

DR. A.M.A. AZEEZ ORATION

The Law in the Speeches of Senator Azeez, the Muslim Tamil Leader of Ceylon, and its Present Significance

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I cannot quite figure out to what I owe this distinct honour of delivering the 50th Anniversary Lecture for Senator Azeez. I have tried to think of reasons. The only one was that I grew up knowing Mohamed Ali, the elder son of Senator Azeez, from the age of five. We began as classmates at the Royal Primary School in the Tamil medium class, the first group of students to begin education in the Swabasha stream at the Royal Primary School. Muslims had the option of choosing to be in the English stream or study in Tamil or Sinhala. We later learnt that Ali's father, Senator Azeez, a man steeped in Tamil literature and among the great Tamil literary figures of his times, had insisted that Ali should study in the Tamil medium. The other Muslim boy in our class was Ismeth Raheem, who was Ali's cousin.

I was the son of a mid-level Jaffna Tamil public servant, studying among the sons of great men of the time. Besides Ali, there were, in my class, Sri Skandarajah, the son of a Supreme Court Judge, Loganathan, son of the General Manager of the Bank of Ceylon, Nadesan, the son of the Permanent Secretary to the Prime Minister, Kandasamy Pillai, the son of the Professor of Tamil at the University of Ceylon, Mailvaganam, the son of the Professor of Physics and Chandrasahana, the son of the Leader of the Federal Party and a Queen's Counsel. There were many other sons of luminaries among

my classmates. But, my father, who did not want my horizon to be limited to his own person as a mid-level public servant, told me that I should look to Senator Azeez as my model, for he was a fellow Jaffna man, a product of a Hindu College like him, a scholar in Tamil, steeped in the knowledge of Hindu texts but also the pre-eminent leader of the Muslims and, as I grew older, the Principal of the premier Muslim institution and a Member of the Senate. Later, as I moved on to do my Advanced Levels with Tamil Literature as a subject, my teacher, Mr Laskhmana Iyer, himself a formidable Tamil scholar, held Senator Azeez out as the preeminent speaker of the Tamil language of his time. He told me that he had never heard a man speak Tamil so as to bring out its mellifluous tones as Senator Azeez did. Like Mr Iyer, who won the Sahithya Academy Award for Tamil, Senator Azeez had won the Sahithya Academy Award for the best literature in Tamil for his book on Islam in Ceylon. Senator Azeez was a man I admired in childhood, youth and later life. I grasped this kind invitation of my class-mate, Ali, to give the Azeez Oration, now in its fiftieth year, in memory of a great Muslim Tamil leader who provided inspiration to me as I grew up.

The topic of my oration relates to the Law in the Speeches of Senator Azeez and its Present Significance. I chose this subject as I have been an international lawyer, both as an academic and a practitioner for over half a century. I have taught law in several universities in the world. I have sat on the Permanent Court of Arbitration, the oldest arbitral institution of international law. I feel competent to assess the impact of the thinking on the law contained in the speeches of Senator Azeez on the legislation that came for enactment before the Senate during his period as Senator

AMA Azeez was appointed Senator on 21st June 1952. He was Senator until 1963 in which year he resigned from the Senate on being appointed as Member of the Public Service Commission. He was in the Senate for over a decade. Every member of Parliament of

which the Senate formed a part in early post-independent Ceylon, is necessarily a law-maker as it is the bill which he enables the passing of after it had received majority acceptance in the lower house that becomes the law of the land. The Senate consisted of appointed members who were eminent in their own disciplines and could bring their collective wisdom to bear on the legislation that was being contemplated. It must behove that a member of the Senate, more than the members of the Lower House, must have the competence to understand the implications of the law that he helps to elevate to the position of a law. The purpose of the Senate was that the law would be analysed in the context of the collective experience of men of wisdom through age, experience and acumen acquired in different fields of professions and disciplines. These qualities are sadly lacking in those who make up the Parliament in the present times. A Parliamentarian has stated that his colleagues do not have the literacy to understand the complexities of the laws that they are called upon to make.¹ But this was not the case during Senator Azeez's time when men sat, particularly in the Senate, whose ability as legislators and as men of learning and immense experience was unquestionable. Senator Azeez was often apologetic that he was not a lawyer but his understanding of the law and the impact that it would have on society surpassed that of many of his colleagues. The extent of the erudition in his speeches, the clear-sighted vision that he had of the justness of the result that the law would produce and the weighing of the benefits of the law against its defects are exhibited in the speeches in ample measure.

The law is seen in the conventional terms of an English lawyer as one in the statute book, devoid of extraneous factors that brought it about. To the Western mind, the law is formulated to promote expediency in commercial and other matters and keep order within

1. MA Sumanthiran, "The Online Safety Bill is Illegal: The Literacy Level of the Government MPs is Zero" *Colombo Telegraph* 23 January 2024.

society so that social and political activities could be carried out. In the classic vision of the English lawyer, the law was a series of orders issued by the sovereign and enforced through punishment if disobeyed. There was a certain logic involved in the formulation and the administration of the law. Lawyers were adept in such logical reasoning in determining and applying the law. In this structure of the law, there was no scope for extraneous factors such as morality. The law was obeyed by the citizen and enforced by the judge and other agencies of the state like the police. It has little to do with righteousness. So regarded, a lawyer merely interprets the law in a logical fashion and the judge applies it.

This is not how the law was thought of in the traditions of Islam or of Hinduism. In these traditions, the law had deep roots in notions of justice, morality and ideals of goodness. The Sharia or the way followed in Islam is formed through four sources: there are four principle sources of Sharia, which are accepted by consensus. They are (1) the Quran, Islamic sacred scripture, which Muslims believe God revealed to humanity through the Prophet Muhammad (On Whom Be Peace), (2) the Sunna (or Prophetic model of behaviour recorded in a literature called the Hadith), (3) the consensus of religious scholars, and (4) analogy. Many regional and local customs are also accepted as a source of the Sharia when they are consistent with the general good. Thus, the Sharia mandates that Muslims follow the good and generally wholesome customs of the lands in which they live.

The Hindu law is based on the notion of dharma or good conduct manifested through the existence of several duties. They include duties such as honesty, refraining from injuring living beings (*ahimsā*), purity, goodwill, mercy, patience, forbearance, self-restraint, generosity, and asceticism. The ideas that animated the speeches of Senator Azeez are deeply rooted in the traditions of the East which he had imbibed since his childhood in Jaffna

and in later life. To understand the philosophy which animated a law-giver, it is necessary to study his background. An important American viewpoint is that those who shape the law, whether they be legislators or judges, are influenced by their experiences and attitudes formed through their youth and middle age and their later life. As the great American judge, Oliver Wendel Holmes put it, “the life of the law is not logic. It is experience”.² It is therefore necessary to look into what animated the thinking of Senator Azeez that are contained in the speeches he made during his time as a Senator before looking at the speeches.

Men and women, sitting as legislators or judges, make law. When they do so, their choices as to the rules to be adopted, how the rules are interpreted and how they are applied depend on their moral attitudes and their experiences. To understand the laws that are created, it is necessary to understand what the thinking of the legislator, inspired by his or her experiences and learning, was. It is therefore necessary to understand the background of Senator Azeez who played a leading role as a legislator in his time.

