



REMEMBERING

Neelan

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INTRODUCTION

A month after Neelan Tiruchelvam died, they bought cans of spray paint and prayed that they would not get arrested. They had all worked with Neelan and chose the spot where he died to paint the road in memory of him.

“Our streets were sites of such destruction and pain for days, weeks, months at time,” reflects Ruwanthie de Chickera, who was there. “Then the glass and debris would be picked up, the blood washed off and these sites of pain would then also be sites that were forgotten.” This group wanted to challenge that amnesia and to have people pause, even if for a moment.

Kynsey Terrace was in darkness when they got there at 1:00 a.m. Ameena Hussein, part of the group, remembers being scared: “There was all the fear and exhilaration that came from wanting to acknowledge this huge wrong, but to commemorate it in a positive way.”

Two of them volunteered to be lookouts while the others prepared to dart on to the street with the paint. They had to work fast, making use of passing headlights. Beneath their feet grew a depiction of flowers and doves. Neelan’s words echoing in their minds, they wrote, “We are fiercely committed to protecting and securing the sanctity of life” over it.

Sithie and Neelan’s colleagues at the International Centre for Ethnic Studies (ICES), Law and Society Trust (LST) and Tiruchelvam Associates (TA) found the drawings but didn’t know who did them. The group was happy to remain anonymous.

Ruwanthie says they were pleased with the effect. “We had been painting in the dark, and so you couldn’t see it properly,” she describes. “The best thing was to see all the colours in the sunlight, to notice people pausing or doubling back.”

Over the following weeks, the paintings would fade. “We didn’t want anything permanent, it was not about erecting monuments,” Ruwanthie maintains. “It was more about the effort of coming together, doing something with other people, then coming back to do it again.”

Sithie soon guessed who was behind it. And it became a larger initiative. Artist Chandragupta Thenuwara became involved and more people from ICES, LST and TA joined. This time they painted as the sun rose.

This intimate act of remembrance and protest grew organically. Paintings started blooming at the sites of other assassinations or bomb explosions. The effort even drew passers-by and neighbourhood children.

In later years, during the road painting sessions, Ruwanthie would go along and find a little spot to work on. Around her, others did the same. “It was a wonderful thing,” she smiles. “You’d be working on your corner of the road. You’d stand up and you’d see a tapestry of 20 metres. I will never forget that experience. It was a small but powerful thing to be a part of.”

This book is released more than two decades after Neelan’s death to pay tribute to a humanitarian whose work continues to influence and motivate others. It aspires to record the indelible mark he left on those who worked with him, were mentored and nurtured by him, and who were his friends and family. It also looks back at his unparalleled contribution to Sri Lankan politics, his impact on the global stage and the lasting legacy he left through the institutions he created and built throughout his life. Most of all, it is a sign of continued love and respect for a trailblazer who tirelessly invested himself towards improving the lot of others.





Neelan the Family Man

One of Nirgunan's earliest memories is his grandfather's funeral.

Murugeysen Tiruchelvam was a Senate Member, a Solicitor-General and a leading lawyer. He was appointed Queen's Counsel (Q.C.) during a critical time of transition in post-independence history. "I was about four-years-and-two months but I still remember the large number of people there," says Nirgunan, of that day in November 1976. His brother, Mithran, was just two.

Their grandfather was a history honours graduate who began practising law in 1933 in British-ruled Ceylon. He often appeared as junior to S. J.V. Chelvanayagam, Q.C. He served as Acting Magistrate in a couple of urban centres and as Acting Assistant to the Legal Secretary, Sir Alan Rose. It was through his work with Sir Alan that he became involved in the drafting of the Soulbury Constitution. In 1942, he joined the Judicial Service and was appointed Crown Counsel in 1947. He became Deputy Solicitor General in 1954 and Solicitor General in 1957.

Murugeysen was a prominent member of the Federal Party and later became a Tamil United Liberation Front (TULF) politician, which brought together the two main Tamil political parties from the North and East into one party in 1972. He was the first from either party to hold Cabinet office. Murugeysen is also recognised as a guiding spirit of the movement to establish the University of Jaffna, which was finally inaugurated in 1974.

Writing in 'The Hindu', S. Muthiah notes that Murugeysen was mentored by S. J. V. Chelvanayakam, K.C., later leader of the Federal Party: "Both Guru and Chela were eminent lawyers, Chelvanayakam guiding his ward through the labyrinths of law that exist in the island. When the ethnic issue began to boil post-1956, he who had always stood for a united and plural Ceylon watched with growing dismay till, finally, he felt he had to play a role in resolving it."

Murugeysen served as a key advisor to Chelvanayakam, and when the Federal Party joined Dudley Senanayake's national government of 1965, following the signing of the Dudley-Chelvanayakam Pact, he was appointed as a Senator, then Minister for Local Government and Justice. He was responsible for the Tamil Language Regulations of January 1966 and the District Development Councils Bill.

While Murugeysen sought to use the position to bring about development in the North and East, he became the focus of criticism from other Tamil political parties, and even from within his own party. He resigned from Cabinet in November 1966 when the Federal Party withdrew its support to the government, citing a failure to implement the Pact, but he continued in the Senate until its abolition in 1971.

The last year of his life saw him defending Tamil politicians, including A. Amirthalingam, V. N. Navaratnam, K. P. Ratnam, M. Sivasithamparam and K. Thuraiatnam, against charges of sedition. The famous trial-at-bar had Murugeysen joining 67 leading Tamil lawyers, including G. G. Ponnambalam and Chelvanayakam, as Defence Counsel. Observers noted it was "Tiruchelvam's sagacity and quiet diplomacy that made possible the appearance of the leaders of the Federal Party and the Tamil Congress, sworn political adversaries, together in a common cause at the trial".

But Murugeysen would not live to see the conclusion of the case where all defendants were acquitted. He passed away on November 22, 1976, leaving behind his widow Punithavathy and their children. Punitham, as she was known, and Murugeysen raised four children, and Neelan, at 32, was then a father and a lawyer himself. Eventually, he would follow Murugeysen into politics, driven by a desire to see Sri Lanka find a peaceful solution to the ethnic conflict and to ensure that the rights of the Tamil community were secured. That was a few years away. For now, Neelan grieved with his family, sons by his side.

Neelan apparently decided early on that he wanted a legal career. "I was maybe 12 and he would have been 16, when our father was hospitalised for an illness. When we went to see him, Neelan signed himself into the visitor's book as 'Neelan Tiruchelvam, Q.C.', and I, as 'Vasudevan Tiruchelvam, F.R.C.S.'," his brother, Vasudevan, recalls. ('F.R.C.S.', which stands for Fellowship of the Royal Colleges of Surgeons, signalled Vasudevan's ambition to study medicine, a dream he realised).

With their sisters, Janaki and Kamani, Neelan and Vasudevan grew up in an unusual household. Sarojini Kadirgamar, a long-time family friend, remembers it being a busy one. "As a politician's home, there were always people coming and going," she says. "It was a gathering place, a hub for conversation."

Punitham juggled roles, supporting her husband, caring for the children and doing charitable work. "She was such a positive character, tiny and diminutive but like a live wire, dominated any room she walked into," Sarojini describes.

A keen social worker, Punitham played a prominent role in a variety of fields. She played an active role in promoting Tamil culture, drama, music and dancing. She was in the Sri Lanka Tamil Women's Union, which was also responsible for establishing the Kalalaya School of Music and Dance, and was at one time its President. She supported local weaver cooperatives. She was also a President of the Red Cross Society, National Council for the Deaf and Blind, and Sangeetha Natiya Sangam. She was Chairman and Founder of the Talking Books Project for the Blind and member of several other social organisations. She passed away on May 19, 1981.

Janaki reminisces that their mother did a lion's share of the childcare. Kamani, the eldest, had an undiagnosed condition characterised by learning disabilities. She couldn't cope with mainstream school. Kamani and Neelan were particularly close. "She loved telling stories, and he was patient with her, sitting and listening to anything she said," Janaki says.

"My mother was a great influence on us," says Vasudevan of Punitham, who had a wide and illustrious circle. Due to her involvement with the Junior Red Cross Society, Punitham travelled extensively. Janaki went with her to flood-affected areas in the North and East, while Vasudevan often stood by her side as she shook hands with world leaders, including the Canadian Prime Minister who visited them at home. When Sarvepalli Radhakrishnan, then Indian President, was in Colombo, he hosted Punitham and her boys at the Queen's House.

Neelan's great love of art and culture, Vasudevan believes, was inherited from their mother. When he was 11 and Neelan, 15, Punitham took Janaki and her sons to South India to expose them to architecture and Hindu temples. She also introduced them to Indian classical dancing. Punitham was particularly knowledgeable about philosophy and religion. When her asthma worsened with age, her children and grandchildren would rub her back to ease her breathing while she narrated stories from religious epics and legends, and immersed them in Hindu philosophy. Neelan soaked it up.

Even as a schoolboy, Neelan had a keen sense of justice. Sunil Bastian, who knew him then, recounts that when they decided to change the name of the Royal College Magazine, Neelan and a friend campaigned successfully to have both Sinhala and Tamil articles in the paper. Another friend, Lakshman Kaluaratchi, testifies to Neelan's intelligence and good sense. "He had this sense of balance," he adds.

Neelan was a gifted debater who researched the issues at hand thoroughly. He was a prefect, and President of the English Literary Association, an elected position. Lakshman watched Neelan grow into a negotiator who could win over even the most recalcitrant opponent. "He was a good listener," he explains. "He would never contradict me. But he would listen and say, 'Perhaps you are right,' then later add, 'but also consider this point of view,' and get me to think about a different perspective."

Often, they would pile into Neelan's home after school where they could rely on Punitham to feed them. Neelan was so like his father in inclination and temperament, Lakshman opines. They both seldom showed signs of temper and were mild-mannered while standing up for their principles without hesitation.

But Neelan did not mention a career in politics. And of the Tiruchelvam children, it was Vasudevan who accompanied their father to meetings such as those with Chelvanayakam. Neelan spent more time with their uncle, Murugeysen Rajendra, a renowned Civil Servant, who was a one-time Government Agent of the North Central Province. He was a Commissioner of Lands and Land Development. He was also Permanent Secretary to the Ministry of Posts, Broadcasting and Information, and afterwards to the Ministry of Nationalised Services. He was also Secretary to the Treasury and Head of the Public Service from 1968 to 1971. Upon retirement, he was appointed as Chairman of the Freedom from Hunger Foundation and a Member of the Monetary Board from 1971 to 1977.

Lakshman and Neelan both gained entry to the Law Faculty at Peradeniya, where they continued their tradition of long conversations, debating current issues and legal responses. Professors like Raja and Savitri Goonesekera, among others, inspired in Neelan a deep love and appreciation of the law, particularly constitutional law.

"We, as teachers, and they, as fresh-faced young students, experienced those Shangri-la years of Sri Lankan campus life," Savitri says, painting a picture of Peradeniya where Neelan and his friends explored what they wanted to do with the rest of their lives. "Even then, he had this commitment to the ideals of justice," she recalls. The course was intense, completing in three years what is now a four-year syllabus. "I don't think we missed a single class," says Lakshman.

It was also where Neelan met Sithie Subhanya Dean. Lakshman describes her as "direct and intelligent." She also made an impression on Savitri: "She wore sari often and, though she looked absolutely demure, she had these sparkling eyes and mischievous look." Whenever the small group of young students spent time together, Sithie and Neelan enjoyed sparring and pulled no punches. It was an era where tensions were high among different communities. These friends didn't care. "Not everyone was happy to mix around, but we were just very open," says Lakshman. They hiked together, visited the theatre and acted in plays.

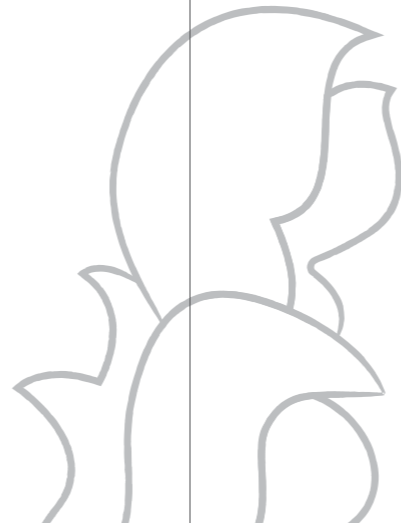
All the while, Neelan and Sithie were falling in love. It was initially a well-kept secret. Even Lakshman had no idea. Her relatives were not pleased with the idea of her marrying outside the community. In choosing to be with Neelan, Sithie went against their wishes.

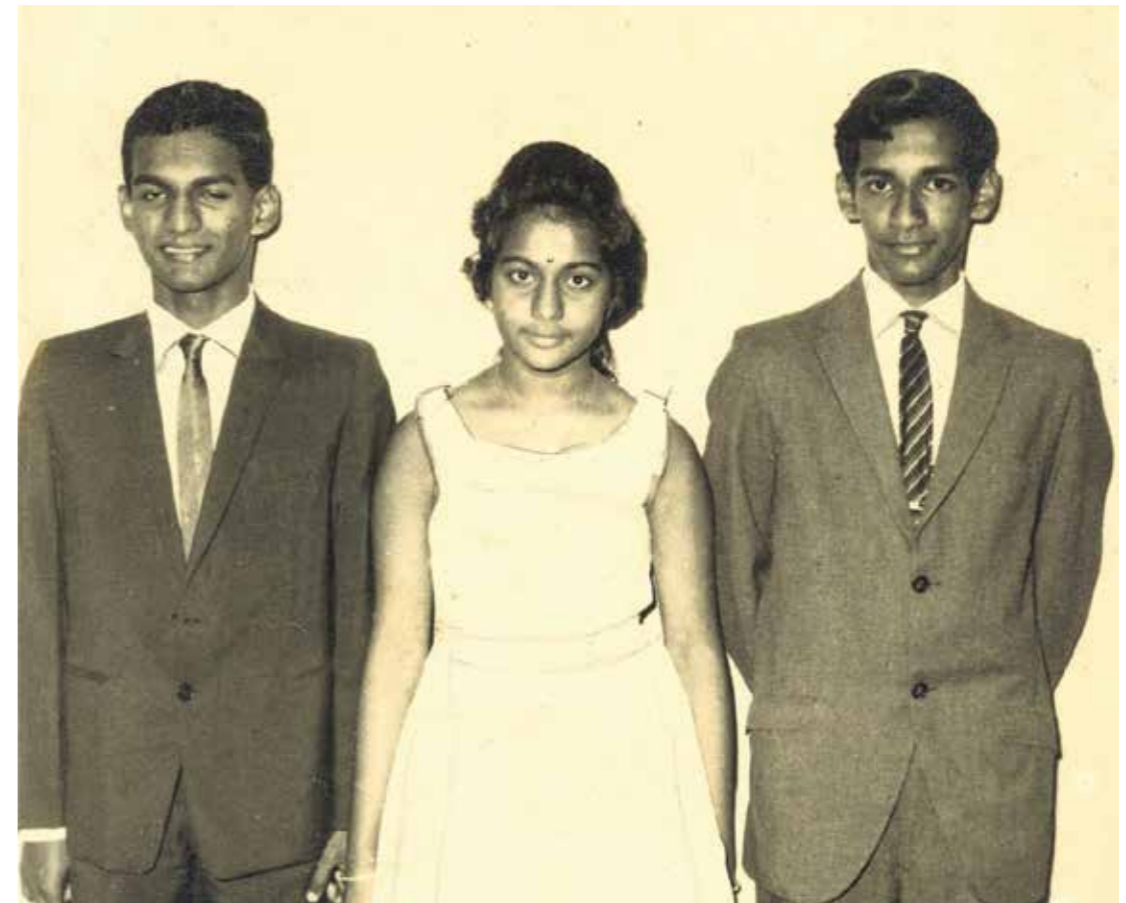
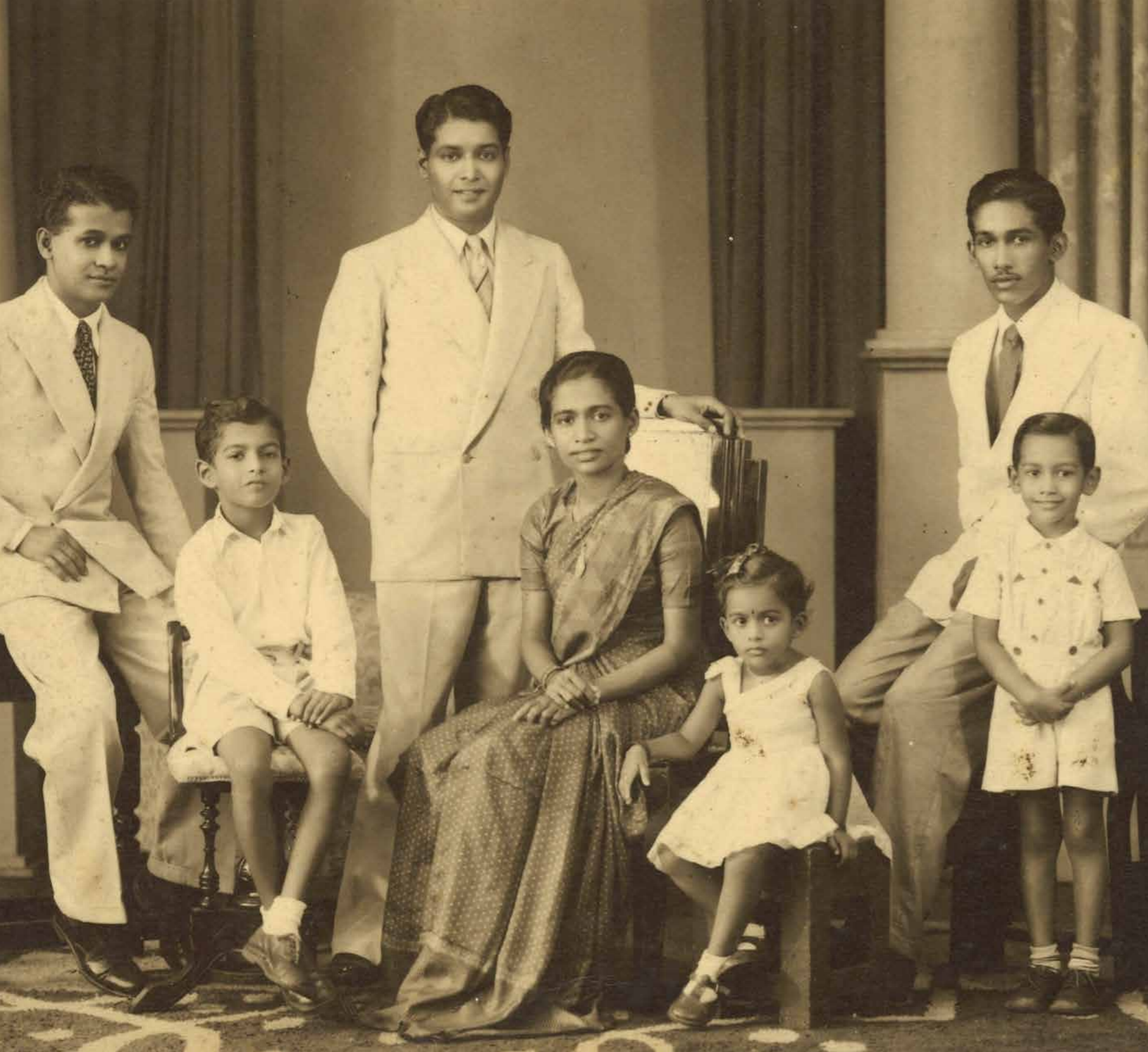
One day, Neelan took her home to his parents and they were married soon thereafter. By all accounts, Punitham and Murugeysen welcomed Sithie with open arms. "His father called her 'daughter'," Sarojini remembers, adding that Sithie accompanied Murugeysen to court on occasion.

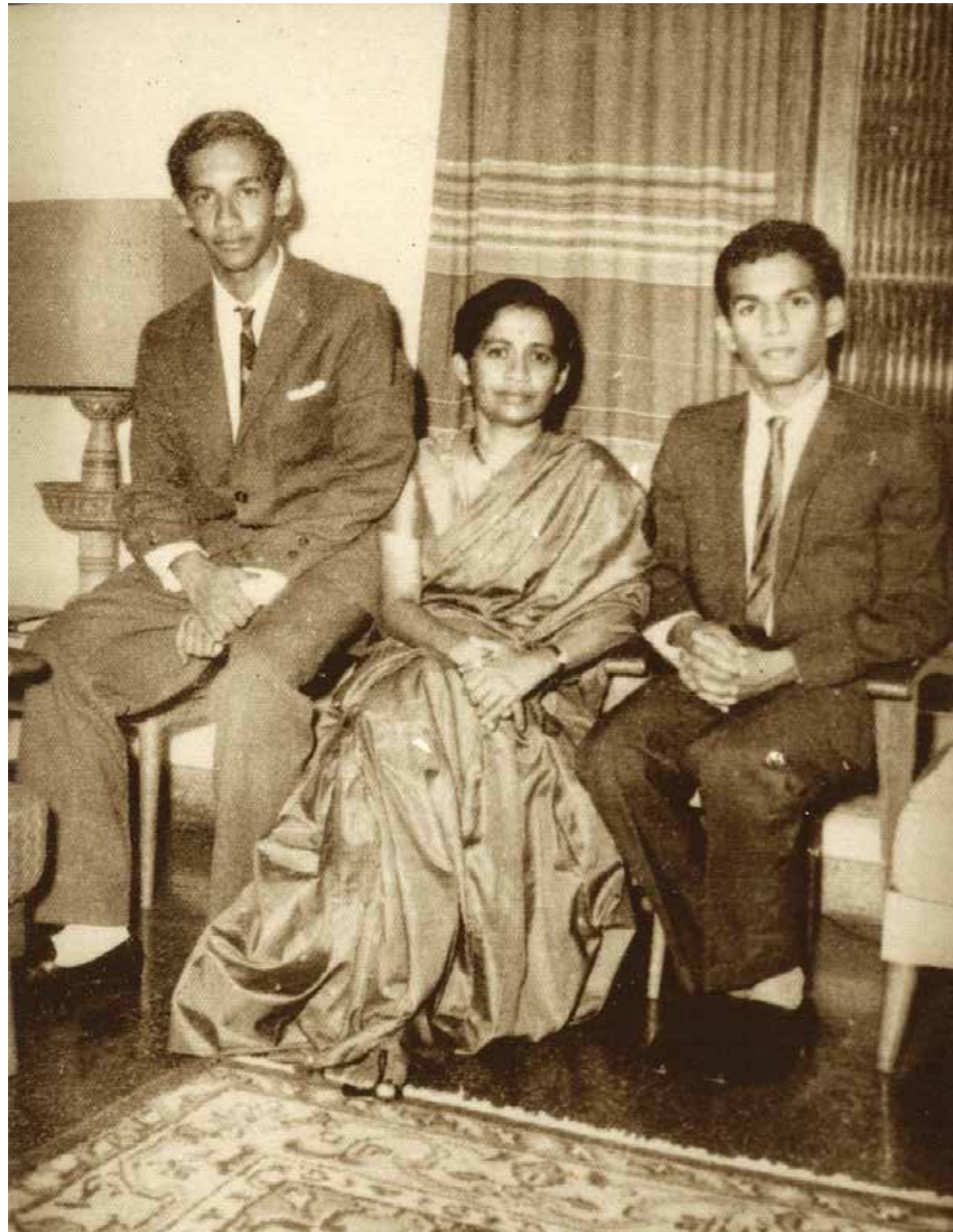
Sithie soon proved a vital collaborator and pillar of support for Neelan. Mithran, Neelan's younger son, says his mother ran the house. "And in their law firm, day-to-day management was something she excelled at," he recalls. "She enabled my father's work from behind the scenes."

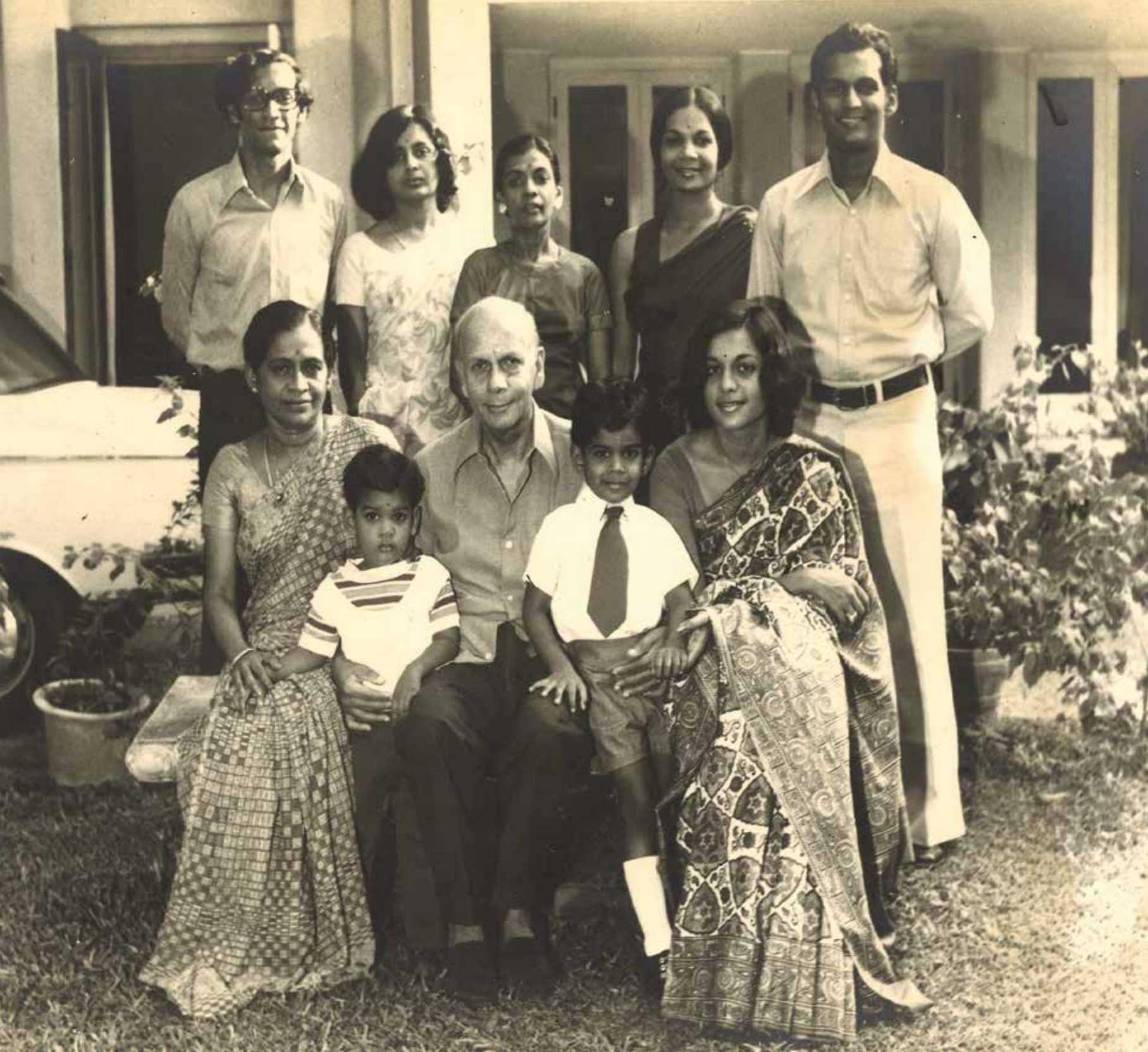
While many sought Neelan's advice, he would turn to Sithie when he needed counsel, notes B. M. Mowsil, Neelan's long-time secretary. She was like his moral weathervane, speaking her mind when she felt he deserved it. Sometimes, he would get a "shelling" which Mowsil witnessed while suppressing laughter at Neelan's sheepish expression.

