

# The role of government and judicial action in defining religious freedom:

## A Sri Lankan perspective

Roshini Wickremesinhe\*

### Abstract

This study examines the role of government policy, judicial action and politics in the context of the fundamental right of religious freedom and religious persecution with emphasis on the experience of Sri Lanka. In 2004 the Jathika Hela Urumaya (JHU) National Heritage Party, the first Buddhist political party, sought to amend the constitution of Sri Lanka, making Buddhism the state religion. There were also three attempts to introduce anti-conversion laws, both by the government and this party. While there is no legal requirement for registration of religious bodies, there are tendencies to harass churches on the basis that they are not registered. Three court rulings denying registration to Christian bodies effectively closed the door to incorporation of Christian ministries. There are arbitrary moves to restrict legitimacy of Christian religious institutions by state machinery.

**Keywords** Persecution phases, religious freedom, role of state and politics, law and judicial action, prohibitive legislation, recognition or legitimising religion.

From New Testament times under the Roman Empire up to the present, Christians from every continent have faced persecution in various forms, even to the extent of torture and death, some inflicted by mobs and some at the hands of authorities. What constitutes 'religious persecution' or the legal definition of the term 'persecution' lacks a universally accepted standard. While some writers and scholars argue that it includes acts of discrimination and mild abuse, others hold the view that the term persecution is "reserved for more extreme, gross violations of one's religious freedom, such as torture

---

\* Roshini Wickremesinhe (\*1968) read Law at the University of Colombo in Sri Lanka and is a lawyer. She serves the Religious Liberty Commission of the National Christian Evangelical Alliance of Sri Lanka (NCEASL) as Director of Advocacy and Law, where she has worked for the past 9 years. Presently she is also Director of the Religious Liberty Commission of the Asian Evangelical Alliance (AEA) and serves on the board of Advocates Asia. As a human rights campaigner and advocacy trainer, she specializes in religious freedom. E-mail: nceasl@generalmail.com.

and imprisonment.”<sup>1</sup> Paul Marshall defines religious persecution as a general denial of a right to religious freedom, but also goes on to define specific terms such as ‘harassment’ and ‘discrimination’ as being distinct from ‘persecution.’<sup>2</sup> The World Evangelical Alliance Religious Liberty Commission has discussed a common pattern in persecution consisting of three stages. The National Christian Evangelical Alliance of Sri Lanka identifies these phases as the three ‘D’s of disinformation, discrimination and destruction or violence.’<sup>3</sup> We see all the forms of persecution inflicted by both state and non-state actors in countries governed by autocratic systems of dictatorship, communist regimes and military governments as well as in some democracies. This study will examine the role of government policy, judicial action and politics in the context of the fundamental right of religious freedom and religious persecution; with emphasis on the experience of Sri Lanka.

## **A lesson from history - religious freedom in Sri Lanka**

It is only in recent years that the phenomenon of religious persecution and the concept of ‘religious freedom’ as a basic human right defined and protected by law has become a subject of conscious public interest in Sri Lanka. However, it has been addressed in Sri Lankan statutes for more than a century.

In 1815, the British conquered the entire island of Ceylon (later named Sri Lanka), after years of fighting to capture the mountainous provinces (Kandyan kingdom) of the island where the last king of Sri Lanka king Sri Wickramarajasinghe ruled. He was exiled and Britain took over the administration of Ceylon after the Kandyan Convention – an agreement between the British and the Kandyan chiefs, was signed. Article 5 of the Kandyan Convention stated that “the religion of Buddhism professed by the chief and inhabitancy of these provinces is declared in-violable and its rights, ministers, and places of worship are to be maintained and protected.” When viewed in the context of colonial rule, this provision embodies the ideal of religious

---

<sup>1</sup> Ronald Boyd-McMillan, *Faith that Endures* 2006:90.

<sup>2</sup> Paul Marshall, *Their blood cries out* 1997:248-249.