From its inception, the life of Senator Azeez was rooted in the values and traditions of Islam and Tamil Saivaism as practised in Jaffna. It is necessary to go these beginnings to understand the philosophy that guided Senate Azeez in making laws while he was a member of the Senate of Ceylon. The thinking of a human person is shaped from childhood. Senator Azeez was born in Vannarpannai, a suburb of Jaffna, on 4th October, 1911. His early education was at the Jaffna Mohamadiya Mixed School in Jaffna where he learnt to read the Holy Quran and at the Vaidyeshwara Vidyalayam run by the Rama Krishna Mission. He was to say this of his short stay at the Vidyalayam: “I now feel thrice blessed that I did go to the Vidyalayam, and nowhere else. My period of stay, February 1921 to June 1923, though pretty short quantitatively was extremely long

2. Oliver Wendell Holmes, *The Common Law* p.1.

qualitatively. It was at the Vidyalayam that I first became acquainted with the devotional hymns of exquisite beauty and exceeding piety for which Tamil is so famed through the ages and throughout the world”.³ During his time at the Jaffna Hindu College, he formed a great love for the study of Tamil and for the study of Ramayana, a part of which was a prescribed text for his O’level examination.

His deep and undisputed scholarship in Islam was combined with a love for Tamil. He joined the Ceylon Civil Service, terminating his studies at the University of Cambridge while on a scholarship there. While a Civil Servant, he held many positions in administration. He was Assistant Government Agent in Kalmunai, a predominantly Muslim area in the Eastern Province, where he was able to observe the hardships of the ordinary Muslims of the region. Here, he was able to cultivate his interest in the Ramayana further as the form of dance known as therukuthu was based on Ramayana stories and was widely performed in the Eastern Province. It is acknowledged that increase in food production in that region took place during his administration. He resigned from the Civil Service to take up the position as Principal of Zahira College. It was a sacrifice of what could have been a career of power and prestige but he gave priority to the duty to his community by resigning from the Civil Service to take up his position as Principal of Zahira. During his period as Principal of Zahira College he pioneered educational reform for the Muslim youth which included the founding of a vibrant Tamil Society at Zahira. His friendship with Swami Vipulananda, who served as Principal of Sivananda Vidyalayam, a school run by the Rama Krishna Mission and the first Professor

3. As quoted in the “Profile of AMA Azeez” by Khalid M Farouk in SHM Jameel and Ali Azeez (Eds.), *AMA Azeez: Senate Speeches* (AMA Azeez Foundation, Colombo, 2008) at p. xiii and in C. Narayanaswami, “Senator AMA Azeez: An Introspective Analysis” Azeez Foundation Post, 25 September 2021 <https://azeezfoundation.com/home/senator-a-m-a-azeez-an-introspective-analysis-by-c-narayanasuwami/>

of Tamil at the University of Ceylon, while he was Government Agent in Kalmunai, has been recorded as having led to many joint ventures in the development of the Tamil language. A whole book is devoted to the consideration of the Senator's contribution to Tamil literature.⁴

I do not want to dwell too much on Senator Azeez's credentials as a Jaffna Tamil man. But, early origins are the foundations of a man or woman. The early roots combined in Senator Azeez the upbringing of a family steeped in Islam, a father with an experience of law and Jaffna politics, a wife with a Persian heritage, scholarship in Arabic Tamil through his uncle, Assena Lebbe Alim Pulavar, a scholar in that unique language that spanned two cultures⁵ and a love for Tamil and Saivite traditions inculcated from childhood. It has been said that while at the Jaffna Hindu College, the young Azeez won the prize for Hinduism but the prize was not awarded him because he was not a Hindu. It is a sad story of discrimination that Jaffna Muslims were to experience later. Senator Azeez consistently referred to Jaffna as "my homeland".⁶ There was a palmyrah tree in front of his residence at Barnes Place. I understand that his son, Ali, has imitated this by growing a palmyrah tree in front of his house.

He gave up his civil service career, a career of power and prestige, coming from colonial days, in order to become Principal of Zahira College. He led Zahira College to great heights. Zahira under him was not just the premier Muslim College in the country but a college in the first rank of secondary educational institutions in the island. The achievements of Zahira during

4. ஏ. எம். நஹியா, அஸ்ஸும் தமிழும் (published by AMA Azeez Foundation, Dehiwela, second edition in 2017).

5. Arabic Tamil had an Arabic script and had a considerable number of words borrowed from Arabic.

6. Speeches, p.69.

the period Senator Azeez was its Principal have been recorded in many places. Many Tamil students from Jaffna and elsewhere, attracted by the association of the Principal with Jaffna, studied at Zahira. They held distinguished positions in the Tamil world and in other fields. Among them were Professor Sivathamby, Professor of Tamil, University of Jaffna, Professor Selvanayagam, Professor of Geography, University of Jaffna, Mr Sivagurunathan, the Editor of *Thinakaran*. Mr Narayanasuwami, an old boy, joined the Civil Service and became a director of the Asian Bank for Development. Many of them taught at Zahira as young men before embarking on their careers. I mention only a few names.

I must make a digression about Arabic Tamil which fascinated me while reading about Senator Azeez. The Senator's uncle, Assena Lebbe Alim Pulavar, was an expert in this language which was spoken in the trading areas of South India and Sri Lanka. It contained an adapted Arabic script. The Arabic script was enlarged with sufficient new letters or modified to suit the pronunciation of Tamil words. The obelisk that the Chinese Admiral Cheng Ho left behind in Galle, now referred to as the "Galle stone", contains three languages. One is Chinese, the other is Tamil and the third was thought to be Arabic. But, the third language is now considered to be Arabic Tamil that was used in the trade routes traversed by Admiral Cheng Ho, testifying to the significance of Muslims in Ceylon and South India as the dominant trading community from many centuries ago. The presence of Muslims has been a factor in Ceylon from old times. Senator Azeez has written about Arabic Tamil.⁷ He is reputed to have spoken the language.

The second digression I want to make is the fascination Senator Azeez had for the Tamil Ramayanam by the poet Kamban. Nahiya, who wrote on the depth of Senator Azeez's Tamil scholarship, notes

7. எ.எம்.எ அஸீஸ், *அறபுத்தமிழ் எங்கள் அன்புத்தமிழ்* (இஸ்லாமிய தமிழ் சொற்பொழிவுகள், 1968).

this touchingly. It is sad that the Ramayana is put to politico-nationalist uses in India today. As Senator Azeez noted, its story is intended to guide human life, as all great epics are. The Senator records as having learnt Ramayana in Jaffna Hindu College from his Tamil teacher. Kokuvil Ponnambalam Master, who was fond of acting out some stanzas in the epic while explaining them. He was to see how the Ramayana touched the people of Kalmunai when he was Assistant Government Agent there. The “therukuthu” a unique form of street theatre, contained the acting of Ramayana stories. Later he recorded how he came into contact with the Ramayana as adopted in Indonesia and Malaysia, two Muslim countries, in puppet theatre, dance and literature and the extensive cultural influence it has had in South-East Asia. There was an Islamisation of the Ramayana in the traditions of these two countries. The modern political use of the Ramayana to stoke nationalistic passions debases this cultural message that India gave to other people, very as the message of the Renouncer of a kingdom, Gautama the Buddha, is misused to advance hegemony of one race over the minorities by making the religion of the renouncer of his kingdom the state religion.

