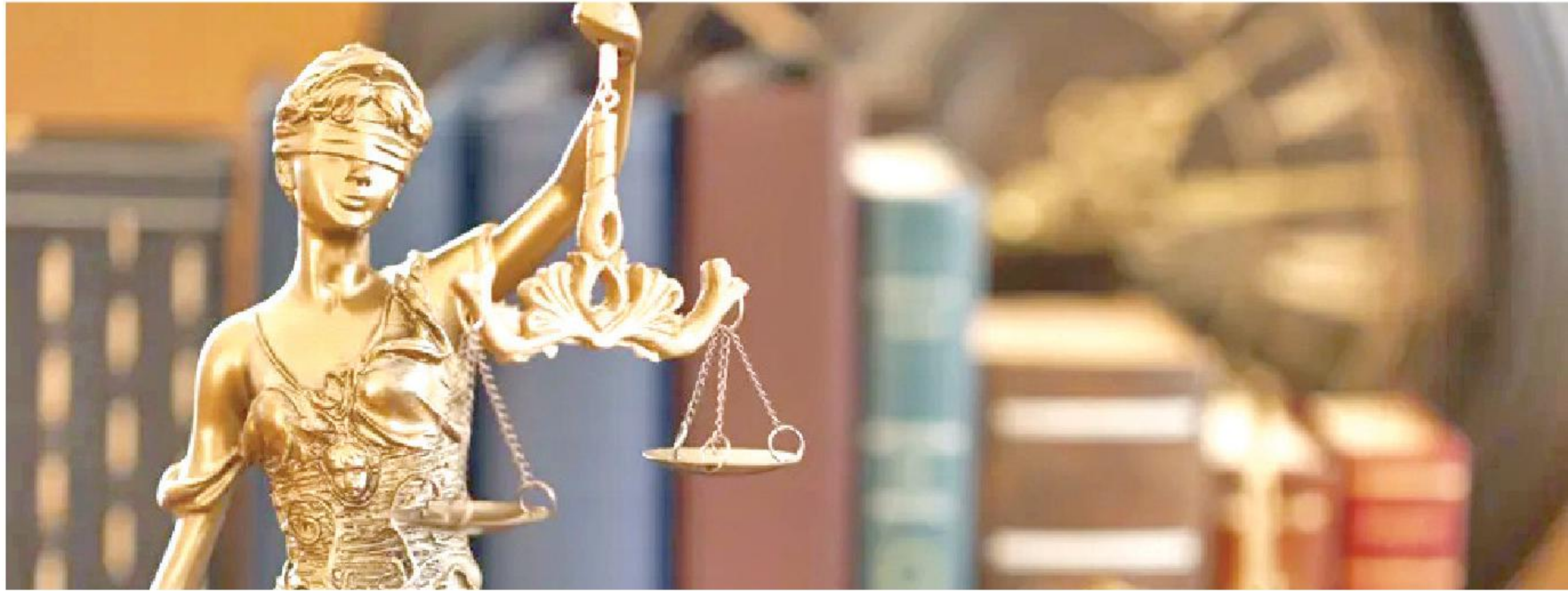


Dissent and the rule of law



—by—

Rajpal Abeynayake



When tasers are used against persons to restrain them, in countries that allow their use, it has been known the taser — a replacement for a gun — could sometimes be worse than a firearm.

A taser pumps a small quantity of electricity into a person's body in order to render him immobile, and is usually used to ensure that police don't face a threat from a person who may be armed and dangerous. A taser supposedly does not kill, and is therefore a good substitute for a gun.

But taser discharges by police have killed people particularly because tasers have been used indiscriminately in certain countries. Sometimes tasers have been overused i.e a reasonably docile person who can be immobilised with one taser charge had been tasered not once but three times or more in quick succession.

A taser is, therefore, an example of a legally allowable weapon that can be used indiscriminately against a person to cause great harm, even death.

Can a legal equivalent of a "taser" exist in the law books? A law that is meant for a so-called positive purpose can have such detrimental effects that the positive purpose for which it was intended may be defeated. It's a taser charge of sorts to use certain legislation meant for exceptional circumstances to arrest or otherwise restrain people.

The United Nations Committee Against Torture, a responsible UN body has called tasers a form of torture. The Committee has observed that tasers are in contravention of the UN convention against torture, and have resulted in many deaths.

Similarly, there is much said against legislation used precipitously — even in this country — for purposes that were not intended. In any event some of this legislation is controversial under any circumstances. But their indiscriminate use can be utterly reprehensible.

