

R.K. Mishra Memorial Lecture by Hon. Prof. G.L. Peiris, Minister of External Affairs of Sri Lanka

Delivered at the Auditorium of Teen Murti, the Residence of Pandit Jawaharlal Nehru, on Friday, 15th October 2010

I consider it a great privilege to be invited here to deliver this lecture in honour of a remarkable personality, who enriched the public life of India in many spheres. Perhaps, Mr. Chairman, it is not inappropriate for you to have invited a Sri Lankan to pay this tribute to his memory. After his passing away last year, one finds in a Festschrift that was published, a chapter by Mr. N. Ram, the celebrated Editor of The Hindu, in which he says that the most insightful and fascinating discussions of public policy which took place at the Observer Research Foundation had to do with Sri Lankan themes, the situation in Sri Lanka, its complexity and the way forward.

Throughout the career of the personality that we honour this evening, R.K. Mishra, there are certain themes which stand out. One of these is deep erudition. He was a reservoir of knowledge about the Vedas, the wisdom of the East, which he combined with great resilience, with a critical assessment of the contemporary world. He moved with Presidents, Prime Ministers and statesmen but he never lost the common touch. Mr. Rasgotra used the word "passion" in referring to him. More than anything else, what he was passionate about was the discussion of public policy and through his work as a journalist, in the Patriot, in the Link and other newspapers, he made a contribution of the highest quality to enriching the quality of the dialogue in India about burning public issues. His memory lives on, his ideals are perpetuated in this organization which he had founded and nurtured, and I consider it a privilege to be called upon to pay tribute to his memory this evening.

Mr. Chairman, the honour that you have bestowed on me is greatly enhanced by the hallowed precincts in which I address you today. Teen Murti, named after three statues depicting cavalry soldiers from three Princely Indian States, Hyderabad, Mysore and Jodhpur, was the official residence of the first Prime Minister of India, Pandit Jawaharlal

Nehru, who lived here from 1948 until his passing away on the 24th of May 1964. Six months after that the Nehru Museum and Library was dedicated to the Indian nation, by the then President of India, Dr. Sarvapalli Radhakrishna. That Museum and Library is today a repository of the culture and the heritage of this great country.

Mr. Rasgotra said that the central research interest of Shri Mishra was the South Asian region, and that is why I selected this particular topic "Constitutional Imperatives in our Region relating to Security, Growth and Equity". Especially because of Shri Mishra's interest in Sri Lanka, I propose to focus on some contemporary developments in Sri Lanka which are of more than purely national importance. These are themes which are of comparative interest to all the nations of South Asia. If you were to visit Sri Lanka today and particularly if you were to compare the ground situation at this moment with the circumstances which prevailed in my country, let us say two years ago, the most conspicuous characteristic would be that the people are carefree, they are celebrating their emancipation from terror and they are able to live their lives in an environment bereft of duress and coercion. That, however, is a state of things which cannot be taken for granted. It has to be strengthened and consolidated. How does one do this? I think there is both an external and an internal dimension.

As far as the external dimension is concerned, Sri Lanka is working with other neighbouring countries, particularly with India, to address such issues as piracy, the safety of sea lanes, the exchange of information, all of these we are doing in earnest. Admiral Verma, the Commander of the Indian Navy, visited us recently. There was also a fascinating series of discussions which took place recently in the Southern port of Galle. This was known as the Galle Dialogue, it had to do with maritime security and these discussions were attended by the representatives of Navies of about 25 countries.

As part of the external dimension, the Government of Sri Lanka is also engaging in a dialogue with the diaspora. We think that is a very relevant and a critical part of the equation. It is certainly not our intention to demonize or even isolate the diaspora. We are telling them that they have a role to play. The conflict is over, that is a closed

chapter. But we are telling them that they have now the opportunity to engage constructively in rebuilding the Northern and Eastern parts of the country, in improving the lives of the people and we are asking them, would you not derive genuine and profound satisfaction from seeing the improvements that are taking place and associating yourselves vigorously with these developments. And I am happy to say that the reaction so far has been very positive.

