SUPREME COURT OF SRI LANKA HAS RECOGNISED *THE RIGHT TO LIFE*.

In a salutary decision delivered by the Supreme Court of Sri Lanka on 08.08.2003, in the case of ***Kottabadu Durage Sriyani Silva VS. Chanaka Iddamalgoda, Officer in Charge, Police Station Payagala and Six others***, recognised the Right to Life under the Constitution in the light of a chain of incidents revealing police brutality in its most degrading forms.

Thanks to the present Chief Justice and the other activist Judges of the Supreme Court, **the Right to Life is finally** guaranteed to the Citizens of Sri Lanka. The Right to Life is now recognised as against the quality of life by the Judgement delivered by **Justice Mark Fernando** together with two other Justices agreeing with him. **Mr. J. Chrishantha Weliamuna**, a leading public interest human rights lawyer, argued the case with Mr. Shantha Jayawardena and Mr. Charuka Samarasekera as his juniors.

Activist Judges and lawyers such as Justice Mark Fernando and Mr. J. Chrishantha Weliamuna, will have to take a step forward to adorn the Right to Life now recognised, to attach ***quality*** to it in future decisions.

Kottabadu Durage Sriyani Silva VS. Chanaka Iddamalgoda, Officer in Charge, Police Station Payagala and Six others

FACTS

The Petitioner, Sriyani Silva, was the wife of a twenty three year old army deserter (detainee) arrested by the officers attached to the Payagala Police Station. The Detainee was arrested on the 12.06.2000 in the morning. The police officers without handing him over to the military police continued to detain him in the police station and assaulted him until 17.06.2000. The Petitioner- wife and the relations of the detainee continued to request to hand over the detainee to the military police without a success. Finally, complaints to the military police, the Human Rights Commission resulted in producing the detainee before the Magistrate and handing him over to the remand prison on the 17.06.2000 evening. The detainee died on the 20th morning as a result of injuries caused by the police assault. On the 18.07.2000, an attorney-at-law, on the instructions of the detainee's wife, filed an application under Article 126 of the Constitution for alleged violations of fundamental rights of the detainee. The Supreme Court granted leave to proceed in respect of the alleged infringement of Articles 11, 13(2) and 17.

The Constitution of Sri Lanka

(*The Sri Lankan Constitution does not expressly recognise the Right to Life.)

Article 11 *: No person shall be subjected to Torture or to cruel, inhuman or degrading treatment or punishment.*

Article 13(2) *:Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the Judge of the nearest competent Court according to procedure established by Law and shall not be further held in custody, detained or*

deprived of personal liberty except upon and in terms of the Order of such Judge made in accordance with procedure established by Law

(* The law as it stands today requires a person arrested by the police to produce before a Magistrate within 24hrs.)

Article 17 *: Every person shall be entitled to apply to the Supreme Court, as provided by Article 126 in respect of the infringement or imminent infringement, by executive or administrative action, of a Fundamental Right to which such person is entitled under the provisions of this Chapter.*

Article 126 (2) *:Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as maybe in force, apply to the Supreme Court by way of Petition in writing, addressed to such Court praying for relief or redress in respect of such infringement. Such application maybe proceeded with, only with Leave to Proceed first had and obtained from the Supreme Court, which leave maybe granted or refused, as the case may be, by not less than two Judges.*

The Supreme Court entertained the initial application filed by an attorney-at-law on behalf of the detainee at the direction of the detainee's wife, while the detainee was in police custody. Later the Supreme Court permitted to substitute the attorney-at-law and permitted the wife of the detainee to be the petitioner in this case.

His Lordship, Justice Mark Fernando holding with the Petitioner's version stated " Even a sentence of death, imposed after Trial and conviction by a competent Court, must be carried out with a minimum of pain and suffering. The deceased was denied even that Right."

His Lordship further observed, *inter alia*, as follows:

"RIGHT TO SUE IN RESPECT OF DECEASED'S RIGHTS

The deceased's fundamental rights under Articles 11, 13(2) and 17 had been seriously infringed, entitling him to obtain substantial compensation had he been able to make an application under Article 126. However, the infringement was so serious that he did not live long enough even to give instructions to file such an application. Article 126(2) gives a person, who alleges that a fundamental right "relating to such person" has been infringed, the right (by himself or by an Attorney-at-Law) to apply to this Court. Several questions arise: does Article 11 include, by implication, a right to life? If the right to life is infringed, are the dependants of the deceased entitled to claim compensation for that infringement? In respect of the infringement of fundamental rights, particularly Articles 11, 13(2) and 17, if the victim dies before making an application, does the right to sue accrue to or devolve on his heirs?