<sup>3</sup> Godfrey Yogarajah, *Disinformation, discrimination, destruction and growth – a case study on persecution of Christians in Sri Lanka*, IJRF Vol 1 Issue 1 2008: 87.

freedom, by granting specific protection to the majority religion of the vanquished inhabitants. The fall of the Kandyan kingdom was due greatly to the defection of several of the king's chiefs and officials. Hence the inclusion of this article may in reality have been part of an arrangement between the British and the Kandyan chiefs, to appease the local polity.<sup>4</sup> The article was superseded by the Proclamation of 1818, which also made special mention of the Crown's protection of Buddhism.<sup>5</sup> Although there were Hindu, Moor, Christian and other religious minorities among the population, this special provision was exclusive to the majority religion.

The Kandyan Convention of 1815 can be said to hold the dubious honour of being the first document specifying government intervention to protect religious freedom as well as the origin of special state protection accorded to Buddhism, veering Sri Lanka from the ideal of a secular constitution.

The first Independence Constitution of 1947 was secular in nature, according equal rights to all religions. However, the subsequent first Republican Constitution of 1972 saw a departure from secularism, casting a duty upon the state to protect and foster Buddhism.<sup>6</sup>

The subsequent (and current) constitution of 1978 follows the same pattern, where Article 9 grants Buddhism "foremost place" and accordingly, casts upon the state a duty to "protect and foster" Buddhism. In modern jurisprudence special state patronage and protective clauses are used to protect the fundamental rights of minorities. The Sri Lankan example of state patronage and protection of Buddhism defies this principle and logic in that it safeguards the majority religion.

## The case for a Buddhist state

Taking it a step further, in 2004, the *Jathika Hela Urumaya* (JHU) National Heritage party, through a private member's bill presented in Parliament, sought to amend the constitution of Sri Lanka, making Buddhism the state religion and "to provide for binding persons

<sup>4</sup> M. J. A. Cooray, *Judicial role under the constitutions of Ceylon/Sri Lanka – a historical and comparative study*, 1982:17.

<sup>5</sup> Article 16 of the 1818 Proclamation.

<sup>6</sup> Article 6 of the first Republican Constitution of Sri Lanka 1972.

practicing Buddhism to bring up their offspring in the same; [and] to provide for prohibiting conversion of Buddhists.”<sup>7</sup> The proposed 19<sup>th</sup> Amendment allowed for other forms of religions and worship to be practiced, as long as it was in “peace and harmony” with all aspects of Buddhism including Buddhist teachings, clergy, temples, artefacts, texts, libraries, Buddhist education centres, culture, festivals, rituals etc. The preamble of the bill states that:

whereas the Buddhist population which is the overwhelming majority must practice its religion in peace and harmony, and as the Buddha *Sasana*<sup>8</sup> has faced the threat of decline ... it is the duty of the Parliament to restore the patronage and protection historically enjoyed by Buddha *Sasana*.

The proposed bill was challenged before the Supreme Court, the petitioners submitting that the bill in its entirety and in part is vague, ambiguous and inconsistent with the constitution. Further, that certain clauses of the said bill are inconsistent with the spirit of the constitution, ideal of a secular state, norms of pluralistic society and Sri Lanka’s international obligations,<sup>9</sup> while undermining the religious freedom of Buddhists and violating the absolute freedom of religion granted to all citizens under Article 10 of the constitution.

Article 10 of the Sri Lankan Constitution guarantees that “every person is entitled to the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.” Article 14 (1) (e) further grants the freedom of worship, observance, practice and teaching of his religion or belief, in private or in public, either by himself or in association with others.<sup>10</sup>

The three-judge bench of the Supreme Court determined that clauses 9:1–9:5 of the proposed amendment are inconsistent with the

---

<sup>7</sup> 19<sup>th</sup> Amendment to the Constitution of Sri Lanka, private member’s bill, government Gazette part II of 29<sup>th</sup> October 2004 (supplement).

<sup>8</sup> ‘*Sasana*’ traditionally meant the three main aspects of Buddhism: Buddha, *Dhamma* (teachings of the Buddha) and *Sangha* (clergy). Although, in the 19<sup>th</sup> Amendment, the meaning was expanded to include temples, culture, rituals etc. See 19<sup>th</sup> Amendment.