As for the internal dimension of security, we have to address the anguish, the pain which is the inevitable result of two decades of conflict. The first consideration is the resettlement of internally displaced persons. It is matter for pride that within a short span of fifteen months the Government of Sri Lanka has been able to reduce the figure of internally displaced persons from 297,000 to less than 20,000. We are not only resettling them as a physical phenomenon but we are doing this in an environment that is pervaded by a high degree of economic wellbeing and comfort. We are also resuscitating the electoral process because it has to do with the empowerment of people. There is a hiatus in those parts of the country because the legitimate Tamil leadership, particularly at the grassroots level, has been physically annihilated by the LTTE. We have, therefore, to provide them political space for the spontaneous reemergence of a legitimate, democratic Tamil leadership with whom we would then engage with regard to substantive issues relating to devolution of power. There have to be credible interlocutors on the other side and that is the importance of the electoral process being revived. So we have today in Sri Lanka, a strategy, a post conflict strategy, which combines a variety of elements, humanitarian, cultural, political and social, and the cumulative impact of that is an atmosphere of confidence and optimism. The country is looking to the future with fortitude and courage. We are able to do that after 20 long years.

Now there are many beneficial consequences arising from that, one of which is rapid economic and social development. As I address you today, Sri Lanka's economy is growing by almost 8.5%. Our external reserves are at an unprecedentedly high level. It is about 7,100 million US dollars. It took us ten years to reach the threshold of 1,000 US

dollars as our per capita income. But in four short years we were able to increase that from 1,000 to 2,000 US dollars as per capita income. And we are confident that we will be able to increase that to the threshold of 4,000 US dollars before 2015.

The economy is growing very rapidly. But we do not believe that there is reason for complacency. It is absolutely essential for us to ensure that the fruits of economic development are equitably distributed among the people of Sri Lanka. They cannot be confined to Colombo and the environs, there cannot be an increasing divide, a yawning chasm between the urban areas of Sri Lanka and the rural hinterland. It is vital that the people of Sri Lanka, wherever they may live in the country, should be full beneficiaries and participants in the process of economic development.

There are economists who argue that if a country is developing rapidly, then distribution of those benefits is an automatic process. There is no role for Government to play in that area. Indeed any intervention by Government, they argue, would distort the picture. The proper attitude for the government, therefore, would be to distance itself and to allow these natural forces to interplay with one another and to produce consequences which will be advantageous to the country as a whole.

I do not, for one moment, believe that that is a valid assumption for South Asia. There is an indispensable role for the State. There must be appropriate interventions by the State.

I read a statement two weeks ago by Dominique Strauss-Kahn, the Managing Director of the International Monetary Fund, to the effect that growth, per se, is not going to result in new jobs. We had figured that out a long time ago. India provides many inspiring examples of this. One of these is the National Rural Employment Guarantee Act, in terms of which 100 days of work are provided for the people of India, in whichever State they may live. This means that they have an income which would enable them to purchase the essentials of life and to enjoy a certain standard of living. So growth has to go hand in hand with equity. And it cannot be left to the mechanical

interplay of commercial forces. The State has an essential role to play in that regard. In Sri Lanka we are certainly seeing a situation in which not only is the economy growing rapidly, but the disparity between the more developed regions like Colombo and the remoter regions is narrowing down. And economic development does not assume the character of mere statistics, abstractions far removed from the lives of people. On the contrary, economic development in Sri Lanka is seen as a process which impinges directly on the quality of life of ordinary people.

How is it possible on the ground, as a matter of practice, to achieve this result of growth accompanied by equity? One major instrument of policy which we have adopted in Sri Lanka is unparalleled investment in infrastructure, particularly highways. No government in Sri Lanka has undertaken so much work with regard to the building of roads and highways. That is the surest way of bringing economic development within the reach of ordinary people. We have also evolved a policy in terms of which the Board of Investment grants incentives depending on the region where the investment is proposed to be made, where employment generation is likely to happen. The further the location the greater is the incentive, for example, incentives in terms of the duration of tax exemptions.

