

## The Island

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### Romance, economics and politics of Monkey Bridge

Tamil Nadu Chief Minister Jeyaram Jayalalitha has rejected Sri Lanka Prime Minister Ranil Wickremasinghe's proposal to build - or some would say re-build - a bridge to India. She had written to Indian Prime Minister Atal Behari Vajpayee to drop the proposal to construct that land bridge between Sri Lanka and Tamil Nadu.

The Wickremasinghe proposal has its roots in mythology and romance of the oldest epic of all, the Ramayana, where a bridge was constructed to rescue a kidnapped beautiful Indian princess by an all powerful Sri Lankan king. However, the Sri Lankan Prime Minister's proposal to construct this land bridge to India, has no such romantic inclinations and is intended for sheer economic co-operation between the two countries. Former mega film star of the South Indian screen, Jayalalitha too seems to entertain no such romantic visions. She does not want the Monkey Bridge. She sees positive dangers ahead and has told the Indian Prime Minister that it would 'jeopardise India's security'.

This newspaper since the construction was first proposed by Mr. Wickremasinghe, has opposed it despite the history and romance surrounding the Old Hanuman's Bridge for economic as well as national security reasons.

The primary objection to such a colossal proposal of building a land bridge across the Palk Strait, the length of which would be about 25 miles, is the astronomical expenditure that would be involved. Sri Lanka's economy is in such a parlous state that the government is surrendering the sovereign rights of the nation to foreign powers and permitting internal interference.

Quite apart from such super colossal projects, our roads are full of potholes. We need to widen our highways, build new highways; overhead bridges and drastically overhaul our railways. Even considering such a grandiose project amidst this mendicant economy is indeed ridiculous.

While it is generally believed that bridges and highways connecting neighbouring states leads to economic prosperity and better understanding between nations, intensive depth studies are called for especially considering the magnitude of these two countries on costs and benefits. With free trade being the buzzword of the day, Indian products even in quantities which are considered to be small by Indians could swamp our markets. We are already experiencing the difficulties on importing of Indian agricultural products. Besides, Sri Lankan exports to India could only be a drop in the vast Indian market.

There are arguments adduced that if the bridge is constructed, we will be connected to the Asian network of roads that is now developing but all that would take a considerable time to reach fruition.

A good reason why we should not let our imagination run away is the snail-paced progress of South Asian co-operation. SAARC is still paralysed and Indo-Lanka trade is still in the throes of many hiccups though progress has been made in certain fields. And at this stage and even in the near future, a highway between the two countries is not called for.

Even security considerations are double-wedged. Jayalalitha in her letter to her premier has said that the LTTE brought gun culture and worse still the horror of suicide bombing into the peaceful state. In these days when 'Friendship with India' is a super sacred cow, it is not a popular act to recall the not too distant past of the eighties when LTTE and its gun culture was nurtured in India by Jayalalitha's friend, philosopher and guru, the late M. G. Ramachandran and the likes with the backing of the New Delhi Government.

Thus, while at the moment New Delhi, Chennai and Colombo are dancing the Bharatha Natyam to step, it could well be that in a few decades this co-ordinated rhythm may not be there. The role of a land bridge in such an eventuality should also be considered in the interests of future generations.

India's fears and threats from the South are genuine. Indian military strategists such as Pannikar have pointed out that whereas invasions from the north in the past have been successfully countered or repulsed the Southern coasts were susceptible to attacks by the western imperial powers and led to the conquest of India. Rajiv Gandhi's tragic fate is another instance.

Jayalalitha has also called on taking over the island of Katchativu on 'lease in perpetuity' because of the harassment of India fishermen.

This indeed is a matter the government should consider while asking for a quid-pro-quo. Since our navy and air force do not seem to effectively control the seas in this region and the terrorists are running rings around them, Jayalalitha's request for Katchativu which is just a huge rock deserves consideration.

