheme involving the development of the entire basin of the Mahaweli river, the irrigation, cultivation and generation of power. These changes have subjected the Veddah community to forces of change unprecedented in their history.

The Veddah communities are divided in their attitude towards the prospects of moving out of jungle habitat and being reintegrated into the new Mahaweli settlement. While the younger Veddahs have welcomed the wider opportunities that resettlement in agricultural community has brought the older patriachs remain determined to resist this change. Despite the uncertainty of their future, the Veddah elders seem determined to stand by their traditions and their way of life.

However, there seems to be little hope for the preservation of Veddah identity since their jungle habitat has been declared part of a natural reserve which has led to a ban on hunting. This has resulted in increasing conflict with the authorities. In addition, tree felling which was necessary for successful 'chena' cultivation has also been prohibited by the authorities, and other external forces were found to weaken the jungle and its ecology to which Veddahs' identity is vitally linked.

The increased status of tribals through programs of affirmative action is one of the central elements in the redefinition of the Indian polity implicit in the constitutional order and the developmental programs of successive post-independence governments. There are about 427 tribal communities listed in the scheduled tribes list of the Indian Constitution, representing over fifty million adivasis. They vary in the socio-economic conditions, but share problems such as poverty, inadequate education, socio-economic isolation, and the continuing exploitation by non-tribal groups. Although the constitution expressly mandates that they be protected from 'social injustice and exploitation' and requires that special attention be paid to their socio-economic interests, there has been little improvement in their material condition. Despite State laws prohibiting the alienation of tribal lands, they continue to be deprived of their territory through the falsification of records and exploited by money-lenders and shopkeepers. Programs specially directed towards tribal development rarely reach the intended beneficiaries, and in some instances, such as the nationalisation of forest produce in Bihar, have contributed towards their further impoverishment. Several developmental programs involving deforestation and dam construction have further



placed in jeopardy tribal groups on the 'brink of survival'. This problem has been particularly acute in tribal areas in the Himalayan region where such groups' livelihood has depended on their access to forest resources. The depletion of these resources by private contractors resulted in the emergence of the Chipko movement in Uttarkhand region in 1973. In 1974 the women of the Bhotiya tribe of Reni village in Chamoli District, fired the imagination of human rights activists by protecting trees with their bodies, and thereby averting their felling by private contractors. Similar movements have emerged in parts of Uttarkhand, Maharashtra, and in Karnataka. In Madhya Pradesh the creation of wild life reserves (Indravati National Park; 1258 square k.m.) and the consequent abolition of all public rights, including the right to gather forest produce has further eroded the livelihood of about 5,000 tribals.

Major dam developments in India has also provided a further focal point of controversy with regard to their ecological impact on plant and animal resources and on the socio-economic future of the people who would be displaced and dislocated by such projects. There has been criticism of the cost-benefit analysis of these projects in terms of augmentation of hydro-power resources and the extension of irrigable land, failure to take adequate account of the environmental and human costs of such development. The Indian Centre for Science and Environment has argued that these projects are based on the premise that 'someone has to suffer for progress'. Usually these are tribals and rural poor. The Narmada Basin Development Programme involving the building of 329 large dams would result in displacing a million people. Except in the State of Maharashtra, few State governments have accepted the principle and/or legal obligation of resettling the people displaced by such projects. An anti-dam campaign was successfully launched with regard to Silent-Valley in Kerala, a rich bio-sphere and one of the few surviving rain forests in India. A similar campaign was launched by the Chipko movement to protect eco-system of the Valley of Flowers endangered by the Vishnaprayag hydro-electric project.

We may now focus on how the developmental processes have

resulted in aggravating slavery-like practise and institutions and taken their toll as landless and indentured labourers. The problem of bonded labour is also linked to the problem of migrant workers, the unequal distribution of land and other assets in the agrarian economy, the non-enforcement of minimum wage legislation and the effectiveness of land reform laws.

Though there are many variations of bonded labour, estimates of the current numbers of bonded labourers in India vary from the Union Government's figure of 120,000 to the 2.6 million calculated by the National Labour Institute/Gandhi Peace Foundation Joint-Survey in 1978, and the figure of 5 million mentioned by the Bonded Liberation Front. (See Tom Brass, Debt bondage in India, in *Third-World Affairs* 1987, at p.290-304).

Debt bondage arises where cash or kind is loaned by a creditor to be repaid in the form of labour service provided by the debtor. The services may be performed by the debtor directly or by a member of his family, or his kinship group. Often such services are neither limited nor defined, nor reasonably assessed or applied towards the liquidation of the debt. [See U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery 1956, Article 1(a)]. This sort of relationship has been stated to be analagous to slavery as it involves the loss on the part of a debtor and his family of their right to sell their labour power at prevailing free market rates during the period of bondage.

Debt bondage has originally been conceived as forming part of a backward agriculture wherein bonded labourers discharged a political/ideological function, as distinct from a productive role. But, recent studies by Tom Brass in the agriculturally prosperous State of Punjab reveal that the majority of the bonded labourers are employed not by a declining feudal land-owning class, but an economically dynamic and politically ascendant class of capitalist farmers.

This study showed that 80% of the seasonal local workers were bonded either through cash or kind debts owed to employers, or through wages withheld by employers. In the case of seasonal migrant workers, 55% were indebted to their employers in the Punjab and 64% were indebted to money-lenders in Bihar. Debt bondage contravenes the Articles of the U.N. Supplementary Convention and the Universal Declaration of Human Rights which provides that no one shall be held in slavery or servitude. (Article 4).

Article 13(i) further states that, everyone has the right to freedom of movement within the borders of his State, while Article 23(1)(ii) states that everyone has the right to choice of employment with equal pay for equal work. India has not ratified the majority of the 106 I.L.O. Conventions relating to the employment and conditions of agricultural labour. Under domestic human rights legislation, debt bondage is outlawed by Article 23(1) of the Constitution which states that bonded labour wherever it exists will be declared illegal. Several States have also passed Ordinances outlawing specific and localised variants of debt bondage.

This case study, therefore, illustrates that agrarian capitalist development does not necessarily result in free wage labour relations, higher daily wages, or the ability of the rural labour to organise.

Similar issues of human rights have arisen as a result of the appropriation of State land to sugar multi-nationals in Sri Lanka. Since the late 1970's Sri Lankan Government had handed over almost 54,000 acres of land to multi-nationals to cultivate sugar. The government justified such land appropriation on the ground that the activities of these Corporations would only involve jungle or State-owned land which was being illegally cultivated. Most of these large-scale sugar cane cultivation projects were located within the Moneragala District, and it has been claimed by peasant organizations that much of this land is already populated by villagers who have lived there for centuries. They particularly claimed that on the land to be developed by the Moneragala Sugar Company, there are 48 large and small villages

occupied by nearly 850 families with a population of over 4,500. The village economy is dependent on paddy cultivation irrigated by small village tanks, and it was alleged that these villagers were being compelled to adopt a different type of production system and to become rural workers or share croppers in the sugar plantation. It has also been contended that many of the villagers who do not secure employment in the sugar plantations would be forced from these lands to live as landless labourers in the outskirts of the plantations. This is again an instance in which the Government's concern for self-sufficiency in sugar and the development of large agricultural plantations with the assistance of foreign capital, has threatened the way of life and the right to self-employment of villagers engaged in traditional forms of agriculture. It has been further contended that the creation of such a large plantation, apart from dislocating the villagers, would disrupt the social cohesiveness of this community in which kinship relations are very close. There is a further concern that with such a process, a new category of rural workers unprotected by the existing system of labour laws would be created. Multinationals who have engaged in aqua-culture projects in the Mundal area in the Chilaw District and have inundated, through the construction of prawn farms, villages which engaged in traditional forms of fishing. Not only have the villages been rendered uninhabitable as a result of flooding of village land, but the fishermen have been denied access to the lagoon which was their source of livelihood. Here again, the policy of the State to foster aqua-culture in partnership with foreign capital and technology has resulted in the exploitation and impoverishment of several fishing villages in the Mundal area.

Similar issues arise from the role — agricultural multi-nationals play in the manufacture and distribution of chemicals, pesticides, seeds, and other agricultural inputs. The Bhopal tragedy has shocked us into awareness of the serious hazards of chemical industries. Equal concern has been expressed about the depletion of plant genetic resources in developing countries and the hazards posed by nuclear power plants. None of these issues can be adequately dealt with within the confines of a brief background paper. The problems of ethnic minorities, tribals and bonded labour, enables us to revert to one of basic concerns of this

session whether there is an inherent incompatibility between economic development and human rights, or whether any special developmental strategies are more likely to promote respect for human rights and social justice.

As seen in this presentation, the propensity to violence and rapid discontinuous change are inherent in the process of development. Development would inevitably result in the disturbance of the prevailing social balance; in the emergence of new social classes and the formation of new interest groups which threaten the existing distribution of power and assets. It results in the release of forces which break up the ideological bases which had promoted a broad social consensus with regard to the prevailing order, into forms of national integration which are inimical to the preservation of long-standing regional and ethnic identities. Development therefore acquires a pervasive character of instability, dis-equilibrium and conflict. The conditions exert strong pressures which tend to push a society in the direction of force and violence. Such force and violence might be used either for establishing order, suppressing conflict and reducing instability or for seeking a radical and lasting resolution of the conflicts themselves. The question then arises as to whether policies, approaches and techniques can be evolved to minimise the propensity for violence and human rights abuses inherent in such a process of rapid development. Are there specific development strategies which tend to accentuate the erosion of the rule of law and of human rights in Asian societies?

This analytical trend leads us to the conclusion that growth oriented authoritarian developmental strategies are more likely to result in policies designed to contain wage demands and the free association of labour in order to create a climate attractive to investment by foreign capital. Such a strategy of development would further accelerate inequalities, create inflexible political structures with little room for the ventilation of conflicts and their peaceful resolution. The growth oriented authoritarian developmental model results in a progressive recourse to coercion, suppression, intensive internal security and a gradual erosion of the rule of law.

On the other hand, an equity oriented participatory developmental strategy would seek to minimise the propensity for violence in the developmental process. Such a strategy would be directed towards the reduction of disparities in income, wealth and power, and the creation of participatory structures which provide political space for dissent and social bargaining. Such a strategy could result in the progressive reduction in structural violence, as well as resolution of conflicts in such a manner as to strengthen the democratic polity and the framework of civil liberty and human rights.

No doubt, the actual social and political reality is more complex than what is assured in the neat categorization of developmental strategies. This reality needs to be understood not merely with respect to the developmental strategies pursued, but also in terms of their actual historical evolution and the balance of power between contending social forces at any given time.

# THE EROSION OF THE RULE OF LAW IN PAKISTAN

*I.A. Rahman*

It is claimed that the Constitution of 1973, in its original form, represented the will of the people of Pakistan, and this claim was not unjustified. But the Constitution in its present form cannot have the same sanctity. Between 1973 and 1977, it was amended several times in violation of democratic principles. The relaxation of constraints on preventive detention, the changes in the provisions applicable to the judiciary and the introduction of discrimination on the basis of religion amounted to deviations from the norms adopted by the people and explicitly upheld by the State's founding fathers.

The further amendments made since 1977 have gone on to deprive the basic law of any public sanction whatsoever. For one thing, the apparent consensus on which the Constitution of 1973 was based has broken down. The units of the federation are clamouring for a revision of the formula for division of powers between them and the federal centre. The point could, of course, be debated. It could be said, theoretically, that those agitating for such a revision do not represent a majority of the population. However, there is no doubt that some of the most fundamental provisions of the present Constitution are clearly of an undemocratic nature. Two glaring examples can be cited.

