

Labour`s cold feet in Combating Crime

Dr. Herrera's emotional, quasi-hysterical charge in Parliament that Government's intention to restrict the granting of bail to repeated offenders of serious crime smacked of fascism comes as a surprise; for in its statements and declarations Labour is doing its utmost to come across as a party of 'law and order'. Its proclaimed zero tolerance on crime has failed on its very first test.

What is wrong with a law which imposes a three-month moratorium and freezes the granting of bail in serious cases where a person is arraigned for a second time. Indeed the measure is mild compared with other more stringent laws in foreign jurisdictions; for the Bill currently being debated in Parliament applies this moratorium **only** in the cases of recidivists i.e. where a person has already been convicted by final judgment, and then only when the charge relates to a serious crime punishable with at least nine years of imprisonment.

If Dr Herrera feels that a pedophile who is charged for the **second** time with a serious offence does not deserve to be remanded in custody, this is certainly worrying not only for Labour but also for our country; for in a triumphant outburst in the House, his colleague Dr Gavin Gulia, who has aspired for the past eight years to occupy the post of Interior Minister, promised that, should Labour be elected to government, it would do away with this moratorium rule, within 6 months!

Government's proposal is so reasonable that it provides that a repeated offender may, even during the 3-month moratorium, apply for release before a Superior Court which may grant his request "for grave reasons" !

Dr Herrera criticized me for proposing this law, which he says tarnishes my credentials as a former human rights lawyer. He fails to understand that human rights protect also the rights of the community and the victims of crime. Indeed it is such criticism as the one made by Dr Herrera which creates doubts as to undermine the credibility of the importance of human rights law and gives the impression that such law is mainly centred around releasing dangerous offenders in the streets.

Can't a human rights practitioner be in favour of procedural and substantive safeguards for persons in police detention – as I have been for the past 25 years – and at the same time be also in favour of restricting the release of repeated offenders immediately following their second arraignment in Court? Can't the legislative impose parameters to the Court's discretion in granting bail. What it can't do is eliminate such discretion completely.

Most of the hullabaloo raised by Dr Herrera hovers around the principle of the presumption of innocence which, in my view, is more of a procedural rule of evidence, than anything else; for if it were not, then no one would be remanded in custody pending trial for even the serial killer or rapist or repeated offender is "presumed to be innocent". The rule, in actual fact means that the accused – once he is presumed innocent – may remain silent,

and it is up to the prosecution to prove his guilt beyond a reasonable doubt so much so that art 39 (5) of the Constitution which refers to this principle, mentions, as one of the exceptions to such principle, the provision **relating to evidence** that the accused may be obliged to prove **certain facts**. Only if the general right to a fair hearing is infringed is there a Constitutional violation but that does not depend on a single incident, but on a consideration of the facts surrounding the trial as a whole.

I look forward to the debate in Parliament on this provision; which incidentally is fully supported by the Police Force which proposed it in the first place. Labour's unfortunate promise to remove this provision, should it be elected to power, has come as sad news to the Police Force; even though, for obvious reasons, I do not think that they should be unduly worried.

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