PRESSURE

But yet certain oversight bodies and the general citizenry of this country have now forgotten that even those who stand on their behalf can be persecuted by the use of certain legislation that is the equivalent of a stun gun. This is not a welcome state of affairs, but with little resistance in general, it is not surprising that the use of legislation to deter terrorism for instance is marshalled in many countries to arrest persons that are considered a 'nuisance' by the establishment.

Former Pakistani Prime Minister Imran Khan has now been charged under anti-terrorism laws, and its questionable why these laws are being used as opposed to the equivalent of Penal Code provisions. However, keen observers might say that Sri Lankans should be the last to object because of the indiscriminate use of anti-terrorism laws in this country as well.

Pertinently, there is now a general acceptance of this form of law enforcement against dissidents. This is dangerous, but society has now it seems accepted that if the 'goods are to be delivered', effective measures of law enforcement should ensure that the establishment survives.

Does that mean that the 'gods' of those oversight bodies that keep the feet of politicians to the fire, have clay feet? Some may ask, where are the lawyers now — when there is licence to abuse PTA provisions? Why allow this form of legal-taser? Why doesn't it prick the conscience of those concerned?

Some may say that it is because the international community is giving mixed signals. Yes, there has been condemnation by certain international actors of the use of certain special legislation to combat ordinary situations that can be dealt with using regular provisions under normal law.

But then, the international community seems to also want to ensure that the current regime which is taken to be an improvement on the previous one, has the ability to deliver the goods to the people. It seems that there is a certain time-run in which there is effective international pressure being brought to bear on issues such as legitimate dissent.

After this period is up, the international community too perhaps becomes something like the local oversight bodies, or the local populace in general. Today, there are no heroes among the dissident community, as far as ordinary people are concerned.

The dissidents have done their job and if they are of nuisance value any further 'just taser them' seems to be the

national consensus. Of course taser being used figuratively here, because this is the law-book equivalent of tasers that are used.

That the use — or abuse — of the PTA has been red-lined by the so called dissident-wing of the Sri Lanka Podujana Peramunaled by professor GL Peiris is telling. Why is this the dissident-wing anyway, one may ask?

Democracy

Though democracy ostensibly works and there is room for dissent within the ruling dispensation, the political space is constricted not necessarily because the regime is using extraordinary measures, but because there is no social dissent against the use of such measures whatsoever.

It's a tolerant polity out there, that is almost goading on the regime to bring back normalcy as long as the 'goods are delivered'. If this is also to some extent what's mimicked by the international community, there would be a level of impunity in the country that was hitherto inconceivable.

It's a matter then of course of political culture, and if there is such a thing, 'international political culture' as well. Sri Lankans in general do not seem to mind dissidents being branded as terrorists. After the job of the dissident is done, one might say

One may say that the establishment has fought back with a great degree of ease after recent events. This could not have been done if there was no acquiesce on the part of the so called oversight bodies, and the other forces that constitute so called civil society. Also this effective fight back could not have been accomplished if the citizenry in general was not this meek. There is more dissent in Pakistan when Imran Khan is charged under anti-terror laws.

Khan has been charged under anti-terror provisions because he apparently spoke out against a judgment and a prosecution which allegedly harmed some of his key supporters. He said words to

the effect 'even judges should beware if they engage in judicial overreach'. Why weren't regular contempt provisions used against Khan?

It is because anti-terror laws are convenient — after all he used them against his own political opponents when in power! So Khan may not have much sympathy on that score, but yet his supporters have come out in full force whereas the reaction here to the use of extraordinary legislation to contain ordinary dissent, has been essentially mute.

These days even GL Peiris seems to look forward to the UN Human Rights Council sessions, which is strange one may say given his past roles. But in the absence of any realistic civil society Opposition to the quelling of legitimate dissent by recourse to extraordinary measures, some may say that conscientious objectors from any quarter are welcome.

The PTA if it's used is a taser-like weapon because it's deployed to 'stun into submission.' Some may argue that there is a place for tasers as well, because if not, there would have been regular guns used which would have been worse. Similar arguments are being used against the aforementioned extraordinary legislation used both here, and in Pakistan.

The 'necessity' doctrine if you will. But if the taser is a form of torture, is the use of tasers acceptable under any circumstances? The answer should be a definite no. Some may argue that this leaves law enforcement in an extremely vulnerable position — and that police will use guns if they don't have recourse to stun guns. But now the stun guns have become guns, and that's the rub. This is the problem with bad devices used with so called good intent. Negative legal instruments would also be touted as necessary. Even the general citizenry may ride with that argument for a while.

But on the whole, when too many citizens' rights are exposed to attack from the so called establishment, society is left vulnerable. That's a big price to pay for 'small conveniences.'