The first is Article 270-A, inserted by the Eighth Amendment of 1985, which perpetuates the legacy of Martial Law. In June 1962, when the first imposition of Martial Law was lifted, the constitution had saved certain enactments made and actions taken under it. Similarly in 1972, when the second imposition

of Martial Law was lifted, the indemnity was extended for a specified period under civilian rule. But the present indemnity provision enacted on 30th December, 1985, at the end of the third period of Martial Law, validates all laws made by the Martial Law. Authority between 5th July, 1977 and 30th December, 1985, in perpetuity. Notwithstanding anything in the Constitution, they cannot be challenged in "any court on any ground whatsoever". "All President's orders, Ordinances, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or bye-laws in force immediately before the date on which this Article comes into force shall continue in force until altered, repealed or amended by competent authority." The 'competent authority' is the legislature, but its ability to repeal Martial Law orders is not unfettered.

The second example is the additions made to Article 203 to provide for the Federal Shariat Court. This court comprises judges of superior courts and ulema, all of whom are nominated by the President. While some kind of criterion to determine the eligibility of the judges to sit on this court is available, there is none for the ulema who are chosen solely by the President at his personal discretion. This court will become, after 1989, the supreme law-making body in the country. It could then strike down any act of the legislature, even the operation of the constitutional provisions on the ground of repugnance to Islamic injunctions as interpreted by the "ulema" sitting on the court. It is clear, from verdicts already passed as those on the law of pre-emption and "rajm" (stoning to death), that the judges are unlikely to succeed in resisting the opinions formed by the ulema sharing the bench with them. Not only will the court have the power to strike down legislation, it will also have the right to lay down the law. Such a supplanting of the elected legislature by a court is not countenanced by any constitutional theory based on the sovereignty of the people.

An important pillar of the rule of law is the existence of an independent judiciary. Over the years we find that the principle of the independence of the judiciary has increasingly been subverted with impunity in Pakistan.



Former Supreme Court Judge Dorab Patel has identified a number of institutional constraints on the judiciary's independent functioning. He has pointed out the anomaly that while a practising lawyer must have 10 years' experience at the Bar, a member of the civil service, with an equal period of service, can be appointed a Judge of the High Court if he has worked for three years as a District Judge. Judges drawn from civil service suffer from two clear disadvantages. First, to quote Mr. Patel, "a member of the civil service need not have any knowledge of the law to qualify for appointment to the High Court, except the limited knowledge acquired through three years' service in subordinate judiciary as a District Judge". Secondly, after working for the civil service for a decade or more, such judges get completely steeped in the attitudes of the executive and may acquire concepts and prejudices that render some, if not all, unfit to promote the independence of the judiciary. Mr Dorab Patel has also criticised the manner of appointing adhoc and additional judges of the High Courts, the system of having Acting judges of the Supreme Court and Acting Chief Justices of High Courts, and the fact that over "the last 15 years the advice of the Chief Justices (regarding the appointment of judges) has been repeatedly flouted". He has also argued, with ample justification, that secondment of sitting Judges to such offices as Chief Election Commissioner and heads of various administrative commissions, etc. militates against the concept of an independent judiciary.

Along with a steady erosion of the independence of the judiciary we have been witnessing a dangerous distortion of the judicial processes. For instance, it is a cardinal principle that an accused is presumed innocent unless proved guilty and the burden of proof lies on the prosecution. Apart from the changes in the Evidence Act, which grant greater credence to police reports than before, a number of special laws have been made which place the burden of proof on the accused. In other words, the person being prosecuted is presumed to be guilty unless he proves otherwise. This practice started soon after independence when the Criminal Law (Amendment) Act of 1948 was adopted. It was included in Anti-Corruption Laws, and in the seventies, in the Prevention of Anti-National Activities Act of 1974 and the

Validating Act of 1975. The Special Courts for Speedy Trials Act of 1987 also contains the same principle.

The principle that trial in absentia cannot be held fair, has been thrown overboard. This principle has a special significance for Pakistan, because the Quaid-i-Azam (founder of Pakistan) strongly opposed in absentia. However, the law does recognise the difficulty presented by the absconding accused and the established procedure has been that where the accused was absent, the court could record the evidence but final judgement would be deferred till the accused was apprehended and given an opportunity to rebut the evidence. However, in Pakistan, a special enactment enables the whole trial to be concluded and sentence awarded in absentia.

The degree to which the principle of a fair trial, one of the most basic assumptions of the rule of law has been subverted is demonstrated by the Special Courts for Speedy Trials Act, 1987. The measure was first introduced as an Ordinance in July 1987 and enforced as an Act in November 1987. It is a law which fully demonstrates the consequences of hasty legislation. The ordinance ousted the High Courts' jurisdiction in appeal and provided for appeal only to the Supreme Court.

The object of this Act is said to be the speedy conclusion of cases. The procedure laid down is that the provincial government can refer any case under provisions of the Pakistan Penal Code to the special courts. The investigation is to be completed speedily and the court is to hear cases on a day-to-day basis.

The first objection to this law is that it gives the executive undue authority to determine the mode and course of trial.

It is also necessary to consider whether the means to ensure speedy trials are absent from the Criminal Procedure Code. Under the Code the police are required to complete their investigations within 14 days and there is nothing to bar the courts from concluding trials with the utmost speed.

As far as the press in Pakistan is concerned successive governments have not only kept alive the colonial legacy of curbs on the freedom of the Press but have also enacted legislation to make these restrictions harsher. The curbs devised by the colonial rulers during periods of emergency (such as in the Press Act of 1931 or the Defence of India Rules, 1939) have been integrated into the normal laws.

All the offences journalists can possibly commit, such as libel, spreading of rumours, publication of material that offends the beliefs or sentiments of various communities, or threatens the interests of the State, are duly listed in the Pakistan Penal Code. Nevertheless, the Government has introduced restrictions on Press freedom in special laws. As a consequence, the Press in Pakistan can be proceeded against under the Security of Pakistan Act, 1952; the Maintenance of Public Order Ordinance, 1963; and the Official Secrets Act of 1923.

A common feature of these laws is that they empower the Government to take action against publishers on a number of vague grounds and unlike the normal laws, they do not provide for appeal against the orders of the executive.

In addition to the punitive provisions of the laws applicable to the Press, governments have tended to use regulatory provisions of law to restrict the right to freedom of expression. The most vexatious use of such provisions is the distortion of the procedure for 'authentication of declarations' (Licences). Before independence, the right to publish newspapers was well established. The law only required the publisher and the printer to file declarations before a District Magistrate accepting responsibility for their publications and providing their addresses for the record. The District Magistrate had no discretionary authority to refuse a declaration; he had merely to authenticate the document. However, under the Press and Publication Ordinance of 1963, the declaration has been turned virtually into a licence which cannot be claimed as of right. A number of grounds have been laid down which can be invoked by the Government to refuse to grant a declaration. In practice, a declaration cannot be authenticated by a District Magistrate

without the clearance of the Federal Government and nobody who is even remotely suspected of dissident views can hope to obtain a declaration.

The Government has two other means of interfering with Press freedom. First, newsprint is distributed by a State agency and the grant of newsprint quota depends on the Government's discretion. Grants of huge quotas to pro-establishment papers and the reduction or total denial of quotas to others are measures frequently adopted by authorities to interfere with the free and objective functioning of the Press. Second, the Government directly owns a large number of industrial and trading establishments, such as banks, public utility services, etc. which provide upto 75% of the advertising revenue available to the media. Thus the withholding of these public sector advertisements is used by the Government to punish independent publications.

Besides, both the radio and television are directly and totally controlled by the Government. Together they have a much larger audience than the Press. Further, through the National Press Trust, notionally an independent trust, the Government owns and controls a number of newspapers. Thus, the greater part of the media is under the control of the Government and the special privileges and facilities it enjoys is extremely unhelpful to the free Press.

What the Press in Pakistan suffered during the Martial Law period should have become part of history. It has not. Although some relaxation in the establishment's control over the contents of newspapers is visible, and the Government has generally avoided recourse to the harsher Press laws to deal with the critical sections of the Press, there has been no progress towards freeing the Press of institutional constraints, and the use of official pressure to chastise independent newspapers and journalists continues. The most objectionable example of use of authority to suppress freedom of expression is the large number of periodicals and books that are banned under executive orders.

Both organisations of newspaper owners and working journalists have adopted resolutions criticising the stopping or curtailment of advertisements by State agencies to a number of publications. Despite promises to end discrimination against publications considered critical of the Government, the policy remains unchanged. The threat of serious revenue losses continues to erode the ability of the Press to function freely.

Among the issues concerning Press freedom that have been pending is the Government's failure to withdraw the Press and Publications Ordinance of 1963 (PPO). Many meetings between the Government and representatives of newspaper owners, editors and working journalists have been held and the Information Minister has repeatedly promised withdrawal of the PPO but no progress has been made.

The Government has also failed to undo the excesses committed during the Martial Law period. The ban imposed in 1979 on the publication of a number of newspapers (including Musawaat, Sadaqat, New Times, Alfatah, Tehreek, Razdan) is still in force. Until the newspapers suppressed in 1979 are allowed to resume publication, the present Government's claim to support Press freedom will be untenable.

## SECTION II

## **RESTRICTIONS ON FREEDOM OF PRESS, AND OTHER CIVIL LIBERTIES**

*Sumanta Banerjee*

In most of the Asian countries<sup>[1]</sup>, the fight for freedom of association, freedom of the press, and other civil liberties, emerged as an essential part of the larger national struggle for independence from the yoke of colonial rule. The Asian nationalist leaders — trained as most of them were in the tenets of the dominant tradition of European political thought concerning the nature of liberty — borrowed these concepts of civil liberties to express national urges and mobilize their people behind them, and to posit them as challenges to the European colonial rulers demanding from them the same rights which the citizens of Great Britain, France or the Netherlands enjoyed. The more fervent the expressions of nationalist aspirations were, the more ruthless the colonial rulers in curbing the civil liberties of the population. The press, and associations such as political parties and trade union organisations, were the main victims of the anti-democratic policies of the colonial powers, since these were the main forums for expressing and mobilizing public opinion.

However, in the post-independence period in most of the countries of South and South-east Asia, the question of civil liberties now assumed a different dimension. There were new areas of conflict — the incipient conflict between the new rulers

(the indigenous elite which had come to power and which used to champion these demands during the anti-colonial struggle) on the one hand, and the most deprived victims of colonial rule (the rural poor, the urban proletariat) on the other. There were also the problems of sub-nationalism and ethnic minorities who *were beginning to assert their rights to autonomy* (e.g. Nagas and Mizos in India; Muslims in the Philippines; Tamils in Sri Lanka; Chinese in Malaysia and Indonesia).<sup>[2]</sup> The challenges for the new rulers were whether they should extend the freedoms for which they fought for during the colonial regime to the poor and other disadvantaged groups.

Should the rural landless labourers be allowed the right to form organizations to fight for land and better wages and be allowed to demonstrate for their demands? Should the industrial workers be permitted to organize strikes and their supporters be given the right to express their views in the press? Should the ethnic minorities be given the right to voice their grievances?

In the new situation the defence of civil rights such as freedom of speech, or of press, or of association, was getting rapidly involved with particular socio-economic demands of disadvantaged groups and often challenged the authority, and even legitimacy, of the ruling elite.

In facing this challenge, the new rulers in South and South-east Asia — almost without exception — betrayed attitudes and followed policies that were not only reminiscent of those adopted by their colonial rulers, but in certain situations even surpassed them in ruthlessness. Most of the South Asian and South-east Asian states, after independence, retained some of the most repressive colonial legislations that suppressed civil liberties.

The other historical factor which needs to be considered is the socio-cultural tradition, shared by people of most of these countries. Norms which reinforce collective loyalty to a patriarchal head and his dictates, which still persist among the people, have often been used by the national leaders of the newly independent states to impose authoritarian laws that impinge on civil liberties such as the freedom of assembly, or of the press.



In some countries, the curbing of civil liberties had been resorted to in the guise of a modern authoritarian political doctrine; the doctrine of 'national security'. Legislation passed on the basis of this doctrine was not only invoked during wars, but extended during peace time to arrest political dissidents alleged charges of 'espionage' or 'terrorism'. Significantly, assaults on press freedom and freedom of assembly based on the allegation of protecting 'national security' had taken place in army-controlled regimes as well as in countries enjoying a fair degree of parliamentary democracy.