Today, with the cornerstone of our diplomacy and the popular refrain of our leaders being 'friendship with India' it would, however, be prudent to recall that old adage: Stand not too far away from the rich man lest he forgets thee and not too close lest he grabs thee'.



## Is whistle-blowing an exercise of a fundamental right to freedom from corruption?

Speech by Justice Mark Fernando at the seminar on Whistle-blowing organised by the Organisation of Professional Associations (OPA)

Some months ago Professor Hoole, on behalf of the Ethics Committee of the Sri Lanka Association for the Advancement of Science ("SLAAS"), invited me to address this Seminar on "Whistle-blowing". In his letter he observed that the Institution of Electrical and Electronic Engineering stated in its Ethics Guidelines that members "are encouraged to whistle-blow, but are not required to do so since it is likely to lead to loss of employment".

"Whistle-blowing" is not a subject to which I had devoted any particular attention, and Prof Hoole's summary of the problem gave me much food for thought. It gave rise to several questions. If whistle-blowing is indeed something to be encouraged, then - legally, morally and/or ethically - whistle-blowing must be right and proper. It would also follow that there is a right to whistle-blow. Again, if whistle-blowing is worthy of encouragement, it cannot be misconduct. And if whistle-blowing is not misconduct, how could it ever result in any penalty at all, let alone the extreme one of loss of employment? Further, if whistle-blowing deserves to be encouraged (and not merely tolerated) should it not also be a duty - legal, moral and/or ethical - as well? Finally, is the right to whistle-blow confined to the public sector, or does it extend to the private sector?

Perhaps all of us have a sub-conscious prejudice against whistle-blowers. Whistle-blowing, after all, is just another term for sneaking, and from childhood sneaking is discouraged. Children are told, if you do something wrong, you must "own up" and take your punishment; and if someone else does something wrong, he must own up, and if he doesn't, you don't sneak on him. Of course, if that someone else happens to be someone you dislike, the temptation to sneak will often be irresistible! Furthermore, a child is taught that if he is a member of a team, then "team spirit" is important; and that it is disloyal to "let the side down" by disclosing the shortcomings of members of his own team. So, later, in adult life we join and work in various organizations with this in-built prejudice against sneaking, regarding it as something underhand, distasteful and disloyal; not the "done thing". We are also conscious that if we expose the malpractices of others, they in turn may make allegations of misconduct against us, true or false. It is not surprising, therefore, that people who wish to expose corruption often resort to anonymous letters.

However, today corruption and other forms of malpractice are so widespread both in public sector and in the private sector, and cause such grave loss and damage to the whole community, that exposure must be encouraged, because without exposure past malpractice cannot be remedied, and future malpractice cannot be prevented. Individual prejudices and loyalties must give way to the public interest.

The SLAAS (as well as other professional bodies) may therefore usefully consider (a) the circumstances in which there is a right, and even a duty, to expose corruption in the public sector; (b) the limits of that right; (c) how that right should be recognised and enforced; (d) the legal protection to which whistle-blowers are or should be entitled; and (d) whether the position in the private sector should be any different. And it is on those points that I wish to share some thoughts with you this evening.

What is "whistle-blowing"? I would venture to define "whistle-blowing" as the voluntary disclosure, by a member, officer, employee or an agent of any organisation, of mal-

practice (whether actual, suspected or anticipated) within that organisation. It would include disclosure to authorities within that organization as well as public disclosure. Ordinarily, whistle-blowing would be intended to remedy some past wrongdoing and/or to prevent its recurrence.

What is "malpractice"? "Malpractice" would cover not only bribery and corruption, but all forms of malpractice prejudicial to employees, the public and the nation - such as safety violations, nepotism, discriminatory and oppressive practices in employment, pollution and other environmental damage, misrepresentation and suppression of facts in regard to the quality of goods and services, revenue frauds, theft, misappropriation and resource wastage. I would exclude purely individual grievances, however genuine.

