



## AUSTRALIAN TAMIL MANAGEMENT SERVICE

### Judicial Interference in Executive Administration and Politics



I write in response to the **Sri Lanka Guardian** article '*Mischief by KT: The Northern Province Chief Minister Candidature*' by **Professor S. Ratnajeevan H. Hoole**.

The article begins with Asian Tribune's report [*that the "Ilankai Tamil Arasu Kadchchi [Federal Party or FP] Leadership has decided on Retired Justice C.V. Wigneswaran as the Chief Minister candidate in the forthcoming Northern Provincial Council Election."* ]

Professor Hoole goes on to highlight the low level of credibility allocated to Asian Tribune. Through my own experience with them – I identify with their low standards. I used Due Administrative Process to complain against Asian Tribune to the Australian Human Rights Commission. Asian Tribune has been carrying this participation (**Appendix**) and each time I do a Google search under my name I see this posting coming up. I take it as recognition of my active Australian status. Professor Hoole did not use that example but instead used Asian Tribune's treatment of Dr. Laksiri Fernando as follows: [*The secretly funded Asian Tribune therefore has poor quality journalism as to be expected. We recently saw Rajasingham banning the writings of Dr. Laksiri Fernando because of, as Rajasingham wrote to Fernando,*

*the “gradual change in your position which is gradually developing contrary to the stance of Asian Tribune.”]*

This choice is an important factor in the core issue in Professor Hoole’s article – the nomination of a Judge for the Chief Minister position in Northern Sri Lanka. To me such a nomination is in breach of the Doctrine of Separation of Powers. In the Sri Lanka Guardian article ‘**Religion is the Poor man’s Legal system**’, I wrote and quoted as follows:

*‘Due to my own legal experiences here in Australia as well as in Sri Lanka, I was able to appreciate more deeply the words of wisdom shared by Justice Wigneswaran. Justice Wigneswaran’s experience with a former Chief Justice is brought out as follows: ‘In 1977 I was one of the young Lawyers who went up to the late Mr. Neville Samarakoon, Queen’s Counsel, and invited him to come forward to contest the post of President, Bar Association. He said “Leave me alone! I like to lead a peaceful life!” He went on to elaborate on what he considered as essentials to his life-peaceful, which I believe is not relevant here! But within a few months he had consented to shoulder the mantle of the Chief Justice of this Country. Soon after at a party I asked him “Sir! You were reluctant to contest the post of President, Bar Association but Destiny seems to have designed other plans for you.” He laughed, puffed at his pipe and said “When J.R. called me and asked me to accept the office of Chief Justiceship I told him “On one condition”. He asked what it was. I said “No interference of any sort”. “He agreed. So I agreed!” he said. How thereafter President Jayewardene forgot his promise and interfered with the Judiciary and what that led to, are part of our unfortunate history.’*

The above speech by Justice Wigneswaran was made in the aftermath of the dismissal of Dr. Shirani Bandaranaike from the position of Chief Justice. The legal profession claimed that it was in breach of the Doctrine of Separation of Powers. The question I ask now is ‘*If the Executive is wrong in playing the role of Judiciary is it not equally wrong for the Judiciary to play the role of the Executive?*’ Justice Wigneswaran enjoys respect as a Judicial expert and his social position is also high on this basis. The status earned through the legal profession must strengthen the Judicial structure and not the Political structure. Justice Wigneswaran becoming a Government Minister is the parallel of changing religions or race.

As one who is considered to be wise in the law of Thesawalamai – the Customary Law of Jaffna Tamils – Justice Wigneswaran would appreciate the importance of ancestral lineage. This is highlighted through the Separation of female inheritance as Dowry / Seethanam from male inheritance which is called Muthusom. That which is earned through current relationships through marriage is called Thediya Thettam (acquired wealth). If one does not get married there are no new relationships and therefore there is no Thediya Thettam. Like in immigration, new shares through new relationships are Equal until proven otherwise on merit basis. All these structures are on the basis of the forces that motivate and influence us to work, save and preserve wealth to confirm our work values as a family/community/society. Thesawalamai recognizes that Mothers naturally motivate daughters and Fathers naturally motivate sons. The parallel of this in Democracy is that Executive Government motivates Administrators and Judges motivate Lawyers. Politicians motivate ordinary citizen driven by belief. Similarly in our ethnically divided country – Tamils naturally motivate Tamils and

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Sinhalese naturally motivate Sinhalese. Hence the relevance of choice between my demotion and Dr. Laksiri Fernando's demotion by Asian Tribune. Our status must be shared with the side that supported our development of status – until we could show otherwise through objectively measurable merit basis. We can no longer claim that there are no ethnic sides in Sri Lanka. That would be disloyal to our rich investment in diversity.