## Freedom Of The Press

Article 19 of the Universal Declaration of Human Rights states that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Most of the governments under our present survey while publicly adhering to this and its more detailed formulation (e.g. Statement of the Rights, Obligations and Practices to be included in the Concept of Freedom of Information, 1948; Declaration on Fundamental Principles concerning the contribution of the mass media to strengthening peace and international understanding, to the promotion of human rights..., 1978), continue to pursue policies that deny these rights to millions of their citizens.

The denial takes numerous forms ranging from direct control through restrictive legislation on the press and journalists to indirect control on the dissemination of information through laws with catch-all phrases. In the first category we may mention the system of censorship, the closure of newspaper offices, arrests of journalists, etc. In the second category we have the various laws relating to defamation, contempt of court, official secrecy, defence matters, etc. which inhibit the publication of certain types of news.

Ironically enough, some of these laws are either verbatim copies

of colonial laws, or derived from them. The British Official Secrets Act of 1911 till today remains a model for many of the ex-colonies of Britain. The Act makes it an offence for any officer of the government to disclose any unauthorized information, and also makes the knowing, receipt and reporting of the information by journalists an offence. In Malaysia, recent amendments to the Official Secrets Act of 1972 (based on the British Act of 1911) have removed all penalties and fines and replaced them with a minimum of one year's mandatory jail sentence. The new amendments deny the right to judicial review of any decision that a public officer might take to certify certain information as secret. This has led to the reluctance of government officials to talk to journalists, and this has consequently meant a reduction of the flow of information on government policies. The law is so stringent that a journalist could be committing an offence merely by asking for information not made public by the government. According to the Malaysian National Union of Journalists (NUJ), the one-year sentence "is plainly intended to frighten local journalists". In 1985, prior to the recent amendments two journalists were convicted and fined under the Official Secrets Act. One was the local bureau chief of the FAR EASTERN ECONOMIC REVIEW, who was charged with publishing classified information on Malaysia's trade policy with China. The second was a reporter of the English language daily NEW STRAITS TIMES, who was charged with receiving a secret military document on the purchase of planes for defence purposes.

Indian journalists also face the same threat from the Indian Official Secrets Act of 1923 (based again on the British Act, and enacted in the pre-independence era). As in Malaysia, whatever amendments have been made so far have only tended to make the Act more stringent than the original British Act. An amendment made to the Indian Act in 1967 makes most of the offences cognisable and punishable with larger prison sentences.

Although the Indian Constitution guarantees 'freedom of speech and expression' (Article 19-1a [3] perpetuation of some of the old colonial laws hampers dissemination of information. Two such laws — the Indian Telegraph Act of 1885 and the Indian

Post Offices Act of 1898 — empower the government to intercept, detain and prevent transmission of any message 'in the interests of public safety'. Thus, reports despatched by journalists by mail, or through teleprinter or telex, from one part of the country to another, or to the outside world, are liable to be confiscated by the authorities. The term 'public', incidentally is widely interpreted by the authorities in order to withhold information.

Some of the terms inserted by the colonial rulers in the pre-independence legislation of India still continue to remain on the Statute books. They are catch-all provisions, and there is hardly anything which can escape their staggering reach. Thus, Section 124-A of the Indian Penal Code of 1860 for example defines 'sedition' as: "whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". In October 1986, Mr Krishna Raj, editor of ECONOMIC AND POLITICAL WEEKLY, and Ms Harji Malik, a journalist, were hauled up on charges of 'sedition' for having published an article by Ms Malik in August 1984 on Indian army action in Punjab.

Several governments in South and South-east Asia have enacted legislation, or adopted measures relating specifically to the press, which either restrict the scope of newspaper publication, issue guidelines to influence the contents of newspapers, or control their distribution. The two rights involved in freedom of the press — the right to publish, and the right to read — are curtailed to a great extent by these laws and measures. In Malaysia, the Printing Presses and Publications Act of 1984 requires all newspapers to obtain a publishing permit, renewable on a year to year basis, which can be revoked at any time by the government which cannot be repealed in the courts. On October 28 the government revoked the publishing license of three newspapers — the English daily STAR, the Chinese language SIN CHEW JIT POH, and the Bahasa-Malay tabloid WATAN.

The newspapers carried reports and comments critical of the government. In Singapore, the Undesirable Publications Act of 1967 authorizes the government to ban publications considered "contrary to the public interest". The Newspaper and Printing Presses Act of 1974, requires newspaper companies, printers and chief editors to renew their licenses annually. In South Korea, a 'Basic Press Law' came into existence in 1980, requiring among other restrictive measures, the official licensing of publishers and journalists. Besides, the Information Ministry issues directives to newspapers editors/journalists advising them how to report on certain issues or requesting them to refrain from reporting on at all. These laws were criticized in October 1986 by the Council for the Promotion of Democracy and the Council for Journalists Democracy Movement — the latter organization founded by several journalists who were dismissed from their jobs in 1975 and 1980 as a consequence of their demands for greater press freedom. In India, the Press (Objectionable Matter) Act provides for security deposit — a provision which had been objected to by journalists as something "unknown to the law of any other country" besides being "preventive in its effect" (Dissent on Press Legislation — Report of the First Press Commission, 1954).<sup>[4]</sup>

Freedom of the press in the region is also threatened by the invocation of a variety of security laws, operative under different nomenclatures (Internal Security Act in Singapore and Malaysia; National Security Act in India; Special Powers Act in Bangladesh; Public Security Act in Nepal). For example, the Singapore Internal Security Act — derived again from the former British colonial government's Preservation of Public Security Ordinance (1955) — allows indefinite detention without any charge of any person on the basis of "acting in any manner prejudicial to the security of Singapore... or to the maintenance of public order or essential services therein..." Sixteen church community leaders detained under the Act on May 21, 1987, include three journalists, one of them being Jenny Chin Lai Ching, a reporter of the NEW STRAITS TIMES of Malaysia. In Bangladesh, the Special Powers Act (SPA) considers it an offence to publish "prejudicial reports" — a term which has become almost a euphemism for news or comments critical of

the government. Four people who were arrested under the Act on 15th May 1986, were detained for one month included the director of a journal AMADER KATHA (Our Message), the owner of the press which published it, the publisher of SHANGBADIK (Journalist) and one of its reporters. In October 1987, on the eve of an Opposition campaign against the Government ('Dhaka seize programme'), the government banned the publication of a newspaper called BANGLAR BANI on charges of publishing anti-government news. It further placed restrictions on the publications of news highlighting the Opposition campaign. In protest on 5th November, all Bangladesh newspapers were published with a blank space at the top of the last column on their front pages.

In some of the countries, even comments referring to the activities of the rulers is considered an offence. In Thailand for instance, people have been convicted of 'lese majesty' because they had expressed political opinions on matters involving the Royal Family.<sup>/5/</sup> One of the classic cases of infringement on press freedom on this basis comes from Nepal, where the Treason (Crime and Punishment) Act, prohibits criticism of the Royal Family of Nepal. Section 6 (1) of the Act states "In case any person foments hatred, malice or contempt for His Majesty or the royal family directly or indirectly through written or spoken words, signs, postures or otherwise... he shall be punished with imprisonment for not more than three years". Under this Act, in early 1986 Keshav Rana, publisher of the VALLEY NEWS AND VIEWS, and Harihar Raj Joshi, a journalist were arrested on the basis of having written newspaper/article quoting Indian intelligence services, that over two million US dollars had been provided from the King of Nepal's political funds to the Gurkha National Liberation Front — an organisation of Nepalese-speaking population of the Indian state of West Bengal. While Keshav Rana was released on bail in mid-October 1986, Harihar Raj Joshi was released only in June 1987. In October 1986, Keshav Raj Pindali, the 71-year old editor of SAPTAHIK BIMARSHA was arrested for publishing a poem against corruption in the local self-government institutions 'panchayats' of Nepal. He was released in April 1987. In November/December 1986 Aand Dorjee Lama, editor and publisher of RAJDHANI

and Bhairav Risal, columnist of the same journal, were arrested for commenting on the shortcomings of the government's economic policies.

Certain new laws in South Asia, enacted recently for the purpose of curbing 'terrorism' by secessionists (e.g. Prevention of Terrorism Act or PTA in Sri Lanka, and Terrorist and Disruptive Activities in India) have been used against the press and journalists. In Sri Lanka, among those (tried in absentia) under the PTA and Emergency regulations is Daya Jayatilleke, a 30-year old Sinhalese political scientist and a staff writer of the LANKA GUARDIAN. In India, at least four journalists have been charged under the anti-terrorist act these include: V.T. Rajshekhar, editor of DALIT VOICE; Sukhdev Singh, editor of DIGNITY; Shahid Siddiqui, editor of NAI DUNIYA; Khalid Ansari, Editor of MIDDAY; and Al Haj Naz Ansari, editor of MASHRIQUI AWAZ. While the first has been accused of expressing criticism regarding the Indian government's handling of the Khalistan secessionist movement, the other three have been charged merely for reproducing interviews with the Khalistan spokesmen.

Some of the governments are also resorting to a more sophisticated and populist plea to curb press freedom. Taking advantage of the popular feelings against biased reporting in the Western media, these governments seek to brand as 'Western inspired' any genuine criticism of their own shortcomings or repressive policies. In September 1986, the Malaysian government imposed a ban on the ASIAN WALL STREET JOURNAL. The country's Deputy Prime Minister Ghafar Baba, announcing the ban said : "If there are reporters who like to write things which can create trouble, investors will run away. We want people who write things which are fair and good to contribute to stability." At the end of 1980, the then Indian Minister for Information and Broadcasting Mr. Vasant Sathe, echoed similar attitude when he said that the freedom of the press was relevant only to the extent that such freedom was beneficial to the nation as a whole. Whenever the press reports on internal conflicts, the authorities brand newsmen as 'anti-national' or 'forces of destabilization' or 'working for foreign powers'. Fear

of harsh penalties that are incorporated in the laws, often lead journalists to self-censorship, as a result of which the government does not have to invoke the laws.

## Freedom Of Association

Two articles of the Universal Declaration of Human Rights are relevant for political and social activists of Asia and South-east Asia. Article 20 (1) says: "Everyone has the right to freedom of peaceful assembly and association". Article 23 (4) says : "Everyone has the right to form and to join trade unions for the protection of his interests".

While in most countries, trade unions are functioning in one form or another, there is a tendency on the part of the ruling powers to forge them into a centralized organisation under government control. A good example is the recent formation with the blessings of the government of the All-Indonesia Union of Workers (SPSI).

But it is the unorganised labourers who are restricted both officially and unofficially to exercise their right to assembly and association. Even in a country such as India where political parties and trade unions enjoy comparative freedom, the landless peasants who organise themselves for economic and social emancipation often face onslaughts from the powerful landlords and the state police. A recent example is that of the 19th April, 1986 killing of 21 peasants by the police in a village called Arwal in the East Indian state of Bihar. The killings took place when the police fired upon a meeting of a peasants' organisation — Mazdoor Kisan Sangram Samiti (Workers and Peasants Struggle Committee) — which had been rallying the local peasants around their demands for land, housing, minimum wages for agricultural labourers and other economic issues. Soon after the incident the Indian People's Human Rights Commission, headed by the noted film director, Mrinal Sen, set up a tribunal consisting of two former chief justices. The tribunal which inquired into the incident blamed the police for "brutal and indiscriminate firing" and held that the government "joined hands with feudal

landlords to ruthlessly crush the movements of the poor organised to pressurise the landlords and the government to implement agricultural reforms”.