<sup>9</sup> The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Sri Lanka is a signatory to both instruments as well as the Optional Protocol of the ICCPR.

<sup>10</sup> Article 10 and 14 (1) (e) of the Constitution of Sri Lanka 1978 echo Article 18 of the UDHR and the ICCPR.

constitution insofar as they affect fundamental rights of thoughts, conscience, religion and equality. The Supreme Court concluded that the amendment requires a special majority vote in Parliament (two-thirds majority) and approval by the people at a referendum, in order to become law.<sup>11</sup>

Following the bitter experiences of colonial rule under the Portuguese and the Dutch who invaded the Maritime Provinces, the perception of the Kandyan chiefs of 1815 that the British posed a similar threat to the existence of Buddhism and their religious freedom is justified and hence one can understand the reasoning behind the special provision in the Kandyan Convention. However, is such special protection necessary or justified in a modern democracy where more than 70 per cent of the 20 million population profess Buddhism? Is Buddhism today facing “a threat of decline” as claimed by the proponents of the 19<sup>th</sup> Amendment?

The form of Theravada Buddhism prevalent in Sri Lanka (introduced to the island in 247 B.C.), the Sinhala language and indeed the Sinhalese race are unique to Sri Lanka, making them a global minority, increasingly aware of the fact that one’s religion, culture and language must be preserved from the onslaughts and effects of globalisation.

Furthermore, there remain negative perceptions of Christianity, influenced by atrocities and discrimination suffered by Buddhism under colonial powers. Although the Christian population has declined since the time of colonial rule and according to the last national census remains at 6.89 per cent of the population (mostly Roman Catholics and less than 1 per cent Protestants), the perception, sadly, persists that Buddhist culture is under serious threat by ‘foreign’ and ‘Western’ Christianity.

## Politicising religion

The answer to the question also lies partly in ‘numbers’. Simply put, how many votes does it take to win an election? Statistics play an important role in post-independence Sri Lankan politics.

---

<sup>11</sup> Article 83 (a) of the Constitution of Sri Lanka 1978: Amendment of certain important provisions of the Constitution requires a referendum.

Votes are essential to gain and maintain political power, and religion is a powerful and emotive issue which can win or lose votes. It follows that championing the religious rights of the majority against threats real or imagined makes popular political strategy – irrespective of whether the motivation is genuine devotion to one’s faith or cunning.

The formation of what is arguably the first Buddhist political party took place in December 2003, following the death of a popular *bhikku*<sup>12</sup> Ven. Gangodawila Soma Thero, who died while on a visit to Russia. Orchestrated mass hysteria accusing Christians of murdering the Ven. Thero resulted in dozens of churches being attacked in the aftermath of the funeral. A presidential directive deploying troops and police to guard churches prevented what could have become an ugly witch-hunt of innocent Christian citizens. The climate of Buddhist religious fervour that was whipped up became a perfect spring-board for launching the *Jathika Hela Urumaya* (JHU) national heritage political party, led by a group of Buddhist monks. Promises of establishing a Buddhist nation and enacting laws prohibiting religious conversions were key planks of the JHU’s election platform.

One month later, Buddhist monks from the JHU launched a ‘fast-unto-death’ campaign demanding the government to enact anti-conversion legislation within 60 days. Fearing the people’s wrath and the consequences to the government if another death of a monk occurred, the government of Prime Minister Ranil Wickremesinghe agreed to the demand and the fast was called off. It was a clear demonstration of the power of Buddhism in dictating state policy. However, before the expiration of 60 days, Parliament was dissolved by the president and he called for a parliamentary election. Four months later, at the parliamentary election in April 2004, the JHU emerged as the third largest political force in the country, winning over 500,000 votes and 9 seats in Parliament. Within six months of being elected, the JHU went on to propose a bill limiting religious conversions as well as the above discussed 19<sup>th</sup> Amendment to the constitution.

At the presidential election in 2005, the election manifesto of both leading candidates addressed the issue of religious freedom.

---

<sup>12</sup> A *bhikku* is one who has renounced worldly life and joined the mendicant and contemplative community.

