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state from religion and culture, particularly from that of the majority community, as an essential tenet of political secularism.

The question of fundamental rights has assumed, particularly during the past decade, a crucial significance in our state-society relations. Although not quite in parallel with the sheer magnitude of rights violations, the masses have now become increasingly conscious of their fundamental rights and the right to seek judicial redress. Yet, there are still constitutional and procedural impediments to a satisfactory rights regime. To overcome the existing barriers and inadequacies, the Constitution as well as the governmental structure should extend fundamental rights to the same extent as has been guaranteed by international human rights laws under which the Sri Lankan government has undertaken international obligations. A Bill of Rights should be included in the Constitution as the minimum guarantee of all fundamental rights.

Abuse of political power, corruption in the public life, excessive bureaucratization of public affairs and the arbitrary use of state power by those in office with scant regard for social accountability are but a few symptoms of a long process that has characterized the institutional decay in our body politic. If our political order today lacks public legitimacy and credibility, it is as much a product of the disintegration of politico-moral bases of governance as of an institutional crisis. Worse still, the public outrage about these negative trends is often exploited by political parties solely for partisan political gains. Remedial promises are often forgotten when critics become office-holders. Our society has obviously reached a point in which effective and tangible mechanisms for political accountability have to be built into the constitutional outlines of government. In other words, accountability of the government is no longer epiphenomenal, but central, to any meaningful debate on political reforms.

Freedom of expression and specifically the guarantee of the people's right to receive and disseminate information is a mechanism vital to ensure a democratic polity. Moreover, a media free of state control, can also be an effective social check on the abuse of power by those in power. Similarly, media should be made accessible to all sections of opinion.

The introduction of the right to recall in which MPs and all elected officials of the state could be recalled by a process initiated by the voters can be considered as a necessary step towards ensuring public accountability.

Elements of direct democracy would be of extreme value to supplement the existing institutions of representative democracy which paradoxically have lost, to a considerable degree, their democratic bearings. This is all the more important in the context of the existing constitutional provision for referendum belying its plebiscitary spirit. Mechanisms for direct democracy can be fruitfully utilized in a system of diffused legislative power where people's participation in provincial, municipal and rural administration is secured through plebiscitary initiatives.

Our electoral system too needs reforms. While recognizing that Proportional Representation is more democratic than the first-past-the-post mechanism, particularly to a plural society like ours, the undemocratic elements of the PR system presently in operation in our country should be removed. It should be changed to ensure better relations between the electors and the elected. Similarly, the present system of the political party constitution prohibiting the freedom of MPs in parliament should be abolished.

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Statement by the Civil Rights Movement of Sri Lanka on 25 October 1991:

HUMAN RIGHTS, SOVEREIGNTY AND DEVOLUTION

When there is criticism of our human rights record from abroad, we hear, all too often, the sentiment expressed that other countries should mind their own business and that what happens here is solely our own affair.

Such a viewpoint, though morally wrong, would have been legally correct some years ago. But today it is legally wrong as well. It is accepted law today that the doctrine of sovereignty of states no longer holds good *so far as a state treats the fundamental rights of its subjects*. The concept of national sovereignty has *in this respect* given way to the concept of international responsibility. As one expert has lucidly put it:

> "Had a well-meaning delegation from abroad called on Chancellor Adolf Hitler in 1936 to complain about the notorious Nurenberg laws, and the manner in which they were being applied to persecute German Jews, the Fuhrer would probably have dismissed such an initiative with the classic phrase of 'an illegitimate interference in the internal affairs of the sovereign German State', pointing out that these laws had been enacted in full accordance with the provisions of the German Constitution, by an assembly constitutionally and legally competent to enact them, and that neither they nor their application were the concern of any meddling foreigners. And, in international law as it then stood, he would have been perfectly right - and so would Party Secretary-General Josef Stalin have been if a similar