In some countries, even non-political organisations such as social welfare groups or development organisations face restrictions on their rights to assembly and association. In June 1985 Indonesia passed Act No. 8 on ‘social organisations’ which requires these organisations to be based on ‘Pancasila’ : “Belief in the one supreme God, just and civilised humanity, unity of Indonesia, deliberative democracy and social justice”. The attempt to make ‘Pancasila’ a compulsory state ideology also violates Article 1(2) of the UN Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief (1981), which states : “No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice”. A similar assault on the rights of association and assembly of religious communities is taking place in Pakistan where Ordinance No. 20 (1984) prohibits the Ahmadiyya community from practising Muslim social and religious customs, since they are regarded as heretics to the prevailing Islamic laws of Pakistan.

Security legislations and anti-terrorist laws have posed the most serious threat to civil liberties organisations in the region. Introduced with the ostensible purpose of suppressing actions such as the spread of hostility among ethnic groups, religions, races, etc., or wanton killing of citizens by terrorists, these laws have several dangerous implications. First, the terms ‘terrorist’ and ‘subversion’ have been worded and defined in such a way that they can be extended to include any form of political dissent. Thus, in Indonesia, Presidential Decree No. 11 defines a person engaged in ‘subversive activities’ as anyone who can “distort, undermine or deviate from the ideology of the *Panca Sila* state, or the broad policy lines of the State”. In India, the Terrorist and Disruptive Activities (Prevention) Act of 1985, defines ‘disruptive activity’ as any activity “whether by act or by speech or through any other media or in any manner whatsoever which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India...”



Secondly, in implementing these laws, the governments have almost invariably used them against selected groups or individuals connected with civil liberties movement or trade unions rather than against those spreading antagonism against religions or ethnic communities. In India for instance, the anti-terrorist law which was introduced to suppress alleged Khalistani secessionist activities in Punjab was invoked to arrest K. Balagopal, a university teacher who heads the Andhra Pradesh Civil Liberties Committee. Similarly in Gujarat state, several trade unionists were held under the Act when they led a strike in a factory. While it is important that the Acts are not used against opponents of the government and civil liberty activists, it is equally important that any law invoked for dealing with alleged terrorists or those accused of spreading religious hatred, should provide for a fair trial.

On the question of freedom of the press or association, we have to steer a careful line between a purist position of absolute freedom since, for example, march by religious fanatics may in fact provoke violence by or against other religious communities. In India, highly provocative speeches by religious leaders or communalist politicians, and religious processions quite often lead to the outbreak of violent riots between Hindus and Muslims. At times, assemblies in support of practices such as the 'suttee' or widow-immolation in a Rajasthan village in India tend to reinforce and spread obscurantist beliefs that retard the progress of human society. On such occasions, one must recognize the need for some limitation in the interest of peace and equality of all citizens. Civil liberties groups in India so as to prevent violent outbreaks between religious or ethnic groups have urged the government for more effective policing instead of introducing extraordinary laws that vest arbitrary power in the hands of the authorities and violate fundamental rights.

In conclusion, the position in South Asia and South-east Asia may be summarized as one of rapid erosion of the freedoms of expression and assembly in both the law and in practice. The erosion is in the form of both direct assaults on the press and the right to form associations, and insidious encroachments on these rights. Whether they are overt or covert, the violation of

fundamental rights are on the increase in almost all the countries in the region. By implementing these measures, the regimes are forfeiting their right to legitimacy, and are reimposing the anti-democratic structure of the past colonial rule against which their people fought to gain independence.

## References

- [1] *For the purpose of this paper, I am limiting its scope to South and South-East Asia in general and India in particular.*
- [2] *Let me add that these problems of sub-nationalism and ethnic minorities are uniform in nature, and require different types of solutions, depending on the historical background and the political will of the ruling powers of the states.*
- [3] *Even this guarantee is circumscribed by the following amendment made in 1951: "Nothing... shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right (to freedom of speech and expression) in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".*
- [4] *In Indonesia, on June 29, 1986, the authorities withdrew the publishing licence of PRIORITAS because of publishing "cynical, insinuating and tendentious reports that had created a situation that confuses the public". Five days before the closure, the newspaper quoted criticism made by the Indonesian ambassador to Japan about the Indonesian government's economic policies.*

*The government closed down SINAR HARAPAN, a leading daily for carrying "speculative reports" about the*

*government's economic policy options. In India, the government exerts pressure on the press in indirect ways, as evident from its recent move to take over the building of the Delhi edition of INDIAN EXPRESS which has been a major critic of Prime Minister Rajiv Gandhi for alleged corruption within his administration.*

[5] See Amnesty International Report, 1987.

## CENSORSHIP — OVERT AND COVERT IN INDIA

*People's Union for Civil Liberties (Delhi)*

Freedom of expression has always been emphasised as an essential basis for the democratic functioning of a society. In India it has been guaranteed under Article 14 of the Constitution. Yet in innumerable ways this freedom has been restricted by the State, through outright censorship of the press and ban on meetings and protests as during the Emergency, or through a number of covert ways. Due to their blatant nature, the covert means of control can be tackled directly by those who oppose them. But covert censorship is more subtle and insidious; therefore, it is harder to detect, identify and oppose.

The press has known direct control during the Emergency (1975-77) when all critical news and editorials were censored and the government used the threat of arbitrary arrest, heavy fines and confiscation of printing presses to bludgeon the majority in the press to conform to government guidelines. The latter consisted not only of prohibitions but also directions as to what should be highlighted by the press. With radio and television already under government control, all media was singing one tune.

Although direct censorship of that kind is now a receding memory different states of India have continued to experience it. Under the provisions of the Disturbed Areas Act, the government has been able to impose restricted censorship in certain areas, most recently in Assam and Manipur.

State level legislation has led to other attempts at decentralised, but direct control of the press\*. Such arbitrary powers would ensure the silence of journalists based in the provinces who are often the ones to unearth the corrupt and repressive actions of the State machinery. After a national outcry against the Bihar Press Bill, it was finally withdrawn as was the one in Tamil Nadu. But the Orissa Press Bill, containing similar provisions, remains in force.

Besides direct forms of control, the press in India has been accustomed to innumerable indirect controls ranging from the control of newsprint supply by the government, threats to proprietors who have other business interests and through the withholding of advertising. Small newspapers, largely dependent on government advertising, are specially vulnerable to this pressure. Of late, several cases of police threat aimed at news photographers and deliberate delays in transmission of news photos have come to light. Also, journalists have been physically threatened or attacked by a variety of interest groups or by the police. The nature of news media ownership also affects freedom of expression. As more and more critical reports are prohibited from publication, journalists have become increasingly cynical.

Besides the press, the State has used a variety of ways to control freedom of expression. For instance, the provision under Section 144 Cr P C, which allows the police to prohibit a gathering of five or more people in any designated area, has often been grossly misused to prevent political activity hostile to the government. Similarly, even municipal rules, governing areas where posters can be posted, are enforced selectively, most often in favour of the ruling party, thus restricting a legitimate form of political expression of those opposed to the government. The continuing misuse of government media for limited partisan purposes leads to increased inequality for those with no access to this media. There has been growing evidence of the manner in which the government has been using postal surveillance and telephone tapping as an indirect form of control of people's rights to communicate freely.

The control of the State machinery is felt more distinctly in the smaller towns and mofussil areas where the police are known to intimidate printing press owners, restrict meetings and even control who shall speak at public meetings. Recently in Andhra Pradesh there have been a number of instances of such police actions.

Another aspect is the control of cultural expression through the misuse of the censorship system in the individual states. Writers critical of the State have been subjected to another kind of harassment as is evident from the way the Foreign Exchange Regulations Act (FERA) was used recently to put pressure on Prof. Arun Bose, author of 'Marxian and post-Marxian Political Economy', published by Penguin Books in England. Although Prof. Bose had declared all his royalty earnings, he was prosecuted under provisions of the Act for not seeking prior permission of the central government for publishing the book outside India. The government has now clarified that FERA ought not to apply to writers. Yet the fact that it was used in this manner indicates that the government will use any such provisions for its own purposes unless people are vigilant.

These are only a few instances of control, overt and covert, which the State can use to control freedom of expression. State control and repression may not appear excessive in the metropolitan areas but it must not be forgotten that it is a daily reality for millions living in the villages and smaller towns. For them, one means of resisting this repression can be afforded by a vigilant and free press which can continuously expose high-handedness and misuse of State power.

*\* Laws whereby a government official could decide that certain news was "scurrilous" and under the law arrest and/or fine the particular journalist already existed in Tamil Nadu and Orissa and introduced by the State government under the Bihar Press Bill in 1982.*

**SECTION III**

# **EROSION OF THE INDEPENDENCE OF JUDICIARY AND THE LEGAL PROFESSION**

*Asma Jahangir  
and Munir Malik*

Fortunately we have before us certain standards that now come to be widely accepted. In all these standards the highest common denominator is the principle that an independent legal profession and a judiciary means a system of administering justice that is perceived and accepted by the people to whom it is applied — as fair, impartial, expeditious and as promoting the social, political, cultural and economic rights of the people. It should be a system which advances the cause of human freedom and dignity taking into account the prevailing power patterns and structure of a given society. It should be a system that not only provides for an equitable balance between the rights of the citizens and those of the state, but also be a mechanism that balances the rights of citizens inter se.

Conventional wisdom has it, that the judiciary and legal profession have a leading role to play in the advancement of Human Rights within the framework of a legal order established by law.

## **Independence Of The Judiciary**

It has now come to be commonly accepted that the judiciary must really be an independent branch of the system of government. The separation of powers doctrine means that the judiciary must be free from interference both of the executive



and that of the legislature. Independence from the executive has really two aspects. Firstly, the power of the judiciary to strike down arbitrary executive action must be recognised. This means that not only should the constitution confer such power but that the judiciary as an institution should be ready to protect against the abrogation or curtailment of its jurisdiction. Secondly, that at all levels of judicial authority, it should be ensured that an executive officer must not be asked to perform judicial functions. Similarly, to preserve the image of the judiciary as an independent repository of judicial power, judges must not be called upon to perform executive functions. The judiciary must conduct itself in a manner that is consistent with the dignity of the office and comprise persons acclaimed for their integrity, qualifications and experience. As an institution, it should be responsible for its own administration, both in terms of disciplining the subordinate courts and in laying down the procedure for the conduct of trials and inquiries. The judiciary must have real and effective power to deal with Habeas Corpus matters so as to ensure against the encroachment of the Executive or the Legislative on fundamental rights of the people. The large mass of litigation between citizens inter se or between the citizen and the state in the exercise by the latter of its police powers takes place in the subordinate courts. Unless these courts are presided by qualified persons with integrity and experience and unless they are equipped with facilities commensurate to the burden of litigation; no meaningful justice can be dispensed. Delay, incompetence, neglect or dishonesty are a complete negation of the judicial process and in such a system the public will lose its faith in the judicial process. It should be the duty of the state to ensure that people have easy and ready access to the judicial process.

For the judiciary to be seen as independent, it must command the respect and support of an independent bar and vice versa.

## **Independence Of The Legal Profession**

Independence of the legal profession has been recognised to include the unrestricted right of each member to advance the

lawful interests of his clients. As a natural corollary it means that the standard of professional competence of the members of the legal profession should be such as to advance the lawful interests of their clients. Lawyers as a collective body must ensure that all people, especially the underprivileged, have easy to free access to effective legal redress. As a profession, lawyers must provide effective legal aid schemes and implement programmes for imparting legal literacy. In a region where illiteracy appears to be the rule as apposed to the exception, large numbers of people are completely ignorant of their basic rights and more importantly, of the liability and obligation cast upon them by the increasing volume of registration. Viewed in the context of a long standing legal principle that ignorance of the law is no defence, the promotion of mass legal literacy is indeed one of the profession's compelling responsibilities. Bar associations must ensure that proposed legislation is widely disseminated for debate so that public opinion is mobilised against or for its enactment. In the region, the increasing trend towards authoritarianism and the resultant encroachments on human rights necessitates that an independent legal profession, champion the cause of the rule of law and mobilise public opinion against laws and actions that violate established fundamental rights and liberties.