‘Mahinda Chinthanaya’ the election manifesto of Mahinda Rajapaksa, presidential candidate of the United People’s Freedom Alliance (UPFA) stated, “while preference given to Buddhism in terms of the constitution will be consolidated, all other religions including Hinduism, Islam, Catholicism and Christianity will [be] treated on an equal footing.”<sup>13</sup> The candidate of the United National Party (UNP) Ranil Wickremesinghe in chapter 10 of his manifesto titled *A righteous society*, stated “we will create an environment for all Christians to practice their religion freely.”<sup>14</sup>

The fact that this was the first time in the country’s election history that presidential candidates highlighted this issue in their election manifesto is indicative of the growing importance of the issue of religion and religious freedom in politics. Two days prior to the 2005 presidential election, the chief prelates of the four Buddhist *Nikayas*<sup>15</sup> issued a joint statement urging people to vote wisely in a bid to preserve the unitary status of the country as well as to protect Buddhism.

As members of the *Maha Sangha*<sup>16</sup>, we consider it is our supreme duty to advise and guide the government and the citizens in general, in protecting and developing our people, particularly the Sinhala Buddhist population of Sri Lanka, and the country where the great teachings of Lord Buddha have been preserved and protected for nearly 2,500 years. We accept that there is a threat to every race and religion in Sri Lanka [...]. Among them is the fundamentalist movement to convert the innocent Buddhists to other religions.<sup>17</sup>

Religion had undoubtedly become an important factor in securing political power in modern Sri Lanka.

## Prohibitive legislation

Notwithstanding constitutional guarantees on religious freedom and Sri Lanka’s obligations under international law, there were three attempts to introduce anti-conversion laws, both by the Sri Lankan

---

<sup>13</sup> ‘Mahinda Chinthanaya’ 2005:14.

<sup>14</sup> Election manifesto of Ranil Wickremesinghe 2005:10.

<sup>15</sup> *Nikaya* is a chapter, similar to a denomination in Christianity.

<sup>16</sup> Buddhist clergy.

<sup>17</sup> Colombo Page News Desk, Sri Lanka, 15<sup>th</sup> November 2005. Article titled: “Four Buddhist Nikayas urge people to vote wisely, preserve Sri Lanka’s unitary state and protect Buddhism.”

government and the JHU. The example from which they drew inspiration was India – the world’s largest democracy, where ironically, at that time, six states were yoked under various forms of anti-conversion laws. The initial draft bill (modelled almost exactly on the now repealed anti-conversion bill of Tamil Nadu State) was unveiled in July 2003 by Minister of Hindu Cultural Affairs Mr Maheswaran. Although a cabinet minister, Mr Maheswaran was a minority ethnic Tamil and a Hindu who wielded little political clout both within and without the House. Perhaps recognising this limitation and the possible defeat of the bill, the Minister of Buddha *Sasan* and Justice and Legal Reform W.J.M. Lokubandara – a veteran politician respected by the people as a champion of Sinhala Buddhist culture and religion, formally announced that he would be presenting an anti-conversion bill. By mid 2004, a new draft bill proposed by Minister Lokubandara, representing the government as well as the bill proposed by the JHU, were unveiled. The JHU cited the recommendations of the 2002 report by the presidential commission on Buddhism<sup>18</sup> to enact anti-conversion laws to curb Christian activity as their motivation.<sup>19</sup>

The more draconian of these two draft legislations titled *Freedom of religion bill* proposed by Minister Lokubandara would have made it an offence<sup>20</sup> for any person to “unethically convert or attempt to convert any other person” from one religion to another.<sup>21</sup> The term ‘unethically convert’ was defined as: “to directly or indirectly make, persuade or influence” a person to adopt another religion ... by use of any kind of allotment or promise of allurements, or inducement or promise of inducement, or material assistance [...]”<sup>22</sup> Consider the following every-day-life scenarios, in the light of this definition:

---

<sup>18</sup> Official commission appointed by President Chandrika Bandaranaike Kumaratunga.

<sup>19</sup> Venerable Athureliye Rathana Thero M.P. speaking to media in 2006. Ceylon Daily News paper of 7<sup>th</sup> April 2006. Online <http://www.dailynews.lk/2006/04/07/po101.asp>.