TA, which the couple ran, grew in reputation. But according to Mithran it was his grandparents' example that convinced his father to enter public service. Punitham who remembered the strain of the trial-at-bar could not have been thrilled at the thought of Neelan going into politics. In this, too, Sithie and she were of one mind.









Sakuntala Kadirgamar, Sarojini's daughter and Neelan's long-time colleague, confirmed that Sithie was against the prospect. She had strong opinions and did not relish dealing with politicians, especially those she had taken a visceral dislike to. She did it for Neelan. "It was tough," Sarojini points out. "But if you care deeply enough, you put up with a lot of pressures."

And Sithie was as good with people as Neelan was. "She was a convener," says Sakuntala. "Neelan would ask people over at the drop of a hat, and Sithie would provide for them." These home dinners brought together interesting people: legal luminaries, performance artists, writers, intellectuals, and politicians joined round the table with friends, family, and young people, many of whom the couple took under their wing.

They observed this tradition wherever they were in the world. Neelan read for his doctorate at Harvard Law School and was a Fulbright fellow in the late 1960s. He also held academic appointments at Yale and Harvard during the 1970s and 1980s. They kept an open house, welcoming friends and colleagues from South Asia to their table. Radhika Coomaraswamy, who went on to work with Neelan, was a third-year undergraduate at Yale when they met at a Carnatic music concert. They promptly invited her over.

"They were kind and funny and dynamic," she says. "It seemed to me that they softened each other and, together, their two personalities made a whole." And their closeness was evident. Sithie was vivacious and outspoken while Neelan was a listener, seldom saying much.

Radhika often attended gatherings in the Tiruchelvam household over the next thirty years, encountering leading intellectuals from South Asia and the world. Among them were the eminent anthropologists Gananath Obeyesekere and Valentine Daniel, legal scholar Upendra Baxi, historian and author Romila Thapar, anthropologist S. J. Tambiah and Arjun Appadurai who was already a trailblazer in the social sciences. She sat down with Ashis Nandy, the political psychologist, social theorist and critic, and met Veena Das, who would later be named Krieger-Eisenhower Professor of Anthropology at Johns Hopkins University. There was the Booker Prize-winning Indian author Arundhati Roy, and Judge Krishna Iyer, hailed as a pioneer of judicial activism in India.

Vikram Raghavan, an intern at LST who later became a lawyer at an international organisation, said Sithie had always addressed him as "son". "Like so many others, I basked in her affection, encouragement, and love," he reminisces. "I related to her like I did to my own parents. I can't think of anyone else outside my own family who I was so close to."

"Although she was Neelan's constant friend, companion, and law partner, Sithie was never his shadow," he continues. "She was a profound lawyer and an activist in her own right. And what an amazing mentor she was to me. My 1997 internship with Neelan was equally an internship with her. I learnt as much from Sithie during my time in Colombo as I did from Neelan. I can still hear her lecturing the cook in Rosemead Place about seasonings just as I remember her insightful discussions about commercial and legal due diligence for a Malaysian investor. I first heard about the New Yorker from her, and the World Development Report, with which I was later to do some work during my time at the World Bank."

"Aunty Sithie," Vikram says, "taught me how to eat Thai food, to appreciate Manhattan, and to shop for art in Colombo. And there was so much about my own country, India, I learnt from Neelan and Sithie. She lived a full and complete life. She lit up the dark corners of those around her with her smile. She had such a joy for living. It's that joy that I will, to paraphrase Neelan's words, 'try and imitate and emulate'."

Neelan and Sithie were generous. They supported friends and family, even babysitting for colleagues. A professor once told Mithran that Neelan had offered to watch his kids for a few hours and had later been found eating chocolate cake and watching Bugs Bunny cartoons, having as much fun as the children.

The gatherings and the cartoons continued when they returned to Sri Lanka. When it was past their bedtime, Nirgunan, who was interested in politics, tried to eavesdrop on conversations while Mithran dozed off.

Neelan's life was seldom without activity and more so after he entered politics. From his office, Mowsil watched politicians, academics, researchers, activists, artists, journalists, diplomats and other visitors stream in and out. Neelan would not disappoint someone who wanted a favour, he recounts. Local and foreign journalists routinely sought him out to discuss the latest national developments. Some friends even recommended that he should make recordings for visitors to avoid having to repeat himself so much! Mowsil marvelled at how his boss did not seem to tire, running on bran crackers and green tea.

It was 1979. Just two years before, J. R. Jayewardene had assumed the Presidency in a landslide election. In the weeks that followed, Sinhalese state-sponsored mobs targeted Tamils, killing and injuring thousands while scores more lost livelihoods and properties. Tamil political parties, which lobbied for



greater devolution of power, recognition of the Tamil language and other measures to protect the rights of the Tamil people, were convinced that whichever party was in government, they would not implement a fair agreement and that separatism was the only solution. In 1976, they adopted the Vaddukoddai Resolution at the TULF party convention in its namesake town in Jaffna District, calling for the separate state of Tamil Eelam.

Neelan continued to espouse a political solution within the framework of a united country. In the early 1980s, he assisted the Jayewardene regime in devising the District Development Councils. It marked the first significant effort by the State to meet Tamil demands for autonomy in the North and East through establishing an institutional framework at the district level. Neelan even tried explaining it to seven-year-old Nirgunan, who said he has vivid recollections of the time, particularly of the burning of the Jaffna Public Library in 1981.

By 1983, intercommunal tensions intensified culminating in state-sponsored anti-Tamil riots in July. When the riots broke out Sithie and the boys were home. Neelan was in Jaffna. “For a while, we didn’t know where he was,” Mithran says. Their concern grew with the passing hours. Homes and businesses were burned and looted. Mobs wreaked havoc on the streets.

“We were woken up in the middle of the night, bundled up and sent to our neighbours’,” Mithran recalls. “It was a confusing time. We were afraid.” When Neelan finally returned, they welcomed him with deep relief.

It was clear, however, that Sri Lanka was not safe. Sithie and Neelan packed the children off to a boarding school in Kodaikanal, a South Indian hill station. It was a difficult time for them. They missed home and their parents. The feeling was mutual. Neelan went to extraordinary lengths to try and be with them. He once braved India’s highways during a State of Emergency declared after Indira Gandhi’s assassination in October 1984 to be with Mithran on his 10th birthday. It would be a few years before Neelan and Sithie felt it was safe enough for their children to return.

That decade saw Neelan setting up two institutions: LST and ICES in Colombo. Work, along with political appointments, was increasingly hectic but Neelan did not lose focus on family.

He made it a point to visit Vasudevan, whom he called ‘Bunny’, although the reason for the nickname evades memory. Their bond grew stronger with age. “We traced his travels across the globe,” Vasudevan says, remembering that Neelan called every birthday. When Vasudevan and Junia lost their son to leukaemia, he consoled and supported them.

Neelan visited Janaki in Melbourne in the mid-1990s. She observed that living under threat had taken a toll on him. “He was happy to walk in the parks here, to be himself,” she says. “It was a pleasure for him. He was tired of security following him around.”

Travelling became a way of spending time and bonding with his boys. Mithran remembers a trip where he accompanied Neelan to South Africa, which was undergoing a dramatic political transition and they were caught up in unrest following the killing of Chris Hani, leader of the South African Communist Party in April 1993 who had fiercely opposed apartheid. Both father and son went to the funeral where they found crowds singing and chanting. Nelson Mandela came to the stage. The speech he made that day turned the tide of violence and prevented bloodshed on the streets. A year later, the apartheid government was defeated in peaceful elections. The details are still etched in Mithran’s mind: “To be there with my father in that time was also to be in the middle of history.”

It was clear to Mithran that his father respected people, who like Mandela, were fundamentally non-violent. “Those he really admired were the peacemakers who came from different parts of the world, where there were a lot of reasons why you could easily fall into violent conflict, many reasons that would justify a violent response,” he muses.

This was certainly true of Sri Lanka, where the 1990s saw an escalation in conflict, bloodshed and political turmoil. Vasudevan recalls that nothing shook Neelan’s determination to serve his country. He would step into many roles in seeking ways to realise his dream of a strong and vital democracy. “I knew he was under stress,” he says. “Even in the eighties, we all begged him to get out of there. But he really believed he could help find a solution.”

If, like those closest to him, he feared for his safety, Neelan never confessed it. “He would not publicly say that he was afraid, that was not his nature,” Vasudevan reflects. Like so many other things, this too seemed an inheritance that could be traced back a generation: “My father fought for a cause, and Neelan was the same. He had a lot of courage, you know.” In the years ahead, this would be greatly put to the test.

Editor-in-Chief of the ‘Indian Express’ Shekhar Gupta first visited Sri Lanka in 1984 on a reporting trip. In the first notebook he used here, he had written down the names of 28 people to interview in Madras (now Chennai) and Colombo. By June 1991, more than half were already assassinated. “Keep that notebook,” Neelan had advised him, grimly. “And watch the survivors.” For Shekhar, it became an exercise in watching the body count.

It was just past 9:00 a.m. on July 29, 1999, when Mowsil felt the distant boom of the explosion. He was walking past the Lady Ridgeway Hospital for Children in Borella towards office at around 9:10 a.m. He knew the blast meant a bomb had exploded nearby. He started running towards the site.

Three cars behind Neelan, Ameena saw and heard the explosion. On Rosmead Place, she and Mowsil joined the crowd around the wreckage of his vehicle, grief-stricken at the sight of his lifeless form in it, just metres away from his Kynsey Terrace office. Ameena, his colleague for nearly ten years, found herself noticing odd things—like how his shoes were on the street. And Mowsil was surprised to find the black briefcase of Neelan’s books intact. Not a page inside was burned.

The hours passed. As the authorities delayed, a clerk from LST took down a curtain and covered Neelan’s remains. Mowsil picked up the shoes and brought them back to TA, leaving them in their usual spot by Neelan’s desk. Word had gone round. Friends from around the world were calling non-stop to ask whether the news was true. Was he really no more?

The man who delivered the bomb—stepping right up to the car as it was caught in traffic and triggering the explosive he carried—was the only other person to die in the explosion.

Mowsil’s life was turned inside-out. He came to Neelan in February 1990 seeking a temporary position as private secretary. They got on so well that he stayed on. At the time, Neelan had not yet been appointed as an MP for the second time but instead served as Treasurer of the TULF. He was also acting General-Secretary of the party. The former position-holder had been killed a few months prior. Mowsil now struggled to make sense of what happened.

Many paid the price before him, prompting Neelan to once comment that assassinations had clearly cast “a dark shadow over our public life” while stressing the need to “create political conditions which restore respect for the sanctity of human life”.

Neelan himself lived for years under threat. As early as 1995, there was information about LTTE plans to stake out his home. A security detail was assigned to him. But he joked with friends that he didn’t expect the LTTE to waste a suicide bomber on him, that they would come for him with a gun. Even that was uttered with a laugh.

Nirgunan did not shrug it off so easily. He was consumed with worry and wanted his father to wear a bulletproof vest. The family even procured, with difficulty, the old bombproof Jaguar that transported the Queen of England on her visit to Sri Lanka in the early 1980s. But they could not find a mechanic to carry out essential repairs. It stayed parked in the garage.

Savitri met Neelan on his return from a fellowship at the Rockefeller Foundation Bellagio Centre in northern Italy. He told her he had a wonderful time. He was next due to take up a visiting professorship at Harvard Law School and she asked why he had not travelled there directly from Italy. Neelan said he had “a lot of things to tie up and finish”.

“And I wondered about that because it had a kind of finality,” Savitri recounts. Sithie later told Savitri that Neelan had come back so he could resign from Parliament. While other friends had questioned his choice to even take up a seat, Savitri feels it had been a sensible one. It was a constructive way of seeing how he could shape the discourse. “But maybe he had got to the point where he felt he could do little more,” she says, adding that he had once told her, with some sadness, that moderates would not be able to hold the TULF.

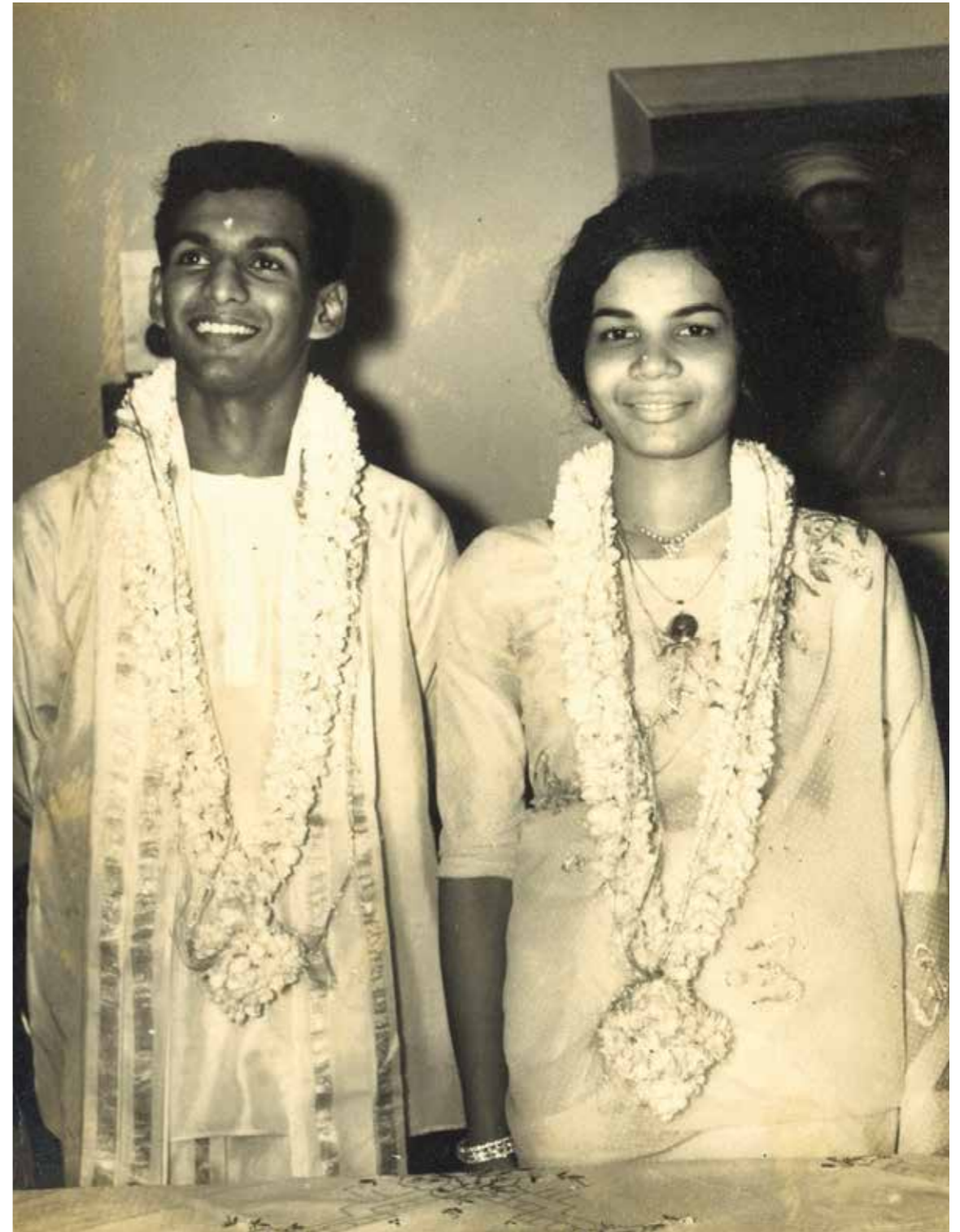
“I sometimes wonder whether we failed him,” Ameena says. “Did the state fail him?”

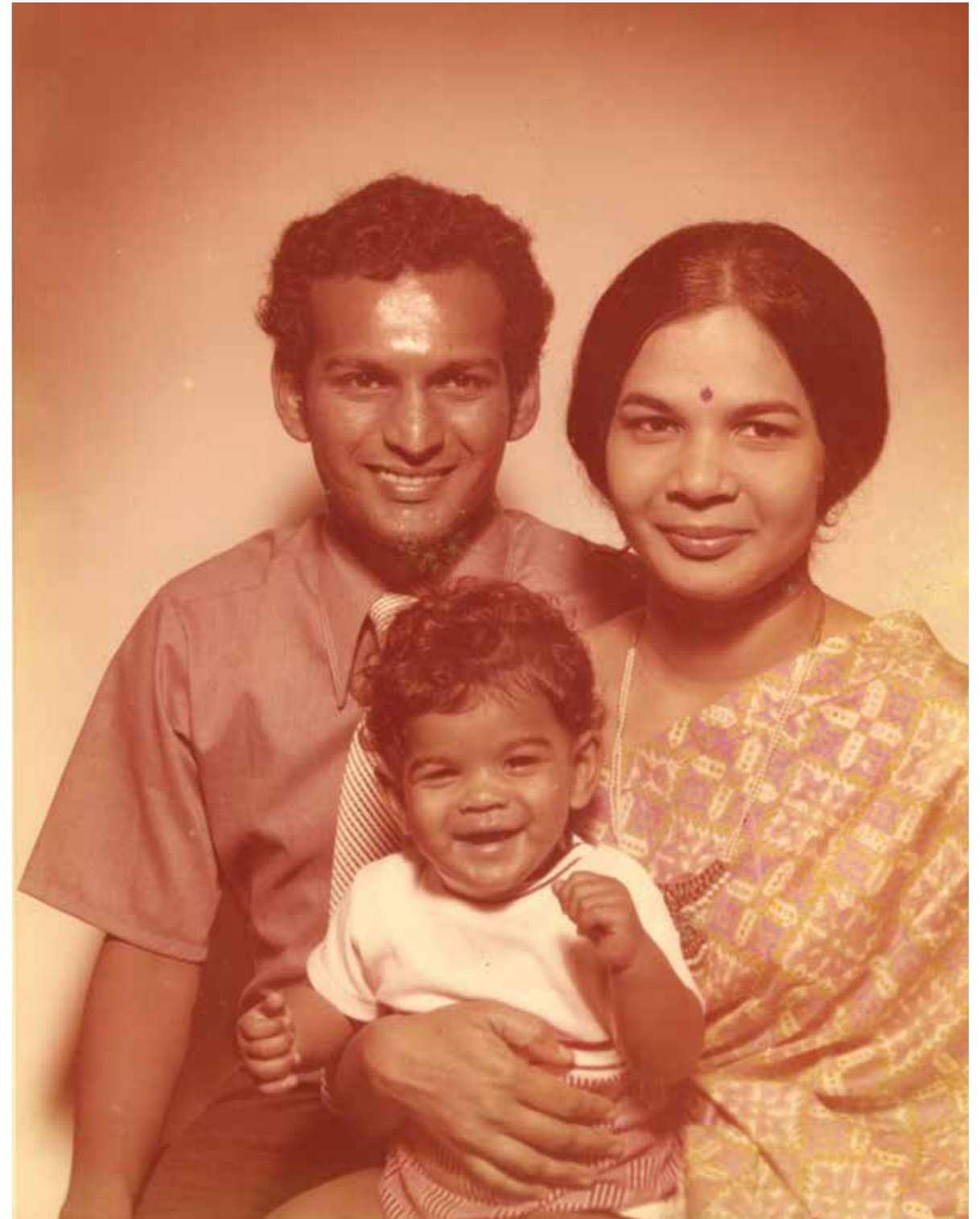
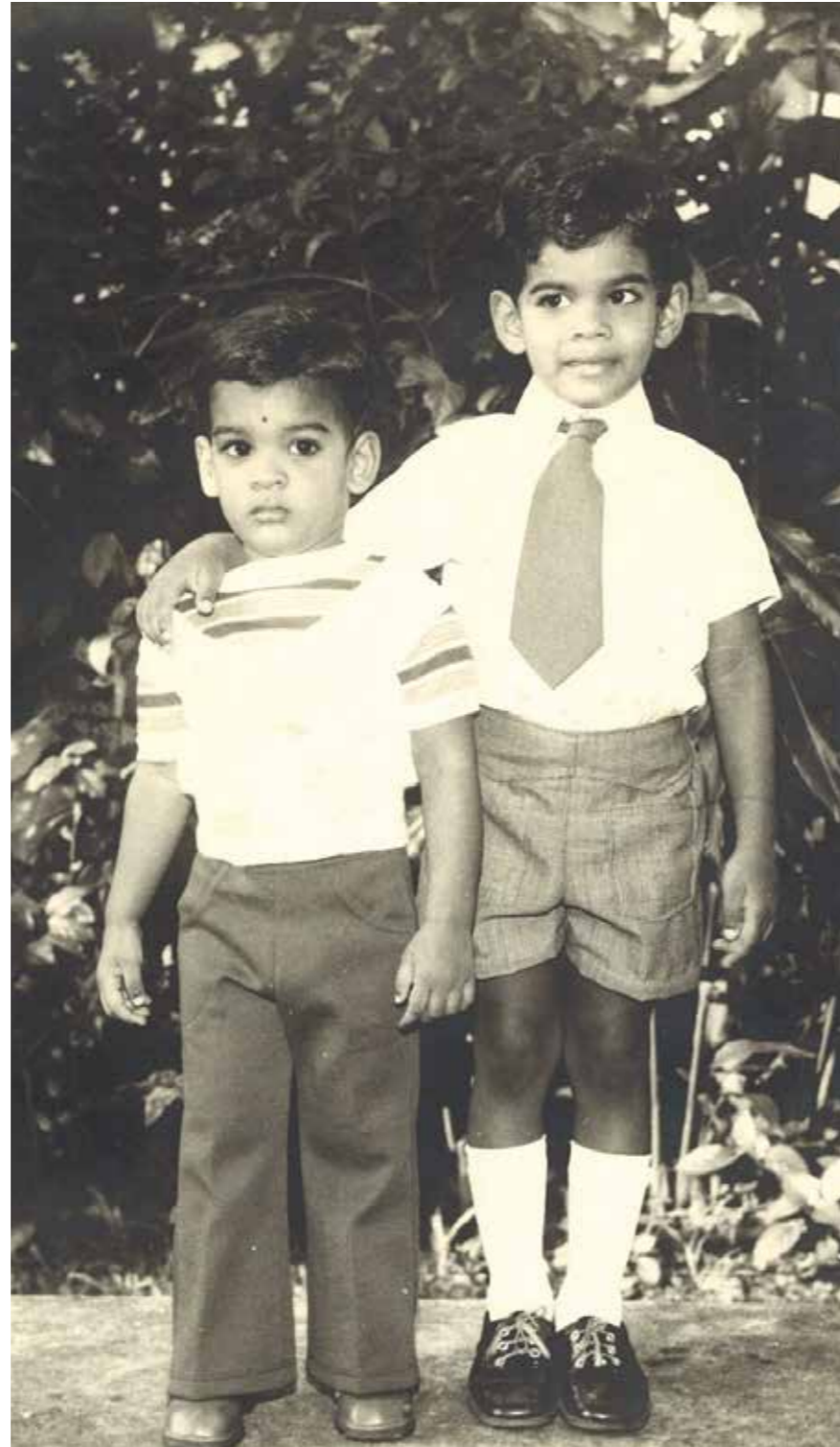
Could Neelan have been saved had they been better prepared, had they taken the danger more seriously? Had he lived, Neelan—through his determination, negotiation skills, and ability to guard the neutral space—would have played a critical role in the struggle to ensure the protection of human rights, especially of the vulnerable.

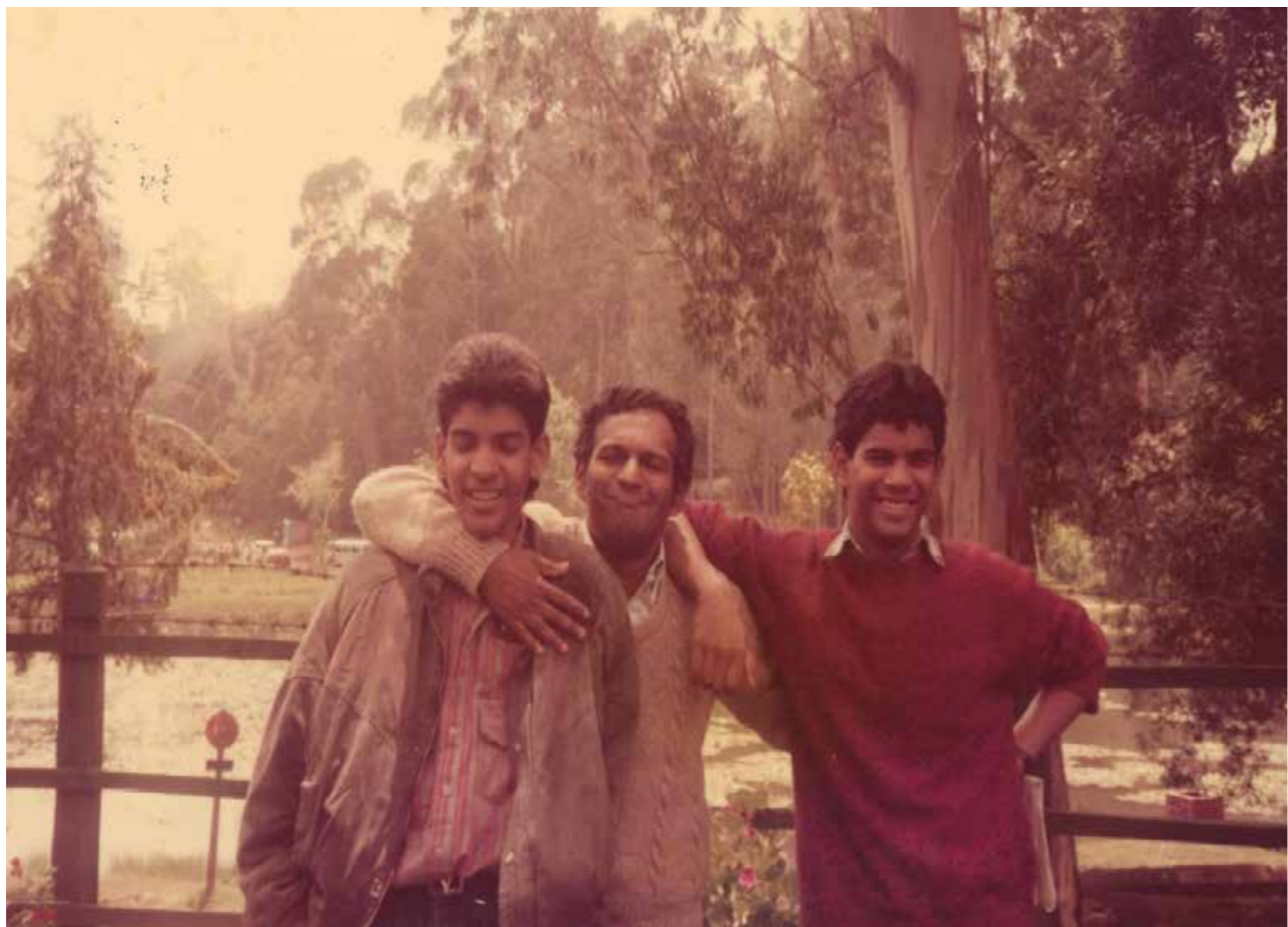
Radhika shares that sentiment, particularly in relation to his skill and patience as a negotiator: “This came late in Neelan’s life, but he had it. Whether it was personal or political, he would listen to both sides and formulate a solution they could live with. With Neelan died that skill. There is no one today in Sri Lanka quite like him.”