Rather than repeat what has been said of his great achievements as a scholar, as a public servant, as an orator in both Tamil and English and his multi-faceted activities in the promotion of Islam and Tamil literary studies, I want to speak of Senator Azeez as a statesman of post-independent Ceylon when its political divisions that were to lead to great strife began. The vision that Senator Azeez had in stemming this tide that was to lead to misery in our country must surely animate any settlement and a new beginning for our island home that has now hit the rock bottom. Though addressing this issue is to court controversy, yet, outlining the thoughts of a revered Muslim Tamil leader has continuing relevance. He was an undoubted leader of the Muslim community. Without a shadow of doubt, he had all the vestiges, in scholarship of Tamil and Tamil

Saivaism and Tamil literature to be quintessentially fit to be a Tamil leader, surpassing other Tamil leaders of his times in the attributes of greatness that a Tamil leader should have. One of the great flaws of modern democracy is that power to make laws has been hijacked by incompetent persons who have used populist means to win elections. This had begun in the time when Senator Azeez was a parliamentarian. Ever since his days, there has been a slide into authoritarianism and a dismantling of democracy by processes which Senator Azeez had tried hard to stem. I select some areas on which he spoke to illustrate his views and their validity in the context of modern times. These areas concern capital punishment, bribery and the ethno-religious issue that has befuddled Sri Lanka and hindered its social and economic life and the powers used during emergency rule which are the source of the Anti-Terrorism laws of modern times.

When he became a Senator, his record shows that he promoted several liberal reforms. He has said that he was a “democratic socialist” who stood for the common man. There are several references in his speeches to the assertion that he was a democratic socialist. He dealt with complex bills on legal subjects with deep understanding of the legal issues despite his self-effacing apology that he was no lawyer. I have chosen to comment on some of the areas on which he has spoken. They remain controversial areas in the political and social life our country to this day. The approach adopted by a leader of great depth and wisdom must be looked for guidance to the solution of these continuing problems that afflict our land. Had the wise courses he advocated before the slide have commenced been adopted, these problems could have been averted.

Abolition of Capital Punishment

The early bills on the abolition of capital punishment in Ceylon sought to suspend capital punishment for a period of time so

that it could be later introduced if violent crime increased as a consequence of such suspension. Senator Azeez supported the bills but it is clear that he was for the total abolition of such punishment and not its mere suspension. He characterized capital punishment as “a primitive form of punishment. Humanity has been moving towards the abolition of capital punishment”.⁸

His statements were made in early days when the campaign for the abolition of capital punishment had not still gathered momentum. As he pointed out, there were only 36 countries in the world that had banned capital punishment at that time. There were still doubts as to the wisdom of banning such punishment. But, Senator Azeez did not seem to have such doubts. He supported total abolition of such punishment. Indeed, since he spoke, the abolition of capital punishment has progressed impressively. When Senator Azeez spoke, he referred to 36 countries as having abolished it but the World Coalition against Capital Punishment states that by 2023, 112 countries have abolished the death penalty for all crimes and 23 countries had suspended execution of those sentenced to such punishment. In Sri Lanka, the penalty exists but there is a moratorium on executions. Senator Azeez believed that the taking of life as a form of punishment was an inhumane act. Capital punishment involved the state taking human life as a form of punishment. The state exists to protect and promote the lives of its citizens. It is basic that a state should not take the life of any citizen as a form of punishment. The principle is born from the sanctity of life which all people and all religions recognize. The death penalty remains on our statute books. The Constitution of Sri Lanka refers to it in Article 13 (4) which states that “no person shall be punished with death or imprisonment except by Order of a competent court”. The death penalty though imposed has not been executed in Sri Lanka. In Sri Lanka, sad to say, extra-judicial

8. Speech on the Suspension of the Capital Punishment Bill, 20 May 1956.

killings by the authorities have increased. Accountability for such killings is non-existent. In that context, the progress that has been made through the non-execution of capital punishment appears to be an illusory gain.

The use to which presidential pardons have been given to criminals sentenced to death, whose deeds have caused abhorrence also has caused public concern. The presidential pardon is modelled on the prerogative of the British sovereign to pardon criminals. In modern law, it is exercised by the British sovereign only in limited circumstances where the conviction was later to be found to be grossly unfair or based on false evidence, where there is a public sentiment that the criminal had spent a long time and had suffered enough in prison, or where he is in the final days of his life due to a terminal illness. Presidential pardons were widely misused during the presidential regimes of Maithripala Sirisena and Gothabaya Rajapakse. The latter pardoned Duminda Silva who was found guilty of killing a fellow politician in cold blood and Sunil Ratnayake who was found guilty of committing the Mirusuvil massacre of eight Tamil civilians. Both were given the capital sentences. Gothabaya Rajapakse pardoned both of them. The pardons were challenged through fundamental rights petitions. Recently, the Supreme Court, for the first time in its history, held that the exercise of the power of pardon relating to Duminda de Silva was illegal.⁹ There is a petition pending regarding the pardon of Sunil Ratnayake. The decision depended on the basis that Gothabaya Rajapakse had not followed proper procedure in conferring the pardon. The procedure required consultation with the Attorney General, with the judge who convicted and with the Minister of Justice. There was no record that such a procedure had been followed. Assuming such a procedure was followed and it was recorded, one must conclude that each

9. <https://www.dailymirror.lk/breaking-news/Presidential-pardon-granted-to-Duminda-Silva-not-valid-in-law%3A-SC/108-275192>

of these officers should have made a reasoned decision as to why they would recommend the pardon. The adequacy of the reasons given also could be reviewed by the courts. The Supreme Court was establishing a wide power of review of presidential powers in this case. It follows that the pardons given by Sirisena to Atte Gnanasara Thero, the rabble rouser and the convicted murderer, Shramantha Jayamaha, are reviewable pardons not only for the lack of proper procedure but on the lack of reasonable grounds for such a pardon. These pardons had political or mercenary reasons and are clearly not maintainable in terms of the law.

It demonstrates the yawning gap that has arisen between the pursuit of ideals by good men and women as in the days of Senator Azeez to a state of decadence when there is so much of deviance from moral standards that go without being sanctioned. The notion of a sanctity of life is virtually non-existent in this country which has Buddhism as its state religion. Should not the basic notion of ahimsa, the love of all human life, not be the criterion for governance in this country? Does that not include that all human beings are treated equally and the worth of their lives be guaranteed?

Bribery

One interesting speech involves the introduction of a bill on the prosecution of bribery. It is a demonstration of how squeamish a subject the prosecution of bribery was in 1954 long before it became a major cause of the rot that ate deep into the political and economic structure of the country. An argument against it put forward by some senators was that it violated the human rights of potential suspects.

It is strange to read the speech of Senator Azeez on the Bribery Bill today when bribery has led our country to economic ruin because he was speaking against the characterization of the Bribery Bill as against fundamental rights. He scoffed at the idea

that the Bill could ever violate such rights. He pointed out that the “allegations of bribery are so wide and frequent that it has become a matter of paramount importance”.¹⁰ He wanted a specialised machinery like that under the Attorney General to deal with the issue of bribery. He supported a Bill which would vest the power of prosecution in the hands of a single officer over both public servants and members of the legislature on the ground that there should be an accumulation of expertise in a single entity to grapple with this growing problem in the country. The opposition to the Bill on bribery on human rights grounds indicates the pliant views that were taken of the phenomenon at times when the problem was beginning. There was no momentum towards the creation of strong institutions against the practice of bribery. Senator Azeez had said in his speech : “.. in a young democracy like ours, it is very essential that all possible steps should be taken against bribery and accusations of bribery”. That warning was not heeded. Bribery was to consume the economy of the country in time to come. The institution of strong enforcement machinery to prevent bribery, as suggested by Senator Azeez, and meaningful prosecution of those who took bribes may have prevented the problem. Instead, a soft view had been taken.