<sup>20</sup> This bill no longer is a threat.

<sup>21</sup> Section 2, Freedom of religion bill, Gazette notification part II of 24<sup>th</sup> June 2005.

<sup>22</sup> Section 10, Freedom of religion bill, Gazette notification part II of 24<sup>th</sup> June 2005.



Engaging in prayer, sharing from Scripture, teaching, singing sacred songs or practicing charity in a multi religious environment such as one's neighbourhood, place of work, school or any public place may be considered illegal, since it can "directly or indirectly make, persuade, or influence" another person to become interested in one's religion, leading to a conversion. Religious celebrations and events which are open to the public such as Christmas, Sunday worship services, prayer meetings or any event where the Christian faith is manifested may be considered forms of behaviour designed to 'influence' a person to embrace one's own religion. Similarly, preaching the message of salvation and forgiveness of sins to those who believe in Christ may be considered "a promise of allurement or inducement" in the form of eternal life which could "directly or indirectly, persuade or influence" a person to convert to Christianity. The bill also would have prescribed unusually heavy fines and prison terms of up to seven years as punishment. It was shelved due to internal political upheavals as well as pressure from human rights groups and the international community.

The 'Prohibition of forcible conversion of religion' bill proposed by the JHU as a private member's bill in 2004 remains active, although not yet enacted as law. The bill would in essence declare it a punishable offence to convert or attempt to convert any person from one religion to another by use of force or by allurement or by any fraudulent means. It also would make it an offence to aid or abet any such conversions. The broad and vague interpretation of the terms 'allurement', 'force' and 'fraudulent' contained in the bill would leave it open to subjective interpretation by the courts. For example, 'allurement' is defined as an offer of any gift or temptation in the form of any gift in cash or kind, any material benefit in cash or kind, offer of employment or promotion in employment. Any religious body, individual, church or organisation engaging in charitable deeds such as providing food, shelter, medical care, education or the running of orphanages, schools, homes for the aged may then be accused and convicted of attempting to convert a person through 'allurement' and liable to a heavy fine and imprisonment up to five years.

It was challenged before the Supreme Court by Christian and civic groups on the premise that the draft bill violates fundamental rights guaranteed under the Sri Lankan Constitution. The Supreme Court ruled two clauses *ultra vires* the constitution. These were

clauses 3 and 4(b) – prescribing a draconian reporting requirement of all conversion related activity and punishment for failure to do so.<sup>23</sup> The Court recommended the removal or modification of the offending clauses, whereby a simple majority in Parliament can pass the bill. After going through the various stages of the legislative process, the amended draft bill presently lies with a consultative committee of the Ministry of Religious Affairs, prior to the third and final reading and vote in Parliament.

### **The question of legitimacy - state approval or recognition through registration**

Religion may be said to consist of a system of moral and ethical principles prescribing a code of conduct; it involves a statement of doctrine and a form of ritual and religious observance; all of which a man honestly believes in and approves of and thinks is his duty to inculcate on others, whether with regard to this world or the next.<sup>24</sup>

Who or what defines the legitimacy of a religion or belief? International human rights law has sought to avoid philosophical and ideological controversy by identifying certain categories of rights such as the freedom of thought, conscience and religion, rather than attempt definition.<sup>25</sup> The state and the law have a moral obligation and responsibility to protect society from activities which are illegal or promote moral degeneration, while not infringing on the previously mentioned fundamental freedoms. Our purpose here is not to discuss the delicate line which divides the operation of such obligation and the unhindered enjoyment of the right of religious freedom, but to explore the question of state conferred legitimacy of religion or religious institutions, based solely on a system of registration with, or acceptance by the state.

Here again, there are varying levels of state sponsored legitimacy, from the most extreme which is a total ban on religion, or on the other hand, recognition based on fulfilment of a condition or recognition tied to a particular action such as construction of a church.

---

<sup>23</sup> Prohibition of forcible conversion of religions, government Gazette supplement part II of 28<sup>th</sup> May 2004.

