

Sri Lanka: A broken justice system

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After an excruciating 18 months in detention, poet and teacher Ahnaf Jazeem was released on bail this week. Jazeem was arrested on 16 May 2020 under the Prevention of Terrorism Act (PTA) in connection with a Tamil-language poetry anthology called Navarasam published in 2017.

The fact that a man could be arrested in the first place over a publication of poetry speaks to the sorry state of the country's law enforcement mechanisms. But that Jazeem was denied bail for nearly two years is an unconscionable failure of Sri Lanka's criminal justice system. The 27-year-old poet's lengthy detention and the six months he spent inside a prison cell with no access to a lawyer speaks volumes about the draconian and cruel nature of the PTA and how easily the law can be politically weaponised against foes perceived and real. In the case of Ahnaf Jazeem, Sri Lanka's horrible anti-terror laws were used to incarcerate a young poet for nearly two years, all because the CID officers who arrested him could not comprehend the language in which his verse was written. Jazeem's arrest comes against a backdrop of increased marginalisation and discrimination targeting Sri Lanka's Muslim community.

He is just one of many who have been incarcerated under the PTA and detained for long periods of time even without being charged in court. Tamil PTA prisoners have been languishing in detention for years sometimes even as long as 15 years, often without being charged. As recently as May 2021 a group of ten Tamil men and women were arrested and detained under the PTA for commemorating those who died in the final phase of the war.

Former Governor of the Western Province Azath Salley was arrested in May this year and held in custody for over six months allegedly for making a controversial statement at a media briefing. The CID arrested him using the provisions of the PTA and the International Covenant on Civil & Political Rights (ICCPR) Act. He was finally released and acquitted from all charges by the Colombo High Court only a few weeks ago after spending six months in detention.

The continuous detention of prominent Attorney Hejaaz Hizbullah is even worse. Hizbullah was arrested in April 2020 and he has now spent over 18 months in detention without bail. It was a year after his detention that he was finally indicted under the PTA on the charges of inciting communal strife. Once again, the accusations are flimsy and the Attorney General's entire case hinges on the evidence of a single child. Several of his classmates have complained to the Supreme Court that the CID sought to coerce false testimony from them to implicate Hizbullah.

It is not only minorities that have faced the threat of prolonged pre-trial detention under the Gotabaya Rajapaksa administration. Former CID Director Senior Superintendent of Police Shani Abeysekera was also held in custody for 11 months before the Court of Appeal ordered his release on bail. It was abundantly clear that the former ace detective was being punished for his pursuit of justice in several high-profile cases in which many leading figures in the current administration stand accused.

The guiding principle of the Bail Act of 1997 is that bail is the norm, except in extraordinary circumstances. It is also in line with guarantees enshrined in the Sri Lankan constitution, the Code of Criminal Procedure Act and Sri Lanka's international obligations under the International Covenant on Civil and Political Rights (ICCPR).

The plight of these accused is emblematic of the broken criminal justice system at every level. Rather than building a case against a suspect, police perform the arrest first and then seek to build a body of evidence against an individual. Until sanity prevails, either on the Bench or the AG's Department, those accused on baseless charges languish in custody. The AGD is equally culpable for repeatedly objecting to bail for detainees, when it is fully aware that there is no real evidence or good rationale to continue to hold them prisoner.

Sri Lanka's criminal justice system is riddled with delays that ensure a suspect remains in custody for years until the matters are taken up in court and dealt with to conclusion. Mandatory detention prescribed in draconian laws such as the PTA and laws that have been selectively weaponised like the ICCPR Act, have contributed to this travesty of justice. All the while, custodial deaths and accusations of torture continue apace. It is past time to repair the broken bail system and start a real national conversation about paying damages to those who have cruelly and unnecessarily suffered detention.

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