As the IMF pointed out, wide-spread corruption has been the cause of the economic crisis in Sri Lanka. Politicians and public servants have been stealing the wealth and the resources of this country. There has been no accountability. There is a Bribery Commission and adequate laws on bribery. But, prosecutions of bribery seldom occur. Though the public knows who committed bribery, there is no effort to prosecute the persons involved because they hold power in the state. Where proceeds of bribery are taken out of the country, simple procedures exist for the recovery of such money with hardly any cost to the state. The World Bank

10. Speeches, p. 37.

runs a programme for the tracing and recovery of assets stolen by leaders of states. The United States government also provides similar assistance. To invoke such assistance, all that is required is for the government is to ask. But, no such effort has been made by the different governments of Sri Lanka simply because corruption exists at high levels. The rooting out of corruption is a prerequisite for any economic development in Sri Lanka. Senator Azeez spoke about this long ago.

The Ethnic and Religious Strife

I want next to deal with another problem, the ethnic and religious strife that afflicts our country and has been the root cause of our misfortunes over the years. For seventy-five years since independence, no issue has taken up the energies of those who rule us as this issue which has been the means to the acquisition of power by the leaders of the majority Sinhala ethnic group in Sri Lanka.

Senator Azeez was senator at a difficult time when the leaders of the Sinhalese majority found an easy path to power through the stoking of ethnic passions first through the making of Sinhala the only official language of Ceylon and later through the making of Buddhism the state religion. In the guise of ringing in the age of the common man, the chauvinist leaders of the newly named Sri Lanka (Lucky or Blessed Lanka) through administration in Sinhalese, the governance of the country was entrusted to the incompetent. Legislators, some of them barely literate, began the making of laws. Administrators were appointed through bribery or as a reward for political service, Reading his speeches now, with a hindsight of the perilous journey in ethnic and religious chauvinism, the foresight that Senator Azeez had in warning against the dire plight that would befall the country in the course which had been adopted show a foresight born of deep wisdom and understanding of the

course of human events. He characterised the Official Languages Bill (1956) as the “shortest Bill ever introduced but fraught with the gravest of consequences...consequences that will outlast the present generation”.¹¹ How accurate those words have turned out to be. The effects of the Bill outlasted his generation and will outlast several future generations to come. The problems it generated will remain unsettled for a long time and until it is settled, our country will be in turmoil.

We, today, note the wisdom of his view for the Sinhalese poor, the “common man” the Sinhala chauvinists spoke of, educated only in Sinhala, were unable to secure higher types of employment in areas of modern technology or join the professions in a meaningful way. While their chauvinist leaders sent their children to be educated in the West, the children of the poor were kept in the delusion of racial superiority educated in a fashion that denied them access to education in the new technologies. Senator Azeez prefaced his speech on the Official Language Bill by stating that he was a democratic socialist who had the interests of the common man in mind. It was a canard of the Bandaranaike government of that time to say that it was introducing the age of the common man. Its policies sent the country cartwheeling into a steep decline under the smokescreen of communalism and racial hatred that enabled the rising new classes among the Sinhalese to capture and keep power through the stoking of racial and religious passions. Through seven decades of descent into tyranny, this island has not had any other political or economic concern other than the scotching of the interests of the ethnic and religious minorities, a course that Senator Azeez had warned against. The speeches he

11. Speech on Official Language Bill, 3rd July 1956. *Senate Speeches* p.96. Senator Nadesan has pointed out that Senator Azeez was “one of the radicals of that period” when he as a member of the Jaffna Youth Congress and that they were together in the struggle against British Imperialism though Senator Azeez had “strayed” into the UNP later. *Senate Speeches*, p.46.

made are premised on the view that the Muslim community in Sri Lanka would be the most affected by the language change that was being made in 1956. In a long speech he made, Senator Azeez quoted from a Prize Day Report at Zahira College; he pointed out that the Muslim in Ceylon had to know four languages to fulfil his obligations fully, they being Tamil, Arabic, Sinhalese and English. The Muslim of Malay origins would want to learn Malay as well. He portrayed the Muslim community as specially disadvantaged by the Bill.

I like to think that Senator Azeez must have gone through an inner conflict in making these speeches.¹² The two important Muslim organizations of the time, the All Ceylon Muslim League and the All Ceylon Moors' Association had agreed to support the Sinhala Only Bill "with due recognition being given to Tamil and English, provided that fundamental rights of the minorities in respect of religion, culture, language, etc. are incorporated in the Constitution". This was a pragmatic approach. The majority of Muslims lived, interspersed among the Sinhalese. They were adept in speaking Sinhala though many of them spoke Tamil at home. They preferred the adoption of a practical approach to the issue, a solution which did not accord with the interests of the Tamil minority or, perhaps, the Muslims of the Eastern Province who were Tamil speakers. The Sinhala Only Bill did not provide for the official recognition of English and Tamil and did not recognize what was in the proviso in the resolution of the Muslim League and the Moors' Association regarding fundamental rights. After the Bill was presented without any reference to the official status of Tamil and English, the All Ceylon Muslim League decided not to support the Bill. Though the pragmatic course of accepting Sinhala Only was followed by some Muslim leaders like Sir Razik Fareed,

12. I like to think that this view is reflected in *ஏ. எம். நஹியா, அஸீஸும் தமிழும்*.

Senator Azeez voted with his Tamil colleagues on the Senate against the adoption of the Sinhala Only Bill. This was in accord with the resolution of the All Ceylon Muslim League which he quoted in his speech.

The intense inner conflict he felt in considering the Bill appear in the two long speeches he made on the subject in the Senate. As much as the Sinhala Only Bill led to the alienation of the Tamils, it also began a fragmentation of the Muslims. The Southern Muslim could take to Sinhala Only more easily as he lived among the Sinhalese. I do not say she because Muslim women at that time preferred to speak in Tamil. I speak of experience with the families of my Muslim friends of my youth. Their mothers spoke to me in perfect Tamil. My Muslim friends spoke to their mothers in Tamil. The elite Muslim was comfortable with English and for him, it was a class issue that English should be kept. This was not so for the Muslims of the Eastern Province who lived among Tamils and earned their living through agriculture rather than trade and business like his Southern counterpart. The Muslims of the Eastern Province produced great Tamil poets and literary figures of Tamil language. They loved Tamil but they loved their religion more. There began an evolution of a separate identity of the Muslims of the Eastern Province with the Sinhala Only Bill. This was accentuated by the un wisdom of the Tamils in rejecting the Muslims. Senator Azeez had lived amongst the Muslims of the East as Assistant Government Agent of Kalmunai. Besides, he was a Jaffna Muslim. He could not readily have shared in the pragmatic view of the other Muslim leaders of accepting Sinhala Only as the only official language of the country. He understood that there was an evolution of the separate identity of the Muslims of the East. This identity was to become sharper as time evolved. He understood the position of the Tamils and stated views favourable to federalism as an eventual solution to the crisis that was developing.

His speech in response to the Throne Speech announcing the

introduction of the Sinhala Only Act was a carefully calibrated speech that balanced the pragmatic approach he was mandated to accept by the resolutions of the two Muslim associations and his own view of the injustice that was being done to the minorities and the harm that would ensue to the peoples of the island.

He stressed the need to reject the suggestion that was coming to be made that the Sinhalese race alone constituted the Ceylonese nation. This is an idea that is now entrenched in the Sinhala mind but it had its genesis a long time ago with the Sinhala Only Bill affirming that position. Senator Azeez asserted that like the Tamils and the Burghers, the Muslim community forms an integral part of the Ceylonese nation. Earlier, the Senator had pointed out that democracy was not the rule of the majority but the rule of the people. Sadly, in Ceylon (now, Sri Lanka) democracy was lost due to populist politics and a rule by the majority had set in after the Sinhala Only Bill. The decline in the governance and the economic climate of Ceylon (Sri Lanka) began from those times when division of the Ceylonese nation into ethnic groups came to be legislated through the Sinhala Only Act. It is worth repeating that Senator Azeez predicted that the effects of the short Bill would outlast his generation. It will outlast the present generation and beyond.