<sup>24</sup> J.A.L. Cooray, Constitutional and administrative law of Sri Lanka, 1973:526.

<sup>25</sup> Natan Lerner, the nature or standard of freedom of religion or belief, Facilitating freedom of religion or belief: A desk book, 2004:65.

Ronald Boyd-McMillan says that “the mark of a totalitarian government is that they refuse any group of people the right to gather without permission”<sup>26</sup> irrespective of the purpose of the gathering. This form of religious persecution, cloaked in the respectability of laws, decrees and regulations is increasingly evident, but not limited to totalitarian governments.

## Recognition - the Sri Lankan experience

Under Sri Lanka’s democratic system of government, religious rights are guaranteed under the constitution (as discussed elsewhere in this paper). There is no legal requirement for registration of religious bodies with the state. However, in order to contract business transactions such as buying or selling of property, religious institutions must fulfil the requirement of legal persona. Ideally, religious bodies fulfil this requirement through incorporation by an Act of Parliament. It is a lengthy process, where a bill seeking incorporation must be prepared and presented in parliament through a M.P. or a party where it goes through the normal procedure of passing an Act of Parliament.

While in the past all religions had equal opportunity to avail themselves of this right through incorporation, the anti-Christian movement of the 1990s became active in preventing incorporation of Christian churches and organisations. Many of the traditional mainline denominations and some older evangelical denominations were already incorporated or were assumed to be ‘legitimate’ due to their long history and presence on the island. It is pertinent to remember that incorporation by an Act of Parliament is not a legal requirement for the establishment or function of a religious organisation or a place of worship. However, in practice, Christian churches and organisations were singled out and often challenged by mobs and even by the police and local government officials, to show ‘registration’ as proof of their legitimacy and right to exist.<sup>27</sup> The myth of churches ‘recognised’ or ‘approved’ by the state was thus perpetuated. It was however, neither law nor state policy.

---

<sup>26</sup> Ronald Boyd-McMillan, *Faith that Endures* 2006:72

<sup>27</sup> Incident reports compiled by the National Christian Evangelical Alliance of Sri Lanka reveal many such instances.

Mounting pressure by radical Buddhist nationalist groups such as SUCCESS<sup>28</sup> and the JHU agitating for repression of Christian activity led the government in 2003 to propose the compilation of a list of ‘recognized’ churches – probably as an appeasement to the Buddhist lobby. It caused great concern among the Protestant churches that this may well lead to churches which are not on the list of ‘recognized’ churches being declared illegal by the state, resulting in the closure of hundreds of churches and government interference in matters of personal faith and religion. Leaders of the Protestant churches rejected the move on principle and the matter was not pursued.

## Important judicial decisions

In a multicultural democracy,

the judicial organ of the state can by its actions dissipate tensions in a way other organs subject to electoral politics and pressures can not. Or it can exacerbate those tensions in a way that fundamentally weakens the credibility of the institutions – the multicultural legitimacy – of the state.<sup>29</sup>

Unfortunately, in the Sri Lankan experience discussed below, the latter is true.

In 2002–2003, the Supreme Court of Sri Lanka delivered determinations on three bills which sought to incorporate three separate Christian ministries. Paradoxically, the Supreme Court ruled all three bills were unconstitutional, by reason of being inconsistent with Article 10 of the constitution (which guarantees the freedom of thought, conscience and religion), while the third bill was deemed also to be inconsistent with the foremost place accorded to Buddhism under Article 9.

The first determination was on a petition against the bill to incorporate the ‘Christian *Sahanaye Doratuwa* Prayer Centre’ in 2002. The Court reasoned that the rights guaranteed to citizens under the constitution to practice a religion of choice, as enumerated in Article

---

<sup>28</sup> Acronym for the Society for Upliftment and Conservation of Cultural Educational and Social Standards. A radical and well organised Buddhist nationalist group. Has a wide membership drawn from all spheres of society, generally operates anonymously. At a high-powered meeting in 2001 to re-launch SUCESS, their leaders called upon Buddhists to utilize “any method, even violence” to counter the spread of Christianity.