Although the right to life is not *expressly* recognised as a fundamental right, that right is impliedly recognised in some of the provisions of Chapter III of the Constitution. In particular, Article 13(4)

provides that no person shall be punished *with death* or imprisonment except by order of a competent court. That is to say, a person has a right not to be put to death because of wrongdoing on his part, except upon a court order. (There are other exceptions as well, such as the exercise of the right of private defence.) Expressed positively, that provision means that a person has a right to live, unless a court orders otherwise. Thus Article 13(4), by necessary implication, recognises that a person has a right to life – at least in the sense of mere *existence*, as distinct from the *quality* of life – which he can be deprived of only under a court order. If, therefore, without his consent or against his will, a person is put to death, unlawfully and otherwise than under a court order, clearly his right under Article 13(4) has been infringed. In regard to every such instance, upon the infringement-taking place, the victim will cease to be alive, and therefore unable to bring an action. If I were to hold that no one else – next-of-kin, in-testate heir, or dependant – is entitled to sue the wrongdoers, that would mean that there is no remedy for causing death in violation of Article 13(4); and that the right to life impliedly recognised by that Article is illusory, as there is no sanction for its infringement. That would also create anomalies: that there is a sanction for the lesser infringement, i.e. of imprisonment contrary to Article 13(4), but non for the much graver infringement, of causing death; and that in regard to causing death, there is a remedy for an imminent infringement, but not for an actual infringement. The choice, therefore, is either to interpret Article 13(4) narrowly, as if the words "death or" were not there, or to interpret "person" in Article 126(2) broadly, as including the lawful heirs and/or dependants of such person – either to interpret the fundamental right restrictively, or the Constitutional remedy expansively. Article 4(d) requires this Court to respect, secure and advance fundamental rights, and that requires me to reject the former course, and to adopt the latter. Where there is an infringement of the right to life implied in Article 13(4), Article 126(2) must be interpreted – in order to avoid anomaly, inconsistency and injustice – as permitting the lawful heirs and/or dependants to institute proceedings.

Likewise, Article 17 recognises that every person is entitled to make an application under Article 126 in respect of the infringement of a fundamental right. That is an independent fundamental right, for the infringement of which relief will be granted: *Porage Lakshman V Fernando*, SC 24/90 SCM 29.9.95. If a person is temporarily prevented from making, or pursuing, such an application, he will certainly be entitled to complain that his fundamental right under Article 17 has been infringed. But if he is put to death in order to prevent him – totally and permanently – from complaining, can it be that no one else can complain? For the reasons already stated, here, too, Article 126(2) must be interpreted expansively.

Article 11 guarantees freedom from torture and from cruel and inhuman treatment or punishment. Unlawfully to deprive a person of life, without his consent or against his will, would certainly be *inhuman* treatment, for life is an essential pre-condition for being human. In any event, if torture or cruel treatment or punishment is so extreme that death results, to hold that no one other than the victim can complain will result in the same anomalies, inconsistencies and injustice as in the case of Articles 13(4) and 17. Here, too, Article 126(2) must be interpreted expansively.

I hold that Article 11 (read with Article 13(4) recognises a right not to deprived of life – whether by way of punishment or otherwise – and, by necessary implication, a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively [of. Article 118(b)].

There is yet another reason which compels that conclusion. Article 14.1 of the *Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides:

> "Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

The interpretation that the right to compensation accrues to or devolves on the deceased's lawful heirs and/or dependants brings our law into conformity with international obligations and standards, and must be preferred."

ORDER

Their Lordships awarded a sum of Rs.800,000/- as compensation and costs to the detainee's wife (the Petitioner) and the minor child to be shared equally. Out of the said Rs.800,000/-, the State was required to pay Rs.700,000/- and Rs.50,000/- each, personally by the Officer In Charge of the police station and the Officer in Charge, Crimes.

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