In rejecting me – Asian Tribune judged on the basis that I was using personal experience. In rejecting Dr. Laksiri Fernando – Asian Tribune was accusing him of using his subjective powers against the Government of Sri Lanka. If Asian Tribune had accepted my work as that of a common citizen it would have known that Dr. Laksiri Fernando was NOT accusing individuals as per his personal knowledge but as per their official positions in the structure of Public Administration in Sri Lanka to which Dr. Laksiri has strongly contributed. Given that Dr. Laksiri Fernando contributed to that system he is entitled to use subjective powers but from the position of a citizen – the other side of Administrator close in rank to the Executive. Hence Dr. Laksiri Fernando was well within his rights. I identify this through my own parallel here in Australia – against the CEO of the University of New South Wales and the Australian Executive Government. The difference in response by Asian Tribune is due to our apparent status known through the titles before our names. But as per their own choice / Truth – they keep publishing again and again – my actions against them through the Australian Human Rights and Equal Opportunity Commission on the basis of my interpretation of the UN's stated principles of Equal Opportunity in a multicultural society. Given that I actually practice these values I am able to identify quickly / intuitively through my discretionary powers those who interfere with / obstruct the path of Equal Opportunity principles and values. My belief gives me the authority to take action against such obstructers and when I do take such action without expecting to win - I get participatory credits. These are ownership shares. Those who fail to use that path because they think are not likely to win – may consider me to be a mischief maker – as Asian Tribute also made me out to be. Caritas which was at the center of this Asian Tribune matter – also confirmed through their actions that they considered me to be dependent on my husband. The Caritas doctor was apparently an older person without in-house training in multiculturalism. To him I would have looked like a housewife abusing Public resources. Likewise to Asian Tribune my work would have seemed to be without value for themselves. But in both instances my participation is a permanent feature in Public ledgers through global laws – confirming my confidence in using them. This confidence is shared naturally with those who have faith in me. One such important reader in the UK wrote just yesterday:

*'Dear Gaja*

*I always believe that if we have been through difficulties to bring just an ounce of good to others, God will always be there to guide us on. It is only after reading your articles that I realise how much you have been through in your life. Whatever articles I send you is through God's grace.*

*We have never known each other and though I feel the need to help the Tamils, as they are my heritage, I have not had the opportunity, except in helping my cousins who are still in Sri Lanka. I have no reason to look for the articles that I have sent you. Somehow it comes my way, I realise the connection the article has with your thoughts and send them to you. Surely there is a higher being, helping you in your work.'*

I responded as follows:

*'Thank you. It's amazing as to how you have identified with my own feelings and conclusions. As you say, we have never met. But both are genuine in what we do and hence one becomes the medium for the other in our mutual sharing. This is possible only through a Divine system. As you say - the articles come my way too as they come your way. When others who are seeking, identify with our common work - we truly merge and your work is mine and mine is yours. I believe in this fully. We thus merge even without having met each other and may not meet in physical form. This is what Truth / Love / God is about. It's that feeling within. Thank you so very much for being a part of it'*

Ultimately it's about the social value of our work that gives us real status in that society.



In terms of Asian Tribune, at their level – due to Australian Human Rights Commission's attention – I am now a high status opposition – something I would not have had, had I continued to write as per their liking. It's a bit like the Tamil issue being escalated to the global level due to those without official portfolios using their powers to become the 'other side' of military powers – i.e. as citizens' army that matches the government army in standards..In other words if the higher officials fail to raise their standards to the intellectual level – we need to go down to the level at which we could show our powers through them. When this is done non violently and naturally – it is Democratic management. When done with force – it is rebellion; when done with force violently – it is terrorism.

If Professor Hoole had written on behalf of the Tamil Community through which he attained at least some of his status – then he would have found and highlighted his point through my experience with Asian Tribune – particularly because mine is about Equal Opportunity to participate and share rather than earn status through merit. Their ADD (Attention Deficiency Disorder) limited Asian Tribune to our respective apparent status than the relevance of our work to the current needs of the society they claim to serve. Despite the CEO being a Tamil – Asian Tribune is effectively practicing racial discrimination by using subjective powers instead of merit based assessment.

In terms of Justice Wigneswaran seeking Political status – this would negate his contribution through his subjective powers within the judiciary. His status has developed through his legal positions and hence his subjective powers especially as a Judge using discretionary powers. The way a father would use his discretionary powers would be different to the way a

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mother would use her discretionary powers. Hence the need for separation. In traditional family system – father represents the family to society and hence has to measure through rights and wrongs as if he is part of society. Then the family would merge comfortably with society. Mother on the other hand would encourage participation without expecting grades. This would help the mother promote unity by limiting internal competition. Likewise Politicians. One who attained high status through the Judiciary would have difficulty to NOT JUDGE.