<sup>29</sup> Asanga Welikala, *The Menzinger Determination and the Supreme Court: A Liberal Critique*, Centre for Policy Alternatives Sri Lanka, 2003:1.

14 (1) (e) is distinct from Article 14 (1) (g) which guarantees the right of citizens to engage in a lawful occupation, trade, business or enterprise. The Court concluded that, “a prayer centre that seeks special legislative recognition by way of incorporation cannot avail itself of these two freedoms together.”<sup>30</sup> Simply put, the Supreme Court reasoned that multiples of freedoms or rights cannot be enjoyed by a single entity, simultaneously.

In the matter of the ‘New Wine Harvest Ministries’ – a Christian worship centre seeking incorporation, the Supreme Court expanded on its reasoning in the Prayer Centre determination. The Court determined that uplifting the socio-economic condition of people not restricted to those who are of one’s own religion amounts to allurements which “would necessarily result in an inconsistency with the free exercise of a person’s thought, conscience and religion as postulated in Article 10 of the constitution.”<sup>31</sup>

The argument by counsel for the intervenient petitioner New Wine Harvest Ministries that nearly all previously incorporated religious bodies from all faiths have as their objective the dissemination of the principles of their faith as well as social welfare and education was deemed irrelevant by the Court.

Later that same year the Supreme Court considered the bill for the incorporation of an order of Catholic nuns, the ‘Sisters of the Holy Cross of the Third Order of St. Francis in Menzingen’. The Court reiterated its reasoning in the two preceding determinations that it is unconstitutional for a Christian organisation that spreads the Christian message to also engage in social development activities. Further, the Court stated that the Sri Lankan Constitution guarantees the manifestation, observance and practice of religion but not the right of propagation – which was one of the stated objectives of the Menzingen Sisters. “The propagation and spreading of Christianity ... would not be permissible as it would impair the very existence of Buddhism ...” the Court stated.<sup>32</sup>

The determinations of the learned justices set an impossible precedent whereby any group with the objective of propagating a religion and engaging in social development activities can only be

---

<sup>30</sup> Supreme Court Determination 2/2001.

<sup>31</sup> Supreme Court Special Determination 2/2003.

<sup>32</sup> Supreme Court Special Determination 19/2003.

incorporated if the bill is passed by a two-thirds majority in parliament and at a referendum. It effectively closed the door to incorporation of already beleaguered Christian ministries.

## **Denial of existence**

Further to disinformation, discrimination and destruction emerges another phase of persecution, where the state refuses to recognise certain religious groups and in effect, denies the existence of such groups. This does not extend to the outright banning of the group whereby their existence becomes illegal, but a simple refusal to officially acknowledge their existence. If one does not exist, one does not have any rights. Therefore violation of one's rights too does not exist. This method of denying existence, when used as a tool of persecution against a religious group or any segment of society, at worst, can lead to horrifying results such as murder or extra-judicial killings and at best, alienate and subjugate people through subtle methods which are respectable at face value – but beneath that veneer, they are efficient in stripping people of their rights and relegating them to the periphery of society, with little or no recourse to justice. In between, there are many levels on which this method of persecution can take place. While tyrannical dictators and Communist regimes seem most likely to engage in such methods of persecution, the danger of a democratic state resorting to it can also be disturbingly real.

In September 2008, the Ministry of Religious Affairs in Sri Lanka was instructed by the executive to draft legislation whereby future construction of any place of worship is subject to the prior permission of the Ministry. Given the complexity of Sri Lanka's multicultural society and politics, there may be genuine reasons warranting such a directive. This discussion will focus on the practice and repercussions of this directive, in the context of decrees and regulations bestowing 'recognition' on religious bodies and not discussing the merits or demerits of the stated objectives or reasons.

The secretary to the Ministry of Religious Affairs and Moral Upliftment informed all Provincial Councils and Divisional Secretariats (local government bodies) to comply with this requirement – in addition to other existing legal requirements – with immediate effect and create necessary bi-laws for proper enforcement.<sup>33</sup> For the present, applicants are required to fill in a specified application, which the local government

---

<sup>33</sup> Letters dated 10<sup>th</sup> September 2008 and 16<sup>th</sup> October 2008.

body must endorse and forward to the Ministry for their consideration and approval. Applicants cannot approach the Ministry directly.

