

# Writing on rights: A sombre reflection

## Situation Report...

By KISHALI PINTO-JAYAWARDANA

In this marking of the twenty fifth anniversary of the Sunday Times, it is a reflective task to write about the 'Focus on Rights' column, carried for the first time in the Times edition of 26th March 2000 and continued up to date, with brief pauses in between.

Looking back, I discovered that, (though now faded almost completely from memory), the very first Focus column appropriately titled 'The dilemma of disappearances' called for enforced disappearances to be criminalized and the right to life to be constitutionally protected. It says much for our intensely troubled society that these demands remain very much alive today, albeit in respect of a different political regime.

As was enjoyably unearthed in that veritable trip down memory lane, another Focus column honed in on 'the man who made a difference.' Here, the Supreme Court classically reiterated the core of the public trust doctrine which had, by then, been judicially developed as a safeguard against political abuse of state resources.

Those were heady times and heady precedents. And those initial columns were a fitting harbinger of what was to come. Indeed, the change in the logo of the Focus column, effected in the mysterious depths of the Times' sub-editorial, from a stylized scroll and a pen when the column was in its infancy to embodying the scales of justice, perhaps unwittingly symbolised the changing tenor of the writing itself. Before long, a wholehearted commitment to the conceptual notion of rights and the law gave way to a much more complex weighing of what the law actually means to people when naked authoritarianism overtakes democracy, as flawed as that democracy may have been. Assessing the deeds and misdeeds of successive governments as well as the role played by judges, lawyers, civil society and the media itself became an essential part of this process.

But at the start and in principle, writing on human rights and the law in Sri Lanka was an easy, almost instinctive choice. It did not come as a politically charged decision by any means. Instead, it combined the two great passions of life; on the one hand, an emotional commitment to the idea of justice and on the other, a profound respect for the cold logic of the law. It was fortuitous therefore that, on a personal level, the professional choices that were made quite early on, combined the examination and exploration of the law with an idealistic belief in the ability of journal-

ism to, put simply, right terrible wrongs done by the most powerful. Needless to say, such

idealism was short lived.

Even so, in those years when the law stood for something and the media had the power to bring down governments, there was an exhilarating duality about this combination. Across the Palk Straits, for many years, public interest litigation in India had been made possible by the framers of a constitutional document who were infinitely wiser and far less mean spirited than on our side of the divide. Sri Lanka's constitutional framers, both in 1972 and 1978, were obsessed by the desire to keep power in the grasp of the political and legal elite and release it only grudgingly, under tremendous pressure.

I recall querying this contradiction in heated bewilderment from one of the country's most liberal judges then in retirement. His response that, 'it is far better to have tightly drafted provisions which may be liberally interpreted by judges when the occasion so warrants it' is engraved most disconcertingly in memory. This unquestioning faith in the ability of a select few to decide on what was best for the country rather than to have the Constitution hold the scales equally marked Sri Lanka's path to destruction long before constitutional aberrations like the 18th Amendment came into being. This was merely a logical culmination of what had gone on before.

So the jurisprudential burst of energy evidenced by Sri Lanka's Supreme Court during the time that this column commenced was inevitably short lived. By the end of that decade, these judicial standard setters had been ruinously discarded. It is amusing to witness those who remained quiet when those seeds of inequity were sown, now bewailing the politicisation of Sri Lanka's judiciary in most charged terms.

The question may be reasonably posed; what else can be expected when members of the Bar, legal intellectuals, civil society and the media allowed (nay, even encouraged) the conscienceless dismantling of Sri Lanka's judicial institution at a time when a critical mass may have easily made a difference unlike now when it is far more difficult?

It is commonly said that adversity makes for a hardening of resolve. In writing critically on the judicial role when a virtual judicial dictatorship predominated, contempt of court was frequently a threat, made all the more ominous by its fundamentally imprecise nature and the vast judicial discretion that it confers on a judge, as politically or financially corrupt as he or she may be. There were also minor irritants in the form of maliciously personalized attacks by media propagandists eager to ingratiate themselves with ruling politicians. All these were however, merely a spur to greater resolve. Though the Focus column never looked for accolades and never applied for such, the expressions of support that it received verbally and in writing through the years was all the encouragement it needed.

Twelve years down the line and in these most conflicted times for the law, for the media and for justice, this celebration of writing on rights is a sombre one indeed.

Contd. from Page 27

The then Defence Secretary, Austin Fernando, drove from his office to Army Headquarters to ascertain the position and report to Prime Minister Wickremesinghe immediately. He checked on the accuracy of the maps published in the Sunday Times. One in particular was the Kurungu Paanchan base. The late Lakshman Kadigamar, one-time Foreign Minister, raised issue publicly thereafter. This was a major cause for President Kumaratunga to withdraw support to the Ceasefire Agreement.

I also reported how the LTTE was moving valuable military items via the Bandaranaike International Airport when they passed through to Wannu after peace talks in various foreign capitals. I learnt recently that the Government now has official confirmation of this fact. It had come from a former high-level LTTE personality in a confession he made. He listed the items. If Opposition Leader Ranil Wickremesinghe was kind enough to speak on my behalf earlier, as Prime Minister I had earned his ire. I was banned from his news conferences. His confidant, who was also my friend, conveyed to me that if I do not stop criticising, I would be "exposed" in Parliament.

In marked contrast, President Kumaratunga, who had cohabitation issues with the then UNP government, wanted to confer national honours on me. She said so to her parliamentarians. One evening, after coffee with her at the Janadipathi Mandiraya together with the late Lakshman Kadigamar, I had a call from her office. One of her staffers said the President needed my bio data since I was being considered for a national honour. By hindsight, I am quite happy this did not materialise. I point this out to show how on the one hand, a President wants to honour a journalist. On the other extreme, the same journalist is vilified as a good-for-nothing traitor. During the conversation at the coffee meeting I had occasion to speak about some highly irregular procurements by the Sri Lanka Navy.

Mr. Kadigamar said, "Please tell HE all what you know." I related the details. "What proof have you got?" she asked me. I produced a set of documents originating from Navy headquarters. "How did you get them?" asked Ms. Kumaratunga. Mr. Kadigamar intervened promptly "You cannot ask him that. He is not going to tell you," he said.

Ms Kumaratunga backtracked by saying, "That is not what I meant." She was seated in a chair with her back facing Navy headquarters. She turned in the direction of NHQ, raised her hand, pointed her finger and remarked, "That is where the bullet is going to come from." I later learnt that she made her own inquiries by confidentially asking senior Navy officers.

With her UPFA government coming to power defeating the UNP, she held a conference of senior military officers and the Police high command

Some of the books written by the author