While continuously plugging the position of the Ceylon Muslim League, Senator Azeez consistently espouses the status of Tamil. In oblique references in his speeches, the right of Tamil to a place in Ceylon is recognized.. He refers to Senator Kanaganayagam as the “Senator who comes from my homeland” referring to Jaffna as his homeland. He does not use the term in its connotation in which it is used in the Indo-Sri Lanka of 1987 relating to the existence of a Tamil homeland but there is an association made between areas in which Tamil is spoken, Jaffna and the Eastern Province. He did

contemplate a possibility of a federal solution when he said in his address on the Throne Speech that, as a last resort,¹³

“if it is found to be the constitutional device available, when all efforts have failed and all remedies have been denied, to prevent the sure emasculation and the final extinction in Ceylon of the Tamil language, I can, in those circumstances, appreciate the federal principle and even, subscribe to it”

In another part of the speech, referring to the Gal Oya Scheme, he said:¹⁴

“I do feel personally that it is a legitimate desire on the part of the Tamil-speaking to have a home of their own. I am not thinking in terms of the exact territories, boundaries and so on, but I do say that if there is going to be scope, if there is going to be room for the development of the Tamil language, it is inevitable that there should also be a home for it”

It took many years for international law to work towards such a solution. It is now accepted that there is a principle of internal self-determination which provides relief to persecuted minorities. The object of the principle is to ensure devolution of power as a solution to ethnic problems. The principle came to be stated as a proposition in the Quebec Secession Case by the Supreme Court of Canada when it stated that persecuted minorities could resort to self-determination as an ultimate solution. Since then, this dictum has come to have an internal and an external dimension. The internal dimension is that such minority problems should be solved through internal self-determination which involves a solution through federalism or through some form of devolution of powers to the minority. External self-determination is a principle that justifies a separate state. In the later discourse of finding solutions

13. *Speeches* p. 74; Address on the Throne Speech 8th May 1956.

14. Address on the Throne Speech, p.81.

to the problem, the notion of self-determination is widely used. It was the claim on the basis of which the LTTE fought a thirty year war for secession. Now, discussion of external self-determination which justifies secession is prohibited in Sri Lanka by the Sixth Amendment to the Constitution. The Amendment makes it a criminal offence to advocate secession.¹⁵ So, I had better not discuss it here.

But, in a landmark ruling in *Chandrasoma v Senathirajah*¹⁶ the Chief Justice Priyathep with whom Justices Upali Abeyratne and Anil Gooneratne agreed, held that internal self-determination was possible under the Constitution, upholding the validity of the 13th Amendment which involved devolution of powers and was an instance of internal self-determination. In doing so, Chief Justice Dep referred to the Canadian Supreme Court judgement which had discussed both internal and external self-determination. Federalism is a solution that is considered permissible under the Constitution as a result of this judgment. But, unfortunately, federalism is considered a dirty word by the Sinhala-Buddhist hegemony. That solution, which Senator Azeez foresaw as a possible future solution where all else fails, is precluded not by the law but by the evolution of the psychology of the majority community which regards such a solution as affecting the indivisibility of a united Sri Lanka. On this ground the full implementation of the Thirteenth Amendment is also resisted, particularly by the Buddhist clergy. Consequently, the calamitous events precipitated by the Sinhala Only Bill predicted by Senathirajah as outlasting his own generation has now come to pass.

The facts of the case have significance. The plaintiff, Chandrasoma, challenged the election of Senathirajah and his fellow Ilankai Tamil Arasu Katchi (Federal Party) members

15. The Sixth Amendment was passed on 8th August 1983.

16. 4th August 2017; SC SPL 03/2014 ; https://www.supremecourt.lk/images/documents/sc_spl_03_2014.pdf

of parliament on the ground that they belonged to a party that advocated secession contrary to the Constitution and the law. So, the plaintiff asked the court to invalidate their election. The evidence of their espousal of secession in the constitution of their party. The provision in the constitution of the party read:

“The objective of this party is to establish political, economic and cultural liberation among Tamil speaking people by way of forming autonomous Tamil Government and autonomous Muslim Government as part of United Federal Sri Lanka in accordance with the principles of self-determination. Note: There will be a full guarantee in regard to religion, language rights and fundamental rights for the minorities residing in the States which will be connected.”

It is interesting to note that the ITAK constitution spoke of an autonomous Muslim Government, presumably for areas which had a Muslim majority in the Eastern Province. The ITAK was seeking to make itself acceptable to the Muslim community in light of the schisms that were taking place between the Tamil and the Muslim community. The argument for Senathirajah and the ITAK MPs was that they had taken the oath under the 6th Amendment not to advocate secession and their party did not advocate secession in asking for federalism within a unitary state. The Supreme Court accepted these arguments.

Senator Azeez anticipated the fact that the Muslim community could not have uniform interests because of the fact that one third of the community lived in the Northern and Eastern Provinces among a Tamil majority and two third lived among the Sinhalese. The Sinhala Only Bill brought out the divisions between them. While the Muslims living in the South took a pragmatic view on the Bill, the view of the Muslims in the North and East was different. There was a progressive development of the identity of the Muslims of the Eastern Province whose experience and living conditions

had become different. The earlier unity between the Tamils and the Muslims had been sundered as a result of Tamil hostility in the North through the driving away of the Jaffna Muslims by the LTTE and by violence resulting in the brutal killings of several hundreds of Muslims in the East by the same group. The alleged reason was that the Muslims were siding with the state during the war. After the war ended, the hostility continued with episodes like the Shanmuga Vidyalaya incident where there were objections to Muslim teachers wearing the abaya.¹⁷ The wearing of one's chosen form of dress does involve fundamental rights. The tension continues but the ITAK's existence of the Muslims as a separate people entitled to autonomous government in areas where they form majorities recognizes their right to separate governance in the areas where they are the majority. It shows that instead of grouping the Muslims within the Tamil nation, the distinctness of the Muslims is now recognized by the major Tamil party. Senator Azeez had adverted to this distinction in his speech. One notes that he speaks of Tamil speaking peoples, using the plural, denoting that there are two Tamil speaking peoples in Sri Lanka, one of them identified by the fact that "they love Tamil but they love their religion more".

Many commentators now agree that a separate identity of the Tamil-speaking Muslims of the Northern and Eastern Provinces must be accepted. It has become concretized due to the hostility of the Sinhala Government through its land policies taking Sinhala settlers into the Muslim and Tamil areas. Consequent on the rise of Buddhist groups like the Bodu Bala Sena showing hostility to the Muslims, the identity of the Eastern Muslims who have cultivated

17. <https://www.aljazeera.com/features/2018/7/14/hindu-group-protests-against-muslim-teachers-wearing-abaya>

their own forms of Islam, has become entrenched.¹⁸ They have to be taken into the equation if any solution is to be found to the ethnic problem.