The procedure itself is inconsistent with principles of equality and justice in that it exempts 'traditional religions' from submitting documentary evidence required by the Ministry to prove their bona-fide. However, nowhere does it specify what 'traditional religions' are. Local government or Religious Affairs Ministry officials make the decision based on their own understanding or biases. While Buddhism, Hinduism and Islam are generally accepted as 'traditional' religions, only some Christian denominations such as the Roman Catholic Church and older Protestant denominations which were introduced during the time of Portuguese, Dutch or British Colonial rule, are accepted as 'traditional.' Newer Christian denominations are viewed with suspicion. The Assemblies of God in Sri Lanka, for example, which has existed since 1919 and was incorporated by an Act of Parliament in 1947 was not accepted as a 'traditional church' when it sought approval for construction. Even where such churches have complied with all the regulations and provided documentation to prove their bona-fide, their applications are not approved by the Ministry.

The need for Ministry's approval of construction, in fact, becomes a vehicle by which 'legitimacy' is bestowed on religious institutions and by extension religions, by the state machinery.

Perhaps the most alarming repercussion of this directive is the blatant abuse of it by state officials to harass Christians. Churches, which have already been in existence for years, are asked by local government officials to furnish approval from the Ministry of Religious Affairs.<sup>34</sup> The directive is clearly applicable only to new constructions and does not have retrospective effect. However, it is misapplied and used by state officials as a tool to close down existing churches or threaten demolition.

The experience of the Kithu Sevana church in Galgamuwa, Kurunegala district is a case in point. The Divisional Secretariat sought closure of the church building which had already been legally approved for construction, prior to the presidential directive. Despite this fact, the pastor was warned that his church could be demolished

---

<sup>34</sup> Examples: Assemblies of God church in Dickwella, Matara District, Vineyard Community church in Makandura, Kurunegala District, Assemblies of God church in Middeniya, Hambanthota District. Requests made by letter or verbally by Provincial Council or Divisional Secretariat officials.

since he did not obtain approval from the Ministry of Religious Affairs. The Divisional Secretary of Galgamuwa in a letter dated 11<sup>th</sup> August 2009 informed the pastor that the Secretary of the Ministry of Religious Affairs has instructed the Divisional Secretary to file legal action against the pastor and ordered a halt to the construction.

There appears a spiraling trend of churches being refused permission for construction, permission to register marriages in their churches, or issuance of visas for Christian leaders to attend conferences. A prerequisite for all of the above is a letter acknowledging one's legitimacy from the Ministry of Religious Affairs.<sup>35</sup>

## Conclusion

Freedom to have or adopt a religion or faith of choice is a fundamental human right, a quintessential requirement of a vibrant democracy. It follows that the free existence of religions, too, is a phenomenon evident in a democracy. Registration or recognition of religious organisations or a place of worship under a condition is in effect recognition or acceptance of a religion by the state. If one were to decide that stars are heavenly bodies worthy of worship and establish a 'religion' of star worshippers, can a state determine if that is in fact a legitimate religion or not? In doing so, the state in effect infringes on one's sacred human right to have a religion. Human rights do not vest with the state or the law or society. It is therefore not the prerogative of government or the law to bestow human rights on people as a privilege. Thomas Schirrmacher very rightly observes that "human dignity and human rights are part of man's being as God's creation. Thus, the state does not create human rights; it merely formulates and protects them."<sup>36</sup> This then is the ideal, the purpose of government and law in the context of human rights. Sadly though in Asia, and perhaps in much of the world, we lack role models who emulate this ideal.

There never was found, in any age of the world,  
either religion or law that did so highly exalt  
the public good as the Bible.

(Sir Francis Bacon, English lawyer, philosopher and essayist 1561-1626)

---

<sup>35</sup> Complaints and reports received by the National Christian Evangelical Alliance of Sri Lanka.

<sup>36</sup> Thomas Schirrmacher, The persecution of Christians concerns us all, The WEA global issues series Volume 5, 2008:111.