

Question per week answered

by Justice C.V.Wigneswaran - 20.12.2020

Question :- Who is a Political prisoner? How does one identify a Political prisoner?

Response :- Very good question! As a former Law Lecturer and Judge and now a Politician this question fascinates me. Defining the term political prisoner in a strictly legal sense is simply not possible. Because they have been used in a variety of different contexts. But they are not criminals in the normal sense.

Let us take this word political prisoner. Around 1961 two Portuguese students were sentenced to a seven year prison term. Their “Crime” was making a simple toast to freedom! They held their wine glasses high and toasted to freedom. This was during the dictatorial Government of Antonio de Oliveira Salazar. His government took the toast to freedom as an affront to them.

Peter Benenson who was a British Lawyer who founded the human rights group called Amnesty International (AI) coined the term “prisoners of conscience” to describe the two Portuguese students. Their sentence and imprisonment were catalysts for the establishment of Amnesty International. In his significant newspaper Article “The Forgotten Prisoners” Benenson wrote as follows –

“Open your newspaper any day of the week and you will find a story from somewhere of someone being imprisoned, tortured or executed because his opinions or religion were unacceptable to his government. The Newspaper reader feels a sickening sense of impotence. Yet if these feelings of disgust could be united into common action something effective could be done”.

Such effective action was the formation of Amnesty International!

Prisoner of conscience and political prisoner have been used interchangeably - one for the other and the other for the one. A political prisoner is a dissident generally who is critical of agents of governmental authority (Military included) or ruling elites. Political prisoners are the symbolic representations of attempted challenge to the status quo. Ideologically the context may be racial, economic, political or religious. These political prisoners are different from common criminals. Whereas political prisoners are involved in some type of group struggle against the establishment or the ruling elites, common criminals are typically involved in an element of satisfying their self-interests.

Political prisoners are those penalized by legal systems and imprisoned by political regime not for their violation of the Country's Codified Laws but for their thoughts and ideas and actions that have fundamentally challenged existing power relations. One is ascribed the status of being called a political prisoner only after capture. It is the State's prosecutors who would give rise to such nomenclature. Because it is they who identify individuals as common criminals and so called Terrorists, Fundamentalists, Extremists and so on. Prior to capture they may have been dissidents, revolutionaries, social reformers, freedom fighters or radical thinkers depending upon the nature of their activities and how their activities were interpreted. Keppetipola Dissawe was not an ordinary criminal even though the Britishers tried to say so. He was a political prisoner taken into custody by the Britishers and beheaded.

In Sri Lanka almost all political prisoners in recent times have been found guilty under the Prevention of Terrorism Act. If they have been found guilty under the said Act by virtue of their confession only then they would have been found guilty under a law and procedure not acceptable to the general law of the Country or indeed any decent Law of any democratic Country. Confessions are not generally acceptable as evidence under normal law relating to major crimes. But the

Prevention of Terrorism Act finds such confessions good enough to sentence a prisoner for life imprisonment.

Almost all the Tamil prisoners detained, sentenced or serving sentences in prisons under the Prevention of Terrorism Act are political prisoners. They were charged under the PTA for political reasons only. If they were ordinary criminals they would have been charged under the normal laws. When the State is unable to prove any charges against a person but is prejudiced against such person for his or her thoughts and actions or even his or her face or race, then in order to punish him or her, he or she is prosecuted under the PTA. So it is for political reasons a person is prosecuted generally under the PTA. Sometimes heavy Drug offenders are charged under the PTA. But they would not be generally political prisoners unless for political reasons the Government detains someone under the PTA to foist Drug charges after long detention.

When I was in the Supreme Court, in Nagamani's case (Nagamani Theivendran vs Attorney General SC Appeal No.65/2000 SCM/16/10/2002), I gave a judgment that even if confessions are acceptable under the PTA, no sentencing should take place unless corroborative evidence of the contents of the confessions are made available to satisfy the court that the incident mentioned in the confession did indeed take place. Suppose a person in his confession says I set fire to the BMICH. But if the BMICH was not subject to any fire on the so called date of offence would it be correct to find the prisoner guilty? So independent evidence must be forth coming that the crime mentioned in the confession did actually take place despite his or her confession.

But I do not know how many of our original Court judges follow that Supreme Court Judgment. In fact they have not had that judgment reported in the Sri Lanka

Law Reports, because possibly many a prisoner might get released if the contents of the judgment are adhered to.

The confessions are in fact dubious pieces of PTA evidence. When PTA cases against Tamil Prisoners came up before Judges who were well versed in all three languages Sinhala, Tamil and English about 25 years ago almost always the Prisoners got acquitted. The reason being that the signed confessions of Tamil prisoners were in Sinhala. More often some police officer would have explained the contents and the Prisoner would have signed. The officer would give evidence that he explained the contents to the prisoner and that he understood and signed the confession. If the so called Police Interpreter was asked a few questions with regard to his competency in the Tamil Language, he would have been exposed. Mostly the confessions were in fact written by the Police or their Para Military agents and the prisoner was asked to sign. When the Police Interpreter is asked how he would translate a particular word in the confession into Tamil or vice versa, he would not be able to answer properly. His knowledge of Tamil would almost always be faulty. If the interpreter was incompetent how could the confession be accepted? So the prisoner got acquitted.

But if the Judges were not competent in Tamil almost always they convicted the prisoners. They just went by what the so called Police Interpreter says. Political prisoners are generally the victims of prejudice and bias.

First those who arrest without understanding what the arrestee says, would in any event arrest because the arrestee does not speak Sinhala. Then there are those in Departments which prosecute, who presume that the arrestees must be guilty because they are Tamil speaking. Then there are Judges who act in prejudice. (Vide Judicial Mind by Almeida Gunaratne, Kishali Pinto Jayawardana and Gihan Gunatilleke which speaks of racial bias among the members of the Judiciary).

Therefore it is wrong to say that there are no political prisoners. Specially in relation to Tamil prisoners who were taken into custody just on suspicion and kept for very long time in detention without charges being filed because there were no charges to be filed. They were political prisoners because they happened to be Tamils and politics and prejudice determined their long detention and incarceration.

Whether Sinhala or Tamil anyone taken into custody under the PTA must be considered a person not properly before the law of the Country. PTA was an aberration. It was called a Temporary Provisions Act and it has existed until today for 41 years. It is used mostly now against the Tamils and all those arrested and kept in prisons for political reasons. They are indeed political prisoners. So you identify a political prisoner by the Law under which he is taken into custody and charged. If the person arrested is a Tamil and he is arrested under the PTA almost always he would be a political prisoner!

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