“Neelan’s voice is more important today than in his own time because he stood for so much that was the best in politics in Sri Lanka,” Savitri concludes. “It was a voice for reason and respect for diversity.”

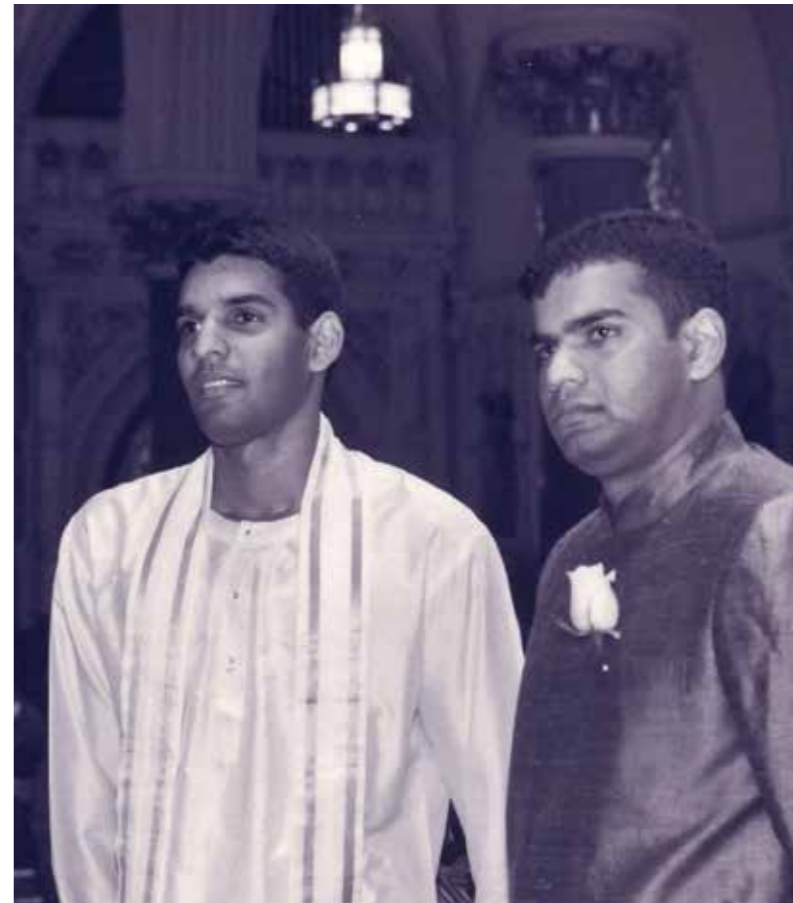
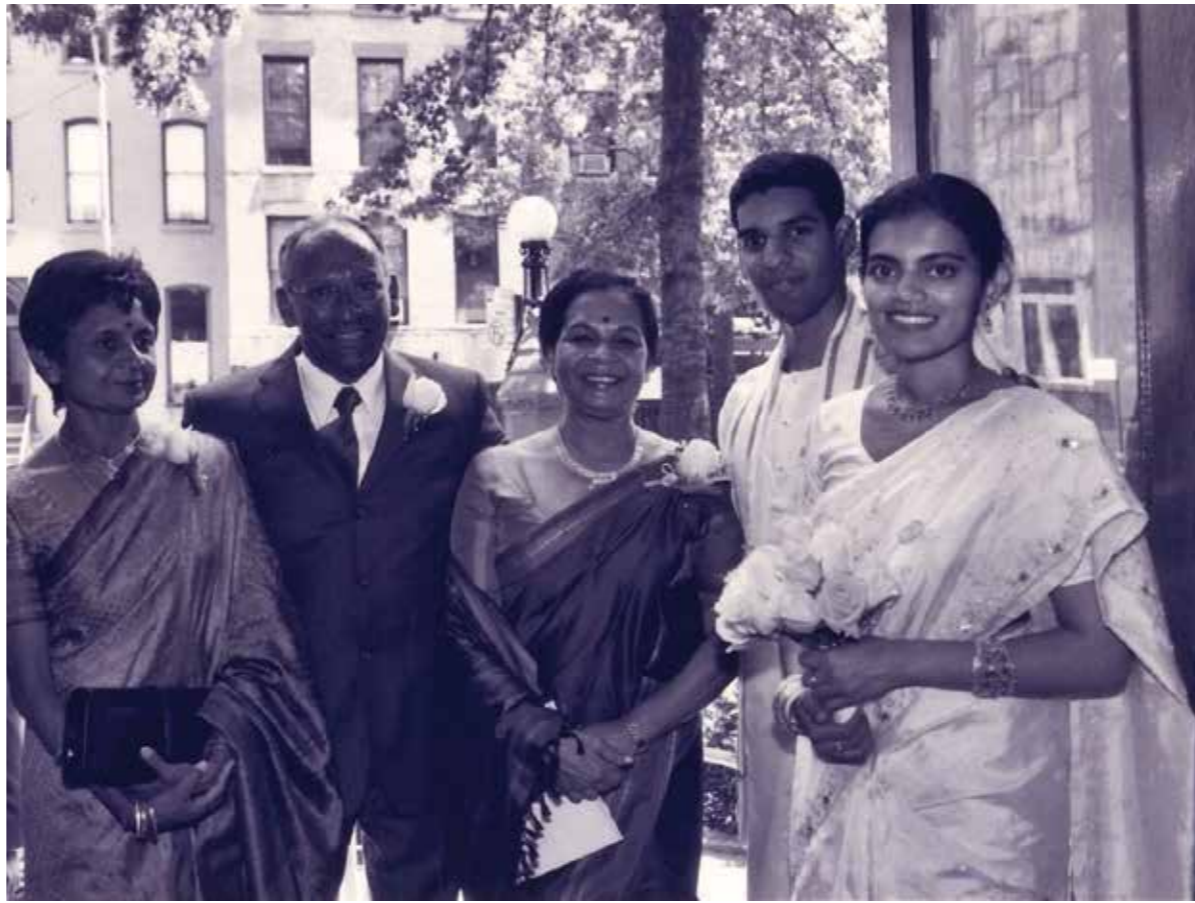




















1995

LAW AND SEXUALITY: AMENDMENTS TO THE PENAL CODE, BY DR. NEELAN TIRUCHELVAM

Our Penal Code is modeled on the Indian Penal Code, which was introduced in the Legislative Council in 1836. The author of this legislation was Thomas Babington Macaulay, who was the first Law Member of the Legislative Council who believed that law reform in general, and codification in particular, should be animated by the principle: "uniformity where you can have it; diversity where you must have it; but in all cases certainty". Vasudha Dhagamvar has pointed out, "the Indian Penal Code is an astonishing piece of work, even more so when one realises that it was drafted in two years by a young man without prior experience of drafting, and virtually single-handedly".

The Penal Code embodied the moral standards and social perspectives of an early Victorian age. There are several profound changes in contemporary mores and values relating to gender equality, which must be reflected in the law. The first development relates to the growing global consciousness with regard to the phenomenon of violence against women and the need for concerted international and domestic action to address the causes and consequence of such violence. These concerns are reflected in the Vienna Declaration of 1994, the Beijing Platform for Action of 1995, and the decision of the U.N. to appoint a Special Rapporteur with a global mandate on this issue, Sri Lankan lawyer Radhika Coomaraswamy. The second development relates to the growing sensitivity to the reproductive health rights of women and the right of an individual to have control over and to decide freely on matters related to her body and to her sexuality. A related concern relates to the health risks to which women are subjected as a result of unsafe abortions, which threaten the lives, particularly, of the

poorest and youngest women. A third development relates to the need to be responsive to the alarming incidence of sexual exploitation of children, including the phenomenon of child pornography. Finally, there is a need for the law not to discriminate and punitively deal with persons with different sexual preferences, and to move away from puritanical attempts by the law to legislate morality.

Our law relating to abortion is in urgent need of reform.

There is no other aspect of our criminal law that is so discriminatory in its impact on different social classes. The more affluent social classes are able to have recourse to a simple surgical procedure performed by an experienced practitioner to terminate an unwanted pregnancy. The predicament of the poor and the unmarried, who must turn to illegal abortion clinics or quacks, is deplorable. One gynaecologist has concluded that illegal abortions are one of the major causes of maternal morbidity and mortality in Sri Lanka. One estimate is that at least 20 percent of the hospital beds in gynaecology wards are occupied by women who have developed complications as a result of unsafe abortions.

I, therefore, strongly favour the liberalisation of the law on abortion, and would go much further than the proposed amendments. I would, in this regard, commend the approach of the United States Supreme Court in *Roe v. Wade*, where the majority ruled that, prior to the end of the first trimester of pregnancy, the attending physician is free to determine, without regulation by the state, whether in his medical judgment the pregnancy should be terminated. From and after the end of the first trimester, the state may regulate abortion procedures to the extent that the regulation reasonably relates to the preservation and protection of maternal health. I would support the decision to decriminalise abortion and to repeal the existing provisions in the penal code. We need assurances that a more humane and realistic regulatory framework, with a focus on reproductive rights and maternal health, will be introduced very shortly by the government.

One of the important changes introduced by the law is the creation of the new offence of sexual harassment. Sexual harassment in the workplace

and elsewhere has become an increasingly important issue on the agenda of the women's movement. Several legal scholars have struggled to frame an adequate definition of sexual harassment, having regard to the diverse behaviour for which regulation is ordinarily sought. Radhika Coomaraswamy has emphasised two important ingredients. First, it is conduct that is unwanted by the recipient - in other words, unwelcome sexual attention. Second, it is conduct that, from the recipient's point of view, is offensive or threatening. The German Penal Code and the Penal Code of Denmark have focused on contexts of subordination or financial dependence where authority is abused to extract sexual favours. The present amendment is not so limited, which is important as women walking in public places and travelling in public transportation are often subjected to a great deal of harassment. Several foreign researchers and tourists have written to the press on this issue. In Canada employers are encouraged to issue a sexual harassment policy, which includes procedures to investigate complaints and to discipline transgressors. Clearly, this problem cannot be dealt with only by recourse to legal strategies. The community needs to be sensitised through public education programs. The Australian Human Rights and Equal Opportunities Commission engaged in a poster, magazine and radio advertising campaign entitled SHOUT (Sexual Harassment is OUT). We need to engage in similar public education programs.

One of the key provisions in the amendments relates to the reform of the law relating to rape. Feminist writers have rightly pointed out that rape is an instrument of control in a patriarchal society, and that women's vulnerability to rape is one of the main factors that constrains her empowerment. "Rape occurs in the family as a form of marital rape or incest, rape occurs in the community, and rape occurs in situations of armed conflict and in refugee camps." Nonetheless, the law relating to rape has been inadequate, the prosecution of offenders lax, and the response of the police to victims callous and indifferent. The present amendment endeavours to more precisely define what constitutes "sexual intercourse" and the circumstances in which "consent" cannot be presumed. It further defines circumstances in which enhanced punishments would be applicable, such as custodial violence, rape of a pregnant woman, rape of a woman under 18 years of

age, rape of a disabled woman, and gang rape. While there can be no objection to increasing the maximum penalty for such heinous offences, one remains concerned as to whether, in these and other circumstances, judicial discretion should be curtailed by the imposition of a mandatory minimum sentence. A new element is that which enables the court to order that compensation be paid to the rape victim.

The conceptual recognition accorded to marital rape represents a significant breakdown in the public/private distinction, which has hitherto constrained an effective response to domestic violence. However, the importance of this change is negated by its limitation to judicial separations. I would urge that this limitation be removed in an acknowledgment of the seriousness of marital rape. To do so would be to fall in line with several Commonwealth countries. In 1991 the Court of Appeal in the United Kingdom ruled that marital immunity is an anachronistic and offensive common law fiction, which no longer represents the position of a wife in present day society. In many jurisdictions rape has been redefined to emphasise the demeaning and violent aspects of rape rather than its sexual character. The present amendment adopts a more sound approach by creating, in section 365B, a new offence, "grave sexual abuse".

The present amendment relating to rape closely follows the progressive report of the Law Commission of India in 1980, which subsequently resulted in the Criminal Law (Amendment) Act of 1983. The Law Commission of India in its report referred to the "radical and revolutionary change in the approach to the offence of rape; its enormity is frequently brought into prominence and heightened by the revolting and gruesome circumstances in which the crime is committed" The Commission's report dealt, in detail, with matters of procedure - such as arrest, detention, medical examinations, interrogation, and trials in camera - and evidentiary rules.

In many jurisdictions, the reform of the law has been accompanied by the creation of gender-sensitive support networks. These have included mandatory examination of victims by women doctors and the enlisting of units

of policewomen in each station to deal with rape cases. In other countries, rape crisis centres have provided integrated services to women victims of violence, including legal services, counselling and support.

The offence of gross indecency between persons still renders homosexual and lesbian acts between consenting adults unlawful. The law should not seek to penalise adults for their sexual preferences. As such, section 365A should be amended accordingly.

Section 286A deals with the problem of child pornography, while section 360B deals with the problem of sexual exploitation of children. Here again we do not seem to have reliable statistics, although the problem has clearly reached alarming proportions. Some official estimates place the figure at 30,000 children who are exploited as sex workers in resort areas. A non-governmental organisation, PEACE, has estimated that the number of children between the ages of eight and fourteen who are sexually exploited is 10,000. There is an urgent need for a more systematic study of child abuse.

Only a small fraction of these cases are reported and followed up. In 1990/91, only 421 cases of child abuse were reported, of which 327 complaints were filed and 76 resulted in convictions.

Neelan the Lawyer

“At no other moment in recent history have the questions of constitution making and constitutional reform been of such importance or the central focus in political discourse.”

- Neelan Tiruchelvam, ‘Crisis of Constitutionalism: Securing Minority Rights in Plural Societies’

One night in 1988, during a laborious election monitoring and expert mission to Pakistan, five people made their way to the country’s red-light district. They had spent the day in formal meetings. Radhika, who was part of the group, said Neelan, whose curiosity and appreciation of the world extended beyond borders, proposed the idea.

And minutes after they entered the room occupied by the sex workers, he requested the women to sing for them. Neelan had learnt that the best ghazals, enthralling and lyrical Urdu verses dealing with loss and romantic love, were to be heard in the red-light district.



“They sang all night for us. It was beautiful she says.

It was the first of several election monitoring and expert missions Neelan undertook. He worked in Chile in 1988, Kazakhstan and Ethiopia in 1992, and South Africa in 1993. A published scholar in law, social justice and development, he was enlisted to help evaluate the draft constitution of Kazakhstan and review the constitution-making process in Ethiopia.

In 1977, Sri Lanka started drafting a new constitution which was adopted in September 1978 as the country’s second republican constitution. That era was marred by open conflict between Tamils and Sinhalese, but also witnessed contestations over the concentration of state power.

Neelan invested significant time studying this spiralling ethnic strife and the possible political solutions to it, with an eye to ensuring the balance of power between the different arms of the state. Neelan also wanted to ensure critical principles relating to equality and fundamental freedoms would be enshrined in the laws as well as institutions and institutional processes. He graduated in 1966 with a Bachelor of Laws (LLB) from the University of Ceylon, Colombo. As a Fulbright scholar, he earned his Master of Laws (LLM) in 1970 from Harvard Law School and his Doctor of Juridical Science (JSD) from the same institution in 1973. Later, he became a Fellow in Law and Modernisation at Yale Law School.

Attached to the Marga Institute on his return, he directed his team to examine issues as diverse as parliamentary procedures, environmental regulations, and equal opportunity policies. Sakuntala, current Executive Director of LST, first met him at Marga. He was studying international contracts and she saw him as a rare professional who understood multinational investments and who had vast contacts abroad. He was a legal counsellor, too, for the Global Consortium of Entrepreneurship Centres.

Those interests also overlapped with TA a corporate law firm, which Neelan and Sithie ran together, and where they developed their expertise in representing foreign and domestic multinationals in commercial transactions.

“Neelan’s US education made him a pivot for American companies,” says Anil Tittawella, PC, a practitioner in civil and commercial law litigation. “He was the trusted name in Sri Lanka’s legal fraternity that US lawyers would refer and defer to. I knew him from the corporate law side. He had high profile clients at a young age.”

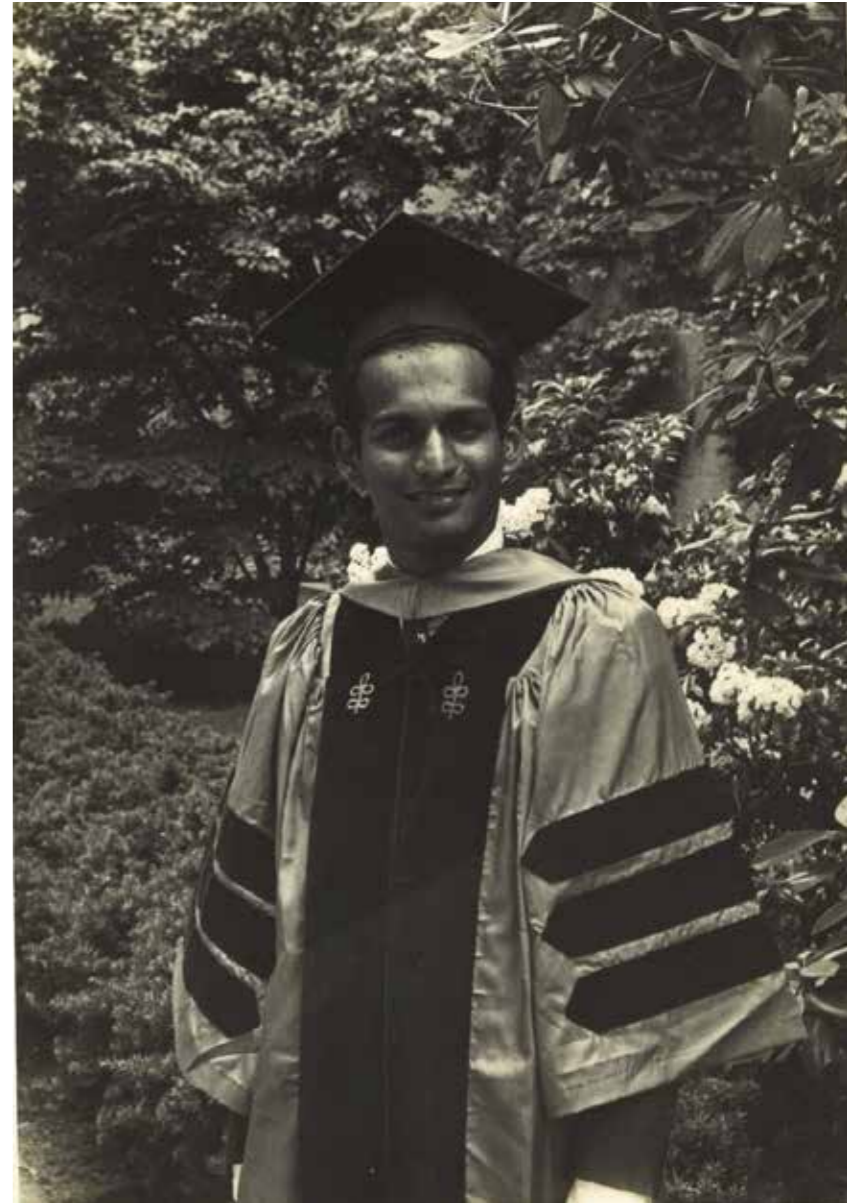
“In the famous Tawakkal case (a major investment that became embroiled in corruption allegations during President Chandrika Kumaratunga’s administration) F. J. & G. de Saram and I were lawyers on the ground, doing the general work,” Anil continues. “But I found out that Neelan was the shadow man whom the Americans were fact-checking with, keeping tabs on whether what we were doing was in line.”

The case concerned the sale of shares of Puttalam Cement Company Ltd. to Tawakkal Group of Pakistan before controversies led to the deal being cancelled and Holderbank (renamed Holcim in 2001) taking over the company. Holderbank AG was also listed in the New York Stock Exchange. F. J. & G. de Saram represented Puttalam Cement Company in court against Tawakkal.

In 1989, Anil was Neelan’s opposing lawyer in a dispute between Paul Finnegan, General Manager of Galadari Meridien Hotel, and Galadari Hotels (Lanka) Ltd. “I was with the Meridien party and he was with Galadari,” he narrates. “Again, it was a question of him constantly trying to see if there was middle ground. As with all corporate litigation, it starts with a bang before commercial sense takes over and a settlement ensues. In our typical Asian style, tempers go up and objectivity goes out the window. But Neelan could always keep focus and objectivity.”

“Neelan was more qualified and intellectual than all of us put together,” Anil confesses. “He was not showy, always understated. We never really saw him around. But there was room at the bottom of the table for him. He was not one to appear in court. He was like the puppet master, and we were the puppets—not in any derogative way. People respected him for who he was and his legal diplomacy. While lawyers tend to be harsh in our language, he wasn’t that type. He saw the middle ground. He believed that compromise was not defeat and it was probably the same in politics. Compromise, for him, was progress.”

His skill at corporate law still surprises Neelan’s closest associates. He was interested in how it helped regulate and direct economic growth, and how it levelled the playing field between the developing world and growing multinationals. Neelan was so forward-looking that he was sometimes accused of trying to regulate entities before they even existed. But his purpose was to learn from and avoid the mistakes of advanced economies.



Savitri, who taught him at the University of Peradeniya, says Neelan eschewed sterile scholarship. He explored how law could shape the direction of development and respond to the challenges of a modern Sri Lanka. This led him to establish LST, which undertakes interdisciplinary research and advocacy on socio-legal issues.

The concept that securing human rights must necessarily include non-state actors was gathering momentum. Neelan understood that it was vital not to brush aside non-state actors and to think of them as relevant stakeholders, Savitri says. He also believed the corporate sector had to be drawn in but with some kind of regulation.

Neelan was a rarity in that he was both an outstanding lawyer and scholar, explains Upendra Baxi, a legal scholar, collaborator, and friend. Not only was he well-read, but he also combined a “lively appreciation of the law with the urgency of the tasks of law in a dynamically changing society... It would not be an overstatement to say he introduced law and development as an area of concern in Sri Lanka and keenly promoted its growth in the SAARC region.”

Neelan also bolstered the study of constitutionalism as a scholarly discipline. A ‘Cat’s Eye’ column (written by leading feminists in Sri Lanka) noted: “His love of constitutional ideas was not a petty, partisan exercise. He studied constitutions as the living embodiments of the moral firmaments of society. He felt deeply about these issues and he wanted to structure a noble and just society.”

Radhika believes constitutionalism was the subject closest to Neelan’s heart. His conviction that Sri Lanka’s intractable conflict could somehow be resolved through constitutionalism was a reflection of this. He was building on the legacy of generations of Tamil lawyers and politicians, including his father. In many ways, however, he was in a league of his own.

Like Anil, others observe that Neelan seldom appeared in court to practise as counsel. He devoted his time and energy to areas he believed were of socio-legal and political significance, and he created national and international spaces and initiatives to advance this agenda. “He was involved in every Sri Lankan constitutional negotiation since the late 1970s and nearly succeeded with the 1995 proposals,” Radhika recalled.



Jayadeva Uyangoda, political scientist and friend, first met Neelan in the early 1980s while he was a researcher at the Marga Institute, before Neelan established ICES. “I went there one day and I saw him coming to the office,” he recalls. “I introduced myself and he knew about me. We had a nice chat. And at that first meeting, do you know what Neelan told me when I was about to leave him? He told me to write my political memoirs! I still remember. Whenever we met, I would ask him, ‘Neelan do you remember our first meeting and your request?’ I always joked with him that it was my unfulfilled promise to him.”

“He was unique in that he was a liberal constitutionalist,” reflects Uyangoda. “He enriched liberal constitutional thought in Sri Lanka and liberal constitutionalism by introducing those ideas in writings, speeches and in parliament.”

“Most constitutional lawyers in Sri Lanka have been orthodox liberal constitutionalists who believed in individual rights and the individual rights framework of liberal constitutionalism,” he elaborates. “However, the minority demands for political rights, particularly Tamil demands for regional autonomy, cultural rights, etc., transcended the liberal individual rights framework, but no constitutional theorist had really tried to expand the limits of the liberal individual rights framework.”

“Even people like (Somasundaram) Nadesan, QC, who raised the question of minority rights, worked within that framework but tried to transcend it legally,” he continues. “I think it was Neelan who introduced two notions of liberal constitutionalism to Sri Lanka. One is pluralism. The second is multiculturalism. He also brought into Sri Lankan political discourse on minority rights contemporary ideas like Charles Taylor’s theory of politics of recognition.”

These conversations, Uyangoda observes, were not present in Sri Lankan legal jurisprudence because constitutional scholars until then were educated in the British tradition of constitutional law, which was “very much the individual rights tradition.”

“The scholars who brought in new ideas were trained in the North American tradition of constitutional law,” Uyangoda points out. “This includes Neelan and people like Radhika, even Deepika

Udagama, who were exposed to wider traditions of constitutional law. These are important in a plural society like in Sri Lanka. You have to recognise the constitutional principle of group rights because group rights involve minorities, particularly ethnic and cultural minorities or religious minorities. In Sri Lanka, the liberal individual rights discourse is very much a part of Sinhala majoritarian constitutional theory.”