In a Court of Law – participants are already divided into two. The Judge endorses one side or the other through her/his interpretation of the applicable law. This outcome is ‘shown’ publicly so society would learn from the judgments. In politics Administration is largely for internal purposes so that the group would function with One mindedness. Faults when found are for educational and training purposes and are not to be ‘shown’ outside – the reason why I had to resign when the internal process failed to give form to my contribution. Even now, I am contributing to the University of New South Wales as well as the Australian Government – knowing very well that like Asian Tribune they would not show any appreciation. But from time to time – mothers/institution-makers from within these groups respond to make me feel included. Then my work supports that institution to which we are both common. The essence of my work then is added to the real institutional powers.

Similarly – minds with weak investment in Equal Opportunity principles and values would also combine naturally to manifest outcomes that block progress through the democratic system. This often comes from those holding high positions. Those of us who seek returns from them beyond our own earnings may get those returns at the physical level but they are likely also to get the negatives with it. If Justice Wigneswaran does seek to be Chief Minister of Northern Province – he would bring with him his own criticism of the Executive Government.

When Mr. Neville Samarakoone QC declared that he accepted the then President’s offer to become the Chief Justice on condition that there would be no interference – he himself was actually crossing over to play the role in an Executive Government structure. The offer came from the President through use of discretionary powers which are subjective powers. For functional reasons the papers may be signed by the Executive. But unless the Judiciary elects and or appoints its own head – the appointment itself is an interference and is in breach of the Doctrine of Separation of Powers. Now Justice Wigneswaran seems to do likewise through TNA.

We all have mothers as well as fathers within the one person. But what we show society needs to be such as to confirm our deservedness of the official positions. We similarly have the judiciary as well as politicians within ourselves. It would be confusing to the common person who has been ‘told’ about the separation of powers - if a leader was once part of the judiciary and then part of the executive.

In his above mentioned speech, Justice Wigneswaran stated ‘‘*Speaking of Judges sometimes they are found fault with for forcing settlements on parties when one of them has a very good*

*case. Either they prefer not to labour themselves with the process of going through evidence and coming to a finding or their sole concern is to show conclusion of cases for the record.'*

Judiciary needs evidence that confirms rights and wrongs calculated as per common principle/law. Legislature needs participation and not internal grades using the same set of laws. . Hence politicians should not be conscious of evidence until the matter becomes Administrative and then judicial. Until then politicians need to be driven by their common belief. This is a major reason why Judges should not become Chief Administrators. When Administrators become politicians in a particular issue - they are demoting themselves.

## **Gajalakshmi Paramasivam – 25 April 2013**

### **Appendix**

<http://www.asiantribune.com/node/4188>

**Sydney, 18 January, (Asiantribune.com):** Australian Human Rights and Equal Opportunity Commission (HREOC) has dismissed a complaint lodged against the **Asian Tribune** by Ms Gaja Lakshmi Paramasivam on the grounds of "lacking in substance."

She had "alleged racial discrimination in the provision of goods and services within the meaning of the Racial Discrimination Act 1975". HREOC dismissed her complaint saying: "Having considered all the information she has provided to date, I am satisfied that Ms Paramasivam's complaint is lacking in substance."

Her complaint was based on the rejection of her comments by the Administrator of the **Asian Tribune** who wrote:

Submitted by Gaja on Tue, 2006-06-27 06:25.

**Ms. Gaja, It seems that you have so many personal problems. You have a habit of making use of the forums to air your personal problems**

Kindly don't make use of the Asian Tribune forum to wash your dirty linen.

If you persist airing your problems in the guise of making comments to the news items posted in *Asian Tribune*, then we may have to remove your membership in our forum.

Administrator

Ms. Paramasivam responded by saying: "I challenge you to do so and face the consequences."

She has a history of complaining regularly. The following complaint against Caritas is typical of her string of complaints. When the **AsianTribune** reported Duncan MacLaren, Secretary General of Caritas International is of saying:"We are here (in Colombo) in solidarity with all those who

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believe in peace (in Sri Lanka), a peace with justice that is promoted through dialogue between human beings, not through the barrel of a gun," she responded with the following comments:

Mr. McLaren,

I am a victim of Caritas here in Sydney, Australia. On 06 May 2005, I was sent to Caritas by the Courts, for an assessment. The doctor in charge threatened me with enforced medication and suggested that I ought to take instructions from my husband and children. I had to pray hard to get myself out of the situation and urged the medical team to contact my husband on the phone. This was done and my husband informed them as to how highly I was valued by the Medical Faculty of the University of New South Wales, and referred them to the Dean of Medicine - Professor Bruce Dowton who gave a glowing reference about me on the basis of my work. I believe that if not for that Goodwill from Professor Dowton, I would have been more traumatized that night at Caritas. I was taken back to Mulawa prison which felt heavenly after this ordeal. There I was placed with mentally ill inmates and I decided not to eat any food except fruits - which I felt were safe - in case they sought to enforce medication. I later learnt from another inmate that they do inject medication if you are disobedient.

What authority does Caritas have to take a higher position in Peace Development than the fighters / workers at the coalface?

Her comments on other issues to ran in a similar vein.

**Editor's comments :** No comment