The extent of malpractice in Sri Lanka cannot be disputed. In 1938 it was found that the allowances of no fewer than 14 out of the 50 elected members of the State Council had been seized under court orders. It is obvious that financial embarrassment is often a prelude to corruption. Accordingly,

about it, and (b) they would suffer official or unofficial reprisals. I doubt whether the situation in Sri Lanka is any better.

In both Australia and the USA there is whistle-blower protection legislation, but Dawson doubts the effectiveness of that legislation. In Sri Lanka there seems to be none. On the other hand, there are statutory provisions, and subordinate legislation, which appear to inhibit, if not to prohibit, exposure of malpractice.

Section 16 of the Sri Lanka Press Council Law, No 5 of 1973, makes it an offence punishable with imprisonment to publish in any newspaper any part of the proceedings of the Cabinet of Ministers, any document sent by a Minister to the Secretary to the Cabinet, and vice versa, and any matter which purports to be a Cabinet decision - seemingly, even if publication was bona fide with the object of exposing malpractice or corruption.

There are many statutes, particularly in regard to financial institutions, which require employees to sign declarations pledging the observance of secrecy in regard to "all transactions" of that institution, except when disclosure (a) is required by the directors, or a court of law, or the person to whom a transaction relates, or (b) is in the performance of his duties, or (c) is in order to comply with any law. Section 45 of the Monetary Law Act, No 58 of 1949, goes even further, by providing that no employee shall be required to produce in any court any book or document or to divulge to any court any matter coming under his notice in the performance of his duties under that Act, except as may be necessary for the purpose of carrying into effect the provisions of the Act. Once again, even exposure of malpractice in the public interest appears to be prohibited.

Chapter XLVII of the Establishments Code prescribes norms of conduct applicable to all public officers. Section 6 authorises "a Secretary or Head of Department (to) use his discretion to supply to the press or the public information regarding Government and Departmental activities which may be of interest and value to the public", but stipulates that "no information even when confined to statements of facts should be given where its publication may embarrass the Government as a whole or any Government Department or officer". Every other public officer "is forbidden to allow himself to be interviewed on, or communicate, either directly or indirectly, any information which he may have gained in the course of his official duties to any person, inclusive of the Press..." These provisions appear to prohibit the disclosure even of the truth in regard to malpractice and corruption in the public sector, and even where the public interest demands exposure.

Besides, many contracts of employment expressly provide that the employee must maintain secrecy in regard to the employer's affairs, even after the employment has come to an end.

To sum up, then, there appears to be a broad prohibition on the exposure of malpractice and corruption - imposed by statutory provisions applicable to several public sector institutions, by subordinate legislation, such as the Establishments Code, applicable to all public officers, and by contractual secrecy clauses in contracts of employment of both public and private sector employees. The existence of such provisions not only fails to encourage whistle-blowers, but exposes them to disciplinary action including dismissal.

(Continued on page 16)

Today corruption and other forms of malpractice are so widespread both in public sector and in the private sector, and cause such grave loss and damage to the whole community, that exposure must be encouraged, because without exposure past malpractice cannot be remedied, and future malpractice cannot be prevented. Individual prejudices and loyalties must give way to the public interest.

The Public Bodies (Prevention of Corruption) Bill was introduced in 1941, but was indefinitely postponed by the majority vote of the Councillors! On the very next day a resolution was moved calling for the appointment of a Commission to inquire into the charges of bribery and corruption made against Councillors. The LMD de Silva Commission was appointed under the Commissions of Inquiry Ordinance. Despite widespread rumours of corruption, only twelve persons volunteered to give evidence. The Commission found five Councillors, out of the 50 elected members, guilty of corruption: i.e. one out of ten; and also reported that another four Councillors (unidentified) were in all probability also guilty. A recent Marga survey of the Judiciary, covering 50 judicial stations (and over 80 different courts) sought information from judges, lawyers, court staff, and "court users" (such as civil litigants, virtual complainants, remand prisoners, prison officials, police officers, and the corporate sector). 41 judges, out of a total of 49 who responded to the survey, reported that they were aware of 226 incidents of bribery. 441 lawyers, out of 447 who responded, reported 771 incidents of bribery by lawyers. 107 court users, out of 879 who responded, admitted that they had resorted to bribery to expedite legitimate processes. A large majority of all respondents believed that the judicial system was corruptible.