“If you look at S. J. V. Chelvanayakam, Nadesan, even Neelan’s father, they were all lawyers who wanted Sri Lanka’s constitutionalism to accommodate the political rights of minorities,” he continues. “But they failed because they still worked within that orthodox liberal tradition. Neelan is the one who consciously expanded the theoretical approach of liberal constitutional rights.”

The two men frequently met in an informal setting at Neelan’s chambers. “We had a lot of shared interests and enriching and inspiring discussions,” Uyangoda reminisces. “One reason I went there was that he and I had a habit of regularly reading two weekly newspapers, one British, one American. The American one was The New York Review of Books. The British one was The Times Literary Supplement. The book reviews are excellent, and we would chat about the latest interesting articles in these publications. And he had resources to order interesting books to the ICES library, which he built up.”

Uyangoda was involved with Neelan in drafting equal opportunity legislation and the bill to establish the Human Rights Commission, which was suggested by President Chandrika Bandaranaike Kumaratunga’s cabinet. “We worked together in introducing legal and constitutional reforms,” Uyangoda says.

After entering parliament on the national list in 1994—his political career is examined in a separate chapter—Neelan, on behalf of the TULF, supported the efforts of the Kumaratunga-led People’s Alliance administration to draft a constitution that would adequately reflect the aspirations of Sri Lanka’s minorities. There was public debate about a “unitary state” versus “federalism”. Neelan campaigned openly about the importance of striking a balance and came to be widely recognised as an authority on constitutional reform.

In March 1995, during an interview on ‘TNL’ radio, he spoke with foresight of how “effectively security and guaranteeing rights is a very important aspect of the constitutional reform process”. Many of the issues he flagged remain strikingly valid at the time of writing this book but have mostly disappeared from public discourse—academic or otherwise. “Here, we are looking at three different kinds of constraints,” he says.

Firstly, the need to more effectively strengthen individual rights. The right to life, for example, is not expressly protected in the constitution. There are certain rights with regards to the rights of accused when they are interrogated which need to be protected. They are known as the Miranda rules in the United States. When a person is arrested by a police officer, he has the right to counsel and the right to remain silent. These are important procedural rights which need to be secured. So, the first task in terms of strengthening individual rights would be to incorporate certain rights which are recognised in the International Civil and Political Covenant, and make them part of our laws. The second constraint relates to what are known as ‘derogations’ and ‘limitations’ of fundamental rights. In times of emergency or in the interests of national security or the national economy, Parliament may by law or by Emergency Regulation derogate from or limit these fundamental rights.

He continues:

It has been a strong view of constitutional lawyers and human rights activists that the limitations in the present constitution are too sweeping and they need to be rationalised, they need to be limited. The third constraint relates to having more effective remedies. As you know, one thing being considered is the proposal to ensure judicial review of legislation, which means that in addition to pre-enactment review we will have a certain opportunity to challenge legislation which violates fundamental rights. There is also an attempt at what we call democratising remedies, by which I mean to extend the period of time within which the fundamental rights challenge could be invoked, and to allow public interest groups to intervene on behalf of a person who, for reason of poverty or other disadvantage, is unable to intervene on his own behalf. These are important changes and we will strongly support such reforms.

Neelan was a strong proponent of a federal solution. In the same interview, he addressed the question of whether meaningful devolution was possible within a unitary framework:

But it is our strong conviction that in a unitary constitution the centre has the power of overriding either legislative or executive authority of the devolved unit. We have seen this in Sri Lanka, in a number of important areas such as agrarian service, education and transportation, where the authority of provincial councils has been legislatively and administratively overridden during the last several years. The judiciary in most countries do not function as a natural arbiter between the centre and the provinces, particularly within a unitary framework. Within a unitary framework, the judiciary seems to function rather as an extension to the centre, rather than a neutral arbiter between the centre and the provinces, which again has led to a considerable concentration of power and concentration of authority in the centre and to consequently weaken and dilute devolution. In the Sri Lankan context, there is another complicating factor, which is the presidential system. In the presidential system, power tends to gravitate towards the centre, and when you have an active, interventionist presidency (as we have had in the period of former President Premadasa), we found that certain sub-district units, divisional secretariats, were established, which were controlled directly by the centre, and the devolutionary exercise was weakened and somewhat undermined by the creation of these sub-district units throughout the country.”

In a separate interview, this time with the Tamil language ‘Virakesari’ newspaper, Neelan addressed the question of defining the nature of the Sri Lankan nation:

The first ideological definition of the Sri Lankan nation is contained in the Indo-Sri Lanka Accord where Sri Lanka was defined as a multi-ethnic, multi-religious society and that the North-East region had certain preponderance of the Tamils and Muslims. Subsequently, it was pointed out that a plural society must be one based on equality and in which the state does not privilege any religion, any ethnic group or any community. A political solution can only be meaningful if this principle of equality is understood and accepted. The alternative approach is one which assumes that the majority community will remain dominant and the minorities must be given justice within that framework of dominance. This is a kind of approach we find in a country like Malaysia where the political and economic dominance of the Malays is taken as given and the Chinese and the Indians are given certain concessions within that framework. It is important to distinguish these two approaches and for the government to adopt an approach based on pluralism and equality.

Pluralism and equality were two areas that held Neelan’s academic and political interest. His many published works include papers titled ‘Crisis of Constitutionalism: Securing Minority Rights in Plural Societies’; ‘The Politics of the Judiciary in a Plural Society’; ‘The Making and Unmaking of Consti-

tutions—Some Reflections on the Process’; ‘The Crisis of Constitutionalism: South Asian Perspectives’, etc.

In helping to draft the constitution mandated by the Kumaratunga government, Neelan was willing to do the hard work of consulting all stakeholders. Until then, Sri Lankan constitutions had been drafted by parliamentarians and parliamentary select committees, with token efforts at consultation. But he was convinced a successful constitution must account for the wider polity with their diverse concerns. This alone would generate a sense of ownership and commitment to the enshrining principles.

Even friends sometimes wondered about Neelan’s faith in that exercise. Jani de Silva considered herself a radical young researcher in the early 90s and worked with Neelan at Marga and ICES. She struggled to gauge whether Neelan stood on the left or the right. He was committed to human rights. But she questioned his confidence in constitutionalism. “Hadn’t national leaders like J. R. Jayewardene and Ranasinghe Premadasa flirted with political authoritarianism while operating within the bounds of the constitution?”

Jani had felt the “correct” response to terror by state and armed groups was visible political dissent on the streets, but working with Neelan at, for instance, ICES exposed her to the importance of turning political dissent into institution-building “so that a climate which can sustain creative constitutional reform can emerge”. “It taught me that civil society, annihilated in the violence of the 1980s, would not spontaneously rise up like a phoenix, without serious human effort,” she writes.

Neelan expounded that the law was vital in this equation, the foundation underpinning all efforts to protect human rights and to guarantee them for future generations. Through the institutions that he was connected with and in his official capacity, such as Law Commission member, Neelan pushed to modernise many areas of Sri Lankan law while maintaining an interest in understanding which prevailing systems worked and why.

As Radhika points out, Neelan became a pillar of the law and society movement, which was rooted in awareness of how colonial law and ideology could have an adverse impact on local communities. He sought out examples of practices that evolved organically instead of being imposed and that strengthened the agenda of social justice and human liberation.

Flipping through Neelan’s ‘The Ideology of Popular Justice in Sri Lanka’, Savitri indicates his enduring interest in governance before colonial regimes were established. He had argued that it represented a “sophisticated polity rather than absolute monarchy”.

The essay pointed to Buddhist texts like the ‘Vasala Sutta’ (on caste) and the ‘Sigalovada Sutta’ (on relations in the family and community) as evidence of respect for human dignity and potential; of how the king exercised authority guided by these principles. It also quoted Hindu texts like the ‘Mahabharata’ which recognised that “neither the rod nor the rod bearer governs the people and the dharma ensures mutual protection”.

“Neelan synthesised all of it,” notes Savitri. That was part of his scholarship, seeking to understand the linkages, the bridges. “He came from an awareness of ethnic identity, but he wanted to go beyond that to ideals of equality and justice,” she explains. “Once he had that concept, he wanted to see how he could realise it.”

These ideas were explored in his PhD thesis, which combined Neelan’s interests in law and anthropology. It was on ‘gamsabhavas’ or the village councils for dispute resolution in pre-independence Sri Lanka, some of which still existed at the time.

“There were measures and practices that restrained rulers from exercising absolute power,” Neelan later wrote. “The gamsabhavas functioned as community-level participatory bodies of local administration.” Radhika says Neelan believed this form of informal dispute settlement deserved constitutional protection and had a valid place in modern Sri Lanka. One of the impulses that drove him was the need to find a system that combined parliamentary democracy with strong indigenous traditions.

This research, too, informed his efforts when Neelan accepted an assignment from then President J. R. Jayewardene in 1981 to conceptualise District Development Councils. Neelan found there was insufficient data or information on what was a vast subject. Radhika says he was determined to rectify this. He helped organise a conference in Nairobi that year. Sponsored by the Ford Foundation, it brought together international experts to discuss ethnic conflict and related issues, such as federalism and equality before the law. The conference led to the founding of ICES in Colombo.

Neelan visualised what could happen if human rights were essential to development and not hindering it. He contended that the discourse could be profoundly enriched by reference to the religious, spiritual and artistic traditions of South Asia, which he believed would resonate with the lived experiences of his countrymen. For instance, he cited the idea of Dhamma and its centrality to notions of justice, accountability, and morality in Hindu-Buddhist theory, and explored how this could shape views on what made a good leader.

“Very little effort has been made to imaginatively build on such concepts and to articulate principles of

governance and democratic accountability which draw on language and idioms which form part of the Hindu-Buddhist tradition,” Neelan said, in a speech before the Council of Europe in 1993. “Similar attempts need to be made to draw on linkages between constitutional values and the rhetoric of rights, on the one hand, and the concepts, ideas and institutions which are central to the belief systems and the world view of Islam on the other.”

Upendra, himself a legal scholar and professor of law, believes Neelan demonstrated how legal regulation and adjudication were central to any measures of development aimed at performing social justice, not only in Sri Lanka but for South and South-East Asia. According to Upendra, Neelan felt that both professional and popular literacy in comparative jurisprudence, and in international treaty and customary law, were essential for measures of planned development.

Many South Asian societies were still ruled by strong leaders that practised authoritarian constitutionalism. To argue, then, for rule of law, human rights, constitutional democracy, and for dignified dissent could itself have been considered as sedition, Upendra pointed out. But Neelan remained committed, crafting multiple discussions on how to reconcile conflicting interests: “His message was simple: one can roll back the dark times by valiant acts and performances deepening freedom.”

Years after Neelan’s untimely death, Vasuki Nesiah, lawyer and academic, finds one of the most enduring aspects of his legacy to be how he seamlessly integrated intellectual and activist pursuits. To him, they were not distinct realms. “His activism, his life as a lawyer and parliamentarian, were shaped by thoughtful critical reflection,” she said. “His approach to scholarship, in turn, was shaped by a deep consciousness about how ideas matter, the very human stakes of a life of ideas.”

This idea resonated with Henry Steiner, founder of Harvard Law School’s Human Rights Programme. He met Neelan through the course and recalls a man who was not interested in demonising the opposition and who was persistent in his efforts as a peacemaker. He wanted Neelan to teach at Harvard and eventually established a scholarship in his name there.

By this time, Neelan had many publications to his name. This includes 1982’s *Ideology of Popular Justice - A Socio-Legal Inquiry*; *Democracy and Human Rights*, and *Civil Disobedience*, published in 1996 and 1997 respectively. There was also the Sinhala monograph *Politics and Culture*.

Steiner envisaged Neelan teaching his students because he was a rare combination: an academic with real world experience in one of the most complex and extended ethnic conflicts witnessed by South Asia. Steiner, aware that Neelan was heavily criticised in later years, including by members of his

own community, could imagine there were some who thought him naïve, “a fool who was dangerous because of what he said and tried to do.”

This could apply to anyone who did not see the world in polar terms, Steiner muses. “Such people as Neelan can readily be cast off as dreamers, as people who simply believe abstractly in certain ideals and values, and dreams,” he reflected.

To Steiner, however, Neelan represented the possible: “Without such people as Neelan you lose your sense of the ideal and the possible in the world. You think only of the bloodshed, the force and the bullying that must dominate everything.”

A fellow professor at Harvard, the Brazilian politician, Roberto Unger, saw it as Neelan’s fate to reach maturity in a society riven by conflict. “By accepting this fate, and struggling with it, he made himself into a man,” he observes. “But Neelan was not the opposite of Sri Lanka. His country made him. Through him, it spoke with another voice. In him, it signified its intention to become greater and better than it is.”

As an academic, Neelan regularly tapped into his vast international contacts to enable others to access opportunities to grow professionally. One of them was Hemamal Jayawardena, a forensic scientist and Harvard-educated lawyer, who calls Neelan’s involvement in his life “a landmark”. Hemamal once did paid part-time work at the Harvard Human Rights Programme and, as a member of the Editorial Board of the Harvard Human Rights Journal, undertook voluntary assignments.

“The editorial team was primarily tasked with checking references of citations in articles sent to be considered for publication,” Hemamal says. “This was in 1992-1993. Henry Steiner was the Director of the Harvard Human Rights programme and learned I was from Sri Lanka. Perhaps thinking I had some commonalities with his friend, Neelan, he had, I believe, a good opinion of me. He assigned me several significantly responsible tasks in the programme in spite of me being a student part-time employee.”

Upon his return from Harvard, Hemamal joined the Kelaniya Medical Faculty and wrote extensively on social justice and human rights. “My first attempt at a short story was in late 1994,” he relates. “As a practitioner in forensic medicine at the time, I spoke with people of all walks of life as part of history-taking before performing autopsies or clinical forensic medical examinations. I got ample material for ‘The Patient from Jaffna Island’ from a relative of a deceased from a war-affected area of Sri Lanka regarding the anxieties and pain of one who is sick.”

‘The Island’ newspaper published it in January 1995—the tale of a 70-year-old man living in Jaffna with his wife and three children. It described the difficulties of war-hit communities and, specifically, of the old man falling ill and needing an operation.

“Neelan had been reading my articles and letters to the newspapers regularly,” Hemamal says. “In addition to the Harvard alumnus connection, the social justice content of my writings had interested him. In early 1995, I was surprised to receive a call from this lion of a lawyer who had a soft and gentle voice. He asked me whether I could drop by his office in Kynsey Road.”

“His office was on the first floor,” Hemamal continues. “There were a few persons dressed in plain clothes who appeared to be security personnel. It was my first time meeting this great personality. We spoke of his days at Harvard. We spoke of Mr. Henry Steiner and I told of the great respect Mr. Steiner had for him. After the initial getting-to-know-talk, he told me that he had received an invitation from the Rajiv Gandhi Foundation in New Delhi to speak on mental health in Sri Lanka. He asked whether he could nominate me to do it as he was unavailable to travel on the given dates. I do not know how he guessed my interest in mental health. Perhaps it was after reading ‘The Patient from Jaffna’.”

Hemamal had just joined Nest, an organisation working on mental health in Sri Lanka, as a member of the board. It was established by Sally Hulugalle and Kamini de Soysa in 1984 after seeing the plight of forgotten women at the Mental Hospital in Mulleriyawa.

“Therefore, I gladly said ‘yes’,” Hemamal says. “This paper I presented in India in 1995 garnered a lot of publicity in the local media. Some post-graduate students in psychiatry even called me and thanked me for the content which they said was not in any textbook.”

“The relationship with Neelan grew after this conference,” he continues. “He invited me to start a health and human rights desk at LST. We added a chapter on health and human rights to LST’s annual human rights report. It was easy to convince Neelan of the importance of starting innovative projects. With support from the UNDP regional office in New Delhi and the WHO country office in Sri Lanka, we published a number of monographs related to human rights associated with HIV/AIDS. Later, while sitting at UNFPA, I had the opportunity to support some of Neelan’s work related to reproductive rights.



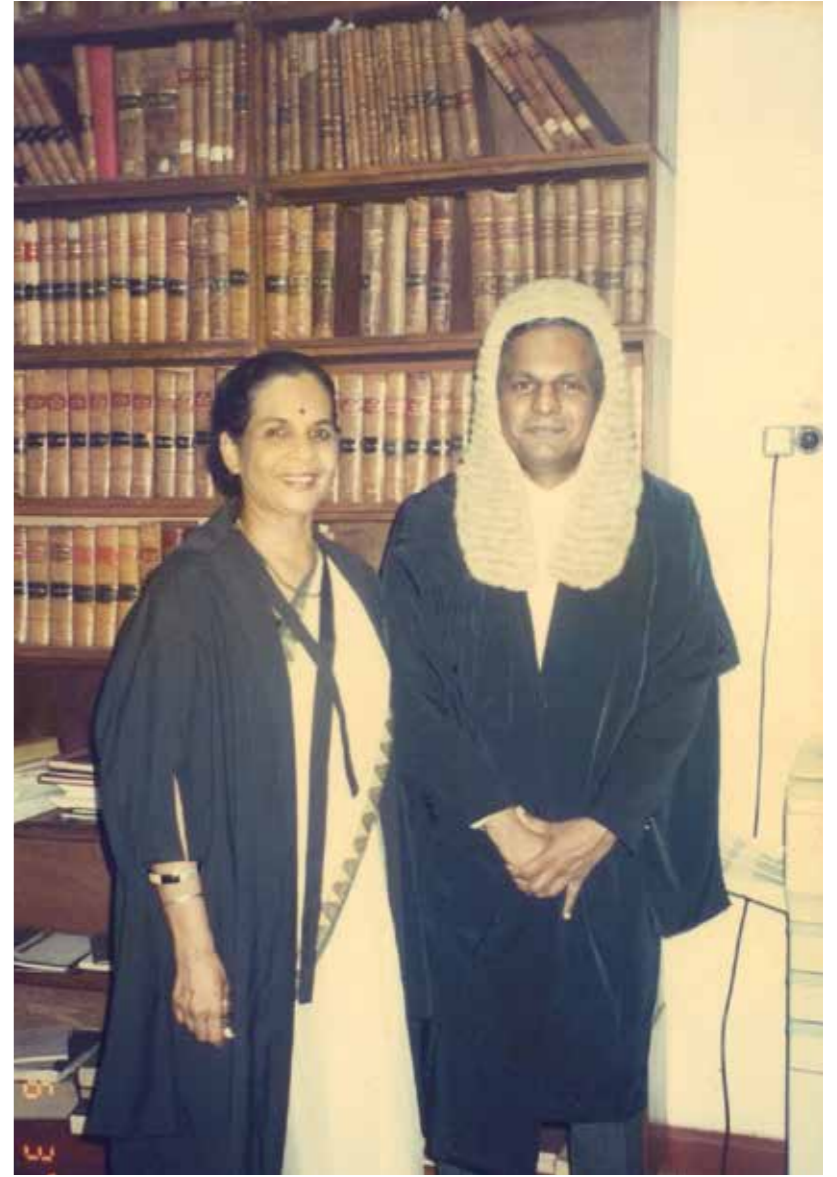
The inauguration of this initiative in 1998 was the last time I met Neelan before his demise.”

“Neelan was a gentle person,” Hemamal reflects. “He spoke softly. He was kind to others around him. He scouted for talent and actively grabbed it for his work. He was a humanist. He was well read. He was truly a critical thinker and good listener. It was easy to advocate with him to take on issues related to any vulnerable group. Although he is known globally for his work on minorities, I believe that it is the vulnerability of the minorities that interested him. I think that my work with vulnerable children, as a staff member of UNICEF, HIV/AIDS-affected persons, as former country programme advisor of UNAIDS, and work with sex workers, as a researcher, have had more than a tinge of influence from this great man.”

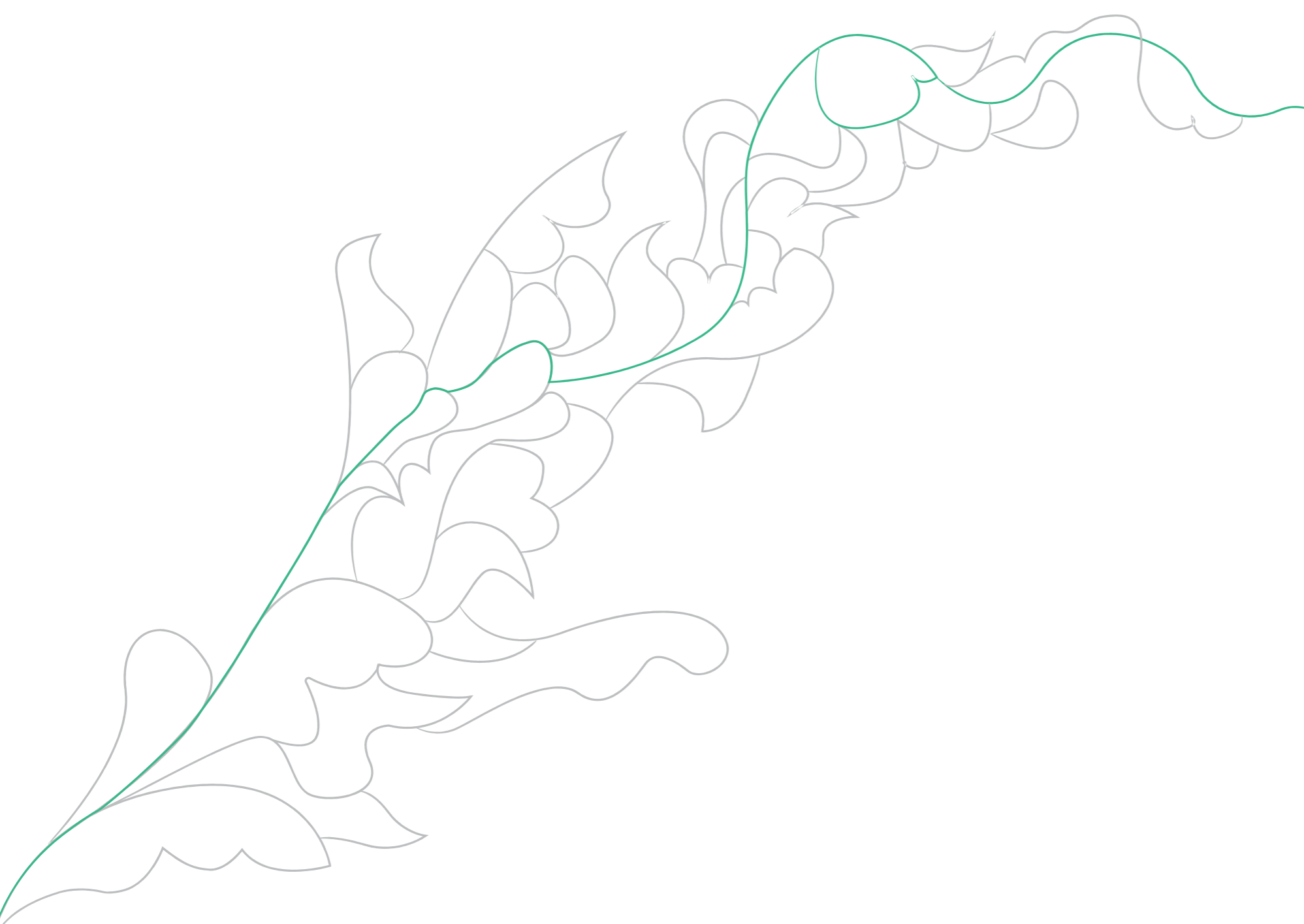
Neelan’s death on July 29, 1999 came just days before he was due to leave for Harvard to teach a Law School course on ethnicity, constitutionalism and human rights, and a seminar on federalism, diversity and group rights. As a Smith Visiting Fellow, he also taught there between 1986 and 1988. “The Law School will miss a truly extraordinary teacher and alumnus. The world will miss a truly great human being,” Robert C. Clark, the dean, said in a statement after his passing.

“It is difficult to fill the void created by the assassination of Neelan Tiruchelvam, not merely because of his formidable intellect, his capacity to strategise political manoeuvres, or his powerful inspiration to colleagues and friends,” Uyangoda poignantly reflects. “Neelan is irreplaceable because, to my knowledge, he is the only contemporary Sri Lankan Tamil politician who had the capacity and commitment to re-conceptualise Tamil politics in democratic emancipatory terms within the framework of a pluralist Sri Lanka.”

Perhaps most of Neelan’s friends were unaware of this, Uyangoda concludes. But his enemies knew it.







1996

HUMAN RIGHTS COMMISSION BILL BY DR. NEELAN TIRUCHELVAM

This bill has been long awaited. The All-Party Conference (APC) debated seven different drafts of a bill to establish a Human Rights Commission during 1993 and 1994. That exercise did not bear fruition, but worked out in fair detail a model for the Commission that was quite bold in conception. The present draft has made little or no attempt to draw on the concepts and ideas that formed part of the APC exercise.

There are two documents that provide guidance on how national human rights commissions should be structured. The first is the Principles relating to the status of national institutions, adopted by the UN Commission on Human Rights in March 1992. The second is a document entitled the Amnesty International Proposed Standards for National Human Rights Commissions. Both these documents enunciate minimum principles and standards with regard to the mandate, composition and methodology of Human Rights Commissions. In addition, several respected human rights groups, including Amnesty International, the Civil Rights Movement, and a group of academics from the University of Colombo, have made very thoughtful comments on the proposed legislation.

Amnesty International has made two general comments, which need to be reiterated. The first is that this initiative should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thereby ensuring that those who violate human rights cannot do so with impunity. The Government has appointed three commissions to investigate disappearances. The Government needs to demonstrate the same resolve in investigating the recent allegations of

extra-judicial killings in Muttur, and the disturbing reports of unprovoked attacks on several detainees in Welikada prison.

The second broad concern relates to the need for a thorough review of existing security legislation and legal remedies, such as fundamental rights petitions and habeas corpus applications, in order to make them more effective instruments of human rights protection.

Another general concern relates to the relationship of the Commission to existing bodies, such as the Human Rights Task Force and the Commission on the Elimination of Discrimination, and the monitoring of human rights. Although these institutions have not realised their initial expectations, there are experienced personnel and other resources that could be utilised by the new Commission. One of the lessons of legal and institutional reform is that you do not necessarily resolve a problem by creating a new institution or by passing a new law. The real challenge is to appoint to these institutions persons with the vision, commitment, energy and administrative will to ensure that these institutions fulfil the powers and responsibilities that have been entrusted to them. The United Nations Centre for Human Rights has identified several factors that are relevant to the effective functioning of national human rights commissions. The first consideration is independence. This independence should be ensured through legal, operational and financial autonomy, clear appointment and dismissal procedures, and the composition of the commission. In this regard, it has been suggested that the criteria for appointments to the Commission be strengthened by ensuring that members have "proven expertise and competence in the field of protecting and promoting human rights".