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> delegation had called on him at around the same time to complain about the wholesale liquidation of the Kulaks in the Soviet Union.
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> Were such delegations to call today on some of the world's living tyrants to complain about the injustice of some of their laws, those protests too would doubtless be dismissed with the same phrase. But in international law as it stands today, those tyrants would be wrong. For since Hitler's and Stalin's time there has been a change in international law so profound that it can properly be called a revolution. Today, for the first time in history, how a sovereign state treats its own citizens is no longer a matter for its own exclusive determination, but a matter of legitimate concern for all other states, and for their inhabitants."
>
> Sieghart:
> The Lawful Rights of Mankind

The writer then goes on to explain that "The formal product of that revolution is a detailed code of international law laying down rights of individuals against the states which exercise power over them, and so making these individuals the subjects of *legal* rights under that law, and no longer the mere objects of its compassion." (ibid). It is now necessary that both the existence and the contents of this code become known more widely, not only by lawyers and politicians, but also by the ordinary citizens for whose protection they exist.

The other theme that is often talked and written about in Sri Lanka today is that of various forms of devolution. The All Party Conference is supposed to be trying to reach a consensus on this. The parliamentary Select Committee headed by Mangala Moonesinghe would, presumably, look into possible models of devolution, or modifications of the Provincial Council system created under the 13th Amendment to the Constitution. H.L. de Silva's booklet opposing a federal system and saying that instead, the Provincial Council system must be given a proper chance to work, has been widely reproduced and discussed in the national press. Dr. G.L. Peiris, Vice Chancellor and Professor of Law of the University of Colombo, on the contrary, argues that federalism can be the only viable mechanism for holding together a nation torn asunder by cultural, religious and ethnic differences. More recently, discussion has centred on a different aspect of the mode of government - the Executive Presidency versus the "Westminster" parliamentary model.

The question of securing fundamental rights has so far not figured in these debates. It is very important that the human rights factors be given its due place in all these discussions. Whatever the mode of government (the present or a revised Executive Presidency, the old or a revised "Westminster System"), whatever the model of devolution, certain fundamental rights must be made non negotiable, and must be enforceable throughout the country. There must also be provisions to challenge legislative or administrative acts by the administration of a devolved unit if they transgress fundamental rights. Devolution must mean more, not less, democracy; it must mean enhanced, not weakened, protection of fundamental rights. An aggrieved person may be required to seek his remedy initially within the judicial machinery of the devolved unit, but in the last resort, a remedy must be available at central level, ie. by a Supreme Court or other such body which is drawn from and which serves the whole country.

In order to make this acceptable to the devolved units, it is essential that the central government itself makes its own actions in the area of human rights reviewable. All legislation must be reviewable by the courts to see if it is consistent with the Constitution, not merely as now at the Bill stage. The Government must sign the Optional Protocol to the International Covenant of Civil and Political Rights, and other like instruments which enable an individual who claims his fundamental rights are infringed to appeal to an international tribunal *as a last resort.* And, of course, the fundamental rights provisions in the Constitution must be amended to bring them into line with our obligations under the International Covenant on Civil and Political Rights.

Our duty to do this was forcefully and repeatedly stressed to the representative of our Government who appeared before the UN Human Rights Committee this year.

These steps should be taken by the Sri Lankan government for the benefit of its inhabitants even if there was no ethnic problem or question of devolution. But it is all the more essential to do it as part of any 'devolution package'. The Centre must be able to say to the devolved units: "Retaining ultimate control over human rights questions is not incompatible with devolution, is not an unreasonable limitation of your autonomy. Look, we too are making our laws and actions subject to review outside our territory." And the Centre will be able to go further and say to the inhabitants of the devolved unit: "You too, in the last resort, will have access to an international tribunal if you remained dissatisfied after going through the provincial courts and the national system."

Attempts should be made to get all "sides" to the conflict to see the advantages to themselves of this approach. Therefore it should be campaigned for not only among the government, 'dissidents', the traditional opposition parties, the sectors of public opinion in the South, but also among the Tamil militants, including the LTTE, and the civilian population in the North and East. The State should offer it as an expression of good faith and a reassurance against the centre acting oppressively; the militants should see it as a vital concession obtained in agreeing to accept a solution less than Eelam. People of all ethnic groups and all political persuasions will welcome it as a guarantee of their fundamental rights against transgression by any government authority, be it central, provincial or district, present or future.