An Australian writer, Stuart Dawson, refers to two public sector surveys, one in Australia and one in the USA, which revealed that about one-third of those surveyed had observed conduct in their workplaces which they believed to be illegal or unethical. What is more, a majority of that one-third believed that if they had reported such wrongdoing internally, (a) it was unlikely that something would be done

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### Letter

## A Saudi definition of justice

The report in "The Island" of 21st July under the title "Uganda dictator Idi Amin in coma in Saudi Hospital" is a relief to those who cannot forget that Idi Amin has been one of the most wicked and barbaric tyrants of the age under whose cruel regime an estimated 300,000 Africans were slaughtered during the 1970's.

Driven out of Africa in 1979 the brutal dictator was shamefully offered sanctuary in Saudi Arabia by the late King Faisal, where reportedly protected by government paid Saudi guards he has been allowed to evade justice and live comfortably all these years.

In treating Idi Amin with the uncommon tolerance that it denies its own citizens who are guilty of far lesser misdemeanours, Saudi Arabia has

exposed the sanctimonious humbug of an Islamic State that justifies its brutal penal system on the grounds that it is bound to rigorously implement the retributive justice of Koranic law.

According to Human Rights Watch (World Report 2001) in Saudi Arabia people are executed for such crimes as murder, rape, armed robbery, drug smuggling, sodomy and sorcery. Most of the time the victims are crudely beheaded in the public square after being blindfolded, handcuffed, shackled at the ankles and tranquillised. Meanwhile hands and feet are amputated for robbery while people are viciously sentenced to flogging (The number of lashes ranging from dozens, to thousands systematically inflicted over a period of time) for "sexual deviance" and drunkenness. If all this is

justified on the basis of the need to strictly conform to "religious laws" then there must indeed be a giant loophole in the law which not only exempts criminals like Idi Amin who are guilty of crimes against humanity but actually treats them with the utmost respect and courtesy!

As the dreaded end approaches for Idi Amin, it is a sobering thought that whether in Uganda, Saudi Arabia or Sri Lanka - be they evil tyrants, nations which give them sanctuary and make a mockery of religion, or those who while pretending to uphold the law only pervert justice in the courts - they too will all face the inexorable day of reckoning that no man may evade.

Prof. Asoka Ekanayaka,  
Peradeniya

### QUOTABLE QUOTES

#### NEIGHBOURS

Your next-door neighbour... is not a man; he is an environment. He is the barking of a dog; he is the noise of a piano; he is a dispute about a party wall; he is drains that are worse than yours, or roses that are better than yours. **G. K. CHESTERTON**, "The Irishman," The Uses of Diversity (1920).

The correlative to loving our neighbours as ourselves is hating ourselves as we hate our neighbours. **OLIVER WENDELL HOLMES, SR.**, The Professor at the Breakfast Table (1860), 11.

People have discovered that they can fool the Devil; but they can't fool the neighbours. **EDGAR WATSON HOWE**, Ventures in Common Sense (1919), 3.34.

Each man is afraid of his neighbour's - a thing which, to the general run of the race, is more dreaded than wounds and death. **MARK TWAIN**, "The United States of Lyncherdom" (1923).

### SOCIETY OF STRUCTURAL ENGINEERS SRI LANKA

QUESTION TIME  
"Box Beam Design of Matakkuliya Bridge"

Speaker  
Eng. Nimal Chandrasiri  
Deputy Director (R.D.A.)

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