The second consideration relates to a clearly defined jurisdiction and adequate powers. With regard to jurisdiction, Amnesty International and other commentators have expressed concern with regard to the Commission's powers, under section 13(b), to investigate complaints of human rights abuses by non-state actors as a result of an act which may constitute an offence under the PTA. There are both conceptual and practical concerns that need to be considered. First, human rights violations must be conceptually distinguished from crimes and must primarily relate to state action.

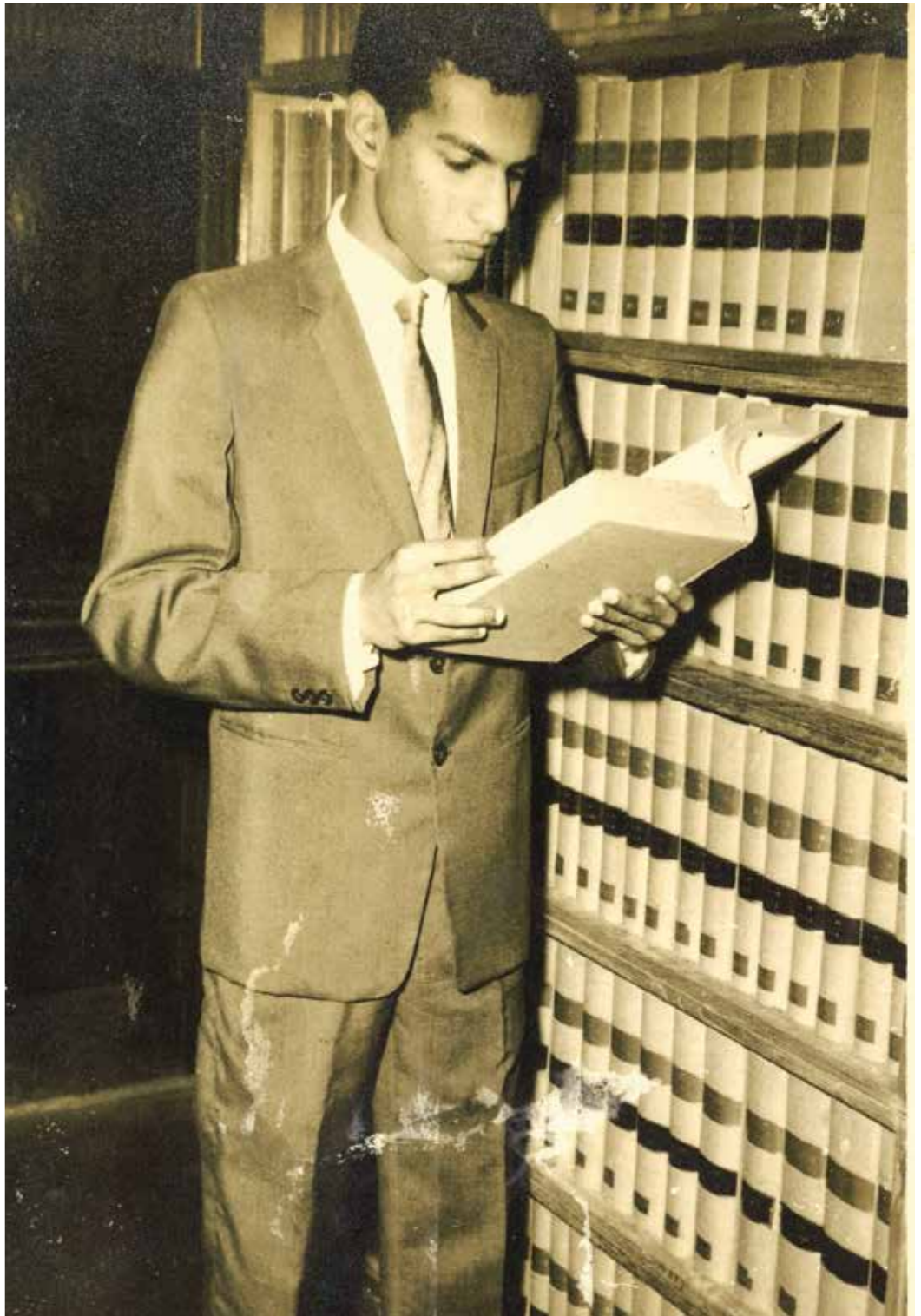
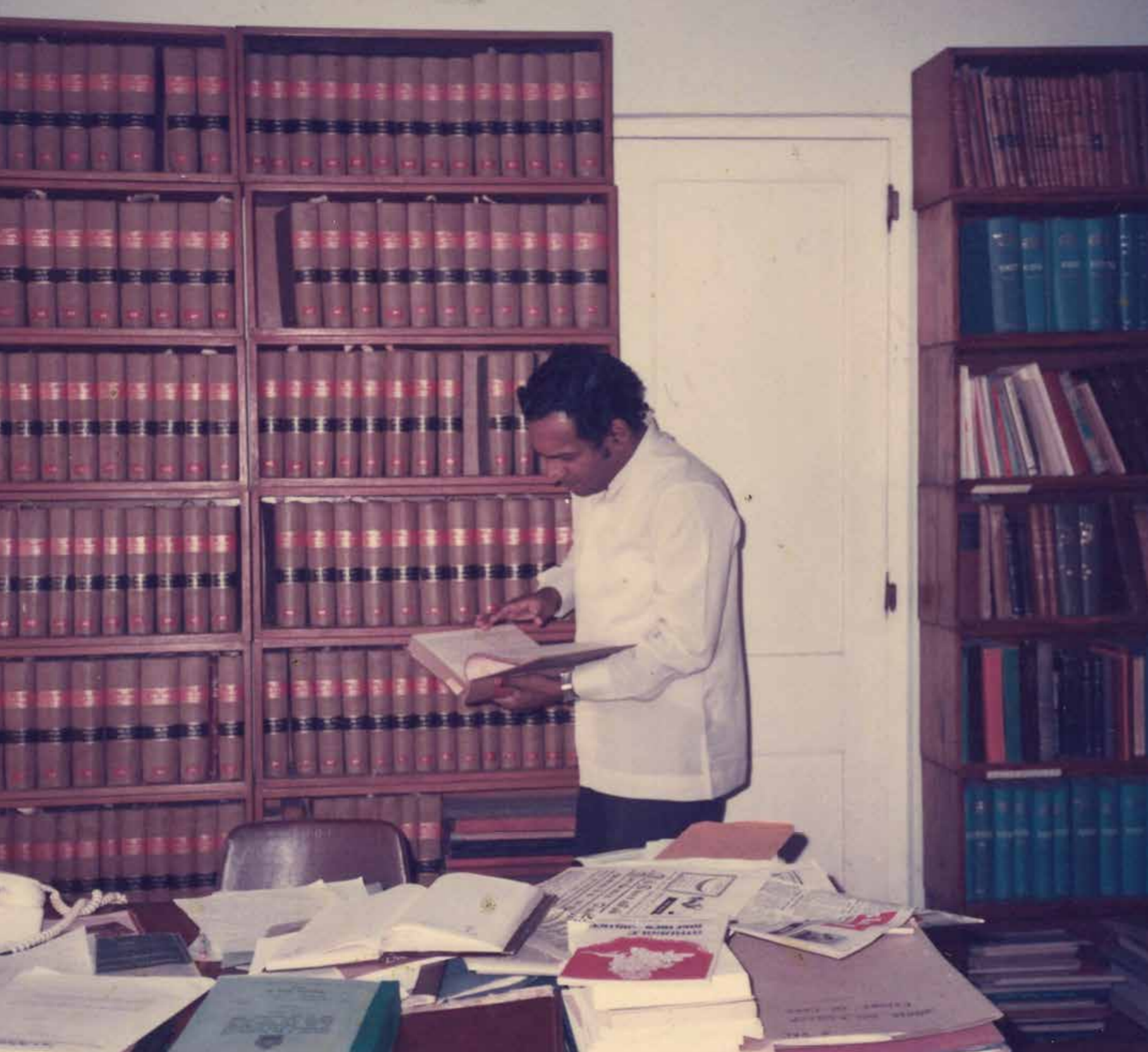
Abuses by armed opposition groups may constitute human rights abuses if such groups may otherwise be equated to states. The practical experience of other human rights commissions, such as the Philippines Commission, is that expanding the mandate to include non-state actors distorts the work of the Commission and limits its effectiveness and efficiency. The Commission should also have the power to investigate systemic abuses, hold public hearings, conduct fact-finding missions, provide technical assistance and publish annual or periodic reports on the status of human rights.

The third consideration is accessibility. This includes awareness of the institution, physical accessibility, and accessibility by ensuring that the Commission, through its composition, represents all components of civil society. In this regard, consideration should be given to the establishment of regional sub-commissions, and regional and district offices of the Commission. Victims should also be entitled to access all relevant documents and information relating to an investigation, and should be provided with assistance and facilities to travel to and present their evidence before the Commission.

The fourth consideration is the requirement of cooperation. The Commission should develop cooperative relationships with intergovernmental organisations, other national human rights commissions and related institutions, and with non-governmental organisations directly concerned with the promotion and protection of human rights.

The fifth issue is that of operational efficiency. This includes the provision of adequate finances and the ability to recruit impartial and efficient staff. The Commission must also adopt its own working methods and rules of procedure to maximise operational efficiency.

The final issue is the question of accountability. The Commission must develop reporting obligations that are linked to its mandate and its goals. In addition to the annual report envisaged by section 29, the Commission should be willing to submit its work to public scrutiny and to submit to external and internal evaluation of its procedures and methods.



Neelan the Mentor

There were days where Damaris Wickeramasekera would pop her head into Neelan's office and find his shoes by the desk, owner nowhere in sight.

Years working with Neelan at LST had taught Damaris this meant Neelan was padding about in his socks, perhaps chatting with an intern or absorbed in a new publication in the library. It was quite the joke that he was always restless for something to do.

Back then, Neelan did the work of several. He was Member of the Board—not just of LST, but of ICES while running TA. He did his political and legislative work simultaneously, including playing an instrumental role in drafting legislation to establish the Human Rights Commission of Sri Lanka, the Office of the Ombudsman, and the Official Languages Commission.



Beyond Sri Lanka, Neelan was involved in international initiatives, most notably as a Member of the International Council of the London-based organisation Minority Rights Group International (MRC). He presented the recommendations of MRC's report to the Parliament of Sri Lanka in 1996 and later succeeded Sir John Thomson as Chairman of the Council.

Of all these institutions, however, it is LST and ICES that truly carry his imprint. By design, the offices of ICES, LST and TA were all on Kynsey Terrace. Neelan's personal office was at TA, where he would meet people, or hop over to one or other of the buildings, noted Damaris. "There was something happening every day."

Founded in 1982, LST was to be a research and advocacy organisation promoting legal reforms for access to justice, human rights, and public accountability. It would attempt to unpack the interlinkages and the ways in which law and society interacted with and shaped each other.

The mission of ICES—established the same year—was to foster conditions for an inclusive, just and peaceful society across national, regional and global networks by promoting research, publication, dialogue, creative expression and knowledge transfer.

Each had a different research focus—one leaning towards the law, the other towards anthropology and culture. Sunil Bastian, a political economist, once asked Neelan why he added the word 'international' to ICES. He replied that he wanted to prove research of an international standard could be undertaken in Sri Lanka. He was certain the global South had much learning to offer the global North, and he wanted to see it happen.

Neelan was the glue that held them together, says Kingsley M. de Silva, who was Executive Director of ICES in Kandy at the time. There was no one from the Tamil community in Sri Lanka or abroad with the same combination of qualities, said Kingsley.

"Physical and moral courage, strong convictions expressed in soft tones, personal integrity of a very high order and a sense of fairness in all his dealings made for such a convincing voice in the despairing search for national reconciliation," he describes. These qualities allowed them to continue working against "an unpropitious background of a worsening of Sri Lanka's ethnic conflict".

When Jani de Silva, Executive Director at the Centre for Studies in Gender & Post-Conflict Development, returned in the early 1990s from the University of Sussex she found, "Sri Lanka was unraveling around me with a fury I could never have imagined."

"A climate of terror, of almost surrealist dimensions seemed to prevail," Jani recalled. The militant Tamil separatist movement, fuelled by the terror of the 1983 riots, had gathered momentum in the North and East, resulting in an all-out war. By the late 1980s, Sri Lanka found itself embroiled in a second savage conflict. The Janatha Vimukthi Peramuna (JVP), which took up arms for the second time against the state, was ruthlessly put down. Between 1987-1991, thousands of youths in particular were killed and disappeared across the South of the country.

"People seemed to disappear every day," Jani wrote, noting with sorrow the death of Richard de Zoysa in March 1990.

What relevance, then, could a place like ICES—one that Jani herself acknowledged seemed the domain of the Anglicised, Western-educated middle-class—have? While she doesn't refute that, she acknowledges it was more.

ICES was a space, she observed, that allowed for complicated identities and nuances when Sri Lankan society was becoming increasingly polarised. Minorities and people of mixed ethnicities were drawn there. So, too, were those from the majority seeking to challenge the status quo. One could research ethnicity without being accused of supporting the Tigers or study the centralising imperatives of the Sri Lankan state without being seen as betraying the Sinhala nation, Jani said.

"Most of all, it was okay to have a laugh in the midst of perhaps the darkest point in Sri Lankan history," she remembers. "We laughed at ourselves, about how mixed-up we were, about our precarious ethnicities, gender-identities and class-contradictions. In the process, we learnt much about the multiplicity and contingency of our identities, and the implications of these 'truths' for 'great Sinhala nationalism' or Tamil nationalism."

Ruwanthie discovered this for herself when she joined ICES as an intern. At 18, it was her first job. For the initial interview, she was guided by Neelan's secretary, Mowsil, into his office.

“Neelan had this sofa one sank into and in it he looked even smaller than he was, absolutely tiny and engulfed in leather,” Ruwanthie smiles. He asked questions and listened closely to her answers. Then Sithie walked in and the whole dynamic changed.

“You could see his eyes light up, see the way he looked at her,” Ruwanthie said. Sithie teased him about something. And, to Ruwanthie, the chemistry and love between the two was obvious.

Ruwanthie’s internship comprised an assortment of odd tasks. She was on a team organising an important conference, and transcribed recordings from the sessions and meetings. With Radhika, then Executive Director of ICES, she worked on a research project about female genital mutilation. As a naïve kid out of missionary school, it was quite an eye-opener. She was encouraged to pursue her interest in street culture and work with street children.

“ICES was then still a very loose organisation,” says Ruwanthie, “If you put up your hand at a meeting, chances were you could work on the project you wanted.” They were motivated. And there was a sense of individual journeys, but also a sense of collective growth—learning across generations, spanning from people like Reggie Siriwardena, a poet and writer, to her.

Neelan actively built such networks. He enjoyed connecting people with each other. When Arundhati Roy won the Booker Prize for ‘God of Small Things’ and she visited Sri Lanka, the Tiruchelvams invited her for breakfast. Ruwanthie was overwhelmed to be on the guest list.

Neelan was the head, a fount of ideas who would inspire and push them, sending them out on projects big and small. Polar opposites in many ways, Neelan and Sithie still complemented each other. “Being there was an inspiration, a demonstration of how to balance, not just work but life and community, how to work with people and to invite them into your home and heart,” Ruwanthie reflects. “It is a complicated thing, not easy.”

Neelan was quiet and contained. “He didn’t seek to dominate or overawe,” claims Sakuntala, the current Executive Director of LST. He wanted his ideas to be persuasive rather than to overpower with his presence.

“Many people posture and present themselves differently when in public,” she says. “But when Neelan spoke you didn’t think of him in those terms. What lingered was the message he intended to convey.”

Neelan understood that people would only believe in the state if it delivered on some counts, even if it failed to achieve all commitments. He was worried that seeking legal redress was increasingly becoming accessible only to the elite. To challenge this, he wanted a better understanding of how law operated in society; a sharper analysis of law reform to see how it would impact people, Sakuntala explains. He believed the general public needed stronger commitment towards human rights, to understand what it was, how it would affect them and to see beyond the confines of ethnicity, class and political orientation. LST became the vehicle to provide that kind of understanding.

His methods were innovative. LST held a lecture series that saw prominent scholars profile legal personalities who had shaped Sri Lanka’s judicial system. Neelan commissioned cartoons to make the fundamental principles of law comprehensible to non-academic audiences. When violence and fear led to university closures, Neelan could not bear the idea that an entire generation would lose out. He made internships available to non-degree holders. This gave them access to training seminars and lectures, prompting scholars over the world to collaborate with each other.

Neelan set up capacity-building workshops for Grama Niladharis. He organised a radio show where the public could question a panel about which laws applied to their cases and what their next steps should be. There were evening discussions on news headlines from which papers and notes would emerge to engage policymakers.

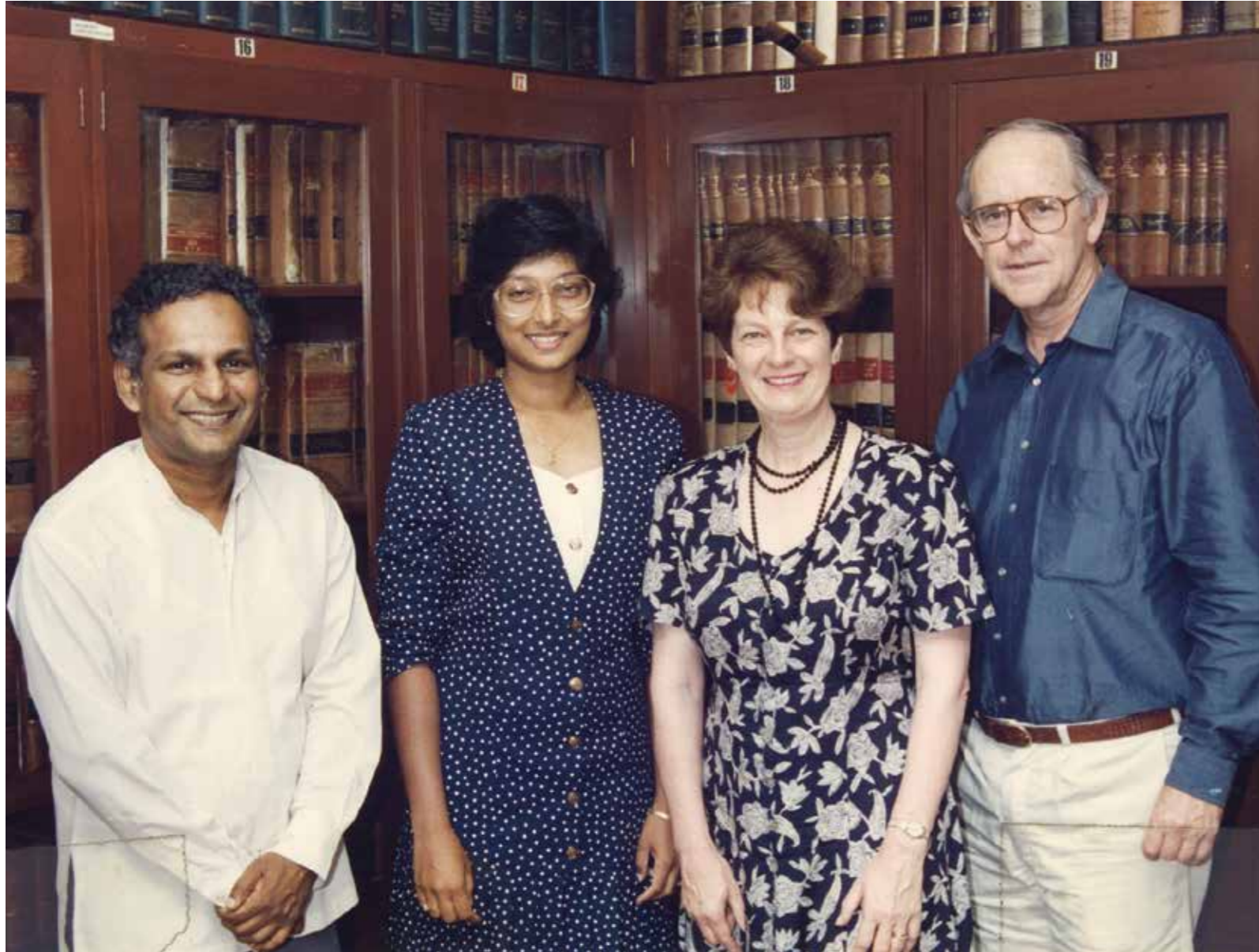
At ICES, across the lane from LST, there were similar conversations. As Sri Lanka entered one of its most tumultuous eras, many discussions would take place on the thatched patio at the back.

Sunil worked at ICES and ran a Thursday morning research group for junior staff to talk about their findings. It was a matter of pride when such work found its way into the world. “In particular, we did a lot for implementation of the Official Languages Policy,” Sunil says. Neelan was a convenor in this issue, uniting Ministers who were enthusiastic about the project, tying them up with donors, and encouraging ICES researchers to provide briefs. This led to the Official Languages Commission Act No. 18 of 1991, and to an Official Languages Commission, which was established with a mandate to ensure government officials were “capable of transacting business with any citizen of the state in any one of the two Official Languages or the link language on any given day at any given location.”

Sunil saw it as “activism, but of a different kind”. Neelan, in particular, facilitated an unusual interaction with mainstream politics. Sunil remembers both Chandrika Bandaranaike Kumaratunga, who would go on to become Sri Lanka’s first woman President, and Gamini Dissanayake, then one of the







main leaders of the Opposition, dropping in for a debate on devolution on that thatched patio with N. Ram, Managing Director of India's 'The Hindu' newspaper, in attendance.

Early editions of the 'Thatched Patio'—the newsletter ICES launched in March 1985 and edited by Reggie Siriwardena—reflect how varied the topics were and how the organisation strove to disseminate their research and foster discussion across various platforms and formats. In those years, the magazine recorded the initiatives undertaken by ICES including a series of TV dialogues on the ethnic conflict and a documentary about Sri Lanka's indigenous people, the Veddas. There was also a conference on Islamic revivalism, a workshop on women and religion in South Asia, and a series of discussions on Asian, African and Latin American writers. The publications produced included volumes on 'Equality and Religious Traditions of Asia', and 'The Judiciary in Plural Societies.'

Local and international scholars continued to visit ICES while researchers represented the institution at major conferences. Neelan, committed to interdisciplinary work, searched for funding and strove to create platforms to further debates and initiate collaborations.

One of these initiatives was a Working Group with Indian scholars headed by Justice Krishna Iyer that sought to understand centre-state relations in countries with federal systems of government. Neelan believed that the 21-month period from 1975 to 1977, when Prime Minister Indira Gandhi declared a State of Emergency across India, was of profound interest to Sri Lanka. In analysing judicial responses, many judges were found wanting during the Emergency, Sakuntala says. And at ICES they unpacked some of these issues: "Neelan was very much a critical thinker and a leader in that way."

While in tune with developments across South Asia, some disheartening, Neelan deliberately responded with hope. In a lecture on the development and protection of human rights at the Council of Europe, he observed that the region witnessed momentous changes beyond the most optimistic expectations, moments in which democracy and human rights had triumphed. They inspired him profoundly.

"These moments have given rise to intense faith and optimism in the normative power of constitutions to create multiparty systems, establish competitive electoral processes, catalyse civil society institutions and guarantee justiciable human rights," he maintained.

Neelan saw, however, that forces of ethnicity and of nationalism also remained strong and was aware of the power of bigotry and intolerance to fuel conflicts in South Asia. In the balance hung the very integrity of the state and the foundations of a secular-democratic polity. He knew that such developments led to "disillusionment and to cynicism towards the appalling disparity between constitutional

ideals and the reality of gross and persistent violations of human rights". But he refused to be overwhelmed: "In the struggle for human values, it is immoral to submit to despair, to cynicism."

It was in this spirit of hope that Neelan invested in people, and in the future. ICES and LST were the sites of his grand experiment. Vikram, was readily absorbed into life at Kynsey Terrace.

Still, Vikram knew "almost nothing" of Neelan before he arrived. "He wasn't a household name in India," he elaborates. "I couldn't even Google him before I went to Sri Lanka. Growing up in Madras during the 1980s, I was familiar with the Sri Lankan Tamil issue but I did not know who Neelan was."

The Neelan he eventually met "had a glow on his face that stood out from his Salesian-white shirt", he said. "He had a wry smile and an infectious laugh. And, as a mentor, he was diligent, nurturing, and encouraging and always interested in what you were doing and what you were reading. He never once pontificated about the fact he knew more than you or that you did not know this or that thing. I think he was the first and my most important mentor for his profound influence on my life."

"ICES struck me as a throbbing, thriving hub of intellectual, literary, and cultural activity in Colombo," he reminisced. "Its programmes drew a wide, diverse, and eclectic group of young and old, Sri Lankan and expat, and intellectual and curious, and Neelan was the centre of this universe."

But Vikram was attached primarily to LST. Together with others, he worked on a range of subjects including constitutional reform in Sri Lanka, Sri Lanka arbitration law, foreign investment in Sri Lanka, telecom disinvestment transaction and various speeches and lectures on the ethnic conflict.

Neelan seldom needed an excuse to organise a cultural event. His love for films was well known. ICES staged several editions of 'The South Asian Documentary Film Festival'. A journalist from 'The Guardian' who had visited noted that, in later years, the addition of bodyguards into this mix enhanced the sense of "ICES as an intellectual oasis, surrounded by the constant threat of violence and unreason."

Researchers were prolific, building up a varied and engaging body of work. Without these efforts at ICES and LST, it would not have been possible "for the Sri Lankan community to build such a powerful critique of the flawed power structure of the Sinhala-dominated polity", opined Malini Parthasarathy, then editor of 'The Hindu'. The real contribution of Neelan and his colleagues, she argued, was "the tireless accumulation of data based on historical and demographic research, documenting the various aspects of the historical deprivation of the Tamil minority and the impact of discriminatory public policy on the community".

As an extension of this work, ICES would commission projects studying devolution, federalism, language policy, land settlement, employment equity, and other related matters. Radhika, who was Executive Director from 1984 to 2006, said that Neelan remained keenly aware of how women's experiences within the conflict were distinctive and deserving of extended research. He encouraged her to study the long-term issues they faced in relation to ethnicity and armed conflict.

In their tribute to him, the Cat's Eye column honoured his eagerness to support women's struggles, saying his commitment was evident in how LST and ICES supported the proposal to pass an Equal Opportunity Act through which an Equal Opportunity Commission (with gender equity as one of its main tenets) would be established. At ICES, flagship initiatives included programmes on Women and Governance in South Asia, and on Women and Religion in South Asia.