Another issue speeches on the Sinhala Only Bill highlight is insufficient constitutional protection of the minorities. Senate Azeez pointed out that Article 29 of the Soulbury Constitution which had required that any statute affecting minorities must be passed by a two-third majority afforded scant protection to the minorities. Senator Azeez declared that this provision lacked any force in providing protection to the minorities in the context of populist minority politics that had emerged since the advent of Bandaranaike and his promise of Sinhala Only in twenty four hours. He said that it was “no longer the Magna Carta” on minority rights it was intended to be. The Sri Lankan courts had upheld legislation disregarding minority rights enacted by the Sinhala majority governments on the ground that they were passed by a two-third majority. Hence, the problem of minority protection remained a constitutional issue. The solution that Senator Azeez and the Ceylon Muslim League advocated was the inclusion of strong provisions on the protection of the fundamental rights of the minorities. He said: “We want whatever rights we have incorporated in the Constitution because the present Constitution has proved inadequate”.¹⁹ In *Bribery Commissioner v Ranasinghe*, the Privy Council sought to revive some life in Article 29 by stating that the interests it sought to protect, namely minority rights, were such a fundamental part of the Constitution that it cannot be changed by even a two-third majority. The Sinhalese populist government

18. Rajni Gamage, *Buddhist Nationalism, Authoritarianism and the Muslim Other in Sri Lanka* (2021) 6 *Islamophobia Studies Journal* 130; https://www.jstor.org/stable/pdf/10.13169/islastudj.6.2.0130.pdf?refreqid=fastly-default%3A74bea2dfb4567cc2a4635e6894e08292&ab_segments=&origin=&initiator=&acceptTC=1

19. *Speeches*, p.86.

hit back. In 1972, it changed the constitution and introduced a presidential system. In 1978, it made Sinhala the official language and Buddhism the state religion, thus ensuring the dominance of the Sinhala-Buddhist majority. But, the Constitution has a chapter on fundamental rights, rather incongruously, because some of the rights that are stated, such as the right to equality, sit uneasily with the existence of a sole state language and a single religion being the state religion. The inclusion of a chapter on fundamental rights was in a sense due to the assertion of its need by minority groups and its leaders. Senator Azeez played a major role in the advocacy of the inclusion of human rights in the constitution, as his speeches show.

One later case involving the use of the fundamental rights provisions is the Noise Pollution Case, (*Ashik v Bandula*)²⁰ resulting from the refusal to issue police permits for the use of loudspeakers by the Kapuwatte Mohideen Jumma Mosque in Muslim prayers. The mosque is within the Weligama police area. The Police had issued an order against it. It is an interesting case in the context of the fact that it was the noise of drumming that led to the anti-Muslim riots in 1815. Interestingly the officer who was in charge of the Weligama police station happened to be a Muslim. One of the principal complainants was another mosque in the area, Jamiul Rahman Mosque. It was more an intra-religious conflict than an inter-religious conflict. Essentially, the Kappuwatte Mosque supported Sufi principles²¹ while the Jamiul Rahman Mosque practised austere forms of Islam found in the Middle East. Despite diversity among Muslims on religious, geographical and other grounds, Sri Lankan law has treated all Muslims as belonging to a single community. This comes down from British times, when

20. 2007 (1) SLR 191 (SC).

21. A third mosque in Kapuwatte, the Jifferey Thakkia Mosque, was also impleaded as a respondent. For an analysis of the case, see Benjamin Sonthal, "Environments of the Law: Islam, Buddhism and the State in Contemporary Sri Lanka" (2016) 75 *Journal of Asian Studies* 137.

the colonial government made a code in 1806 known as the Code for Maurs (sic) or Mohamadons (sic) purporting to be a code on the customary laws of the Muslims of Colombo. It was really based on a Dutch code made in 1770 based on the laws in Indonesia. This code was extended to all Muslims in the island. It dealt with inheritance, marriages and divorce. Later, there was to be legislation on each of these subjects and also an act providing for the administration of Muslim charities (the Waqfs Act, enacted during the time Senator Azeez was in the Senate and on which he made several speeches). This framework of the law treated the Muslims as a unitary people and did not consider their diversity.²²

The Noise Pollution Case did not involve Islamic law. It was an intra-religious dispute to which general law would have been applied despite the fact that the dispute concerned two Muslim parties. It was presented as a fundamental rights case involving the right of religious expression by the Katuwatta Mosque. The argument against was based on the proposition in the Constitution that fundamental rights must yield to higher public interest and the preservation of public order. The extent of noise pollution had to be taken into account. The Environmental Foundation had intervened to argue this point regarding noise pollution. Affidavits were produced by two Muslims who complained that they had health problems caused by the noise from the Katuwatta Mosque. The judgment of Sarath Silva CJ begins with the initial fallacy that Sri Lanka had a secular tradition as far as religious noise was concerned and that such noise was not permitted if it amounted to a public nuisance. This would have been enough to dispose of the case by holding that the refusal of the permit was justified by the need to prevent noise pollution. Silva CJ went further to bolster

22. The three framework legislation which constitute Islamic law in Sri Lanka are the Muslim Intestate Succession Ordinance (No. 10 of 1931), the Muslim Marriage and Divorce Act (No. 13 of 1951, amended 1975), and the Muslim Mosques and Charitable Trusts or Wakfs Act of 1956.

up the secular credentials by saying that the same would apply to the chanting of Buddhist pirith. He also cited textual authority suggesting that pirith should be heard without auricular aids in the presence of the chanter. There is a Tamil saying that if you blow the conch too much, the conch would get spoilt. சங்கை ஊதிக்கெடுத்தான். Sarath Silva CJ wrote more than what was necessary for the judgment provoking unnecessary hostility towards the Muslims in a matter which did not concern other religions, the main complainants being Muslims and the complaint was against Muslims.

The dictum stirred up a hornet's nest among the Buddhist priests who converted the case into one directed at them preventing the use of loudspeakers when pirith is chanted. The Buddhists took offence to the judgment's characterization of Sri Lanka as a secular state. It clearly was not as Buddhism had been given "the foremost place"²³ in the Constitution. The later events arising from the arrest of Pannaloka Thero for using loudspeakers to chant pirith outside the time limits caused a furore and made the Noise Pollution Case a medium for attacks on Muslims.

The case illustrates that the statement of fundamental rights in the Constitution does not amount to very much under the present Constitution. Senator Azeez did not anticipate the priority of the rights of Buddhists under the constitution. Like Section 29 which Senator Azeez decried, fundamental rights are also a mere statement that provides a smokescreen for the hegemony of populist forces in the country. Solutions good men think up in terms of the law cannot withstand the wickedness involved in chauvinistic law making. The episode of human rights as a solution to the ethnic crisis indicates that well-intentioned systems based on the ideal of

23. Article 9 Chapter 2.; Article 10 states the freedom of religion and conscience but it was clearly intended to be subject to the priority given to Buddhism.

human equality and justice are yet subject to the caprice of those in power and can be jettisoned in order to achieve unsavoury results.

I come to another factor that Senator Azeez addressed. That involves the economic effects of the Sinhala Only Bill. It is a matter of particular significance to the Muslim community which constitutes a spearhead of trade and commerce in Sri Lanka. It would dent the efforts of the community if its language rights are affected or if it is made a target of hatred and opprobrium because of its religion. The targeting of Muslim businesses has become common after the rise of Sinhala Buddhist organizations like the Bodu Bala Sena and Sinhala Ravaya. Senator Azeez made the point about the economic impact as follows:²⁴

“I should like to assure the members of the present Government who are very keen on establishing in Ceylon a democratic form of society not only its political aspect but also its economic aspect that were equally keen about it and that is why we request them to solve this problem quickly so that the march towards democratic socialism may not be halted, otherwise the march will definitely be halted by the kind of frustration caused by the kind of fears engendered. And this question of giving due recognition is not only a matter of purely cultural and religious interest but also a matter of economic interest for the reason that I have stated, namely, if you solve this question the chances of establishing democratic socialism in this country are much brighter; otherwise, those efforts are bound to be retarded.” He was kind. The efforts were not just retarded. The Sinhala-Buddhist chauvinist has destroyed those efforts completely, taking the country into utter economic ruin.