We have adopted these modalities. Apart from that, we have done something more direct. That has to do with the expedient of affirmative action or reverse discrimination. There has been a great debate about it in terms of social policy, and Shri Mishra would have been very interested in the premises of that debate and the manner in which it was finally resolved in Sri Lanka. It seemed to us that our educational system, of which we have every reason to be proud, has to conform to essential standards of equity. Education is free from kindergarten to university in Sri Lanka. And the educational system has produced men and women of unquestionable quality. But it has been somewhat elitist in the past.

How do you ensure access to this system for humbler people, for the less affluent, the disadvantaged sections of Sri Lankan society? Over the decades Sri Lanka evolved a policy, the effect of which was that when you select students for admission to the universities of the Republic, you are not guided just by the raw mark which a student obtains at a competitive examination. You take into account the paucity or the adequacy of the secondary school facilities in that part of the country where the student received his secondary education. I am dealing with a situation where, in the conventional university system of the country, we can find places only for a very small proportion of the students who satisfy the minimum requirements for admission to university.

What would be the equitable manner of determining how you allocate the limited number of places available? We evolved this system. I think that is in harmony with the basic thesis that Aristotle expounds in Nichomachean Ethics that there is as much injustice in treating equals unequally as there is in treating unequals equally. We have, then, as a matter of conscious and deliberate policy, adopted that point of view. It has been challenged in the Supreme Court of Sri Lanka, but the Supreme Court has rejected that challenge and upheld the equity and pragmatism that is inherent in this approach to tertiary education in Sri Lanka. Affirmative action, in this form, has been applied to university admissions.

There is another consideration which, to my mind, is equally important. Growth must not only be rapid, it must not only be significant, it must also be sustainable. I think that is very important. In Sri Lanka we have never regarded protection of the environment and the achievement of a high growth rate as mutually incompatible or inconsistent. We have never believed that we are required, a priori, to make a choice between these two - which of them is more important to us. Which of these objectives do we commit ourselves to? That has never been our approach. We believe that they are complimentary rather than mutually antagonistic, because growth will be sustainable only if growth is accomplished in harmony with the environment.

In that regard there is a particularly inspiring judgment by the Supreme Court of India. This had to do with the yellowing of the Taj Mahal. It was discovered by a public interest group that the Taj Mahal over the years was becoming yellow. The marble was becoming yellow because of emissions from factories in the Agra area. These public interest groups went to the Supreme Court of India and wanted action taken against the companies that were responsible for these emissions. They asked that the companies be compulsorily required to take certain precautions to prevent further deterioration of the situation. The companies went into Court and provided a certain defence. The defence was 'yes, we can take these measures, certainly, but if we do so we have to incur very heavy expenditure which means that there will be compulsory retrenchment of a large number of workers whom we employ at present.' Basically, the defendant companies told the Supreme Court of India 'Your Lordships now have to make a choice. If you compel us to adopt these precautions which might be desirable but which are necessarily expensive, then we have to cut costs and this means retrenching employees. So that would be socially disadvantageous.' The Supreme Court of India said exactly what I suggested earlier, that we do not have to choose between these two things. Society needs the benefit of both. The Supreme Court of India, therefore, in a remarkable judgment actually formulated a scheme in terms of which the companies were required over a period, not overnight, to take suitable measures, so that the expenditure does not have to be incurred immediately, it can be spread out over a period. But at the end of that period both these facets of public policy are catered for, and that seemed to the Supreme Court of India to be the balanced approach to the problem. That, I think, is a very salutary approach to a complex issue of public policy in our time.

The other issue when we discuss growth and equity is connected with the nature and scope of the judicial function. This is a particularly relevant topic in India today because of the Ayodhya judgment - a particularly creative judicial ruling by the Lucknow Bench of the Allahabad High Court. The Constitution of India, like the Constitution of Sri Lanka, incorporates fundamental rights. In other words the apex Court, the Supreme Court of

India is the final arbiter with regard to conflicts among different organs of Government. The Constitution of Sri Lanka similarly contains as one of its basic features the concept of entrenchment of judicial power. In keeping with the traditional theory of Montesquieu, expounded in his famous work, "The Spirit of the Laws" the different organs of Government are differentiated, and specific functions are allocated to these different organs of Government. The Supreme Court of India has gone even further and stated that there are some features of the Constitution of India which are to be regarded as fundamental, they cannot be altered at all even with the use of a two-thirds majority. They are sacrosanct and impregnable. Those are the essential foundations of the public law of the Republic of India.