Neelan's nephew, Mayuran, working with Neelan and Sithie, recalled a moment that stood out for him. There was a sexual abuse case in Colombo in which the alleged perpetrators went free. A demonstration was planned in protest. "Neelan papa had asked a colleague why he wasn't invited to speak, and was told by her, 'The protest is only for feminists'," Mayuran related. "He replied, 'I am also a feminist'."

Growing up in what he described as a racist, white, conservative part of the United States, Mayuran only heard the word "feminist" used derogatively in person, on the radio, and on television. "Hearing a man claim to be a feminist in solidarity with women was mind-blowing for me," he said.

In principle and in practice, Neelan was against unilateralism. He strove to surround himself with bright minds and to see LST and ICES develop through team consultation.

"I think he genuinely believed in his legacy and spreading the light of his knowledge to the world," Vikram muses. "Even though he died very young, he groomed generations of lawyers, writers, civil servants, and activists without even raising his temper or talking brusquely to anyone. His values were traditional and universal. He cared passionately for culture, the environment, constitutionalism, and human rights. He was a walking conscience keeper for the Tamil people and for South Asia as a whole."

In her posthumous tribute, anthropologist and scholar Veena Das noted that Neelan's efforts helped support one of the world's most talented generations of social scientists: Malathi de Alwis, Jani de Silva, Sasanka Perera, Sunil Bastian, Valli Kanapathipillai and more. She wrote: "This is in no small measure due to the way he nurtured this generation with the care of a father and the stern discipline of a guru."

Neelan's brand of mentorship was unique, vast enough to encompass the entire spectrum, from personal to professional. Damaris, too, sees his lasting legacy in the minds he shaped, including her own. In these polarising times, Neelan's lessons on how to be a responsible citizen seem more crucial than ever: "For him, it was about respecting others' rights. I have found it is not always easy, but you realise that, without that, you cannot achieve anything."

Many of those who were once in Neelan's ambit today occupy positions of influence in government, civil society, and in the arts. "I take heart in the idea that that vision is implanted in different ways in other human beings," explained Ruwanthie. "I know that I carry Neelan in my heart, and I know the commitments I have made to honour Neelan and Sithie."

Is that enough for their legacy to continue? "The truth is it depends on the next person, how far and how long they will run," she reflected.

Neelan's faith in all of them was deep and profound, Sakuntala poignantly notes: "He really took pride in another generation taking over, seeing these people being recognised in their own fields. Institutions are not just brick and mortar, but institutions come through a generation of scholarship, and really that is what he enabled."

Through his own mentoring, Neelan inculcated an enduring desire in Vikram to mentor others, and to "make a lasting contribution to whatever one can do that promotes goodness and basic humanity".

He was "a truly glorious and ebullient soul", Vikram says. And his memory stays alive through the Neelan Tiruchelvam Trust, the lectures, and all the good work of the many men and women he nurtured.



the thatched patio

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— Yvonne Gunawardena
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Monthly Magazine of the
INTERNATIONAL CENTRE FOR ETHNIC STUDIES

AN ICES CHRONICLE

- * We welcome back Radhika Coomaraswamy, who has returned from the United States after her four-month fellowship at Amherst College. During her stay she has made substantial progress on the book she is writing on nationalism.
- * In pursuance of its project on bilingualism, ICES is co-sponsoring, together with the Official Language Department a workshop on this subject on July 1. Two papers will form the basis of the discussion - one, on the concept of bilingualism, and the other, on the implementation of the new official languages policy in the administration. ICES hopes to work towards another workshop on official languages in the judicial sphere in August/September.
- * The volume on "Ethnic Violence in South Asia", edited for ICES by Veena Das, will be published by Oxford University Press (India).

THE THATCHED PATIO appears monthly. Opinions expressed in articles are those of their authors, and not necessarily endorsed by ICES as an institution.

International Centre for Ethnic Studies
8 Kynsey Terrace, Colombo 8, Sri Lanka.





1997

VOTE ON PUBLIC ADMINISTRATION
BY DR. NEELAN TIRUCHELVAM

Public administration is one of the most critical ministries in relation to questions of governance and development. There is no doubt that throughout the sub-continent we are experiencing a crisis of governance, which arises from a combination of factors. These factors relate to growing disillusionment with the institutions of representative democracy and the failure of the developmental state to respond effectively to the needs of the people with regard to the delivery of basic services, the development of infrastructure, and the alleviation of poverty and social inequality. The emerging phenomenon of the failed state and the explosion of humanitarian emergencies in several parts of the world provide us with a grim warning of the dire consequences that await us if we do not reverse this decline. In our context, we have had to undergo a radical rethinking about the nature of the state and its role in economic and social development. The dramatic changes in the global economy have changed the environment in which states operate. Domestic policies must be ever more responsive to the parameters of the globalised world economy. Recent technological changes have also qualitatively transformed the world that we inhabit. These changes have compelled a radical reappraisal of the role of the state, with an increased emphasis on its importance as facilitator and as regulator. The Ministry of Public Administration must take note of this clamour for governmental effectiveness and frame an imaginative strategy.

The World Development Report for 1997 has focussed on five fundamentals. First, establishing a foundation on law; second, maintaining a non-distortionary policy environment, which includes macro-economic stability; third, investing in basic social services and infrastructure; fourth, protect-

ing the vulnerable; and fifth, protecting the environment. Critical to these tasks is the reinvigoration of state institutions. This means civil service reform, which must involve improving the incentive structure, morale and professionalism of the civil service. It also means ensuring that the state is more responsive to the needs and concerns of citizens and that it works in partnership with business, labour, and civil society institutions in framing and implementing policy. This process must be institutionalised when we are discussing expenditure priorities, social assistance programs, relief and rehabilitation projects and management of environmental resources.

The National Development Council was intended to provide a framework for such a dialogue. The Sri Lanka Institute for Developmental Administration has not measured up to its potential in enhancing the professionalism, accountability and effectiveness of public administration. There is an outstanding study on public administration prepared by some of the most experienced public servants and social scientists, which is both a diagnostic and prescriptive study.

In addition to reinvigorating the state, it is critical to the future of a multi-ethnic and plural society that we decommunalise the institutions of the state. In recruitment for the public service, there must be an emphasis both on merit and on the need to ensure that the public service adequately reflects the diversity of our society. On the contrary, we have noticed the continuing decline in the recruitment of Tamils and Muslims over the last few decades, which has reached alarming disproportions within the public service. I pointed out in a memorandum, submitted to the Consultative Committee on Ethnic Affairs in 1996, that although Sri Lankan Tamils are 12.7 per cent of the population, they are only 5.9 per cent of those employed in the state services. This represents a drop of more than 4 per cent between 1985 and 1990. Upcountry Tamils are 5.5 per cent of the population and they are 0.1 per cent of the state services. With regard to Muslims, although they are 7 per cent of the general population, they are only 2 per cent of the state services. This represents a decline of 3.44 per cent to 2 per cent between 1985 and 1990. These figures are based on the census of public sector and corporate sector employment in 1990. A comparison with the 1995

figures will show an equally dismal picture. The Consultative Committee urged the government to strictly implement Public Administration circular no.15/90 with regard to recruitment. The Committee further recommended that the Attorney General resist, as a matter of policy, any legal challenges to the implementation of that circular. We are dismayed that these recommendations continue to be disregarded and that the recent recruitment of 31 officers to the Sri Lanka Administrative Service failed to include any Tamils, although there were 72 vacancies in the North-East province. The draft constitution has sought to remove any ambiguity with regard to the constitutionality of affirmative action programmes. This is another sad example of the discrepancy between promise and fulfilment.

Neelan the Politician

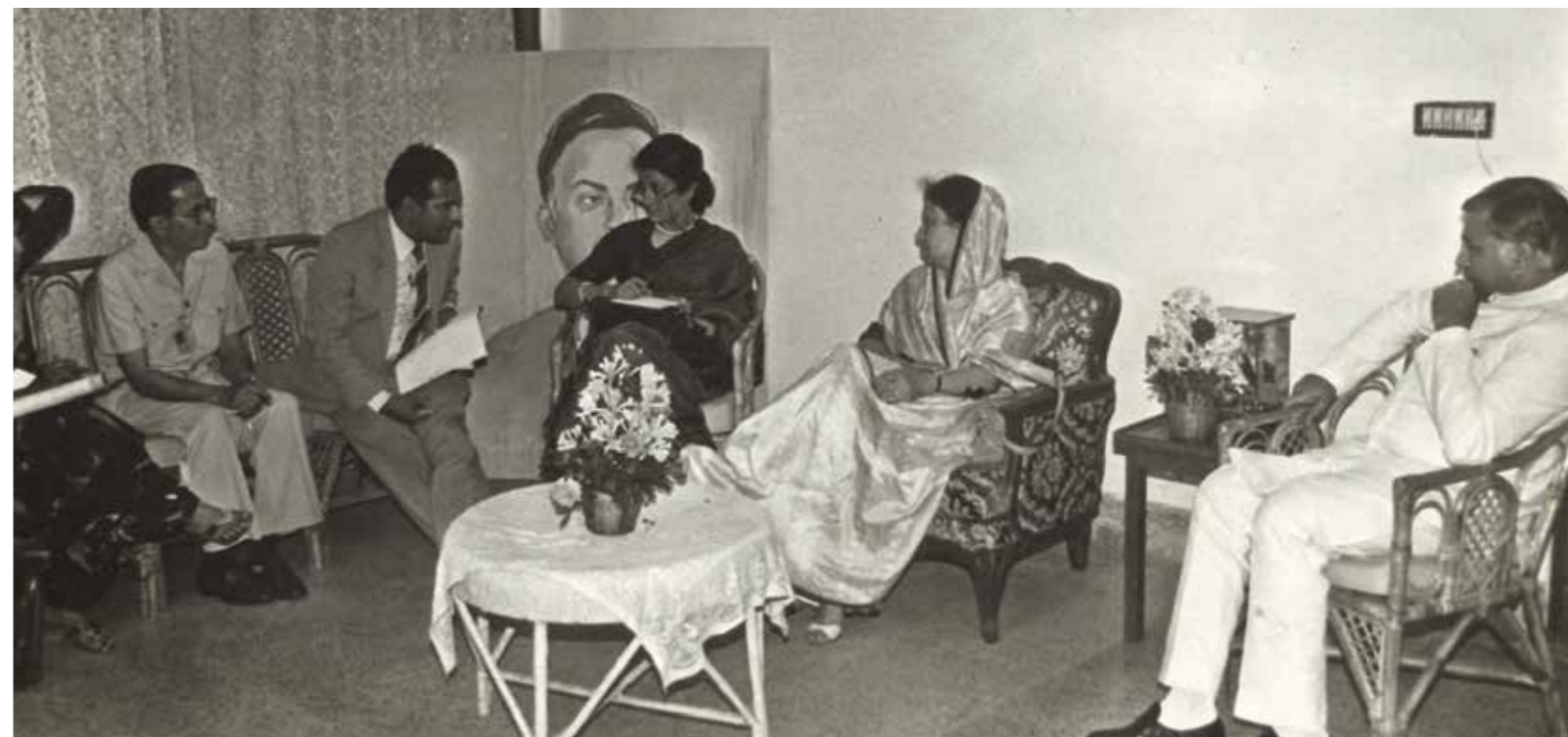
*All has been taken away: strength and love.
My body, cast into an unloved city...
And only conscience, more terribly each day
rages, demanding vast tribute.
For answer I hide my face in my hands...
but I have run out of tears and excuses.*

- Neelan Tiruchelvam, quoting Russian poet Anna Akhmatova in Parliament on November 16, 1998

March 2003: The Sri Lanka Government's sixth round of Norway-mediated peace talks with the LTTE is faltering. Five previous installments have offered little breakthrough.









All delegations are staying at the Prince Hotel in salubrious Hakone, Japan. Among them is Rohan Edrisinha, an advisor to the Forum of Federations, a resource for the peace process. He bumps into Adele, the wife of Anton Balasingham, LTTE's chief negotiator and theoretician, near the elevator. She recognises him.

Adele leaves after pleasantries, saying, "You must meet my husband, Anton." The next day, Rohan chances upon the Balasingham couple and they chat about his work as a constitutional lawyer.

"You must've known Neelan," Anton suddenly says. It is now nearly four years since the outfit he represents deployed a suicide bomber to assassinate Neelan on his way to work in Colombo. Rohan observes that while he had not worked closely with him, he had indeed known Neelan.

Anton pauses. "It's very, very sad what happened, very sad," he remarks, quietly. The words surprise him. But reflecting upon them now, Rohan takes it as a sign that Anton, at least, respected Neelan and found his killing unnecessary, if not distressing.

It is often said that Neelan was not cut out to be a politician. But that depends on individual interpretations or renditions of that job. Neelan was the best politician he knew how to be. He defined his own role and created a distinct legacy.

"Most of us entered public life in the hope that we could contribute towards the alleviation of human suffering," Neelan said in Parliament in November 1996, during the committee stage of the budget on the votes of the President. This exemplified his political life until the bitter end.

"I wish Sithie were here to tell us but I always felt he viewed himself more as a parliamentarian than a politician," surmises Ambika Satkunathan, who worked with Neelan and is currently Chairperson of the Neelan Tiruchelvam Trust. "He was never in 'politics' in the way it is perceived or practised in Sri Lanka. For instance, I don't know if he campaigned during elections for the TULF. Yet, he did politics in the broader sense, where he would mobilise people on an issue. This is not grassroots mobilisation as we knew it but at a more elite level, with MPs of all parties, civil society organisations, diplomats. He was strategic and he viewed Parliament as his platform."

Neelan's parliamentary career started at the age of 39 on March 8, 1983, almost by chance. In August the previous year, a seat became vacant with the death of T. Thirunavukarasu, TULF MP for Vaddukoddai, Jaffna, in August 1982. In October, the TULF nominated Selvarajah Yogachandran alias

Kuttimani from the militant Tamil Eelam Liberation Organisation (TELO) to replace him. But he was in prison as a suspect in the Neervely bank robbery. So, the TULF chose Neelan in his stead.

Ranil Wickremesinghe entered Parliament in the mid-1970s and variously served as Minister, Prime Minister and Leader of the Opposition. He was leader of the United National Party (UNP) since 1994 and continued to be so at the time of writing this book. He worked closely with his uncle, J. R. Jayewardene, a former Prime Minister and Sri Lanka's first Executive President.

Jayewardene appointed a Commission on Devolution (CoD) in August 1979 to ascertain how the prevailing local government structure could be changed so economic development could be planned and coordinated at district level through District Ministers and Development Councils. The ten-member multi-ethnic group was headed by Victor Tennekoon, lawyer and jurist. It included Neelan (as TULF nominee) and Alfred Jeyaratnam Wilson, the academic/historian, son-in-law of Federal Party or Il-lankai Tamil Arasu Kadchi (ITAK) founder, S. J. V. Chelvanayakam.

The CoD recommended the establishment of District Development Councils (DDCs). Neelan and Prof. Wilson submitted a minority report with additional recommendations, some of which were incorporated into the Development Councils Act No. 35 of 1980. DDC elections were held the following year and TULF-controlled councils were established in several districts.

Wickremesinghe was Neelan's junior at Royal College, Colombo. As a young lawyer, Wickremesinghe apprenticed under his father, Murugeysen. He believes Tiruchelvam senior wanted his son to join politics early but that he had been too engrossed in studies. Given the conservative nature of Northern Tamil politics, Neelan's marriage to Sithie, a Muslim, may have been viewed as an additional obstacle to grassroots electoral politics posits Wickremesinghe.

Wickremesinghe's view is that Neelan should have entered politics sooner, taking on his father's mantle, as the senior Tiruchelvam had great standing. By the time his son came into politics, the Chelvanayakam-Tiruchelvam-Naganathan base had disappeared.

"He wasn't a politician who went out canvassing for votes," says G. L. Peiris, a Professor of Law who also entered Parliament on the National List in 1994 and later became Neelan's partner in drafting constitutional amendments for power-sharing. "He didn't fall into that traditional mold. But he was a politician in the sense that he had a vision. He was aware of the pressing problems of his time and he







believed that he had a contribution to make towards finding solutions to those problems.”

Rajavarthiam Sampanthan is a stalwart Tamil politician and lawyer. He was an MP from 1977 to 1983 and from 1997 to 2000. He re-entered Parliament in 2001, the same year he assumed TNA leadership (he still held it at the time of writing this book). From September 2015 to December 2018, he was Leader of the Opposition from September 2015 to December 2018. He describes Neelan as, “A sober, sedate intellectual; a man of great wisdom, a man of great moderation.”

So, the manner in which Neelan joined Parliament in 1983 was perhaps appropriate for someone who would likely not have fit into electoral politics the “traditional” way. And those who made it happen had their own reasons for it.

The ‘Tamil Times’ of March 1983 wrote:

The nomination of Dr. Neelan Tiruchelvam (son of the late M. Tiruchelvam, QC, Cabinet Minister in Dudley Senanayake’s 1965 administration) to the vacant Vaddukoddai seat by the TULF is said to be not without political significance. Having never had to go through the hurly-burly of election-politics, and therefore having never been compelled to take a definite position publicly, and being essentially an academic-politician behind the scenes, he is said to be eminently suited to revive the UNP-TULF ‘dialogue’. He is said to enjoy cordial relations with many Cabinet Ministers, including the President himself. It will be noted that Dr. Neelan was a member of the Committee that produced the report on the District Development Councils.

Tamil militant groups were gaining ground. Neelan’s nomination as MP was also seen by political observers as an attempt to strengthen the hands of those sections of the TULF leadership—the ‘old guard’—which believed in the line of negotiations with the government, and the eventual acceptance of DDCs “as an instrument of decentralised administration of the Northern and Eastern provinces”, the newspaper observed.

On July 24, the Black July riots broke out. Thousands of Tamils were killed by Sinhalese mobs, and homes, shops and temples were gutted, widely believed to be perpetrated with the tacit support of the UNP Government and with the direct involvement of some of its members. In the wake of the riots, on August 4, Prime Minister Ranasinghe Premadasa moved an urgent bill to introduce the draconian Sixth Amendment to the Constitution. It required legislators to take an oath unconditionally renouncing support for a separate state.

Neelan’s presence in the assembly that year was short. He forfeited his seat in Parliament on October 22, 1983, when he, along with other TULF MPs, refused to take the controversial oath. Many of the TULF leaders fled to India and did not return until the Indo-Lanka Accord in 1987. The TULF contested the 1989 election and returned to Parliament but it was not until the 1994 election that Neelan re-entered as an MP on the National List. Neelan’s participation in sittings yielded several incisive, well-researched speeches that would become a hallmark of his parliamentary career until his premature death.

“Strangely, when I met Neelan, he wasn’t a public speaker,” recalls Radhika. “He was a real academic. Very shy. But then he became a superb speaker in English and Tamil. I think all of us, when we began teaching, became good public speakers.”

Neelan markedly did not limit his contribution to matters of ethnic strife, power-sharing and human rights, subjects with which he was most associated. He spoke on the economy, tourism, media, migrant labour and employment, among others. He brought up Section 365 of the Penal Code, which criminalises “carnal intercourse against the order of nature” and was one of the first advocates in Parliament for lesbian, gay, bisexual and transgender rights.

“He made excellent contributions to debates in Parliament,” notes Sampanthan. “He was a person who believed in equality, justice, peace and dignity. He was committed to human rights, to fundamental rights, to the independence of the judiciary, the rule of law, ensuring that all branches of the government—the legislature, the executive and the judiciary—functioned independently of each other, though interacting with each other, not in any way encroached by the other.” In addition to raising issues, Neelan worked on specific pieces of legislation. He was also instrumental in establishing the Human Rights Commission.

“This shows how he viewed Parliament as a space where you could get a lot done through consensus-building, which he was good at,” Ambika analysed. “I think it also illustrates the fact that he didn’t see the opposition or even the LTTE as ‘us’ versus ‘them’. I feel he saw everyone as people who somehow could be convinced. His view of what Parliament represented needs to be strongly stated. It becomes even more important given that MPs today do not understand, nor seem to care, about Parliament as a critical space to get things done and legislate for change.”

During the second reading of the national budget on March 16, 1983, just days after he entered Parliament, Neelan lamented the country’s “unprecedented debt burden”. In another speech, he pushed



for self-regulation of the judiciary. In instances of judicial misconduct, the judiciary “must be free from outside intrusions and interferences in the conduct of judicial functions”. The Ministry of Justice, he said, must insulate the judiciary from such interference.

In the same contribution, he flagged issues with the country’s draconian Prevention of Terrorism Act (PTA) which was passed in 1979:

It has resulted in the issue of judicial custody being transformed from a civilian concept to a non-civilian concept. It has opened the road for non-civilian intrusion into the judicial process. The Prevention of Terrorism Act symbolises the objective condition of oppression and denial of freedom as far as the people of the North and the East are concerned. It impinges on the lives of every person who lives there in regard to freedom of movement, freedom from arrest, freedom from interrogation, and freedom from seizure. I think, Sir, I must express my opinion that this legislation is a blot on our system of administration of justice. It has not in any way contributed towards the reduction of political violence. It has resulted in one standard of justice being extended to those who work within the system and another standard of justice being extended to those who are experienced to work outside.

Neelan also spoke during the debate on the Newspapers (Amendment) Bill in 1983. At the time, two regional publications called the ‘Saturday Review’ and ‘Suthanthiran’ were sealed under Emergency Regulations. While both had been consistently critical, even of the TULF, “...we believe that a diversity of viewpoints must be permitted to express themselves,” Neelan said, warning that, “Otherwise they will seek other forms of expression...And the sealing of a newspaper is like the stifling of a voice, the strangling of a nightingale,” he stated, adding that it is a “very deep blow on the freedom of expression and on the freedom of speech”.

Rohan thinks Neelan’s contribution to politics was two-fold. First, in the area of ideas. Second, in promoting a spirit of compromise and taking a lead in demonstrating that one cannot always get everything one wants; that one must sit down and talk, negotiate, and that, sometimes, that cannot be done in the public eye.

“In his role as a parliamentarian, he made some good speeches,” he points out. “But he was not that typical parliamentarian who would be good at jousting with the opponent. He wasn’t one for sharp retorts.”

Another characteristic of Neelan’s politics was his relentless optimism (although those who knew him said that, towards the end of his life, he was demoralised about the prospect of a power-sharing

solution being adopted that was acceptable to all parties). In 1984, after a dark and tumultuous previous year, President Jayewardene, under pressure from India, convened the first All Party Conference (APC) to draft a political solution. It was held under the auspices of the Indian Government—Prime Minister Indira Gandhi sent her own envoy, Gopaldaswami Parthasarathi, to the talks—and wooed back TULF leaders, such as Appapillai Amirthalingam, Murugesu Sivasithamparam and Rajavarothiam Sampanthan, from Tamil Nadu, which was where they had fled after quitting Parliament.

As Rajiva Wijesinha from the Liberal Party wrote in the ‘Ceylon Today’ newspaper of June 2021, the APC was a resounding failure: “Before six months had passed the conference had generally come to be considered a farce. Nevertheless, it ploughed on and, a year after it had first begun to sit, a document was at last issued that purported to be its conclusions.” And these were promptly disowned by all the parties that had been involved.

Neelan was involved behind the scenes, with Amirthalingam, then TULF Secretary-General, routinely sending his presentations to him for appraisal and comment. This included an extensive working paper on federalism, delivered before the APC on January 19, 1984. “This Conference of All Parties is the last opportunity we have of working out an acceptable solution to the problems confronting the people of the Island,” it started out by saying. The APC transpired to be anything but. The situation in Jaffna and other parts of the North continued to deteriorate with hit and run attacks by Tamil militants, and a series of incidents, including massacres by the Sri Lankan armed forces.

Despite obvious setbacks, Neelan looked ahead. “We cannot afford to lose hope,” he told S. Venkat Narayan of ‘India Today’ in May 1984. “It is immoral to be pessimistic.”

In 1987, the Tamil MPs returned to Parliament consequent to the enactment of the Thirteenth Amendment to the Constitution under the 1987 Indo-Lanka Accord, which resulted in the establishment of the North-Eastern Provincial Council. Neelan was not amongst them. Nevertheless, he made some contribution to the process that saw the Amendment passed. The draft was challenged before the Supreme Court in October 1987, with the Sri Lanka Freedom Party (SLFP) leading the opposition in claiming that several of its clauses were inconsistent with the 1978 constitution.

The Chief Justice nominated a full bench of all nine judges of the Supreme Court to hear the case. The Court decided by a majority of one that the proposed scheme of devolution, the introduction of a provincial council system, did not violate the constitution. The Government had to delete two clauses that were deemed to need referendum, and the revised bills were certified as validly enacted on 14th November 1987.

In 1989, the UNP's President Ranasinghe Premadasa—who had narrowly defeated the SLFP's Sirimavo Bandaranaike at the Presidential Election in December the previous year—announced a unilateral temporary ceasefire with the LTTE. The Indian Peace Keeping Force (IPKF), deployed in the country as part of the Indo-Lanka Accord, by then was engaged in military operations against the LTTE. The Tigers made the possibility of a truce contingent on the withdrawal of the IPKF.

Bradman Weerakoon, Presidential Adviser on International Affairs, provides an insider view of that period. He records that President Premadasa at a temple function in April 1989 made a “peremptory demand” that India completely withdraw the IPKF in three months. This was followed up with directions to the High Commissioner of India in Sri Lanka and letters to Prime Minister Rajiv Gandhi to expedite the process. The LTTE saw these as positive steps and a formal ceasefire followed. The two sides began talks on May 5 with A. C. S. Hameed, who was Minister of Higher Education, Science and Technology, leading the Sri Lankan delegation. Negotiations continued until June 10, 1990 when the LTTE re-launched military operations.

In parallel President Premadasa convened an APC to allow the Tigers to interact with other political parties. The meetings started in August 1989. Its broad agenda was to “deliberate on ways to resolve the crisis the country was facing both in the North and the South”, Mr Weerakoon reports. Neelan was the TULF's representative at these negotiations.

Rohan and Chanaka Amaratunga were nominees of the Liberal Party at the APC talks. “It so happened that we were sitting very close to each other,” Rohan said of his interactions with Neelan. “That's when I got to know him quite well. My early knowledge of him was as a constitutional and legal scholar. This was when I was a student and he was starting to teach around 1979-80. Then, we both started dabbling in politics.”

Neelan was an arch pragmatist. Rohan analyses, “And that is probably what got him killed. He saw his role as such. His instinct was to always look for a compromise, for common ground. He thought it could be done and was good at that kind of thing. He could work with people who were different.”

But being artful wasn't beyond Neelan. He was placed in front of Chanaka and Rohan while M. H. M. Ashraff and Rauf Hakeem were to their left. And often, when the representatives of Sinhala parties said something, he would reach over, softly express certain opinions and encourage them to be stated out loud, Rohan remembers. “So Chanaka would speak up really negatively,” he says. “Then Neelan would declare, ‘You know, these young people and their principles are so dogmatic’ and offer to come up with a compromise!”