If one looks back at the politics since independence, one cannot find politicians discussing any economic plan for the country except ones that were calculated to be offensive to minorities and intended

24. Speeches, p.87.

to undermine their interests like the colonisation schemes in Gal Oya and Kantalai. Otherwise, the effects of Sinhala Only created such schisms that it led to the emergence of great disparities within the Sinhala society and ensured that the an emerging coterie of diehard chauvinists, the new Sinhala business elite forming groups, like the Viyath Maga, kept power by stoking the passions of the Sinhala people.

The Sinhala chauvinist politicians profitted by keeping the Sinhala peasant on the boil, feeding him with tales of past glory, creating myths about his sole right to the island, portraying the Tamils and Muslims as outsiders eating the cake that should be reserved for the Sinhalese. While they became rich through corruption and shady deals often involving public funds, they kept the Sinhala peasant in poverty blaming such poverty on the others, the Tamils and the Muslims. After the end of the civil war, attention turned to the Muslims and they, the premier trading group, now became the targetsear of Sinhala chauvinist hatred. As years passed, the economy became depleted by constant and unchecked corruption. Though the corrupt were identified in the press, no action was taken because the offenders were politicians wielding power. So, the avant garde frauds, the Central Bank fraud and a series of other corrupt incidents went unpunished though the depletion of the national funds they caused was huge. It is now estimated that the poverty gap has grown with the bottom half hitting poverty lines whereas much of the wealth in Sri Lanka is in the hands of just ten percent of the people. Democratic socialism that Senator Azeez espoused has become a distant dream.

In terms of the law, the debts that were incurred by the state were potentially unlawful debts from which liability could not flow. Debts given to states to construct projects of no public utility, like the Lotus Tower, the Mattala Airport and the Nelun Pokuna are trophy projects celebrating the greatness of individual politicians.

When built with monies obtained by way of loans, the issue is whether the loan agreements are valid. They must clearly be ultra vires as no state officer could have signed such a loan when it was clear that it lacked any public interest. These debts are therefore invalid. There is also the odious debt doctrine which brands debts secured to promote a tyrants interest and not that of the people, are considered lacking in validity and are characterised as odious debts which need not be repaid or serviced. Sri Lanka has not tried out these legal methods to avoid its liability to pay back these usurious debts. It has adopted the general policy prescription of the IMF that a debt should be taken as such and be serviced once it is taken.

We know that the IMF has given a loan to Sri Lanka. When such loans are given, the IMF seeks the adoption of austerity measures. These measures will significantly undermine the social safety networks that protect the poor. The poor has been driven to the bottom prior to the adoption of these measures. Their adoption, like the increase in VAT will affect the poor even more. Social tensions will rise. The prescriptions of the IMF, whether they work or not, are largely economic. The IMF seeks the elimination of corruption which is a reform again that is largely economic in character. Being an economic institution and in keeping with the times, the IMF sees the economic decline in Sri Lanka in purely economic terms and does not see or want to see is designed to see the fact that the malaise in Sri Lanka in the period since independence has been due to the preoccupation with ethno-religious politics in Sri Lanka.

Sri Lanka seeks to develop the country through foreign investment. It has a board of investments and free trade zones. It has many bilateral investment treaties and free trade agreements. But, no significant investments have come to Sri Lanka. Across the Palk Strait in TamilNadu, there are flourishing foreign investment companies making it the second richest federal state in India. The flows of foreign investment are not about laws that are favourable to

foreign investment. It is about maintaining political and economic stability, sustaining over long periods a climate in which the foreign investor can profit himself and his host country. In Sri Lanka, the Muslims who furnace business and industry in the country and the Tamils are made to live in fear. There is an army still maintained in the North and the East of the Country. In such a climate of tension with continuous strikes generated by the Sinhala working class, laws cannot bring foreign investment. A workforce that has been educated in Sinhala and Tamil, without a language skill gives access to modern technology cannot be used by foreign investors. Meaningful development is not about economics alone. It is about maintaining a tension free climate for the people so that they could pull together towards prosperity rather than live in continual fear under a Prevention of Terrorism Act. Senator Azeez recognized this link between the need to solve the ethnic and religious problems as they have a destructive effect on the economy of the country. That is a good place to go into the situation of the Prevention of Terrorism Act and its attempted “reform” through the Anti-Terrorism Bill.

For foreign investment to take place, for the economy to improve and for there to be development in the country what is necessary is not the restoration of economic fundamentals which are about graphs and statistics but the restoration of a climate in which the human spirit can flourish without fear. As long as Sri Lanka is befuddled with the politics of majoritarian dictatorship, there cannot be economic or social progress. Senator Azeez was clear on this. He often defined democracy not as the rule of the majority but as the rule of peoples, meaning a plurality of peoples who inhabit this island. We never had democracy in this island in the sense in which Senator Azeez used the term. We have had a dictatorship of the majority which has trampled the rights of the minorities. Democracy that prevails now “ among a large number of political leader is a rabble rousing device.If that is the kind of democracy that is going to be adopted, I say in all humility that

I do not favour that form of democracy”²⁵ He said that on 28th October 1958 during the first communal strife directed at the Tamils when as he pointed out, without seeking to ease tensions, the politicians were rousing the people, to further violence. Sadly, that situation has persisted since the time the speech was made. What has prevailed in Sri Lanka is not democracy but the politics of hatred, with the leaders of the majority community vying for power by showing that they were the true leaders of the majority who could more effectively bash up the Tamil and Muslim minorities and keep them subdued for ever. In the context of such politics, Sri Lanka is condemned to remain in poverty that paradoxically hits the Sinhala majority the most.

In order to maintain the situation of majority rule, there has had to be a rule through emergencies which lasted for a long time and maintain a Prevention of Terrorism Act land after the civil war had ended. Senator Azees has spoken about the continued use of the Public Security Act in the Senate. The need for such a legislation was demonstrated by the events of May and June 1958 when the Sinhala mobs killed a large number of Tamil civilians urged on by Sinhala politicians. The fear under which the Tamil people lived justified the existence of the Public Security Act and the emergency that was declared under it. On the other hand, the continuation of the extensive powers it gave the government undermined the rule of law. It was a conflicting situation that confronted Senator Azeez who saw the need for the emergency but feared the possibility of its continued extensions as undermining the fundamental rights of citizens. The powers that were given to the Governor General under the emergency during those times were extensive. Of these and the possibility of the wrongful exercise of these powers, Senator Azeez made a speech which was perspicacious and deserves to be quoted extensively. He said:

25. Speeches, p. 303 on the State of Emergency.

“In analysing this Bill, one has to take into consideration the communal tension that prevails, about which I am not happy. I am most unhappy that no serious effort is made to ease this tension by any of our political leaders. I say that not a single one of them is taking any serious step to do so, and, in the present position, it would be dangerous to expose our country another fateful event such as that which occurred recently, because already the progress of Ceylon has been set back several years; and if there is another occasion for such riots, then anything might happen. I sometimes used to wonder whether we should not suddenly find ourselves under a dictatorship in a situation of that type, with mass killing and rioting all over Ceylon, with the civil Government breaking down, with martial law of soldiers rule coming into operation, and thereby making the Constitution disappear”

Sadly, riots continued against the Tamils, a civil war took place, then, riots and hostility towards the Muslims took place. Sri Lankan politics has not been one about economic development; it has been one about creating the other and keeping the other under subjugation. First the Tamils and then the Muslims had to be subjugated to Sinhala-Buddhist hegemony. The Public Security Act was an instrument that was used. But, sadly, eventually, it was the Sinhala-Buddhist who now suffers the economic decline that the strife has brought about. If Senator Azeez identified the 1958 riots as “setting back progress by several years” what of the several riots thereafter, the bitter civil war, the unleashing of terror on the Muslims by organizations like the Bodu Bala Sena and Sinhala Ravaya which were supported by powerful Sinhala politicians, the eventual accumulation of power by the army and the voluntary acceptance by Sri Lanka of the status of a poor country, taking the begging bowl to other states and financial institutions.