The composition of the legal profession should reflect the cultural, linguistic and regional diversities of the people. Minorities and other disadvantaged groups, especially women, should be actively encouraged to enter the profession at all levels. An independent legal profession should be self-regulatory in matter of discipline of its members, setting standards of legal education and training as well as assuring the continuing education of its members so as to enable them to keep pace with developing trends in national and international law including human rights law.

It is important to recognise that the judiciary and the legal profession can remain independent only if they enjoy the support of an informed public. Accordingly, the legal profession should establish liaison with human rights groups,

NGOs and other institutions working in the area of human rights so that the development of law is seen as an instrument of social change. In the region, the trend towards authoritarianism is coupled with the attempt to destroy the judiciary and to break the will and unity of the legal profession. This is done by curtailing jurisdiction, creating special tribunals that depart from the generally accepted procedural safeguards of due process, withholding budgetary resources, making political appointments, infringing upon the tenure and conditions of appointment or through a system of selective patronage. Given such a state of affairs the legal profession must play an activist role whether it be in pursuit of social action, litigation or in resisting the abrogation of the Rule of Law.

The prevalent trend in the region is one of the curtailment of judicial power. This includes infringement of the security of tenure and the terms and conditions of appointment of judicial officers. The creation of special tribunals for the trial of offences is now a common phenomenon. Economic resources placed at the disposal of the judiciary have been poor in comparison to allocations made to other instruments of state power. Attempts to eliminate the disciplinary powers of the legal profession and to vest them in a manner which makes it increasingly difficult to resist discriminatory and black laws.

# **THE EROSION OF THE INDEPENDENCE OF THE JUDICIARY AND THE LEGAL PROFESSION IN SINGAPORE**

*Francis T Seow*

In Singapore, incorruptibility and integrity of judges and their freedom from class or racial bias present no real problem. The selection, appointment tenure and removal of Judges of the Supreme Court do not radically differ from familiar British standards. Discussions on the conduct of a Judge of the Supreme Court in Parliament is subject to restrictions. There are, however, certain developments and practices which have, recently, caused judicial independence to come under public scrutiny and debate.

## **Judges On Contract**

Judges of the Supreme Court are re-employed for as short a period as 6 months at a time.

## **Judicial Commissioners**

A temporary judicial expedience has been resurrected from the past by appointing judicial commissioners to help facilitate the disposal of a back log of work. Such appointees have mainly been drawn from the Bar. Consider the invidious situation when the Judicial Commissioners return to private law practice and their own judgments are cited as authorities in a matter in which they appear as counsel?

## Court Of Appeal

There is no permanent Court of Appeal for civil or criminal appeals. Judges are appointed by the Chief Justice on an ad hoc and rotational basis as appellate judges take part.

## Unity Of Judgments

Judgments of the Court of Appeal or of Court of Criminal Appeal are almost invariably delivered by one Judge. Separate judgments and/or dissenting judgments are extremely rare. On the other hand, it could be argued that "a multiplicity of assenting speeches tends to obscure the principle on which the court is acting and thus causes unnecessary difficulties for lower courts and the profession".

## Subordinate Courts

The Subordinate Courts comprise the District Courts and the Magistrates' Courts.

The appointments, confirmations, transfers, promotions, dismissals and disciplinary control of District Court Judges, Magistrates, as well as legal officers, are exercised by the Chief Justice as President of the Legal Service Commission, together with certain other persons, amongst whom are the Attorney General and a Judge of the Supreme Court.

*Judicial officers and Legal officers are freely and frequently moved to and from the judicial branch to that of the executive.*

It is not uncommon that unsuccessful clients become disgruntled and imagine that the failure of their suit was due either to the incompetence of counsel and/or the bias, prejudice or pro-prosecution mentality of the judge. Their imagination would be given more rein if the judge or magistrate had been newly transferred from the Public Prosecutor's Chambers to the Courts.

Thus, in order for there to be or at the least a semblance of Justice a Judicial Commission should be created so that a young entrant could elect, after a given period of exposure to all the legal disciplines within the Service, to remain in the judicial or the legal branch of the Service and, thereafter, to effectuate all transfers and promotions within that branch and that branch alone.

A recent suggestion that such a separate Judicial Commission be created received a vehement response from the Prime Minister.

## **Fettering Of Judicial Discretion In Imposition Of Sentences**

From about 1970 onwards, the discretion of judges on the imposition of sentences has been fettered, whether it be on custodial and/or corporal punishment. The judge has to ignore the fact that not all offences are similarly motivated but also impose the minimum sentence prescribed by law, irrespective of what the mitigating factors may be.

## **The Independence Of The Legal Profession**

On October 15, 1979 the Government amended the Legal Profession Act, 1979, so that, *inter alia*, the Government could appoint 3 members from amongst the Bar, as its nominees, to sit on the Council of the Law Society. They were intended to be the eyes and ears of the Government but, in fairness, they have in the main discharged a difficult task with professional propriety.

By the Legal Profession (Amendment) Act, 1986, the Law Society, which had a hitherto relatively placid existence, suddenly had its powers of comment on existing or proposed legislation clipped by the Government.

The change was brought about because the Government alleged that the Law Society, in issuing a press release in May

1986 criticising the proposed amendments to the Newspaper and Printing Presses Act, Cap. 206 (which enabled the Government to restrict the circulation of the foreign press in Singapore if the Government deems that it was engaging in domestic politics), was involving in politics. It was, further alleged that the Law Society was acting as a political pressure group and that it had been infiltrated, if not captured, by unnamed politicians. As a result, the Law Society may now merely make its collective comments known on any legislation, and only if the Government chooses to submit it to the Law Society. The absurdity of this amendment requires no comment.

This bizarre accusation of infiltration was to echo later on when on May 21, 1987, 16 persons were arrested and detained under the Internal Security Act, (Cap. 143), amongst whom were two young lady lawyers. They were accused of making "use of the Law Society as a political pressure group", — it is hard to come across a more ludicrous accusation, given the fact that the two lawyers were relatively junior and only one of whom was member in the Council. Moreover, all decisions taken by the Council are deliberated by its members, three of whom are Government nominees.

This latest episode is, no doubt, intended as a salutary signal that the Government is sensitive to professional organizations or societies and, in particular, to lawyers creating ripples of dissent, however well-meant or intentioned.

## SECTION IV



## PREVENTIVE DETENTION IN ASIA

*Maria Socorro I Diokno*

One of the most crucial issues confronting Asia today is the issue of human rights. Promoted in name and honored on paper, human rights regrettably remain lofty ideals and aspirations.

Under the banner of "economic development", most governments in the region willingly abandon freedom. In so doing, they maintain themselves in power and retain the unjust and inequitable structures of society.

Most governments use law as a repressive tool. Perhaps the most dangerous laws enacted are those that allow and legalize the practice of preventive detention.

Preventive detention deprives a person of liberty indefinitely, without legal evidence of guilt, and without impartial judicial intervention. This refers to the power to arrest and detain people, without charge or trial, not because they have committed any crime, but to prevent any sort of dissent.

It is wielded by executive authority — civil or military — using administrative, and not judicial procedures. Governments exercising the power of preventive detention often assume, without basis, that preventive detention is the only effective safeguard against any perceived threat to public order and safety or to national security. In itself, preventive detention is a serious denial of the basic right to freedom; it has also bred gross violations of human rights, such as torture, unexplained disappearances and extra-legal executions.

This paper focuses on the law and application of preventive detention and the concomitant human rights violations that it brings forth, in thirteen countries of Asia, representing the different sub-regions of the continent. Twelve of the countries in Asia demonstrate that, governments have increasingly exercised their powers of preventive detention. In eleven, laws allow the exercise of preventive detention, and, in some cases, actually form part of the ordinary laws of the land.

The laws are strikingly similar both in name and in provision. In India they are known as the "National Security Act", 1980, as amended; in South Korea, the "National Security Law", 31 December 1980; in Malaysia and Singapore, the "Internal Security Act"; in Pakistan, the "Security of Pakistan Act"; in Nepal, the "Public Security Act"; and so forth. In all laws, the central authority that issues detention orders belong to the executive branch of the government. The grounds on which detention orders are issued all fall within the same broad and vague category: "acts inimical to national security, public safety or order". Differences lie in the appeal procedures and in the length of detention, which may range from seven days to an unlimited time period.

In the ASEAN sub-region, preventive detention is practiced in Indonesia, Malaysia, Singapore and Thailand.

Indonesia possesses *no law on preventive detention*, and yet the use of preventive detention is so widespread and so pervasive that it has become a permanent fixture in the militarized apparatus of Indonesian society. Many individuals are arrested and detained for indefinite periods, without being charged or brought to trial. No time limit is imposed on the duration of the detention. Releases are solely dependent on governmental concession.

The "Defence of the Security of the Republic of Indonesia Act", September 1982 (No. 20) empowers the Indonesian Armed Forces — (ABRI) — to take any action in order to meet any threat, real or imagined, to the security and unity of the State, the Pancasila and the Constitution (Art. 3). This broad

power sanctions and legalizes any ABRI action, including those which denigrate human rights.

Malaysia and Singapore possess identical laws on preventive detention. This paper focuses on the "Internal Security Act", officially known as "An Act to Provide for the Internal Security of Malaysia/Singapore, Preventive Detention, the Prevention of Subversion, the Suppression of Organised Violence against Persons and Property in Specified Areas of Malaysia/Singapore, and for matters incidental thereto".

The Internal Security Act empowers the Minister of Home Affairs in Malaysia and the President of Singapore to detain any person without trial, if they are "satisfied" that the detention is necessary to prevent the detainee from "acting in a manner prejudicial to the security of Malaysia/Singapore (or any part thereof), or to the maintenance of essential services or to the economic life thereof..." [Section 8(1)]. The Minister of Home Affairs/President is granted a very loose framework for action and moreover, the Courts in Malaysia have refused to impose any checks on the power of the Minister.

Section 8(1) of the Internal Security Act sets the detention period at two years, subject to unlimited extensions. Some individuals in Malaysia have been detained, without trial or charge for fifteen years under this Act. Similarly in Singapore, one detainee has been kept in prison, without charge or trial, for twenty-one years. A corollary section, Section 73(1), empowers any police officer to detain a person for sixty days in Malaysia and thirty days in Singapore for investigation prior to the issuance of a Detention Order by the Minister/President. If no Order is issued, the person arrested should be released. In practice, however, Detention Orders are normally issued as a matter of course.

The Internal Security Act includes the provision that a detainee must be served with a copy of the Detention Order and a written statement containing the grounds and allegations of the facts on which his detention is based. In most cases, the allegations of facts are usually vague and do not define in what

way they threaten the State's public order and safety or national security. Courts in Malaysia have ruled that a Detention Order can neither be considered unlawful nor invalid on the basis of the vagueness or insufficiency of the allegations of facts.

Finally, the Internal Security Act grants the detainee the right to make representations before an Advisory Board composed of persons appointed by the executive. The Advisory Board's powers are purely recommendatory; so if the Board were to recommend the release of a detainee, its recommendation could easily be ignored.

Thailand has two laws on preventive detention: the 1914 Martial Law Act empowers military authorities to detain persons suspected of being enemies of the State, for interrogation purposes for a maximum of seven days (Art. 15/2). The Anti-Communist Act of 1952, as amended, authorizes military interrogation officers, to detain suspected communists for 480 days for interrogation purposes. Upon completion of the interrogation, the military interrogation officers are empowered to decide whether or not to bring the detainee to trial. Anyone not charged in court must undergo re-education training at a KARUNYATHEP camp for a period not exceeding six months.

The Philippines no longer possesses any law on preventive detention. The 1987 Constitution, ratified by the Filipino people, bans the practice of preventive detention. Today, under the Constitution, persons may be arrested and detained only by virtue of a warrant duly issued by a competent judge after evidence has been examined or in the case of flagrante delicto. Furthermore, the new Constitution entitles persons arrested for offenses other than those punishable by life imprisonment to be released on bail. The 1987 Constitution also empowers Courts to look into the validity of arrests and detentions. Even under a state of emergency validly declared and approved by Congress, any person arrested or detained must be charged before the proper civilian court within three

days of his arrest, otherwise he must be released (Sec. 18, Art. VII).