Now what exactly is the nature of the judicial role? You have these constitutional provisions, but there has been a great deal of creative thinking, truly inspiring thinking in India on the part of judges who have been pioneers and trailblazers and have imparted to the barebones of the Constitution substance which is of value not only to India but to the South Asian nations as well.

Shri Rishi Kumar Mishra will certainly have endorsed the conceptual foundations of these developments. One of the pioneers in that regard was Shri P.N. Bhagwati, a former Chief Justice of India, a friend of mine with whom I worked over the years. I meet him often when he visits Colombo, I visited him at his home in Delhi, I have profound respect for him.

Shri P.N. Bhagwati used these mechanisms in such a way as to serve the interest of the vast mass of the people of India. His judgments contained the genesis of the concept which is known as epistolary jurisdiction. There is no point in having all these elaborate structures and mechanisms of the law if they are well beyond the reach of ordinary people. Justice Bhagwati therefore created a body of jurisprudence in terms of which the poorest of people, bonded labourers in quarries, people in the most disadvantaged circumstances in life could simply, by sending a postcard to the Supreme Court of India,

have their grievances addressed in earnest. That was a landmark development in public law which has been followed in many other countries of the region.

Moreover, the Supreme Court of India deserves credit for yet another development. That is a sense of equilibrium. This concept can be an unruly horse if it is not reined in, in appropriate circumstances. Fundamental rights jurisprudence necessarily means that the Supreme Court can override the other organs of Government because the Supreme Court is the final arbiter, exercising the discretionary powers that are conferred upon it by the provisions which incorporate fundamental rights. But it has to stop at some point, and in some countries this is not happening. It has resulted in the usurpation of the powers of other organs of Government by the judiciary. That has resulted in the atrophy of Government. It has led to unnecessary antagonism between the different organs of Government.

The Supreme Court of India has avoided that consequence. I will give you this one illustration. There was a case in which some citizens went to the Supreme Court of India arguing that the cost of railway travel from Allahabad to Delhi was excessive. The argument was, here is a monopoly on the part of the Indian State. The Government determines how much you should pay for a ticket to travel from Allahabad to New Delhi. The Supreme Court was told that the cost of the ticket was exorbitant, and the margin of profit unconscionable. The Supreme Court of India, therefore, in the exercise of its constitutional jurisdiction, was asked to reduce the price that is charged for a railway ticket. Declining jurisdiction, the Supreme Court of India said, this is not a matter for us to get involved in. Institutionally, in terms of our empirical experience, we do not have at our disposal the equipment which would enable us to evaluate this body of evidence and to arrive at the correct conclusion. That spirit of restraint or self abnegation made for a certain sense of balance which enriched Indian jurisprudence and provided guidance for courts in other countries of the region.

There are just two other points that I would like to make before I conclude. When we talk of security, equity and growth, one of the challenges of public policy in our region has been to find appropriate mechanisms to make the legislature responsive adequately to aspirations and the sensitivities of the people. How do we do that? There has been a great deal of thinking and writing on this subject. Among the modalities proposed have been committees of Parliament as a link with the public, the publication of White Papers and Green Papers as the basis of general debate in society, and the intensity and continuity of involvement on the part of academics, professionals and civil society in the formulation of public policy. The Observer Research Foundation, true to the ideals of Shri R.K. Mishra, has dedicated itself with great distinction to the pursuit of that objective.

But in the overall context of that particular debate nothing is more important than electoral systems. What is the electoral system which will enable you to form a legislature which would mirror public opinion? When I was nine years old, - in those days there was no television - Pandit Jawaharlal Nehru who lived here in Teen Murti visited my country. He addressed the Parliament of Ceylon and as a little boy I listened to his broadcast and what he said made a deep impression on me. Jawaharlal Nehru said, the more experience I have about methods of governance in different parts of the world, the more reluctant I am to make generalizations about what is good for everyone. It depends on historical antecedents, cultural context, social traditions, and the like. There is no size that would fit everybody.