The Public Security Ordinance is preserved in the modern law by Article 155 of the Constitution. It gives wide powers to the

President to suspend existing laws and make new regulations. There is subjection to Parliamentary scrutiny of proclamations but this is theoretical as Presidents have commanded overwhelming support in Parliament. It vests wide powers of declaring an emergency that enable the executive branch of Government to use extensive powers it creates to deal with situations of political or economic disorder. Later, extensive powers were created in the Government when faced with labour unrest and the rise of violent protests by Tamil youth. The Prevention of Terrorism Act (1979) gave wide powers of detention of suspects for prolonged periods without sufficient judicial protection. The same tensions that Senator Azeez spoke about arises in connection with this legislation. While it may be necessary for the executive to have wide powers to deal with violence of organized groups, there is the need to ensure that such powers are not used to violate the rights of the citizen and that it is not used by the government to quell dissent by those opposed to its policies.

The Act which permits detention without trial for extensive periods was first used against Tamil youth during the civil war which began in 1983 and ended in 2009. The extent of the arrests, detention and torture of Tamil youth have been recorded in several reports and publications both in Sri Lanka and overseas. Thereafter, the Act has targeted Muslim youth, particularly after the Easter bombings. In later times, the legislation has been used to suppress dissent of the opponents of the government. Faced with mounting protests and threatened trade sanctions by the European Community, the government has brought several bills that seek to change the existing legislation. There is currently a new Anti-

Terrorism Bill being discussed in Parliament.²⁶ The criticism still is that the changes that are made in the new Bill does not fix the inadequacies of the existing legislation from the point of view of human rights law.

From the point of view of international human rights law, seven rapporteurs on different areas of human rights law have indicated how the legislation could be reformed. In their letter to the President on 18 October 2024, the Rapporteurs stated:

“Root and branch reform of Sri Lanka’s counter-terrorism legislation is long overdue. UN human rights experts have provided a roadmap to that end, and we urge the Government to meet the minimum requirements of due process and human rights compliant counter-terrorism legislation they previously identified,”

There were five matters that were identified as making the earlier bills as well as the present bill not in accordance with human rights standards. The Rapporteurs suggested that these shortcomings be fixed. It would appear from their last communication that the Bill that is currently before Parliament has not adequately fixed these

26. Kishali Pinto-Jayawardene, “Old Wine in New Bottles? Sri Lanka’s Pesky Anti-Terrorism Bill has Surfaced Again” *Sunday Times* 14 January 2024. For a commentary comparing the Act with the new Bill, see Centre for Policy Alternatives study at <https://www.cpalanka.org/wp-content/uploads/2023/10/ATA-Table-Complete-v1.2.pdf>. An Anti-Terrorism Bill was published in May 2024. Ten rapporteurs wrote to President Wickremasinghe as to its shortcomings.

<https://www.newsfirst.lk/2023/05/09/un-special-rapporteurs-write-to-president-on-anti-terrorism-rehabilitation-bills/>

The new Bill presented to Parliament on 12 January 2024 is not very different from the earlier Bill. It was also criticised by the rapporteurs. <https://independence-judges-lawyers.org/un-press-releases/un-experts-say-sri-lankas-counter-terrorism-bill-fails-to-heed-their-recommendations-status-quo-fundamentally-unchanged/>

shortcomings. Let me first state the five points which they wanted changed.

1. Employing definitions of terrorism consistent with international norms.
2. Ensuring legal certainty, especially where it may impact rights to freedom of expression, opinion, association, and religion or belief.
3. Including provisions to prevent and halt arbitrary deprivation of liberty.
4. Including provisions to prevent torture and enforced disappearance.
5. Guaranteeing due process and fair trials, including judicial oversight and access to legal counsel.

It is to be hoped that the Bill which is undergoing discussions at present will take heed of these recommendations and be suitably amended. There is no querying of the need for an Anti-Terrorism Bill but, in the context of the past events, it is necessary to ensure that it contains safeguards so that powers under it are not abused. The fact that other democracies contain such legislation is no defence. When faced with the argument that in England, the Queen has the same powers of declaring an emergency as the President in Sri Lanka has, Senator Azeez pointed out that the comparison is not apposite. The history and political culture as well as the institutional structure with a high regard for an independent judiciary make England very different. Minor infringements of civil liberties will not be tolerated by civic society in that country. Senator Azeez pointed out that the situation was different in this country. It is imperative that in the context in which the legislation has operated and given its history of oppression, there is a need to ensure that there is a sufficient balance between the power to prevent terrorism and the civil liberties of citizens. I leave this here. It is the law

of Sri Lanka that customary international law forms part of the law of the state. International human rights law, particularly the law on human rights protecting life and personal liberty as well as the law against torture are part of international law and as such, constitute the law of Sri Lanka. The Anti-Terrorism Bill, to the extent it conflicts with such law, may be unconstitutional. These are matters to be tested out. The violation of such laws are subject to accountability both in domestic law and international law. Even if domestic mechanisms are defective, the growth of international mechanisms will accelerate in the coming years. Besides, it is good for the economy that sanctions are not imposed on trade on account of non-conformity with human rights standards. There must be rethinking on this subject.

External Interference

Senator Azeez's speech on the motion to establish a commission on external interference made in May, 1954 was an example of his erudition and the expertise on the subject of the proposer of the motion, Senator Nadesan. It is a remarkable example of the quality of the debates in Parliament of that time. It is also an indication of the extent of the possible external interference in the country which has reached much greater proportions in the present day. The fear at that was infusion of communism. The suggestion was that a commission should be appointed to curb such possible interference. Senator Azeez opposed such a move. His view was that such a commission may have such wide powers that it could ask innocent citizens to appear before it. He cited the instance of McCarthyism in the United States as an instance of such a thwarting of individual rights by a commission. Yet, he was conscious of the need to save the country from external interference.

The extent of such interference has increased immensely from the time this debate took place. Sri Lanka has since become the

playing field of the very big powers of the world and the politicians have played significant roles in bartering away the rights of the people of the island to different foreign players. The adoption of a truly non-aligned policy is no longer possible as the present economic crisis requires extensive economic assistance from outside the country. It is inevitable that Sri Lanka will be the theatre of politics for rival powers.

Conclusion

For a lawyer, reading the speeches of Senator Azeez provides an insight into the care with which he approached his task as a law-maker. It is a sad commentary on the political affairs of our country that it is difficult to find someone who matched his analysis and foresight on matters he dealt with. The deep learning he committed himself to as a young man, his religious understanding of moral issues of his days born from Islam and Hinduism and his experience as an administrator in public service guided his approach to the problems he faced as a legislator. In Tamil, the perfection of a man and a woman are enshrined in the concept of a perfection possessed by a person called a சான்றோன். ஈன்ற பொழுதின் பெரிதுவக்கும் தன் மகனைச் சான்றோன் எனக்கேட்ட தாய். The Tamil Poet, Thiruvalluvar indicates the extent of this perfection by saying that the joy of a mother is greater when she hears her son being called a சான்றோன் than the joy at the time of his birth. In my estimation, by learning, conduct, his sacrifice of powerful positions to serve his people as an educator, his fearlessness in espousing unpopular views and the power of oratory in both English and Tamil qualify him to be regarded as an exceptional figure in the history of this country. It is an honour for me to have spoken of such a man.

About the Speaker

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More Details