Although preventive detention has been abolished in the Philippines recent events have led many to believe that constitutional safeguards against preventive detention are not observed, much less implemented. For instance, some twenty-four refugees from the southern province of Leyte, fleeing from violence caused by the armed vigilantes in the province, were arrested in Manila on November 1, 1987, without warrant. They were released two days later and then re-arrested on November 5, 1987, again without warrant. A petition for habeas corpus was filed on their behalf, and the hearing set for November 13, 1987. A day before the hearing and eight days after their second arrest, the refugees were brought to court for the first time and charged with various criminal offences. This directly contravenes existing laws which require persons arrested to be charged in court 36 hours after their arrest at the latest (Executive Order No. 272, 25 July 1987). Regrettably, the Supreme Court has dismissed this habeas corpus petition as being moot and academic because the filing of charges against the refugees had legalized their arrest and detention.

So, while the Philippines appears to be free from preventive detention, it is highly possible that this country could join the ranks of its ASEAN neighbors in the practice and application of preventive detention.

In the South Asian region, information available on Afghanistan, India, Pakistan, Nepal and Sri-Lanka indicates that preventive detention is a regular feature of their societies.

In Afghanistan, arrests and detentions for interrogation purposes are conducted without charge or trial and for indefinite periods.

In India, Article 22 of the Constitution allows for preventive detention. In addition, there are three laws authorizing preventive detention which have been enacted.

The "National Security Act", 1980, as amended by Act Nos. 24 of 1984 and 60 of 1984, empowers the Central Government or State Government to issue an Order of Detention if "satisfied" that detention is necessary to prevent any person from "acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or of the security of India or to the maintenance of public order or supplies and services essential to the community" (Sec. 3). The initial Order of Detention is valid for three months. Within three weeks from the date of detention, the Government must submit the reasons for detention and any representation the detainee may make to the Advisory Board. If the Advisory Board decides that there is sufficient cause for the detention, the Government may confirm the Detention Order for a maximum period of twelve months. If the Advisory Board finds insufficient cause for detention, the Government must revoke the Detention Order and release the detainee (Secs. 8, 9, 10, 11, 12, 13 and 14).

The 1984 Amendments to this law empower the authorities to detain a person without trial for a maximum period of twenty-four months if he is arrested in so-called disturbed or terrorist afflicted areas.

Section 5 and 6 of the "National Security Act" state that Detention Orders cannot be rendered invalid if based on one or more of the following:- "... vague, non-existent, non-relevant, not connected or not proximately connected with such person or invalid for any other reason." And, Courts "cannot go behind the satisfaction expressed on the face of the Detention Order" (Sec. 3).

Finally, Section 15 authorizes temporary releases of detainees either without conditions or under such conditions as may be required. Conditions may include a bond with or without surety. Temporary releases may cover specific periods, at the expiration of which the person temporarily released must voluntarily surrender himself to serve the unexpired portion of his detention.

India's second law on preventive detention, entitled "Conservation of Foreign Exchange and Prevention of Smuggling Activities Act", 1974, as amended, authorizes the Central Government or the State Government to issue Orders of Detention if "satisfied" that the detention is necessary to prevent any person from "smuggling goods, abetting the smuggling of goods, engaging in transporting or concealing or keeping smuggled goods, dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or harbouring persons engaged in smuggled goods or in abetting the smuggling of goods" (Sec. 3).

Within five weeks from the date of detention, the case must be referred to the Advisory Board which must, in turn, submit its Report to the Government and decide whether or not it finds sufficient cause for the detention. This has to be done within eleven weeks from the date of detention. If the Advisory Board finds sufficient cause for detention, the Government may confirm the detention and order the person to be detained for a maximum of either twelve months or twenty-four months for those suspected of having engaged in smuggling in highly vulnerable areas (Sec. 8, 9, and 10). In cases where the Advisory Board finds no sufficient cause for detention, the Government must revoke the detention order and release the detainee.

This law contains similar provisions with regard to temporary releases and the invalidity of orders of detention such as the "National Security Law".

India's third law on preventive detention, "Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act", 1980, authorizes the State Government and the Central Government to issue Orders of Detention for a maximum period of six months if "satisfied" that the detention is necessary to prevent any person from engaging in blackmarketeering. The provisions concerning the Advisory Boards, temporary releases and invalidity of detention orders are the same as those found in the "National Security Law".

In Pakistan, the Constitution provides for the use of preventive detention.

Article 10(1) and (2) deal with safeguards with regard to arrest and detention of persons such as production before a magistrate and providing grounds for arrest. Article 10(3) makes these safeguards inapplicable to 'any person who is arrested or detained under any law providing for preventive detention'. Article 10(4) states that laws providing for preventive detention are to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or external affairs of Pakistan or public order, or the maintenance of supplies of services. The grounds of detention are to be communicated within fifteen days. The detention is not to exceed three months without an opinion of the Review Board that there is sufficient cause for continued detention. A person detained for acting in a manner prejudicial to public order is to be detained for not more than a period of eight months and in all other cases for not more than twelve months. When a person is detained under a Federal law, the Review Board will consist of three persons who are or who have been judges of the Supreme Court or the High Court. In the case of a detention made under a provincial law, the Review Board is to consist of three persons who are or who have been judges of the High Court.

Two laws, the Defence of Pakistan Ordinance 1971 and the Maintenance of Public Order Ordinance 1960, provides for preventive detention. Under the Defence of Pakistan Ordinance 1971, the central government may authorise any authority to make orders for the apprehension and detention of any person for the purpose of preventing him from acting in a manner prejudicial to Pakistan's relations with foreign powers, or to the security, public safety or defence of Pakistan, or the maintenance of supplies and services essential to the life of the community, and the maintenance of peaceful conditions in any part of Pakistan. The explanation for this section states that the sufficiency of the grounds on which the opinion of the detaining authority is based for detention of a person is to be determined by the authority forming such opinion.



Under the Maintenance of Public Order Ordinance 1960, the government, if satisfied that it acts with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, may by an order direct his arrest and detention and, subject to other provisions, extend from time to time the period of such detention.

Nepal has three laws on preventive detention. The "Public Security Act" provides for administrative detention, without charge or trial, and is aimed at any person perceived to have violated the "security of the Kingdom of Nepal; peace and tranquility inside the Kingdom of Nepal; amicable relations between the Kingdom of Nepal and other states; or amicable relations among people of different classes or regions in the Kingdom of Nepal" [Art 3(1)]. The length of detention is nine months when issued by the Chief District Officer or Zonal Commissioner and eighteen months when issued by the Minister of Home Affairs, subject to extensions up to a maximum of thirty-six months. "No order issued under this Act can be questioned in a court of law" (Sec. 11).

Nepal's "State Offence Act" empowers the Zonal Commissioner to extend the detention of a person detained under the "Public Security Act" beyond the thirty-six months period of detention stipulated by the "Public Security Act".

Nepal's third law, the "Destructive Crimes (Special Control and Punishment) Act", 1985, authorizes the detention in police precincts of a suspect for ninety days for interrogation, subject to an extension of another ninety days.

In Sri Lanka, the "Prevention of Terrorism Act", 1979, provides for incommunicado detention for any person suspected of engaging in "unlawful activities" for a maximum period of eighteen months without access to lawyers or relatives, at such place and under such conditions as the government may determine.

It is quite clear, therefore, that in the South Asian sub-region, preventive detention has become institutionalized as part of the

ordinary laws of the land. Most countries in South Asia are not under any form of emergency rule, and yet laws have been enacted which in effect not only prolong emergency rule, but create a permanent and legal state of emergency.

In the Indochinese countries of Kampuchea, South Korea and Vietnam, preventive detention is also utilized.

Kampuchea possesses "Decree Law No. 12", of March 1986, which codifies and modifies non-legislative instructions against torture, rules on search procedures, and regulations concerning powers of arrest and length of detention for interrogation. It provides for prolonged detention and interrogation without charge or trial.

Articles 18 and 19 of this law authorize 19 categories of competent cadres who may conduct arrests without warrant in instances of urgency and where there is a quantity of evidence. The 19 categories of cadres would belong to the civil police (9 categories), the army (8 categories) and the public prosecution and tribunal (2 categories). The most prominent agency of political arrests is the civil police under the Ministry of Interior.

Persons suspected of committing offences that adversely affect national security may be detained for up to twelve months for interrogation. "Solely on their own authority, the Minister of Interior or the Minister of National Defence can decide to continue the detention for an additional twelve months" (Art. 28). This law contains no provision guaranteeing that after interrogation, prisoners will either be tried or released.

In South Korea, the law on preventive detention is entitled "Social Safety Act", of 16 July 1975, as amended by the "National Security Act", of 31st December 1980. The purpose of this Act is "to prevent the danger of recommitting specific crimes, to take security measures upon such persons who are deemed to require educational reformation for their return to normal social life and thereby to maintain national security and social peace" (Art. 1). Among the persons who are subjected to this Act are those who have been sentenced or have served

sentence for committing any of the following crimes: formation of an anti-state organization; performance of objectives of an anti-state organisation; voluntary support and reception of money or materials for the purpose of aiding an anti-state organization; escape and infiltration; praising, encouraging or siding with an anti-state organization; attending meetings or conducting communications on behalf of the anti-state organization; providing firearms, ammunitions, gunpowder or any other weapon, money or materials; and any person whom the government "fears" may re-commit any of the above crimes.

Under this law, the Minister of Justice may issue a security measure for a period of two years, subject to extension for another two years. The security measure, although not technically preventive detention, is still highly restrictive of the individual's freedom. There are three kinds of security measures: protective observation, residence restriction and isolated security surveillance.

Protective Observation may be imposed upon any person who is "deemed to require educational reformation because there exists sufficient ground to doubt that he [is in] danger of committing [the] crime again" (Art. 4). A person under protective observation must report to the chief of police and accept his instructions.

Residence restriction is imposed upon any person "who is deemed to [be in] danger of committing [the] crime again... or ... who has violated protective observation" (Art. 5). A person under residence restriction is restricted solely to the area of his residence; he may leave his residence only with the approval and consent of the chief of police.

Isolated Security Surveillance is imposed on any person "who is deemed either to [be in] conspicuous danger of committing [the] crime again or to require surveillance due to absence of fixed dwelling" (Art. 6) or on any one who has violated protective observation or residence restriction. A person under

isolated security surveillance "shall be confined in a fixed place for educational reformation and surveillance" (Art. 6).

The Minister of Justice is empowered to review any case. A Security Measure Review Board may also be created to review any case referring to security measure.

In the Socialist Republic of Vietnam, the government can detain a person for twelve months without formal charge or trial. After this period, the person detained must be either (a) released; or (b) sent to re-education camps; or (c) brought to trial.

In Indochina, as in South and South-East Asia, the governments' use preventive detention is a powerful tool to curtail dissent.

There is no exact figure on the actual number of prisoners in Asia held under preventive detention. It would be reasonable to assume, however, that the figure would be within the range of tens of thousands.

Preventive detention carries with it gross and onerous violations of human rights. It violates international standards and safeguards enshrined in the International Bill of Human Rights. It denies, for instance, the individual's rights to due process, to presumption of innocence, to a fair, public and speedy trial, and the fundamental right to freedom. Preventive detention is also a source of torture, inhuman and degrading treatment, unexplained disappearances, and extra-legal executions.

By far the most dangerous effect of preventive detention is that it creates a climate of fear, so pervasive and so effective, that it stifles all forms of legitimate dissent and substitutes "national interest" for human rights, discipline for debate, and the rule of force for the rule of law. Worse, when institutionalized by the passage of law, it becomes so much a part of the ordinary workings of society and government that people are led to accept and even defend it in the interest of

“national security, public order and safety”. Civilian, military and political leaders and those in power, increasingly rely on it, like a crutch, and increasingly believe that it is an essential tool to maintain the status quo. For example, Singapore and Malaysia do not face any internal threat of armed insurgency. And yet, just this year, many have been arrested under the Internal Security Act — showing very clearly that preventive detention is used as a means to keep its population under effective control.