“This was him,” observes Ambika. “I myself have seen him do this. It was his way of giving the dogmatic and unreasonable people an option, most often without them having to lose face. It was a smart negotiating strategy.”

Rohan believes it was because of Neelan's non-confrontational nature: “He was the sort of person who wouldn't say very much in the midst of a heated debate and then, when the meeting is over, telephone the two sides and try to float compromise while saying complimentary things to both. And I'm not saying that's necessarily a bad thing.”

“People don't value the skill of being able to formulate a compromise between two positions,” Radhika reflects. “That's a skill. If two sides are advocating some kind of position, the ability to formulate a compromise in a way that both sides are happy is a mediator's skill. This came late in Neelan's life, when he went into politics. Even if it's a personal issue or political one, he would listen to both sides and he will formulate a solution that both sides will be happy with. Nobody else had that skill at intellectual level or political level.”

Ashraff and Rauf represented the Sri Lanka Muslim Congress (SLMC) at the APC. Rauf, who was the party's leader at the time of writing this book, said he first met Neelan as a director of a mercantile firm, which had retained the services of the latter's law firm, TA.

“Neelan's intellectual capacity to interpret political issues and to try and introduce novel solutions was helpful,” Rauf says. “He understood the Southern Sinhala polity and its pathological aversion to certain things that were part of Tamil demands. He was innovative. He had a thorough knowledge of and exposure to constitutional law. He could have walked into any Ivy League university and pursued an academic career as a lecturer. But it's his misfortune and our fortune that he came and tried to serve the party of his father,” Rauf concludes.

President Premadasa took a personal interest in the APC talks and there were more than 40 sessions over nearly one year. But they did not produce “any real results”, Rohan recalls.

With the advent of the Chandrika Kumaratunga-led People's Alliance (PA) administration in August 1994, Neelan re-entered Parliament on the TULF's National List. Chandrika had pledged in her election campaign to start talks with the LTTE. Neelan supported this enthusiastically. Tamils voted for her in numbers, helping her secure 62 percent of the vote at the Presidential election held in November that year. The Tigers welcomed her victory in a statement.

G. L. Peiris recalls “a great euphoria in the country at that time...Before we were overtaken by other events, there was an expectation that here at last was an opportunity to get things done on the ground,” he remembers. “And to move towards a pragmatic solution to what is referred to as the national question or the ethnic question.”

Ever the optimist, Neelan was swept along. In a later newspaper interview, he maintained that President Kumaratunga during her election campaign had demonstrated a “certain consistency and clarity of approach to the national question” and that she clearly believed in a political solution and the need to treat all individuals in Sri Lankan society with equality and justice.

Mavai Senathiraja, TULF member, although not in Parliament in 1994 (he took Neelan’s seat after his assassination in 1999) offers a perspective into the TULF leadership at the time. Shortly after Neelan was sworn into Parliament that year, Senathiraja accompanied Sampanthan and Chandrika to Neelan’s house for a luncheon meeting. “We discussed many matters regarding the future of the government, the constitution and solution to the Tamil community’s questions,” he narrates. “It was an important gathering.” This indicates that the parties kicked off the process of constitution-making almost immediately after the Kumaratunga administration was formed.

The Government and LTTE began talks in October 1994 which culminated in the ceasefire agreement in January 1995. However, the situation soon deteriorated and war resumed in April 1995 when the LTTE sank two navy gunboats in the Trincomalee Harbour. This was the start of the Kumaratunga administration’s war-for-peace strategy, which envisaged weakening the Tigers while, at the same time, proffering a political solution to the Tamil citizens.

For the purpose of conducting discussions and formulating proposals, a Parliamentary Select Committee on Constitutional Reforms was established. The UNP was part of it but did not take a proactive role and did not offer alternatives. Neelan and Peiris were the key architects of the draft constitution released in August 1995, which declared in its preamble that the goal was to “redefine the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka..”

Peiris speaks of his close collaboration with Neelan with deep reflection. Their paths first converged in the Law Department (now Faculty of Law) of the University of Peradeniya, where they were undergraduates. He was at Akbar-Nell Hall, and Neelan at Arunachalem Hall. The department was shifted to Colombo and they graduated from the University of Ceylon. Neelan won a Fulbright scholarship and departed for Harvard University while Peiris secured a Rhodes scholarship and went to Oxford.

“I can’t think of any significant flaw in Neelan,” Peiris muses. “He made plenty of allowance for people’s shortcomings and he didn’t expect perfection. He was a very loyal friend. Confidentiality was sacrosanct and he had high moral values. He wasn’t frivolous. He had a serious temperament. He was a good speaker and prepared his speeches meticulously. He was a reservoir of ideas. His Harvard training sharpened his mind. He was trained by some of America’s best scholars with whom he kept in touch. Even in this business of constitution-making, we were both greatly assisted by our respective teachers.”

“After entering politics, we collaborated closely on a variety of things, principally the two documents of 1995 and 1997, which set out the basic contours of a constitutional arrangement that might be helpful in, if not resolving these issues altogether, at least mitigating and extenuating tensions,” Peiris recounts. “He was skilled in encapsulating in a concise document the thinking that he brought to the table. He was an able man, there was no question about it.”

Peiris understood that Neelan was not in the job for the perks of being a politician, or for the long term. “He was there for a task,” he analyses. “He was there to try and get something tangible done with regards to the ethnic issue. What would have satisfied him most, what would have given him the greatest pleasure, was the enactment of some form of constitutional instrument which enshrined the values he believed in.”

Neelan espoused a “practical power-sharing arrangement between the centre and the periphery”. But he also saw that, in the circumstances of Sri Lanka, it could not be done solely by establishing a line of demarcation between the central government and provincial functions, Peiris said, because a large number of Tamils were resident outside the North and East.

“So he was very much aware of the need for some form of power-sharing at the centre,” Peiris said. “I remember having fascinating discussions about a second chamber and the role of such a chamber. We looked at the Canadian experience. Both Neelan and I believed that if you just have provincial councils and you tried to strengthen them in some way, and you left it at that, the solution was incomplete. You have to do something about the centre because the centre continues to wield considerable power and is directly responsible for core functions.”

But both Neelan and Peiris also subscribed to the idea that a second chamber tended to be “superfluous or obnoxious”: “It is superfluous if it is simply a rubber stamp for the first chamber. And it’s obnoxious if it resists the political will of the first chamber. Taking that into account, how do you design a second chamber that would serve the purposes we envisaged in our own country? There-

fore, Neelan was attracted by this idea of the Canadian chamber and its concept of double majorities.”

“He wanted powers of governance to be shared in such a way that it will be beneficial to all the people in the country and all the people of the country will be able to exert their sovereignty while preserving the unity, the territorial integrity and indivisibility of Sri Lanka as a country,” Sampanthan asserts.

The PA government’s first version of devolution proposals was presented to Parliament on August 3, 1995 by President Kumaratunga. It envisaged a united and sovereign Republic of Sri Lanka that was a “union of regions”. Rohan wrote the following regarding this draft:

Unprecedented in their recognition of Tamil grievances and aspirations, the 1995 proposals were welcomed by many persons and groups committed to substantial devolution. They were fiercely opposed, however, by sections of the Sinhalese majority community. Considering their parliamentary majority of one, the government was nervous of this opposition. It was not surprising, therefore, that when the proposals were spelled out in greater detail, various changes were included to appease majority opinion. Along with the ongoing war against the LTTE, these changes did much to undermine the promise of the August 1995 proposals.

The drafters went back to the drawing board. While the constitutional exercise was ongoing, fighting raged in the North and East. The military retook Jaffna in December 1995 (Operation Riviresa) and hundreds died in a bomb explosion at the Central Bank in Colombo in January the following year. Another major operation, ‘Jayasikurui’, inflicted heavy casualties on combatants and civilians. The government suffered setbacks in the LTTE’s Battle of Mullaitivu in 1996 and Battle of Kilinochchi in 1998. Media censorship was introduced to cover up military reversals and security forces’ atrocities against Tamils. In January 1998, the rebels bombed the centre of Sri Lankan Buddhism, the Temple of the Tooth in Kandy.

The human suffering—not only death and injury but mass-scale displacement and disappearances—pained Neelan deeply, as his parliamentary speeches at that time illustrate. They provide a snapshot into the sheer devastating human suffering of that era.

At one time, Tamils from the warfront flooded into Vavuniya, forcing seven schools to be closed to accommodate them. Many had been displaced multiple times. They were subject to “immense hardship, indignity and humiliation due to the lack of adequate facilities and the inability of the authorities to respond to their need for relocation in a humane and considerate manner”, Neelan lamented in November 1996.

That year, Neelan delivered the ‘Mahathma Gandhi Memorial Oration’ for the Sri Lanka-India Society on ‘Civil Disobedience: Impact of Gandhian Ideas on Political Struggle’. In reference to a visit he made the previous week to Thandikulam in Vavuniya, he spoke with great emotion: “We need to renew our faith in the resilience of the human spirit, and rediscover our capacity to express moral outrage without recourse to violence,” he still insisted. “Last week, I was in Thandikulam and confronted the anguish and despair of the displaced, the tragic victims of a cruel and brutal war prosecuted by both sides without regard to its humanitarian consequences. I saw children who had been displaced four to five times in the last few months. They were dispirited and demoralised and their eyes were filled with unspeakable sadness. I met adults who were physically and mentally exhausted and incapable of expressing anger at their predicament.”

During the Emergency debate in August 1997, he said:

It is clear from the debate that many members of Parliament are deeply disturbed by the continued escalation of armed confrontation, unacceptable levels of death, and the enormous human suffering that continues unabated. We share this anguish, and are alarmed by the growth of the national security state and the prevailing mindset of distrust and suspicion, which is so inimical to ethnic harmony. We need to escape this trap and to engage in an agonising reappraisal of the strategies that are being employed and their terrible consequences.

Neelan’s contributions became more emotional and frustrated as the conflict worsened. In February 1999, he remarked:

There is a great deal of disillusionment and despair at the continuation, since April 1995, of the armed confrontation in the North-East and the consequent human suffering resulting from displacement, death, injury and destruction. There can be no other task more sacred and critical to the well-being of persons of all communities than to bring about a peaceful and enduring solution to this conflict. But we need to go beyond rhetoric to practical action. There is a long and bitter legacy of distrust between the two sides. The events of recent years have sadly contributed towards the intensification of this distrust. The decision of one side to renew hostilities in April 1995 and the several military campaigns by the other side to intensify the fighting have further compounded the problem. In no other phase of our history has the armed confrontation been so cruel and brutal. And yet, more and more, people despair at our collective inability to respond imaginatively or with a sense of urgency to the magnitude and intensity of this crisis. They have lost faith in politics and the political process, which is captive to an acrimonious and opportunistic form of adversarial democracy. We must all take responsibility for this predicament.

These sentiments were understandable as the process of constitutional reform was floundering. In 1998, the UNP presented its counterproposals to a redrawn package of January 1997 (deemed the “final draft”) with an in-principle acceptance of the idea of a second chamber (with “adequate” representation for minorities) and the principle of the supremacy of the constitution. As the year progressed, however, there was stalemate on devolution between the PA and UNP. In November, the government released a draft constitution complete with power-sharing proposals and said it would call a referendum if the UNP did not back the deal.

Peiris remembers this period keenly. Neelan, he said, felt the constitutional process had lost focus. Constitutional reform seemed to have a lot to do with personalities and their interests. The questions of principle and values were granted far less importance. “To be candid, he felt that Chandrika, who began with so much promise and expectation, was developing into yet another politician and that her initial idealism was greatly diluted,” Peiris says.

The process was incredibly difficult. “A solution had to take into account Tamil aspirations to a certain extent, to balance out Southern concerns and also to look at the Muslim perspective sufficiently,” Rauf recounts. “The 1997 proposals (they were modified previously in 1996) were the embodiment of all that, and Neelan was their chief architect. But from that time onwards, he earned the wrath of the LTTE and was earmarked as someone who was going for an alternative solution to what they espoused.”

The 1997 draft made major strides over the 1978 constitution in key areas, Rohan writes in a Brookings Institute publication titled ‘Creating Peace in Sri Lanka: Civil War and Reconciliation’. It eliminated the Executive President and concentration of power in a single branch of government, restored an independent public service, and distributed power to the provinces. But it failed to focus, as it should have done, on “modern trends in constitutional jurisprudence”. The draft ought to have acted as a “bulwark against majoritarianism”, he argues. It did not do so.

The publication quotes Neelan as agreeing with Rohan on the character of the draft constitution. “One of the major problems with Sri Lanka since 1948, he indicates, is the definition of the state,” records Robert I. Rotberg, US academic and one-time President of the World Peace Foundation. “Sinhala majoritarians have always assumed a unitary entity. But something other than a unitary state matches the truly plural nature of the contemporary nation. The 1997 draft is partially federal in its devolutionary approach, but not explicitly so, and coordination between the periphery and the centre is suggested, but without a juridical method to settle disputes over power and control. Tiruchelvam calls for a second central legislative chamber to represent distinct regional views at the national level.”

“Most of all, emphasises Tiruchelvam, a new Sri Lanka must recognise Sri Lankan Tamils as a distinct nationality, acknowledge and give lasting territorial integrity to a Tamil homeland, admit the inalienable right of self-determination of the Sri Lankan Tamils, and enshrine into law the right of Tamils to full citizenship and all democratic rights,” Rotberg states. “These are the principles that were drafted at Thimpu, Bhutan, during what Sri Lankan Tamils regard as meaningful negotiations in 1985.”

This was far, far easier said than done. Ranil admits the UNP had significant issues with what was proposed. “There were things we didn’t agree with outside of devolution and we were talking on those,” he recalls. “But on devolution, my view was that it was with difficulty we got the Thirteenth Amendment passed and that was on the basis that Chapter 1 of the Constitution could not be changed. If you touch Chapter 1, you are asking for trouble. And when you also try to amend Article 2 by calling it a union of regions, and again Article 4, that was really where the problem started.”

Article 2 of Chapter 1 declares that the Republic of Sri Lanka is a “Unitary State” while Article 4 pertains to the exercise of sovereignty. “I used to tell Neelan, ‘Why don’t you leave Chapter 1 as it is and deal with the rest of it because, however much we think, we cannot go beyond a unitary state,’” Ranil narrates. “We are committing political suicide. The best that can happen is, like in the Soulbury Constitution, you leave it blank because it means that it’s a unitary state. But I didn’t think we could even go there.”

The nature of the devolution proposals, too, was not unitary, Ranil points out, wondering whether it was “Indian pressure that had driven the government down the road of federalism. The LTTE were asking and fighting for a separate state. The Sinhalese wanted a unitary state and many of them didn’t even want provincial councils. I told them [proposal drafters], ‘You have to be clear where you are.’”

Ranil’s recommendation was that they peg it to the Thirteenth Amendment—which the country was now better disposed towards—and then push the Thirteenth Amendment in certain directions as seven provincial councils were already functioning.

“But if they wanted to untangle everything and to try and make it a federal state, it was not going to work.” Ranil, arguing from his interpretation of federal unions, claims, “The countries which federated are different units which came together. If you took a country and tried to divide it into federal units, it will never happen. That was my argument to him. ‘Why do you want to aggravate it?’ I asked. ‘Even if you are asking for a union of regions, you’re still less than the LTTE. So the LTTE’s going to fight you. So where do you fall back on? Who is going to help you? The Sinhala-Muslim bloc and part of the Tamil bloc will reject you. They will not do anything else with you. The LTTE will

target you. So you either have to be with the LTTE and ask for virtual confederation or you have to come to the proposal I suggested'. These are political issues.”

When Neelan persisted, Ranil advised him to put the matter to a referendum, “to finish it once and for all. You have your will, so have your way,” he remembers telling him. “Then we can be satisfied we put the case to the country. His stand was not tenable. That’s what we always told him.”

“Then, they (TULF) broke up inside because some of them realised the LTTE’s not going to accept this,” Ranil narrates. “The Sinhalese are not going to accept this. So they [the TULF] said, ‘What is the use of us getting caught in the middle? We’ll stand somewhere where the Tamil votes are, without asking for a separate state but for a reasonable solution which gives the Tamils self-determination’. The other worry they were trying to cater for was the diaspora, which was very strong. The fact is that, at the end of the day, diaspora can be strong there but if an issue comes, there were only two sides. Either go with the LTTE or go with the rest.”

Neelan, however, firmly espoused federalism as the key. In a press interview, he pointed out that the Indo-Lanka Accord failed owing to a lack of consensus. It was not successful even in the South as there was no clear definition of powers. “So we hope that a federal system genuinely and sincerely implemented would redress the grievances of the people,” he said. “This is very important because the justification for the armed struggle arises from a deep sense of grievance. It arouses passion which leads people to sacrifice their lives. If Tamils feel that their language is being respected, their culture promoted, their identity projected and they can live in freedom and with dignity, there is real possibility of lasting peace in this country.”

When the interviewer asks him whether he thought federalism “can solve this problem”, Neelan is unequivocal in his reply: “Yes. Federalism can solve this problem.” He also argued that the Indian system of federalism had room for improvement. But, on both sides, he was fighting great odds.

The Tigers roundly denounced the “GL-Neelan devolution package”. In an interview with the Deccan Herald in July 2000, the year after Neelan was assassinated, Balasingham said that, not only did the first set of proposals released in 1995 have severe limitations and fail to meet the political aspirations of the Tamils, the reformulated packages of 1996 and 1997 saw many powers originally proposed to be allocated to the Tamils being whittled down. “Now we find that the package as it stands it is totally unacceptable, not only to the LTTE, but also to the other Tamil parties,” he commented. “The TULF has openly said it is unhappy about it.” It is not a secular constitution, he denounced. Nor is it federal in that it envisages regions and a centre, he further added.

Dharmalingam Sithadthan was an MP for the Vanni district from the Democratic People’s Liberation Front, the political arm of the militant People’s Liberation Organisation of Tamil Eelam (PLOTE). He was a long-time associate of Neelan. Their respective fathers, Visvanather Dharmalingam and Murugeysen Tiruchelvam, had been contemporaries and Federal Party MPs. While they knew each other from the early 1970s, Sithadthan made closer acquaintance of Neelan when they both entered Parliament in 1994.

“I went to his chambers many times, sometimes with colleagues,” Sithadthan remembers. “He would patiently explain to us about the constitution and new proposals. We were then a militant organisation that worked in army-controlled areas and had a running battle with the LTTE. Dr. Neelan talked a lot about these activities. He didn’t oppose it because he understood what we were doing. Everybody knew at this juncture that we either had to join the LTTE or fight them.”

Neelan believed the LTTE’s path would not “give anything to the Tamil people”. “He discussed it often,” Sithadthan points out. “But he never criticised it in a big way, especially in public. It may have been because of a fear of the LTTE.” In any case, the TULF, too, did not openly castigate the Tigers.

Initially, Tamil parties inside and outside Parliament backed the Kumaratunga administration in anticipation of a political solution. “A lot of people maintained that, as long as the LTTE was around, the package cannot be implemented even if it is passed,” Sithadthan relates. “But Dr. Neelan told me, ‘No, Thambi, this is the best time. We must take it and put it into the constitution. Later on, it can be implemented’. And that was our opinion, too. We knew the LTTE would never allow it to be enforced. However, I still feel that, had the government been really willing, it could’ve been done.”

But there was soon opposition within the TULF to the devolution proposals. “They were totally against it because of the LTTE,” Sithadthan narrates. “The LTTE told the TULF they could not vote for the new constitution.”

When the first draft was put to Parliament in 1995, Sithadthan recalls asking Neelan, “Anna, what should we do?” Although he was TULF and I was PLOTE, I always consulted him. He said, ‘Thambi, if nothing else, the unitary constitution is going out. For that reason alone, please vote for it’.

“But the TULF had been instructed by the LTTE not to support it and they planned to abstain,” he recalls. “Neelan Anna was disheartened and unhappy. He told me that, too. He said, ‘What can I do? I can’t force you to vote for it as I am not doing it. But if you can, please do.’ I trusted him and said we would. In the end, it didn’t go to a vote. There was only a debate.”



Neelan had grasped what was going on. “Not only that,” Sithadthan adds, “he understood that the LTTE will never allow the TULF to vote. There was also a big argument at the TULF central committee meeting in Colombo about this. All the MPs expressed opposition except Mr. Sampanthan, who just kept quiet. And he knew, because he was there in the meeting, that it was not going to happen.”

It was an impossible situation. And it only became more intractable. And Ranil feels Neelan got into it “without looking at the reality of it”. He thought it could be done if Chandrika and Ranil joined hands. “Still, there would have been utter chaos,” Ranil insists. “Tomorrow, just because all of us get together, we can’t abolish free education. I told him that.”

“We knew it (package) was dead, even his TULF people knew it was dead, and he still wanted to resurrect it,” he continues. “About a month or so before he died, I was having a chat with him in Parliament, and I asked, ‘Neelan, what are you chasing? I don’t think this is going to come. There’s nothing very much you can do about it. And whatever it says, the government is also not going to do it’. He said, ‘Yes, I don’t think it’s going to come.’ I offered to have a discussion with him to see what we can do and he accepted.”

“That’s the last time I met him,” Ranil reflects. “One day, when I was trying to go out somewhere they said there was an explosion and it was Neelan’s vehicle.”

Ranil knows Neelan was targeted. And while he felt sorry for him, he was not surprised. “My view was that he was getting himself targeted for nothing, for an objective that could not be achieved,” he muses. Ironically, Rohan is of the same view. He studied the constitution-making effort keenly and was critical, particularly when he saw the proposals being watered down. Neelan, he maintains, “gave up his life for a process that went nowhere”.

At their final encounter, Neelan was getting “extremely frustrated”, Rohan continues. “I think he sensed that opposition within the PA was growing,” he narrates. “There was a lot of backtracking as the process came to an end. If you look at the process from 1995 to 2000, the high point was 1997. From 1997 to the time Neelan died, they were revising and watering down the proposals. And that’s partly because G. L. was so weak. I think Neelan felt that Chandrika was stronger than G. L. He was beginning to lose hope. He didn’t say that directly, but I sensed it when I met him.”

“About a week before he was assassinated, he and I had a chat,” says Uyangoda. “And he was quite disenchanted with Chandrika’s government and the way the political resolution and reconciliation process had been de-emphasised by that administration. They were talking about a war victory.”

“Neelan was disappointed that the Sinhalese leadership was not prepared to explain the national problem to the Sinhala people and to get the Sinhala people to realise that the resolution of it was in the interest of the whole country and particularly in the interest of the Sinhala people who are the majority people,” Sampanthan maintains. “He was disappointed that the Sinhala leadership did not reveal the true position to the ordinary Sinhala people who are reasonable people, who would have understood the position had it been explained to them by their leaders.”

For his part, Neelan did all he could to break down the proposals to anyone that asked him—patiently, repeatedly. “I didn’t attend all the party discussions,” Mavai says. “But we knew the details because Neelan explained them to us. It was credit to Dr. Neelan and Chandrika that an attempt was made to abolish the unitary state and introduce in its place a union of regions. “

“He was a gentleman, a kind and brilliant constitutional lawyer of international standing and a knowledgeable intellectual,” he describes. “He was friendly and accommodating towards young people. I met him at his house and, while I was not an MP at the time, I traveled with him to the east, particularly Ampara district, for public and committee meetings. After his demise, I received his seat in Parliament.”

With no progress, Neelan accepted a visiting professorship at Harvard Law School. “Two weeks before he was due to leave, I asked him why he was deserting us,” Peiris reminisces. “He said he was not deserting us but that he was disillusioned. He really did not expect any progress. A lot of things had happened between his coming into Parliament, full of enthusiasm and energy, and then gradually becoming disenchanted.”

Today, their work must be assessed in the context of conditions that existed in Sri Lanka at the time, Peiris urges: “It was a different situation from what we have now. The philosophy at that time very much was that the government needs to take a two-track approach. The LTTE was a terrorist organisation that was rejecting any reasonable solution. Moderate, cerebral attitudes were spurned and those who advocated those attitudes had to be physically eliminated if they could not be persuaded to change their views. That is why Neelan was assassinated.”

Despite the process unravelling around him, Neelan stayed true to his convictions. Peiris heavily underscores that: “He could relate his ideas to changing circumstances but there was no expediency. He did not feel he had to modify his convictions to suit situations as and when they arose. There was a solid anchor, things he believed in, which he would not compromise on.”

“He was a democrat par excellence, a convinced democrat,” reminisces Uyangoda. “He didn’t use

politics for personal gain like others did. He had a universalist approach to Sri Lanka's problems. He transcended the limits of the politics we had at the time in trying to bring together all ethnic communities, all political parties as well as civil society, to resolve the conflict and constitutional dilemma. That's why he was an exemplary democrat; because he believed in pluralism and never thought Sri Lanka's problems could be resolved by one party or one coalition. He knew that maximum possible consensus was necessary and he worked towards that."

The LTTE had to be recognised as the sole representative of the Tamil people. "They, and they alone, had the moral justification to speak for and articulate the aspirations of the Tamils," Peiris analyses. "Neelan was doing it with great acceptance internationally. That was an anathema to the LTTE. Therefore, Neelan had to go. Neelan wanted to do something constructive to sort this problem out, not to leave it to future generations. He wanted to do something of value which would have given him immense satisfaction. Unfortunately, he was taken away before. But had he gone to Harvard and come back, I don't know..."

His friends and family became increasingly alarmed at the threat to Neelan's life. "There was grave danger and we were increasingly alarmed," says Radhika. "The LTTE was targeting him but it wasn't unnatural because since J. R. put him on the CoD, he was constantly interacting and negotiating. He was not only an activist. He was someone who wanted to reach a proper arrangement for the Tamil community. He was a negotiator and a mediator."

Nationalists on both extremes were critical of Neelan throughout his involvement. "Interestingly, people like him remained creative and functioning because there's a certain innocence about them that does not understand the evil that people are capable of," Radhika elaborates. "Neelan was that kind of person. He would just read it as words on paper. Although those around him would get annoyed and angry and frightened, I don't think he ever thought people could be that evil, that they would kill him."

But Sithadthan feared otherwise. "We were also militants at that time," he says. "We had our information gathering. The LTTE was very active. I always warned him, 'Careful Anna, they're after you, they're after you'. And he never listened to me."

Neelan was a lifelong enthusiast of Carnatic music and attended recitals. Sithadthan pleaded with him not to. "I even joked to my friends and colleagues in front of him that we will certainly hear one day the news that a gentleman was killed at one of these recitals and that it would be him. He just laughed it off. I think it is because he is from a democratic political background. He never believed it will happen to him."

Even before they assassinated him, the LTTE slapped the label "traitor" on Neelan. Tamil nationalists gleefully perpetuated it. Part of the assault on him, Rohan thinks, was motivated by jealousy. Those who couldn't match him by virtue of their ideas or intellectual abilities felt marginalised so they attacked him using "strong nationalist and emotive nonsense". The Neelan he knew was "a warm, kind and gentle human being".

