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Sri Lanka: Authorities should not view Human Rights Commission as an adversary but as a partner in reform: Dr. Udagama

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When her resignation as Human Rights Commission (HRC) Chair became public two days before the August 5 Parliamentary election, it was speculated that Deepika Udagama had quit under pressure.

“I want to say upfront that, when people ask me whether I was leaving because I succumbed to intimidation or threat, I feel personally insulted because I’m not that sort of person,” said Dr Udagama whose last day is tomorrow. “If a Chair of an independent commission was threatened or intimidated, it’s not a private issue for me. It’s a public issue. I would have gone public with it.”

“And the last thing I would have done is to have resigned because that really impacts on governance and people’s rights,” she said.

Her departure was prompted by a desire to return to Peradeniya University where she was Head of the Department of Law before obtaining leave to lead the HRC. “I left a young department of study at Peradeniya,” she said. “It was just six years old when I got this appointment.”

Her tenure began in October 2015. Three years later, the HRC received ‘A’ status accreditation from the Global Alliance of National Human Rights Institutions. At the end of that term, Dr Udagama was ready to leave, paving the way for new leadership under the 19th Amendment to the Constitution.

But there came the governance crisis of October 2018 during which the Chair of the Constitutional Council, Karu Jayasuriya, then Speaker, requested all Commissions going out of office by that time to agree to reappointment to avoid a vacuum.

So Dr Udagama stayed on for two more years. Her leave is now up for renewal, however, and the administration needs of Peradeniya University, she said, were acute. She has a moral obligation to return. There were no other compulsions.

“I don’t want my resignation to leave any type of impression that these Commissions can be independent but only so much before they also succumb,” Dr Udagama reiterated. “Absolutely not. These are not institutions that belong to individuals. These are institutions that belong to the public. So it is our bounden duty to protect them.”

“The point is this,” she continued. “Institutions must never be viewed in a personality-bound manner. Never. That’s the true mark of democracy. The true mark of democracy is that there are strong systems and that, therefore, because of strong systems, the systems will continue and people will continue to get the protection that they deserve from governance and institutions of governance.”

The 19th Amendment, therefore, was crucial because it was about checks and balances which, Dr Udagama stressed, were the “life of democracy”.

“People will say, ‘What are checks and balances? Those are academic issues, a footnote to governance’,” she said. “It is not a footnote to governance. It is the central point of democracy and, that, we must understand.”

This is where the Sri Lankan middle class fails. After each election, they sit back and wait to see what the ruling class does. That, she insists, is not how democracy is planned or designed. After an election, the citizenry must be alert and monitor how governance takes place from the word ‘go’.

While the 19th Amendment was “not perfect”—it was a disappointment to those who advocated something much stronger—it offered a better option than an individual deciding on appointments.

When they took over in October 2015, the HRC no longer received complaints of the more egregious forms of violations like enforced disappearances and abductions. But custodial violations is a continuing problem. Illegal arrests, torture and inhuman and degrading treatment were the main complaints in addition to the police not entertaining complaints or affording protection when requested.

“The pattern is clear,” Dr Udagama reflected. “The highest number of complaints we receive each year, even though the total number may vary, are about custodial violations and administrative abuse.”

The HRC prioritized custodial violations complaints because they seriously affect lives. “When you lose liberty, when you are physically and mentally tortured, it impacts on everybody around you,” she said.

The Commission wrote to the police multiple times and they were summoned “quite often”. Reforms have been recommended. And the National Police Commission (NPC) has been notified. But the complaints keep coming.

“There are good officers who see the need for strong reform,” Dr Udagama observed. “But there are also others who are defensive about these sort of interventions. There is a sense that our recommendations are intrusions or that we are exaggerating. Constantly, we find our statistics questioned.”

The HRC counts complaints because, “Nowhere in the world do you wait until these are adjudicated to monitor patterns”. That could take years. “Our position is that, even if you discard 50 percent of these complaints, there’s still a strong number,” she said.

There was a sharp hike in custodial violations while the country was under the COVID-19 curfew. While monitoring visits stopped, the HRC hotline remained open. More than 50 cases were reported between March 15 and May 15. One of her last functions as HRC Chair was to take the matter up with the NPC and Acting Inspector General of Police.

“When you raise human rights issues like these, it is certainly not to embarrass,” she said. “It is to find ways forward. We have always said don’t treat the *Human Rights Commission as an adversary. Consider us to be a partner in reform.*”

Dr Udagama says there must be strong public opposition and a sustained effort to change this subculture in the police. And there must also be disapproval within the institution because, despite a small number of personnel being involved, the entire Police Department is tainted.

"It is interesting where torture is concerned that you do sometimes find public support for it because people have now recognized it as the normal," she said. As a teacher of human rights law, she uses exercises to see how students view this violation.

"You can see that, when they speak honestly, these are not major issues," she explained. "Until it happens to you or to someone in your family, you don't see the injustice. But whole families are traumatised by this and it is also negative on society."

People's rights were also violated through administrative injustice and inaction. These could be employment-related, about not being able to obtain permits or licences, or admit a child to school. It was about getting health care, water services, electricity or a permit to build business premises. "They come here," Dr Udagama said.

Some complaints are referred to the relevant authority—such as the Public Service Commission for employment issues, increments, transfers, etc. The sheer volume of complaints lodged with the HRC means it takes in cases that fall strictly within its purview.

The role of the private sector in human rights violations also requires attention, Dr Udagama said. Both the HRC and the Supreme Court can function only on administrative and executive violations. But the private sector has expanded exponentially and has a huge impact on people's lives as an employer. It provides services like education and health care.

"If that is the case, what protection do the people have?" she asked. "It is important for us to find ways and means of bringing private sector abuse into the loop, into our mandate. That requires an amendment to the law. There are new frontiers of human rights protection we have to look at."

Over the past few years, the HRC also worked on hate speech, especially on social media. It worsened after the Easter bombings in 2019. Even the implementation of the hate speech prohibition in the International Covenant on Civil and Political Rights Act was not balanced and has given rise to concerns that "the anti-hate speech law itself is used as a weapon against certain communities".

"That makes them feel very vulnerable and impacts negatively on inter-community relations and on free expression," she warned. "We do have to work sincerely toward equal citizenship and recognition of diversity of our society, not just by way of superficial sloganeering. Insecurities and fears of all communities must be recognised and addressed."

"A creeping re-emergence of a culture of self-censorship and fear" has also now come to the HRC's attention. "Whether the authorities intend it to be so or not, there is a strong perception that there will be negative consequences for speaking up freely, for dissent, for advocacy," Dr Udagama cautioned. "This is a regression."

"What we saw improve by leaps and bounds in the past few years was the opening up of democratic spaces for discussion, debate and free association," she said. "Creative thinking, different thinking, citizen advocacy are essential to creating a free society." She urged the authorities to address this using the resounding victory they won at the recent polls.

During her tenure, the Commission's biggest institutional impediment was staff shortage and weak capacity. Where the larger picture is concerned, however, the main challenge to human rights protection work was weak citizenship and civic consciousness.

Public voices for human rights protection for all is "rather mute": "Everybody wants rights for themselves, but not for the other."

There must be better civics education in schools. While providing children with occupational training, a major objective of education should be democratic citizenship. Violations can be minimized if people were more conscious of their rights, if there were a more discerning public that demands systems for protection.

“What the Human Rights Commission does is firefighting,” she said. “That’s not sufficient.”

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