Preventive detention strikes at the very heart of democracy and aims to exchange democratic processes with repression and oppression. Once preventive detention is incorporated into society, it becomes almost impossible to completely eliminate it.

The Philippines is a good case in point. During the Martial Law era, President Marcos enacted a series of Letters of Instructions and Presidential Decrees providing for preventive detention. Preventive detention began with the Arrest, Search and Seizure Order or ASSO, followed by the Presidential Order of Arrest or POA, then the Presidential Commitment Order or PCO, and finally the Preventive Detention Action or PDA. Today, the decrees covering preventive detention have been repealed; yet the practice still persists — although not to the same extent. Recently, the military establishment in the country has been urging the government to enact more stringent laws, including those which allow preventive detention.

Preventive detention throughout Asia is an indication of the lack of respect for human rights and the rule of law.

CONCLUSIONS  
AND  
RECOMMENDATIONS

# **CONCLUSIONS AND RECOMMENDATIONS**

## **Introduction**

In December 1987, the International Commission of Jurists (ICJ) jointly with the Christian Conference of Asia — International Affairs (CCA-IA) organised a seminar on The Erosion of the Rule of Law in Asia.

The purpose of the seminar was to analyse the factors that contribute to the erosion of the rule of law and to discuss future action to overcome these factors. Under this broad objective the participants discussed four specific subjects,

- violations of human rights perpetrated in the name of economic development;
- the extensive use of national security and other emergency laws, as well as the use of detention without charge or trial;
- the restrictions imposed on freedom of association, and freedom of the press and other media; and
- the erosion of the independence of the judiciary and the legal profession.

The participants, who came from Bangladesh, Hong Kong, India, Indonesia, Japan, the Republic of Korea, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Taiwan and

Thailand, included practising lawyers, social scientists, human rights activists, journalists and members of grassroots non-governmental organisations working with the disadvantaged sections of society.

The participants agreed upon the following Conclusions and Recommendations:

## **I. Economic Development And Human Rights Violations**

### **Conclusions**

1. The reality of development in the Asian region demonstrates that, by and large, the prevailing development strategies have not been responsive to the needs, values, traditions and economic, cultural, social and political rights of the people. Disadvantaged groups such as the poor, ethnic minorities, tribals, women, peasants and landless labourers continue to be discriminated against and exploited.
2. Most Asian societies are pluralist, being composed of many different groups: ethnic, linguistic, religious, etc. States have disregarded this in the formulation of their policies, which has increased social tension resulting in violence which contributes to the brutalization and militarization of society, an increase in repression and erosion of the rule of law. Devolution of power to these groups and decentralization of authority should be encouraged.
3. The rights of the labour force, particularly of unorganised labourers, are denied in the pursuit of export-oriented industries and foreign investment.
4. Economic and development programmes have frequently been initiated in total disregard of the right to livelihood and to preserve one's cultural and social identity, for



example, the introduction of plantations and other programmes by transnational corporations and their domestic counterparts has further impoverished subsistence level farmers and in many instances forced them into bonded labour.

5. Such ill-conceived development strategies, prepared without grassroots participation have led to a wholesale migration of the rural poor to the urban areas and abroad where they are exploited as a source of cheap labour.
6. International inter-governmental lending institutions, such as the IMF and World Bank, and private consortiums as well as foreign aid programmes, promote and even demand as a condition of aid, changes in politics and patterns of consumption that advance only the interests of the lenders and the local dominant elite who invite such investment. This often encourages the use of high technology in a way that aggravates problems of unemployment and generates consumption and production patterns that are inconsistent with the principle of self-reliance.
7. In many countries, in order to generate national income under the garb of promotion tourism, women and children are being sexually exploited and abused.
8. The ruling elite resorts to the use of coercive measures and laws, which legitimise its development policies and programmes and makes legislative and judicial institutions irrelevant. Even beneficial social legislation has been rendered ineffective by the inability of judicial institutions to implement it. The disadvantaged view the judicial process as an extension of the executive, failing to dispense justice and uphold human rights.

### **Recommendations**

9. Development strategies should be structured in a manner that is consistent with human rights and that takes into account social and economic reality in the Asian region. All

governments should be required to make a public statement showing the expected impact of any development project.

10. Asian countries should have regard to their interdependence when formulating their development strategies and should promote economic cooperation among themselves, *inter alia*, in promoting the goals of the New International Economic Order formulated by the UN.
11. The judiciary should be encouraged to recognize internationally accepted social, economic, political and cultural rights, and the legal profession should be encouraged to initiate public interest litigation.
12. There should be a free flow of communication and ideas consistent with the people's right to know and to participate in the debate on development strategies, including, in particular, full consultation with the concerned population before the planning of projects that will displace them or affect their livelihood.
13. The people should be encouraged to exercise their right to organise themselves freely so that they may take concerted action towards the full realisation of their rights.

## **II. National Security Laws And Preventive Detention Laws**

### **Conclusions**

14. National security laws and preventive detention laws, providing for detention without charge or trial, are legacies of colonial regimes. They have been made more stringent by present day governments in Asia, who often justify such laws under the pretext of tensions in their international relations or internal tensions within the country. In reality governments more often have recourse to national security laws whenever the stability of the government is threatened.

15. In many countries offences under national security laws are tried by special tribunals with procedures that lack the normal safeguards for the defence; the presumption of innocence is replaced in practice, and even at times in law, by a presumption of guilt; and proceedings are often summary with curtailment of the right to effective legal representation, even in capital cases.
16. Preventive detention laws provide for detention without charge or trial and vary from country to country. In some countries they exist as normal laws of the land, in others the constitution itself provides for enactment of preventive detention laws. In some countries a person may be detained on the mere suspicion of the detaining authority that he may commit acts prejudicial to public safety and order. In one country a person may be arrested simply because he is considered dangerous by the detaining authority. Preventive detention laws are commonly used for the twin purpose of interrogation and intimidation by torture.
17. The very nature of these laws provides for little or no review by a competent, independent and impartial judicial tribunal. The grounds of arrest are often given only after a long delay, are usually vague, and are sometimes not given at all. Even where judicial scrutiny is allowed, it is frequently circumvented by the issue of fresh detention orders when the legality of the previous order is *sub judice* or has been quashed. In a number of countries, the material on which the executive authority bases its order of detention is not even required to be placed before the courts. Hearings of review boards are frequently conducted in camera without the presence of counsel. Detainees are deprived of the right to confidential communication with counsel and visits by members of their immediate family. Detention is usually for an indeterminate period. Although in some countries there are limits to the period of detention, a person may then be rearrested under a fresh detention order within days or even at the time of his release.

18. National security laws and preventive detention laws are often used by governments to victimise opposition party leaders, political dissidents, trade union leaders, workers, students and human rights activists.
19. Attempts are being made collectively by governments to legitimise the existence of such draconian laws in regional inter-governmental forums. In such forums the central theme has become terrorism and prevention of terrorism, without, of course, any reference to 'state terrorism'. In short, many states in Asia have armed themselves with laws against the people in order to continue in power, and in that process have brutalised the state machinery.

### **Recommendations**

20. National security laws and preventive detention laws are inconsistent with the principles of the rule of law. They are imposed in order to silence the critics of governments and curb democratic rights and civil liberties. All these laws should be repealed and a powerful public opinion against them should be created.
21. Under no circumstances should concerns of national security outweigh the basic rights of the people and the considerations that are implicit in the minimum standards of due process of law. Procedural safeguards should be made available to persons detained or facing prosecution under national security and related laws.
22. All persons detained or prosecuted under orders that are proved to have been made in excess of authority, or in bad faith, must be guaranteed the right to compensation, and the person responsible should be made liable to civil and criminal prosecution.
23. All civilians tried and convicted by military tribunals should be released and their conviction, and that of those

who have completed their sentence, should not affect their political and economic rights.

24. In most countries, the whereabouts of detainees are not disclosed. Places of detention should be disclosed to the family immediately on the arrest of any citizen. Governments should recognise the right of citizens and human rights groups to visit and report on the conditions of prisons and detention centres and on the treatment of detainees and prisoners of all categories.
25. An allowance should be paid to the families of all those detained without charge or trial. Those who have been charged should be brought to trial immediately or released on terms of bail which are not excessive. Governments should support organisations seeking to provide free legal aid to those in need.

### **III. Freedom Of The Press And Other Media**

#### **Conclusions**

In most countries of Asia the press does not enjoy the degree of freedom necessary to function properly.

The colonial powers in Asia had devised a number of measures to restrict freedom of the media and these measures have been retained and strengthened by the post-independence rulers.

26. The media are often not only under attack from the state but from within, in the form of pressure from proprietors and editorial self-censorship.
27. The press is often subject to arbitrary laws which empower the executive to suppress publications and penalise publishers, printers, journalists and writers. In addition, extraordinary laws have been enacted shifting the burden of proof to the defendant in such cases.

28. Other measures that restrict press freedom are black-listing of journalists for employment by media establishments, restrictions on their right to travel and coercion through press 'advice' and direct or indirect intimidation by officials.
29. The control exercised by the ruling party, armed forces and multi-national companies makes the true independence of the press and other media impossible.

### **Recommendations**

30. The right to publish newspapers, periodicals, books and pamphlets should be recognized as a basic right, which must not be interfered with by the executive through discretionary powers for the granting or renewal of licences, permits etc.
31. The blanket application of security laws to the press should cease. Press laws and decrees which empower the executive to deal with the press without due process of law should be rescinded.
32. Government controls on the distribution of newsprint and access to machinery etc., should be abolished and prospective publishers should be guaranteed their right to obtain newsprint and other essentials. The press should be charged concessional rates for transmission of messages and distribution of printed material.
33. The government should not use its authority, directly or indirectly, to discriminate against publications in the placing of advertisements.
34. In view of the damaging effect on press freedom of press ownership being concentrated in the hands of vested interest groups, there is an urgent need to diffuse ownership and to ensure that working journalists may participate in determining the editorial policy of the publication.

35. Wherever the state directly controls the television, radio or newspapers, the Boards of such media should be free from direct control by the government. Their governing body should be composed of professional journalists and representatives of the public, to ensure objective reporting and free comments. Also the political opposition, civil liberties groups, social activists, NGOs working among the underprivileged and those engaged in similar work should have access to the various media, including television and radio.
36. Interference in transmission of messages by post should be rescinded.
37. All practices involving suppression of news through official 'advice' to the press or the imposition of pre-censorship should be abandoned.
38. Intimidation of journalists by such means as black-listing, arbitrary arrests and threats should be prohibited.
39. Since press freedom envisages the right of access to information, the right of journalists to travel within and outside the country must be fully respected.
40. To ensure public access to official records, countries should avoid arbitrary use of laws like Official Secrets Acts, which impinge upon the right to know and to disseminate information.
41. The affairs of the press, such as registration of newspapers, circulation records and complaints of unfair reporting and comment should be regulated by autonomous Press Councils, which should also be responsible for implementing a code of ethics for the press. The Press Councils should comprise elected representatives of the publishers, proprietors and working journalists, in equal numbers.

42. A responsible press should defend and promote human rights, including those of ethnic minorities and the disadvantaged.
43. With a view to promoting better understanding among the people of the Asian countries, and facilitating greater flow of ideas and information, it is desirable that NGOs from different countries in the region should cooperate and develop forums to coordinate action towards evolving and consolidating a New World Information and Communication Order as expounded by UNESCO.