What is the electoral system that we could consider as being most conducive to the formation of governments which reflect public opinion? In India you have the first past the post system, that is what you have in the United Kingdom as well, but there a very vigorous debate is taking place about changes which are necessary. Sri Lanka, in a way is a constitutional museum. We have experimented with all the different systems - the Westminster style Cabinet system, the Presidential system and when it comes to electoral systems we had the first past the post, we have proportionate representation today. Our view today in Sri Lanka, is that we need a hybrid system. We had the first

past the post system from 1931 to 1978. And we became very dissatisfied with that for a variety of reasons, the principal reason being that there is a horrendous imbalance between the number of votes polled by a political party and the number of seats to which that party is eventually declared entitled.

For instance, the late Prime Minister Sirimavo Bandaranaike whose name is widely known and revered in this country, obtained in the general election of 1977 almost 30 percent of the popular votes and ended up with only 8 seats in a Parliament of more than 200 members and was not able to secure even the post of Leader of the Opposition. So there is an intrinsic imbalance which brings about a distortion of a very basic nature. We became disillusioned or disenchanted with that system and then we opted for proportional representation. But we now find that proportional representation, in the form in which we apply it in Sri Lanka, also suffers from grave infirmities.

One of these is the lack of an adequate nexus between the person who is elected and the constituency that he is supposed to represent. Members do not represent constituencies. They represent whole districts. So you have a district sending 22 members to Parliament. The constituent does not know whom to approach to have his practical problems addressed. This dilutes the strength of the nexus between Members of Parliament and the constituency, but that nexus is one of the essential ingredients of a vibrant representative, democratic system. Also, there are no by-elections under the form of proportional representation we have in our country. By-elections are a barometer of public opinion. In order to give the people of our country the benefit of both systems, a hybrid system combining beneficial features of both these systems is probably the best answer.

There is just one other point, on devolution of power, which is a matter that is the subject of debate in many of our countries. This, again, is one of the fundamental dilemmas of public policy, not only in India or in Sri Lanka but throughout the region. In multicultural, multiethnic societies, what are the economic, political and social structures that you need to create in order to make it possible for everybody living in the country to

feel at home, to feel a sense of genuine belonging without any sense of inferiority or exclusion? Devolution of power falls into place within that overall setting.

The Thirteenth Amendment to the Constitution of Sri Lanka, which was a sequel to the Indo-Sri Lanka Accord of 1987, established for the first time in Sri Lanka's constitutional history a line of demarcation between central government and provincial functions. This was done through the expedient of Three Lists – the Reserved List, the Devolved List and the Concurrent List.

However, recent experience has shown that the Thirteenth Amendment is incomplete in a basic respect. In a country like Sri Lanka, where the minority communities do not live exclusively in a particular geographical area, but are scattered throughout the country, there is a need for a power sharing mechanism in the Centre as well. That is being seriously considered in Sri Lanka. There are many ways of achieving that objective, one of which is a bicameral legislature. This requires a Senate, a second chamber, the composition and functions of which will have to be so defined as to enable the accomplishment of this particular objective.

What I have done, Mr. Chairman in these brief remarks is to range over a wide spectrum of public issues in which Shri Mishra would certainly have been interested. He spent, as Mr. Rasgotra told us, 20 years of his life dealing with these issues, commenting on them and giving the people of India and indeed South Asia the benefit of his insights and his wisdom.

There is a particular reason why it gives me special pleasure to come here to Teen Murti this evening in response to your kind invitation and to address these remarks to you.

I have been a great admirer of Indian political and philosophical thought. Several times, when I visited Delhi, I came to Teen Murti and I found particularly inspiring the letters that Jawaharlal Nehru wrote to his father from Harrow. On the walls you can see

excerpts from his speeches. These are truly inspiring. India, therefore, is the heir to an unrivalled philosophical heritage and Shri Mishra was a contemporary standard bearer. He was the inheritor of this rich tradition. But he had the resilience and the creativity of mind to adapt that traditional wisdom to suit the permutation and combination of circumstances in contemporary life. And that immeasurably enhanced the quality of his contribution, not just to Indian public life but to public life in the entirety of the South Asian region.

I wish the Observer Research Foundation every success in the important work that it has embarked upon in the interest of all the people of South Asia.