"Traitor" was an "unfortunate terminology some people used", Mavai insists: "We are not happy he was killed, very unhappy about the whole incident. He worked and made sacrifices for the Tamils, for devolution of power to the community."

Neelan spoke to Sampanthan five minutes before he died. "He called me and told me, 'Sam, I'm leaving home for work'," he relates. "I had had a luncheon meeting the previous day with the Indian High Commissioner in Sri Lanka at the time, Shivshankar Menon. He asked me how it had gone. I told him briefly what had happened and he said, 'We'll meet up again for a longer chat'. The ride from home to office was just a few minutes. His staff called me to say he had been killed."

Sampanthan remembers that while Neelan was alive, they talked with each other every day, either in person or over the phone. "He always consulted us with regard to whatever decisions he took. We took our decisions collectively," he narrates. "He was a believer in peace, in justice, equality, dignity. He was a valuable person, valuable to all the people of this country, not only to the Tamils. There was no need for Neelan to be here and try to bring about peace. He could have gone to any part of the world and been comfortable. But he chose to remain here and serve the country and its people."

Sampanthan continues: "He felt that the Tigers were fighting for a cause but were doing it the wrong way. He didn't think that violence should be the answer, but he accepted the fact that the Tamils have been treated badly, and that the armed struggle was the result of the bad treatment meted out to the Tamil people."

No, Neelan was not a traitor, Sampanthan insists: "He served the Tamil cause to the best of his ability and in a very straightforward, honest way. I value his services greatly. He wanted to contribute positively towards evolving a political solution that would enable all the people in this country, Sinhalese, Tamils, Muslims, Burghers, whoever, to live in dignity, self-respect, and equality. How can such a person be a traitor?"

"If somebody is killed by the LTTE, he's a traitor," Sithadthan comments. "If somebody is killed by other groups, he's a martyr. That was the thinking at the time. Somehow or the other, LTTE managed to create this opinion among the people."

Neelan was assassinated because “the LTTE didn’t want a political solution within a united Sri Lanka... He was trying his best to bring that about,” he observes. “He was part of the team that wrote the new constitution. They thought that if they killed him, the new constitution wouldn’t come. Simple. In fact, they wanted to do it before the proposals were drafted, to slow down the efforts and prevent the TULF from participating.”

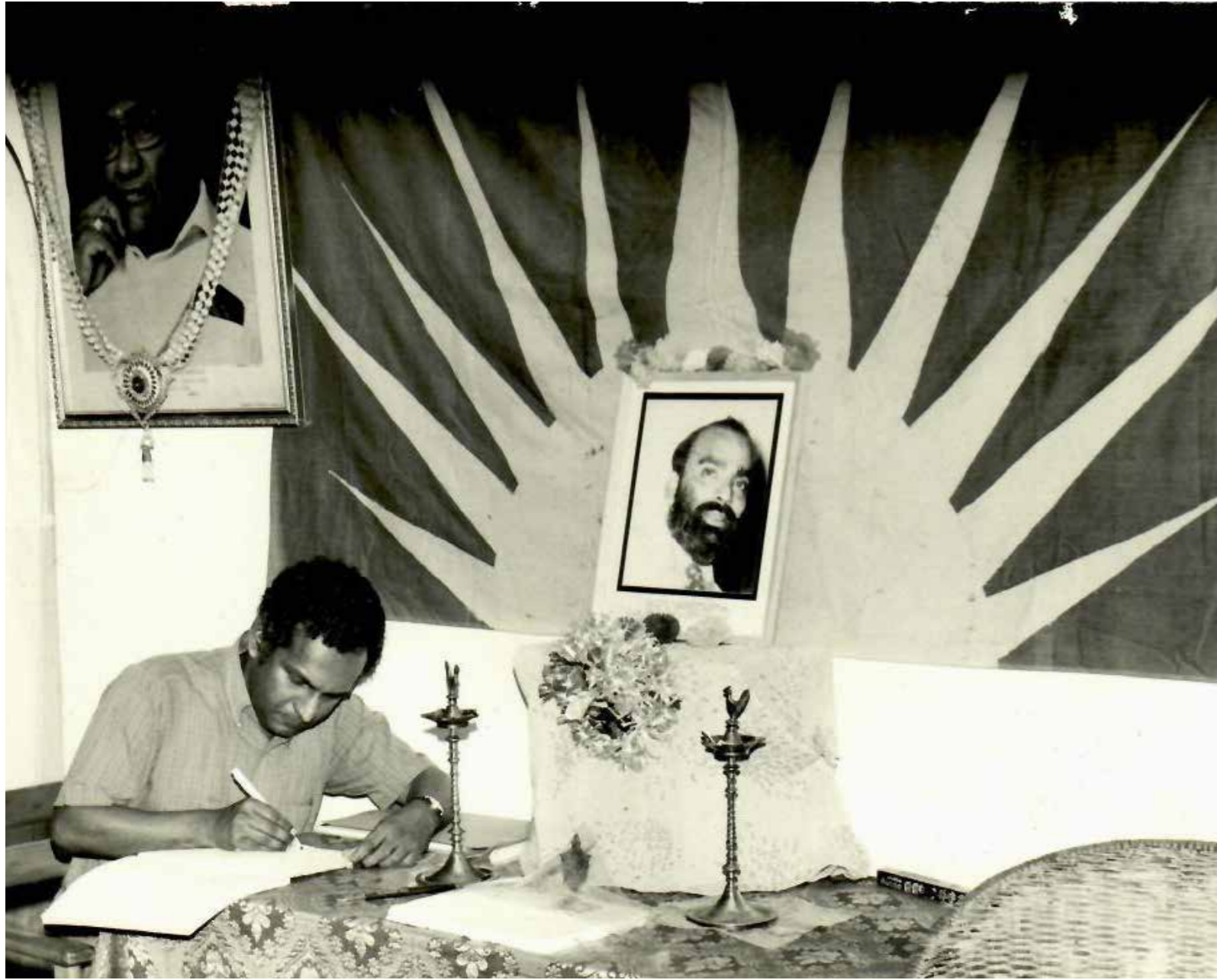
“Do you know that at the last moment he wanted to go out of the country for some months?” Sithadthan asks. “He wanted to leave for a while because a lot of people told him to go. He was very unlucky. Had he gone, maybe we would still have Neelan around us. You can’t get people of that caliber. It’s very difficult. There are no politicians of the caliber and no Tamils here, in Sri Lanka, no Tamil constitutional experts.”

Neelan had “a complicated vision of Tamil nationalism,” Radhika explains. He viewed it from the viewpoint of human rights. “Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights speak of the right to self-determination,” she points out. “Neelan was not an advocate of a separate state but he did believe in the sharing of power between the centre and the areas where Tamils were in the majority. He was a world-renowned specialist on these issues and believed in a form of federalism from the Indian model to the Canadian one. He eschewed the excesses of Tamil nationalism, one of the reasons he got killed.”

In August 2000, one year after Neelan’s passing, Chandrika brought the Constitution Bill to Parliament, which provided for a quasi-federal arrangement. Sri Lanka was not referred to therein as a unitary state. It said, instead, that the state would consist of “the institutions of the Centre and of the Regions which shall exercise power as laid down by the Constitution.” It proposed a clear-cut division of powers between the centre and the provinces. Even though it was a watered down version of the 1997 proposals it could not muster the necessary two-thirds majority in Parliament. The UNP backed out because, in the Bill, the government had reneged on the agreement that Chandrika would hold just one term as President and return the next as Prime Minister and burned copies of the document in Parliament.

“It all finally collapsed because of what was called the transitional provision,” Peiris holds. “I was the Chairman of the Constitutional Reform Committee and we had something like 77 meetings. That was a good document. A great deal of work went into it. We were able to resolve all the thorny issues. Much to our regret, at the very last minute, she (Chandrika) threw that in and insisted on it—although we were abolishing the Executive Presidency, she insisted on retaining the position of Executive President for the whole of her second term, not just part of it. And during that period, she would also exercise some of the powers of the Prime Minister. That gave the UNP a convenient excuse to withdraw from the whole process saying it could not possibly support that. We gave them on a platter the kind of pretext they required to exit from the process in a respectable manner.”

What followed was years of bloody conflict, culminating in the military defeat of the Tigers in May 2009. To date, none of the other constitutional reform processes initiated have come even close to the initiative of 1995-2000. And it was just as well Neelan didn’t live to see the death, destruction and sheer scale of human suffering that he, throughout his living years, had strived so hard to prevent. Despite the end of the armed conflict in May 2009, the ethnic conflict remains unresolved.







1999

EMERGENCY DEBATE IN THE PARLIAMENT OF SRI LANKA, BY DR. NEELAN TIRUCHELVAM

I wish to point out that we have consistently appealed to both sides to end the war and to revive political negotiations. When the cessation of hostilities ended in May 1995, we expressed our dismay and drew attention to the terrible consequences war would have on ordinary people. Since that day, no other political formation has been as consistent and persistent as in our appeal to both sides to bring an end to the human suffering, displacement, destruction and senseless loss of lives, both of combatants and of civilians. In the event that there are any ambiguities or uncertainties on this issue, I wish to reiterate that non-violence is the central article of our political faith. We cannot glorify death whether in the battlefield or otherwise. We, on the other hand, must celebrate life, and are fiercely committed to protecting and securing the sanctity of life, which is the most fundamental value without which all other rights and freedoms become meaningless.

We do not for a moment underestimate the complexities of negotiations, given the legacy of distrust on both sides that needs to be overcome. There are also the complications arising from the continuing frustrations in forging a Southern consensus, the seeming confusion, internecine killings, and lack of coherence within the Tamil and Muslim political formations. Despite all these difficulties, there needs to be a concerted effort to develop a negotiating framework that can command the widest possible support. Such a negotiating framework must include at least minimal acceptance, by both sides, of the norms and standards relating to international human rights and a determination to restore peace, normalcy, civil society and democratic governance. The International Bill of Rights (the Universal Declaration and the Covenants on Civil and Political Rights and on Economic, Social

and Cultural Rights), the Declaration on Minorities, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child provide us with a rich harvest of concepts, ideas and principles, which can inform and discipline any negotiating process. Similarly, international humanitarian standards help us to address the problems of internally displaced persons, prisoners of war, and humanitarian relief, which arise in the resolution of issues in an internal conflict. A clear and unequivocal acceptance, by both sides, of the International Bill of Rights and international humanitarian law would represent a significant step forward. We can no longer offer empty platitudes and meaningless slogans such as peace through war to a long-suffering people.

To protract a war for domestic political purposes, or for the purpose of consolidating the hegemony of a politico-military formation, is to commit an unpardonable crime. There is a heavy moral and political responsibility on the principal opposition party to play a constructive and imaginative role in the search for a solution. Many speakers on both sides of the House have frequently expressed dismay and disappointment at their negative approach to the substantive political issues which has contributed to protracting the war and the conflict. Anyone who believes that there is short-term political gain in subordinating the issues of peace and reconciliation to expediency is committing a serious error of judgment.

I wish to draw your attention to a very important recent report of Amnesty International, released on June 1, 1999, on the issue of torture, which is directly linked to the State of Emergency.

We have, in our Constitution, a provision that makes prohibition against torture an absolute value from which there can be no derogation or limitation by legislation, emergency regulation or executive action. But the harsh reality is that the ground situation differs fundamentally from this high constitutional premise. The Amnesty International report points out:

For years torture has been amongst the most common human rights violations reported in Sri Lanka. It continues to be reported almost (if not) daily in the context of the ongoing armed conflict between the security forces

and the LTTE In addition police officers regularly torture criminal suspects and people taken into custody in the context of disputes over land and other private issues.

The routine of interrogation, even in regard to ordinary crime, has been the practice of torture. The scale of this problem is reflected in the complaints received by government-appointed investigative bodies, decisions of the Supreme Court and testimonies obtained by Amnesty International. The Committee to Inquire into Unlawful Arrests and Harassment received 47 complaints between July and December 1998. The Supreme Court has awarded compensation to torture victims in numerous cases. The recent report of Amnesty International provides disturbing new evidence of the torture of political prisoners, women, children, and criminal suspects and the use of unauthorized places of detention.

Torture is also linked to other human rights violations, particularly disappearances, death in custody and rape. Amnesty has observed, "many of the thousands of cases of disappearances reported in Sri Lanka since the early 1980s concern detainees alleged to have died under torture in Police or Army custody whose bodies were subsequently disposed of in secret".

Three Presidential Commissions of Inquiry were appointed to inquire into disappearances, since January 1, 1988. They found disappearances in 16,750 cases. Even as late as in 1997, the UN Working Group on Disappearances registered 77 cases, the highest number of disappearances reported to them from any one country. The Working Group has pointed out that, of the disappearances that were recorded in 53 countries that they surveyed during 1989-1990, the highest number was in Sri Lanka. Still in 1997 the highest number of reported cases of disappearances in any country in the world remained that of Sri Lanka.

The Committee on Torture made a series of recommendations to the Government, in respect of which no meaningful steps have been taken for more than one year. I would like to refer to two particular recommendations. The first relates to the review of the Emergency Regulations and the Prevention of Terrorism Act, as well as the rules of practice pertaining to

detention, to ensure that they conform to the provisions of the Convention against Torture. Our rules with regard to preventive detention must be brought in line with international norms.

The second recommendation is that all allegations of torture past, present and future, must be promptly and effectively investigated and recommendations implemented without delay. The Supreme Court has frequently expressed frustrations at the prevailing climate of impunity in relation to torture. In eight judgements by the Supreme Court in 1997 and 1998 the Court found that police officers were guilty of torture, and the Court recommended that further investigations take place in respect of them. Today, there are seven indictments currently before the High Court against several of these police officers. Both Amnesty and the Committee Against Torture have urged that firmer action be taken against perpetrators of torture. The Amnesty report has also argued that there is a multiplicity of commissions that inquire into this matter. Amnesty has argued the need for a simple procedure, to be implemented by an independent authority with appropriate powers and expertise, to investigate complaints of torture by law enforcement personnel.

The Amnesty report also documents incidents of torture by Tamil militant groups operating in the North-East. Some are political parties represented in Parliament. I would urge them to make an unequivocal commitment to end torture as a routine practice in their interrogations, and I would also urge the authorities concerned to investigate those incidents which are documented in the Amnesty International report.

I also wish to point out the internecine killings that are taking place again between many of these former militant groups, who claim that they have entered the democratic process. I would urge them to bring to an end to these internecine killings and to view with seriousness the repulsion that the general public feels with regard to this issue.

There is one more issue, which I would like to raise before I conclude. That is the proposal of the Government to reintroduce the death penalty. The last hanging in this country took place in 1976. Although the death penalty

remains part of our statute book and death sentences are passed, they are automatically commuted. In view of the disturbing incidence of gruesome crime and the increase in crime, it has been proposed that the death sentence should apply in a limited number of circumstances.

I refer to the statement that has been issued by the Presidential Secretariat with regard to this matter. It states that the death penalty will now be carried out in accordance with a procedure where it will seek the recommendations of the trial judge, the Attorney-General and the Ministry of Justice as to whether such a sentence should be executed. I would like to express my strong moral opposition to this measure.

Firstly, in a society where the sanctity of life continues to be debased, it is morally wrong to enforce the death penalty even in these limited circumstances.

Secondly, the UN Commission on Human Rights recently passed a resolution asking all countries that have the death penalty in their statute books to refrain from implementing it and to suspend operations with regard to the death penalty. So after the last hanging in 1976, Sri Lanka now goes back in history, and against the trend of international public opinion, to revive the death penalty. It would, in my respectful view, be a retrograde step.

Thirdly, there is no credible evidence that the death penalty ever served as an effective deterrent against crime. There has been a large body of scientific studies on this and, up to date, there has been no credible evidence on this point.

Fourthly, even in the United Kingdom, there have been instances where the death penalty was imposed on persons who were subsequently found innocent of the crimes. Given the imperfections of our system, it would be a terrible mistake to implement so severe a penalty in these circumstances.

So, for these reasons, I would record our opposition to this measure and urge that the Government and the Opposition have an opportunity to debate fully this important proposal with regard to the administration of justice.







EPILOGUE: THE NEELAN TIRUCHELVAM TRUST

THE POLITICAL BECOMES THE PERSONAL

It might sound dramatic to say my life changed that Saturday morning in late 1998 when I went to meet Dr. Neelan Tiruchelvam, or “Dr”, as we addressed him, in his office at TA. But it did.

I was one of many young people at LST who held Dr in awe. I was apprehensive when I first met him. It was my first job and I had heard impressive things about him. The person I found was a quiet, kind, and generous man who guided and helped scores of us figure out our place and path in the world.

All three institutions Dr founded were situated on Kynsey Terrace, a little lane off Kynsey Road. When a friend of my mother heard I was working there, she remarked derisively that it was a space where the privileged went to while their time away; a space for those who did not have to worry about earning a living. As I did not belong to that category, she felt I was being self-indulgent and frivolous.

In retrospect, I realise Kynsey Terrace was a privileged space—an intellectually freeing environment where you did not have to be bound by the identities ascribed to you or the values foisted upon you. You could learn, test ideas and evolve into a different person. It was a protective community for young persons, where they were taken seriously, and their opinions were valued.

Everyone who knew him would remember Dr. Tiruchelvam’s spirit of generosity. In particular, he was concerned about the future of young persons who worked for him. He not only nudged them gently but went the extra mile to help them find their feet, taking pride and joy in their achievements.

Despite his quiet and gentle nature, reading through the collection of some of Dr’s parliamentary speeches shows he was a critical moral voice during that time. He repeatedly spoke during debates about the extension of the state of emergency, pointing out its grave implications on “democratic governance, the rule of law and human rights”. He moved adjournment motions on the displacement of persons and passionately called for action to protect their rights and address their needs, describing the hardships endured by them in detail. He set out not just the statistics but the human suffering. He drew attention to enforced disappearances and extra-judicial killings. He did not shy away from speaking on gender issues, urging for the law on abortion to be reformed, calling for law on marital rape and for the repeal of Section 365 and 365A.

Dr. Tiruchelvam's commentaries on the state of public affairs and governance were pithy, prescient and have stood the test of time. For instance, during the debate on the Human Rights Commission Bill in 1996 he said, "One of the lessons of legal and institutional reform is that you do not necessarily resolve a problem by creating a new institution or by passing a new law." Nearly 20 years after he contributed to the establishment of the Human Rights Commission, when I had the privilege of becoming a member of the Commission, I realised Dr. Tiruchelvam was correct. An institution or law can only act as a catalyst for change. It does not magically resolve a problem.

NAVIGATING A COMPLEX LANDSCAPE

Dr. Tiruchelvam traversed a complex arena as a Tamil who believed in finding a peaceful solution to the ethnic conflict. Violence, armed conflict and the resultant human suffering caused Neelan deep anguish. In response, he advocated for a negotiated settlement to the armed conflict. July 29, 1999—the day of his assassination by an LTTE suicide bomber, close to his office and a few hundred feet away from us—is one of the critical markers of the violent and bloody ethnic conflict in Sri Lanka, which, to me, illustrates its devastating impact.

During his life and after his death, Neelan Tiruchelvam was labelled a traitor and anti-national by both the Sinhala and Tamil communities. The LTTE and certain sections of Tamils were angered because he believed in and supported a negotiated rather than a military solution to the ethnic conflict. And he was perceived as pro-LTTE by certain sections of the Sinhala community because throughout his life he advocated for the rights of the Tamil community.

It is not surprising therefore that for many years the Trust, which was created in Dr. Tiruchelvam's name and to further his work, was viewed with suspicion by sections of the Tamil community. Particularly in the North, many civil society organisations did not wish to receive the Trust's support for their work. It was only after nearly a decade of building relationships with the communities that the Trust was accepted. Yet, still not completely. Even in 2021, a northern non-governmental organisation that sought the Trust's support to meet the needs of communities affected by CoVID-19 mentioned that a member of a civil society group in the diaspora supporting their work expressed displeasure when he heard they had received funding from the Trust. This illustrates the deep divisions within the Tamil community, and the corrosive impact labelling dissenters as traitors has had on intra-community relations. Much work hence remains to be done to repair these ruptures and create a society that sees value in dissent and that celebrates diversity.

MORE THAN JUST A GRANT-MAKER

Institutions that are established in memory of prominent persons, at times, tend to glorify the person rather than further their work and values. Sithie Tiruchelvam, who established the Trust, was aware of this. She was determined that this should not be the case where the Trust was concerned. Her aim was to create an organisation to support work on issues about which Dr was passionate; to support issues that were ignored and communities that were forgotten.

The Trust takes calculated risks to support pilot initiatives because we recognise that community knowledge and expertise must be harnessed. NTT also recognises that assisting nascent community organisations entails more than providing financial resources. It requires considerable institutional strengthening to enable organisations to respond effectively to community needs and to weather external pressures and constraints, including shifts in donor support. Hence, our support includes advice, providing information and expertise to put in place mechanisms and processes to ensure institutional transparency and accountability, and capacity-building to assist organisations to become sustainable.

In Sri Lanka, as in other countries, we have witnessed civil society evolve into the "non-profit sector". Several urban organisations with English-speaking, foreign-educated staff, who had the capacity to easily access funds, became the gatekeepers and spokespersons for local communities. What the Trust is attempting to do is break down these barriers and erode the power of the gatekeepers. Larger, urban organisations often garnered the bulk of the financial resources because donors found it cumbersome and resource-intensive to support small community-based groups that required hand-holding and other forms of non-monetary support to access and effectively use financial resources. It is exactly this kind of non-monetary support that the Trust provides to community-based organisations.

The Trust is different to other grant-makers because we understand that long-term social change is not something that will attract donors. Yet, in Sri Lanka, particularly as a post-war society, where the root causes of the ethnic conflict remain unaddressed, the importance of socio-economic rights cannot be downplayed. While foreign aid seems to prioritise development, there is reluctance to tackle complex structural changes required to enable economic empowerment of the marginalised. It is precisely because of this lacuna, we focus on long-term change, even if the results are not visible in the short-term. The Trust is unique in that it continues to address issues such as human rights, pluralism and social justice even when such issues are considered controversial or earn the ire of the government of the day.

As an indigenous grant-maker, the Trust is aware of the intensity of the power disparity between ‘funder’ and ‘funded’, and ‘agency’ and ‘community’. We understand that this does not necessarily depend on whether the party providing the financial resources is an international or local donor. At times, the disparity can be more intense if the entity providing the resources is local rather than international. We are therefore constantly conscious of not only the impact of our actions, but also how our actions are perceived. Hence, we strive to be partners of local communities and build a relationship of equals.

Of course, the Trust has made mistakes and there have been missteps. We have acknowledged them and learnt from them and continue to evolve. During turbulent and challenging times, a core value continues to inform our work and drive us: to listen to the community and to be responsive to their needs. It is still work in progress.

I hope we have made Dr proud.

Ambika Satkunanathan
Chairperson
Neelan Tiruchelvam Trust

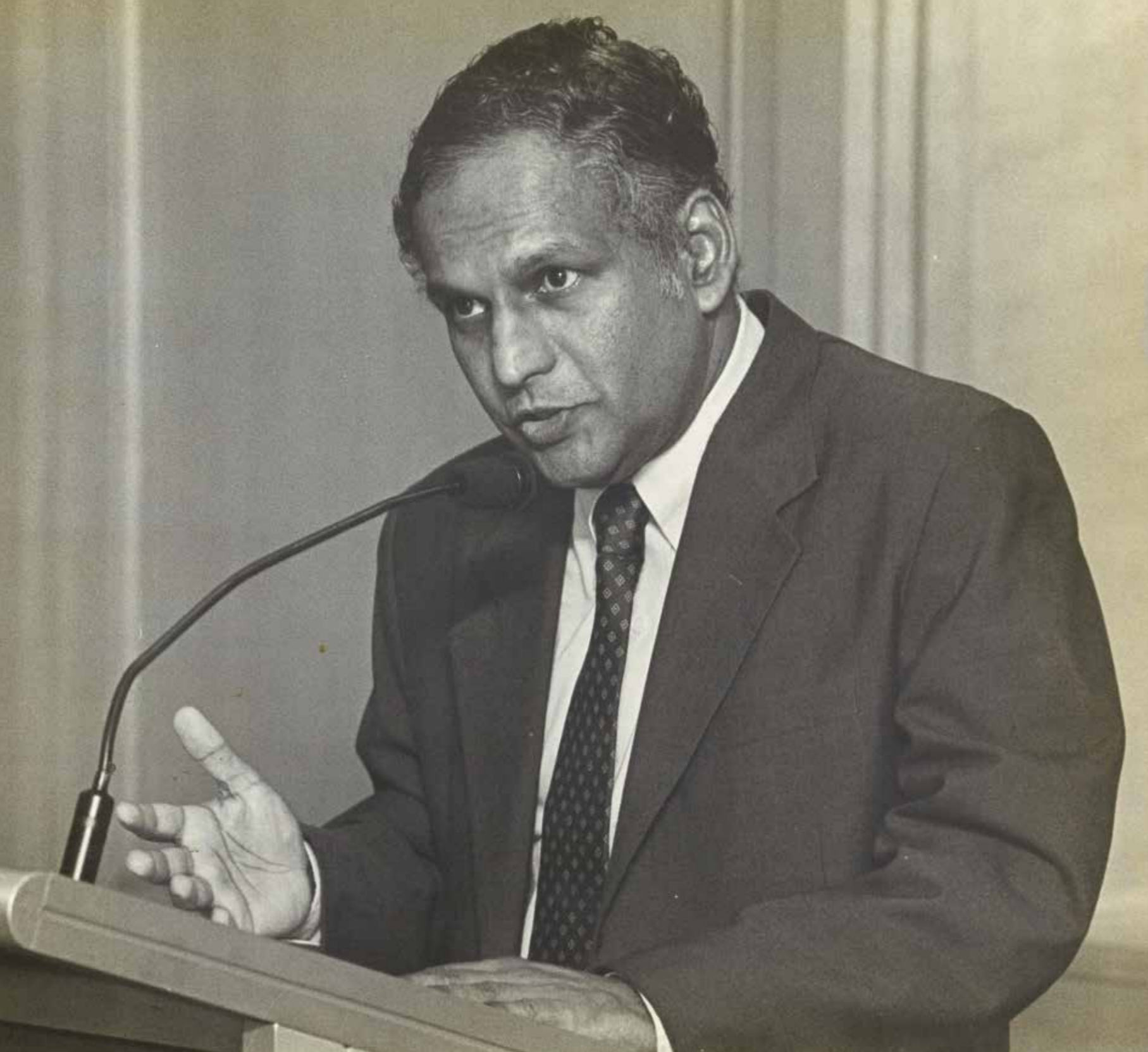
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