## **IV. Freedom Of Association**

### **Conclusions**

44. In several countries the right to form political parties has been abridged by special laws and the authorities have assumed discretionary powers to register and regulate the functioning of societies and associations.
45. In many countries numerous laws have been enacted to curb the right to assemble and heavy penalties are provided for what should be considered as being a legitimate exercise of civil and political rights. Arrests of independent political activists and the use of state violence on peaceful demonstrations are common occurrences in the region.
46. Workers in general, and women and child workers in particular, often do not enjoy the rights enshrined in the International Bill of Human Rights and the ILO Conventions, for example, the right to form trade unions, to collective bargaining and the right to strike.
47. There is an urgent need for the human rights activists in the region to pay special attention to the rights of workers and peasants.



## **Recommendations**

48. The right to form political parties, to conduct political activities, and to have equal opportunity to participate in the electoral process are fundamental and should not be subject to any restriction.
49. The laws relating to societies and associations should be revised to eliminate the exercise of discretionary powers by the executive, in respect of registration, functioning and disciplinary matters.
50. The right of people to peaceful assembly and protest must be protected by the Constitution and faithfully enforced. The use of discretionary powers by local administrators to prohibit such assemblies should be prohibited.
51. All countries in the region should ratify and implement the ILO Conventions particularly those relating to freedom of association, protection of the right to organise, collective bargaining and rural workers' organisations.
52. All national legislation pertaining to labour should be brought into conformity with the ILO standards and the Covenant on Economic, Social and Cultural Rights. All laws restricting the right to work, security of employment, conditions of work and protection against unfair practices by employers should be abrogated. Strikes by workers should not be viewed as a breach of contract. The implementation of labour laws should not be excluded in special areas such as free trade zones.
53. All laws applicable to the formation of, and conduct of trade unions, should ensure labourers' rights to elect their representatives, office-bearers, and collective bargaining agents through democratic process, free from any interference from officials and employers. The practice of restricting workers from establishing federations based on craft or territory should be discontinued.

54. It is essential that human rights NGOs in Asian countries concerned with rights of unorganised labour should find ways of coordinating their activities.

## **V. The Independence Of The Judiciary And The Legal Profession**

### **Conclusions**

55. It is the breakdown of the democratic order and interference by the state which has primarily undermined the legal system, thus eroding the independence of the judiciary and the legal profession.
56. A genuine commitment to the rule of law is essential for the existence of an independent judiciary and legal profession. This presupposes that governments desist from arbitrary actions and conform to national laws and international standards. It is also important to encourage democratic participation of the people in the making of laws.
57. The people are, generally, alienated from the legal system, regarding it as providing remedies which are expensive and repressive. The majority of members of the legal profession have no real understanding of the plight of the disadvantaged and oppressed sectors of society. Those who do try to defend the rights of these sectors are often ostracised, harassed or, even, threatened and imprisoned.
58. There is a need to mobilise public opinion to press governments, the judiciary and the legal profession to take appropriate measures to ensure the independence of the judiciary and the legal profession.

### **Recommendations**

59. All constitutions should conform with the International Bill of Human Rights and guarantee the judiciary's

function as the guardian of fundamental rights and the repository of the rule of law. The right of judicial review of administrative actions and legislation must be vested in the judiciary.

60. To make the concept of separation of powers a reality:

- the selection and promotion of judges of superior courts should involve professional and public participation and not be subject solely to the discretion of the executive authority.
- once selected, a judge should have security of tenure and terms and conditions of service guaranteed under the Constitution, and not be removable except on specific grounds and in accordance with adequate constitutional procedure.
- the service of a judge should not be terminated by the abolition of his court.
- a judge must be guaranteed adequate remuneration, including a pension.
- the practice of appointing adhoc judges and assigning sitting judges to commissions of inquiry and tasks of a non-judicial character should be discontinued.
- there should be a permanent court of appeal in order to eliminate the possibility of judges being called upon to hear and determine appeals from judgements of judges who have coordinate jurisdiction.
- the judges constituting a Bench should have the right to give dissenting judgements which should be published.
- a judge may not practise law in a court forming part of the same court system as that from which he or she retires or resigns.

The above principles also apply to subordinate judges with necessary modifications.

61. The prosecution should be freed of any control by the executive or law-enforcing agencies and placed under the autonomous control of an Attorney-General or other legal officer, whose office, independence and security of tenure should be at the same level as a judge of the Supreme Court.
62. Speedy adjudication of cases and prompt delivery of judgements should be assured as a basic right of all parties who approach the court.
63. Access to justice must be guaranteed to all persons by an efficient system of legal aid and special attention should be given to the disadvantaged groups in society.
64. A free and fair discussion of the functioning and judgements of the judiciary should be permitted and the laws of contempt should be reviewed.
65. There should be a free and independent legal profession as a necessary complement to an independent judiciary.
66. The right of legal practitioners to render adequate assistance to their clients must be respected and, in particular, it should not be encroached upon through retroactive legislation or procedures.
67. The affairs of the legal profession, including enrolment and disciplinary matters, should be regulated by autonomous, elected councils of the profession.
68. All organisations of legal practitioners, such as Bar Councils and Bar Associations must have the right to discuss and express views on legislation, matters relating to human rights, and all such public issues that pertain to the rights of all people.

69. The right of the legal profession to engage in public interest litigation and initiatives needed to extend succour to disadvantaged sections of society, especially to those deprived of basic human rights, must be properly recognised.
70. The legal profession must be allowed due say in the promotion of legal education needed to sustain a democratic and egalitarian order.
71. Only an educated and conscious citizenry can guarantee a just order and the independence of the judiciary and the legal profession. There is urgent need to spread legal literacy among the people so that they suffer neither because of ignorance of the law nor because of unjust laws and can exercise their inalienable right as the ultimate law-makers in their societies.
72. The Asian governments should ratify the Covenant on Civil and Political Rights and its Optional Protocol as well as the Covenant on Economic, Social and Cultural Rights. Those governments that have ratified the Covenants should bring their laws into conformity with the provisions of the Covenants.

## LIST OF PARTICIPANTS

Name	Address
<u>BANGLADESH</u>	
Abdus Sabur	Asian Cultural Forum on Development G. P. O. Box 2930 Bangkok 10501 Thailand
<u>HONG KONG</u>	
Iris Tsang (Ms)	3A, 20/F, Neptune Terrace Tai Man Street Chai Wan
<u>INDIA</u>	
Sumanta Banerjee	D-33 Press Enclave, Saket New Delhi — 110017
Indira Jaising (Ms)	c/o LAWYERS Room No 818 Stock Exchange Towers Dallal Street Bombay 400023
George Mathew	Institute of Social Sciences B-7/18 Safdarjung Enclave New Delhi — 110029

Ninan Koshy

Commission of the Churches  
on International Affairs  
World Council of Churches  
150 Route de Ferney  
1211 Geneva 20  
Switzerland

INDONESIA

Yap Thiam Hien

Jalan Dr. Semeru Raya No 3  
Grogol  
Jakarta Barat

Abdul Hakim

Yayasan Lembaga Bantuan  
Hukum Indonesia  
Jl. Diponegoro 74  
Jakarta 10320

JAPAN

Kim Dong Hoon

150-7 Matsumidai Ikoma-Shi  
Nara-Ken

SOUTH KOREA

Cho Young-Rae

1306 Myung-Ji Building  
58-17 Seo-So-Moon-Dong  
Cheong-Ku  
Seoul

Hwang In Chul

295-1 Yun Hei Dong  
Seo-Dae-Moon-Ku  
Seoul

Park Sang Jung

57 Peking Road, 5/F  
Kowloon  
Hong Kong

NEPAL

Gopal Sivakoti                      Pairavi Law Chamber  
P.B. 940, Kha 2/251  
Putalisadak  
Kathmandu

PAKISTAN

Asma Jahangir (Ms)              AGHS Law Associates  
131 E/Gulberg III  
Lahore

Munir Malik                        2nd Floor, Haroon House  
Dr. Ziauddin Ahmed Road  
Karachi

I.A. Rehman                        Viewpoint  
4-Lawrence Road  
Lahore

PHILIPPINES

Alvaro O. Senturias              United Church of Christ in the  
Philippines  
P.O. Box 718  
Manila 2801

Solema Jubilan (Ms)              Jubilan Law Office  
Kidapawan, Cotabato  
Mindanao

SINGAPORE

Francis T Seow                      Straits Trading Building  
9 Battery Road No 11-02  
Singapore 0104



## SRI LANKA

- Nimalka Fernando (Ms) The National Christian Council of Sri Lanka  
490/5 Havelock Road  
Colombo 6
- Bala Tampoe Ceylon Mercantile, Industrial and General Workers' Union (CMU)  
Colpeltly  
Colombo 3
- Neelan Tiruchelvam 8 Kynsey Terrance  
Colombo 8

## TAIWAN

- Stephen S Lee 121 Chung Ching South Road  
8th Floor, Section I  
Taipei

## THAILAND

- Sampan Hunpayon Department of Business Administration  
Faculty of Economics and Business Administration  
Kasetsart University  
Bangkok
- Aju Jupoa (Dzoebaw) MPCD/SEAMP  
137/1 Nantharam  
50.000 Chiangmai
- Leo Alting von Geusau MPCD/SEAMP  
137/1 Nantharam  
50.000 Chiangmai

Narongsak Tiravong	Union for Civil Liberty 446 Soi Kiatchai Asoke-Dindaeng Road Huaykwang Bangkok 10310
Santi Isrowuthikul	Foundation for Children 1492/3 Chareon-nakorn Road Klongsarn Bangkok 10600
Chalida Srisahaburi (Ms)	441/39 Prachchuen Road Bangsue, Dusit Bangkok 10800
Rakawin Lee (Ms)	Justice and Peace Commission 2492 Soi Saen Suk Prachsongkroh Road Bangkok 10400
Xan Kaewxusai	63 Boornasart Sanchaopohsan Pranakorn Bangkok 10200
Bunlue Khongchantra	Faculty of Law Thammasat University Prachand Road Bangkok 10200
Gotom Arya	Dept. of Electrical Engineering Faculty of Engineering Chulalongkorn University Bangkok 10500
Viboon Engkagul	Law Internet Ltd. 699 Kongboonma Bldg. 6th Floor, Silom Road Bangrak, Bangkok 10500

- Prathan Watanapanich Thammasat University  
Prachand Road  
Bangkok 10200
- Nopnithi Suriya Thammasat University  
Prachand Road  
Bangkok 10200
- Malee Faculty of Law  
Pruekpongsawalee (Ms) Thammasat University  
Prachand Road  
Bangkok 10200
- Ampiwat ACFOD  
Chuayunyongkul (Ms) 232/9 Nares Rd, P.O. Box 2930  
Bangkok 10500
- Jaroen Compeerapap 198/215 Charoensri Market  
Paak-klong. Pasricharoen  
Bangkok 10160
- Saipin Terdphaopong Woman Right's Protection Center  
(Ms) Friends of Women  
98/4 Phra-athi Road  
Pranakorn  
Bangkok 10200
- Supatra Naeapew (Ms) Friends of Women  
98/4 Phra-athi Road  
Pranakorn  
Bangkok 10200
- Theera Srithamaraks Faculty of Law  
Ramkhamhaeng University  
Bangkok
- Surakarn Sunansri (Ms) Faculty of Law  
Ramkhamhaeng University  
Bangkok

Ratsamee Phensook      Legal Aid Center  
63 Bunsiri Road, San Chaopoksai  
Pranakorn  
Bangkok

OBSERVERS

Sammy Matunog      Diakonisches Werk EKD e.v.  
Staffenbergstr 76  
7000 Stuttgart 1  
Federal Republic of Germany

Yvonne Terlingen (Ms)      Amnesty International  
1 Easton Street  
London WC1X  
United Kingdom

ORGANISERS

International Commission of Jurists

D.J. Ravindran      ICJ  
P.O. Box 120  
1224 Chene-Bougeries/Geneva  
Switzerland

Sara Eriksson      ICJ  
P.O. Box 120  
1224 Chene-Bougeries/Geneva  
Switzerland

Christian Conference of Asia — International Affairs

Clement John      CCA-IA  
57 Peking Road, 4/F  
Kowloon  
Hong Kong