

Court decision expresses rifts in ruling circles

Media censorship in Sri Lanka ruled invalid then reimposed

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18 July 2000

At the end of last month the Sri Lankan Supreme Court effectively overturned the stringent media censorship imposed by the government of President Chandrika Kumaratunga. On the following day the Peoples Alliance (PA) government restored the censorship measures. Both the court decision and its reversal reveal sharp divisions in ruling circles over the government's emergency regulations promulgated on May 3 following the army's defeats at the hands of the separatist Liberation Tigers of Tamil Eelam (LTTE).

A panel of three judges unanimously brought down a decision on June 30 nullifying the appointment of the government censor or “Competent Authority” in response to a fundamental rights petition filed by the newspaper group, Leader Publications, challenging the closure of the *Sunday Leader* and associated Sinhala language newspapers.

The Supreme Court ruled that in appointing the censor the government had failed to submit its decision to parliament for review within seven days as required by law. As a result the censor's decision to shut down the *Sunday Leader* on May 22 was “a nullity and of no force or avail in law”. It also ordered the government to pay the Leader group \$1,300 in court costs.

By ruling on a legal technicality rather than on any question of legal principle, the Supreme Court left the door open for the government to reimpose media censorship, which it did just a day later. When the emergency regulations were promulgated it became mandatory for all media—both domestic and foreign—to submit their reports to the “Competent Authority” prior to publication or broadcast.

The blanket censorship provoked protests from journalist and media groups both in Sri Lanka and

internationally. On June 5, the government lifted the requirement that foreign correspondents submit their reports to the censor. The new censorship measures once again extend to both domestic and foreign media but do not require pre-publication vetting.

However, the scope of the new censorship is just as sweeping. The measures ban “any material which would in the opinion of the Competent Authority be prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community or inciting or encouraging persons to mutiny, riot or civil commotion or to commit the breach of any law for the time being in force.”

The narrow technical nature of the court decision deliberately ensures that governments, both present and future, would be able to impose the most draconian forms of censorship. According to the ruling, “What is in issue is not the existence of circumstances warranting the bringing into operation part II of the Public Security amendment ordinance.” It found that “[the] rights and freedoms of the citizens under ordinary laws may be disregarded” and also that the purposes of the emergency regulations were legitimate.

It should come as no surprise that the Supreme Court construed its decision as narrowly as possible. A more significant question is why the judges in the midst of a severe political crisis for the government found in favour of the newspapers at all. In fact cases abound in which the courts have justified the arbitrary acts of the state apparatus—from rape, torture and looting by the police and army to the lengthy detention without trial of hundreds of Tamils accused of being “LTTE suspects”.

There has been considerable tension between the

judiciary and the PA government for some time now. The ruling PA alliance has regularly complained that the opposition United National Party (UNP) stacked the courts with their appointees during their 17 years in office. Just a few days before the censorship decision, 11 judges wrote to the President asking her to retract her accusation that a Supreme Court judge had taken bribes to let off LTTE suspects. A few months ago the newspapers highlighted the President's decision to appoint a person involved in a scandal as the Chief Justice.

But the decision to rule in favour of the Leader group must reflect far more significant tensions within ruling circles over the policy of the Kumaratunga government towards the war and the imposition of emergency regulations in particular. In a narrow sense, there are certainly those, particularly in the opposition parties, who are concerned that the blanket media censorship will be used to stymie any campaign against the government during parliamentary elections due to be held later in the year. The *Sunday Leader* newspaper is associated with Gamini Dissanaika who was the UNP's presidential candidate in 1994, before he was murdered during the campaign by a suicide bomber.

But more fundamentally, there are sections of the ruling class—both in Sri Lanka and internationally—who are concerned that the emergency regulations, including the press censorship, will stoke up popular indignation and hostility towards the war and further destabilise what is already a highly volatile political situation. Kumaratunga and the PA coalition came to power in 1994 promising to end the unpopular war but intensified the military operations against the LTTE and placed new economic burdens onto the backs of the working class.

US Undersecretary of State Thomas Pickering hinted at concerns over the impact of the emergency regulations when he said during his visit to Colombo in May that the censorship regime might turn out to be “counter-productive”. A visiting delegation from the Committee for the Protection of Journalists (CPJ) based in New York met recently with leading government ministers and called for an end the censorship. The US ambassador Shaun Donnelley played a role in organising a meeting between the leader of the CPJ delegation and a prominent UNP representative.

It is under these political circumstances that the

Supreme Court decided to fire what amounts to a warning shot across the bow of the PA government while preserving the ability of the state to continue to restrict basic democratic rights.



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